

Child trafficking for Forced labour



**Bachpan
Bachao
Andolan**



WHAT IS TRAFFICKING?

“Trafficking in person” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.¹

Constitution of India, Article 23 :

“Traffic in human beings and ‘begar’ and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”²

Source:

6.Optional Protocol to United Nation Convention On Transnational Organised Crime, ratified by India in May, 2011

7.Bachpan Bachao Andolan vs Union of India and others (2011) 5 SCC 1

WHAT IS TRAFFICKING?

According to Indian Penal Code, Section 370:

Trafficking is

Through Act of	By means (process) of	For purpose of
<ul style="list-style-type: none">• Recruitment• Transportation• Transfer• Harboring or• Receipt of a person	<ul style="list-style-type: none">• Threat• Force or Coercion,• Abduction,• Fraud or Deception,• Of the abuse of power (or position of vulnerability)• Inducement, including giving or receiving money or benefit	<p><u>Exploitation</u> Including, at a minimum :</p> <ul style="list-style-type: none">• Physical Exploitation• Sexual Exploitation• Slavery or practice similar to slavery (like Forced Labour)• Servitude• Forced Removal of organs

WHAT IS FORCED LABOUR

Code, Sect

“Any work or service which is exacted from a person under the menace of penalty and for which the person has not offered himself/ herself voluntarily.”

- ILO Convention 29

CHILD LABOUR/ TRAFFICKING WHY?

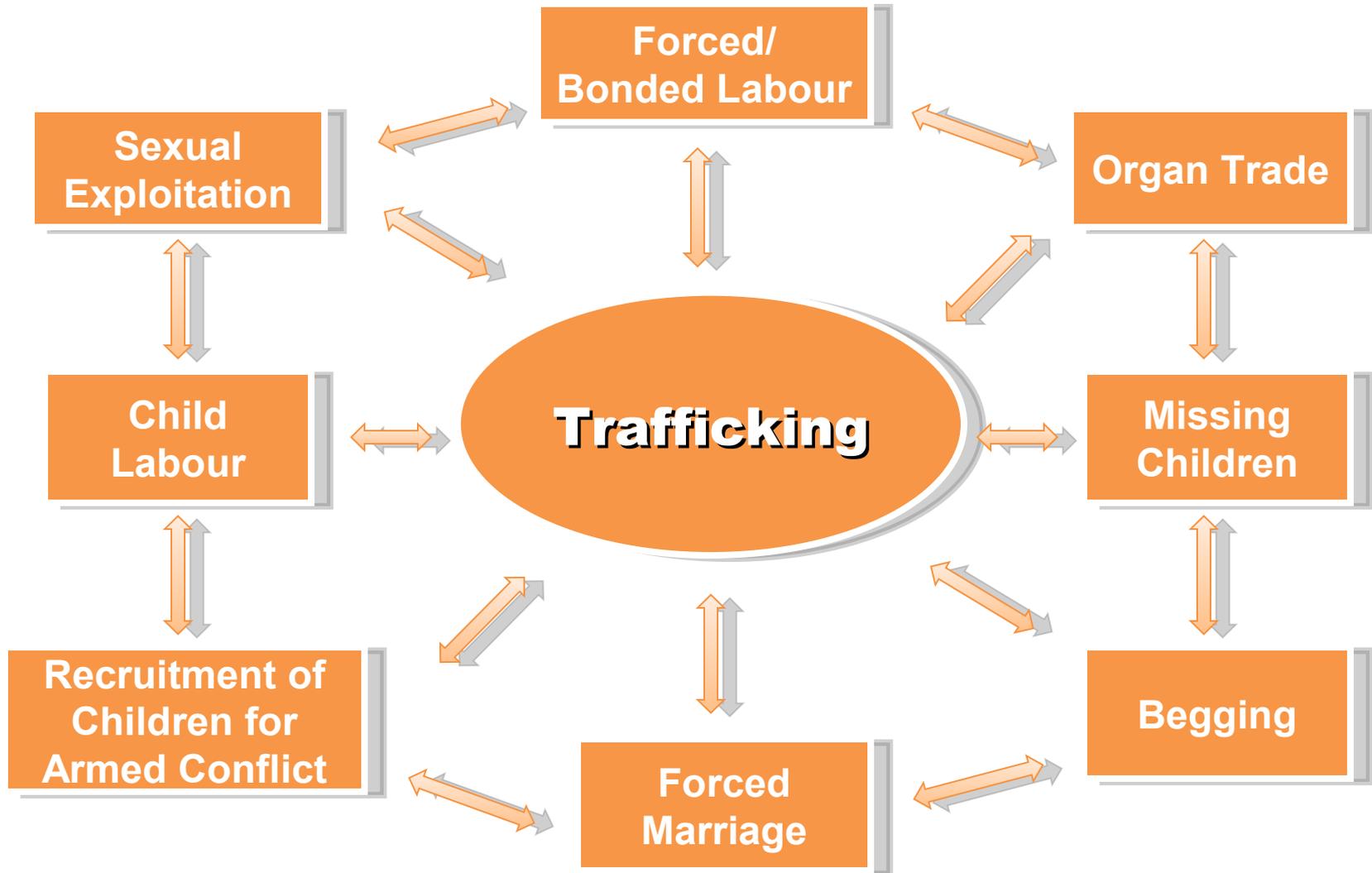
- Most profitable criminal activity.
- In India, from child labour trafficking, illegal profits generated up to 1.2 lakh crore annually.
- From Government figures an estimated 100 crore (1 billion Rs.) generated daily.
- ILO estimates global profits from trafficking at 32 billion USD.

HIGH PROFIT – LOW RISK!

* Source: Capital Corruption: Child Labour in India (2011)

** Source: ILO action against trafficking in human beings (2008)

DIMENSIONS OF TRAFFICKING



SITUATION IN TAMIL NADU

Trafficked vs missing children

- No. of missing children – 2828 (2011)
- No. of FIRs registered – 576
- No. of STILL untraced children – 847

Trafficked vs Child Labour

- No. of children rescued from child labour – 5127 (2011- 2012)
- Rehabilitation amount due – Rs. 10,25,40,000

- No. of child labour inspections - **1232050 (1997- 2007)**
- No. of child labour prosecutions – 4165 **(1997- 2007)**



ENACTMENTS IN INDIA

- **Indian Penal Code, 1860**
- **Protection of Children from Sexual Offences Act, 2012**
- **Juvenile Justice (Care and Protection) Act, 2000**
- **Bonded Labour System (Abolition) Act, 1976**
- **Immoral Traffic (Prevention) Act, 1956**
- **Child Labour (Prohibition and Regulation) Act, 1986**
- **Other legislations**



RESPONSE TO TRAFFICKING: WHY?

- **Biggest Criminal Activity.**
- **Large Crime Networks.**
- **Ongoing Continuous Crime.**
- **Large number of Victims.**
- **Illegal Profits fueling many other Crimes.**

Indian Penal Code

Section	Section	Provision	Cognizable/ Non-Cognizable	Explanation
340	Wrongful confinement			To limit a person from movement by restricting him at one place
342	Punishment for wrongful confinement	Imprisonment for a term of up to 1 year, a fine of Rs. 1000 or both	Bailable, Cognizable	
343	Wrongful confinement for 3 or more days	Imprisonment for a term of up to 2 years, a fine or both	Bailable, Cognizable	
344	Wrongful confinement for 10 or more days	Imprisonment for a term of up to 3 years, and a fine	Bailable, Cognizable	
346	Wrongful confinement in secret	Imprisonment for a term of up to 2 years and any punishment he is liable to for such wrongful confinement	Bailable, Cognizable	Confine a person in a way that anyone interested can not discover

Section	Section	Provision	Cognizable/ Non-Cognizable	Explanation
361	Kidnapping from lawful guardianship	Taking or enticing of a minor (male under 16 years or female under 18 years)		children are made false promises as allurement
362	Abduction	Compel by force or by deceitful means, to take a person to another place is abduction		living and working conditions are never as promised
365	Kidnapping/Abduction with intention of secret or wrongful confinement	Kidnap or abduction with intention that such person be secretly or wrongfully confined	Non Bailable, Cognizable	In most cases of labour trafficking, children are kept in secret and not allowed to move
366A	Procuration of minor girl	Imprisonment for a term of up to 10 years and shall also be liable to a fine	Non Bailable, Cognizable	Procure a girl of under 18 years to force or seduce to illicit intercourse

Section	Section	Provision	Cognizable/ Non- Cognizable	Explanation
366B	Importation of girl from foreign country	Imprisonment for a term of up to 10 years and shall also be liable to a fine	Non Bailable, Cognizable	Import a girl into India from other country to force or seduce to illicit intercourse with another person
367	Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc	Kidnap or abducts in order to cause grievous hurt or slavery or unnatural lust of a person; Imprisoned for a term of up to 10 years and fine	Non-bailable, cognizable	In trafficking, all movement is either through force or deceit. The victim almost never gets minimum wage, thus maybe termed forced labour (PUDR case)
368	Wrongfully concealing or keeping in confinement, kidnapped or abducted person	Same punishment as for kidnapping or abduction	Non-bailable, cognizable	Concealing the information about a kidnapped or abducted person is punishable

Indian Penal Code

Section	Provision		Cognizable/ Non- Cognizable	Explanation
370	Trafficking			
	(1) Whoever for the purpose of exploitation	(a) recruits,		
		(b) transports		
		(c) harbours		
		(d) transfers		
		(e) receives a person or persons by		
		First. Using threat		
		Secondly, using force or any other form of coercion		
		Thirdly, by abduction		
		Fourthly, by practising fraud or deception or		

Indian Penal Code

Section	Provision		Cognizable/ Non- Cognizable	Explanation
		Fifthly, by abuse of power		
		Sixthly, by inducement including the giving or receiving of payments or benefits in order to achieve the consent of a person having control over the person recruited, transported, harboured, transferred or received		
	<i>Explanation 1</i>	Exploitation – any act of physical exploitation; any form of sexual exploitation; slavery or practices similar to slavery; servitude; forced removal of organs		
	<i>Explanation 2</i>	Consent of the Victim is immaterial in determining an offence of trafficking		
370 (2)	Punishment for offence of trafficking	Rigorous imprisonment of seven years, extendable to ten years and liable to fine	Non-Bailable and Cognizable	

Indian Penal Code

Section	Provision		Cognizable / Non-Cognizable	Explanation
370 (3)	Punishment for the offence of Trafficking of more than one person	Rigorous imprisonment of ten years which maybe extended to life and shall also be liable to fine	Non-Bailable and Cognizable	
370 (4)	Punishment for the offence involving trafficking of a minor	Rigorous imprisonment of ten years which maybe extended to life and shall also be liable to fine	Non-Bailable and Cognizable	
370 (5)	Punishment for the offence involving trafficking of more than one minor	Rigorous imprisonment of fourteen years which maybe extended to life imprisonment and shall also be liable to fine	Non-Bailable and Cognizable	
370 (6)	Punishment for a person convicted of offence of trafficking of a minor in more than one occasion	Imprisonment for life, which shall mean imprisonment for the remainder of the person's natural life and shall also be liable to fine	Non-Bailable and Cognizable	

Indian Penal Code

Section	Provision	Expansion	Cognizable / Non-Cognizable	Explanation
370	(7) Punishment for public servant or a police officer involved in trafficking of any person	Imprisonment for life, which shall mean imprisonment for the remainder of the person's natural life and shall also be liable to fine	Non-Bailable and Cognizable	
370 A (1)	Punishment for a person who engages a trafficked minor for sexual exploitation	Rigorous imprisonment for five years which may extend up to seven years and shall be liable to fine	Non-Bailable and Cognizable	
370 A (2)	Punishment for a person who engages a trafficked person for sexual exploitation	Rigorous imprisonment for three years which may extend up to five years and shall be liable to fine	Non-Bailable and Cognizable	

Indian Penal Code

Section	Section	Provision	Cognizable/ Non-Cognizable	Explanation
371	Habitual dealing in slaves	Imprisonment for a term of up to 10 years and shall also be liable to a fine	Non Bailable, Cognizable	Habitually import, export, remove, buy, sell, traffic or deal in slaves
372	Selling minor for purposes of prostitution, etc	Imprisonment for a term of up to 10 years and shall also be liable to a fine	Non Bailable, Cognizable	sells, lets to hire a person under 18 years for prostitution or illicit intercourse for unlawful or immoral purpose
373	Buying minor for purposes of prostitution, etc	Imprisonment for a term of up to 10 years and shall also be liable to a fine	Non Bailable, Cognizable	buys, hires or obtains possession of a person under 18 years for prostitution or illicit intercourse for unlawful or immoral purpose

Indian Penal Code

Section	Section	Provision	Cognizable/ Non- Cognizable	Explanation
374	Unlawful compulsory labour	Unlawfully compel a person to labour against the will of the person; imprisonment of a max of 1 year or fine or both	Bailable, Cognizable	
506	Punishment for criminal intimidation	A term which may extend to 2 years, or fine or with both	Non-cognizable, bailable	Criminal intimidation is to threatens a person with injury to his person, reputation or property or to the person or property of whom the person is interested, with the intent to cause alarm
34,120B, 321, 323,509, etc.				

Bonded Labour (Abolition) Act, 1976

Section	Provision	Cognizable/ Non-Cognizable	Explanation
Section 2 defines bonded labour “is when a person pledges to offer his or his family’s service in lieu of the debt that he has taken from the doctor Section 16- 23 for punishment			
Sec 16- Punishment of enforcement of bondedlabour	Imprisonment for a term which may extend up to 3 years and fine of up to Rs. 2000	Cognizable and bailable	
Sec 17- Punishment of advancement of bonded debt	Imprisonment for a term which may extend up to 3 years and fine of up to Rs. 2000	Cognizable and bailable	
Sec 18- punishment for extracting bonded labour under the bonded labour system	Imprisonment for a term of up to 3 years and fine of up to Rs. 2000		

Juvenile Justice Act, 2000

Section	Provision	Cognizable/ Non-Cognizable	Explanation
Sec 23- Punishment for cruelty to a juvenile or child	Whoever having the charge over a child, assaults, abandons, neglects or procures him/her to be assaulted, abandoned or neglected so as to cause physical or mental suffering will be punished for up to 6 months or fine or both	Cognizable	
Sec 26- Exploitation of juvenile or child employee	Procure a juvenile or the child for hazardous work, keeps him in bondage and withholds the child's earnings or uses them for his own purpose is liable for imprisonment up to 3 years and also a fine	Cognizable	

Child Labour (Prohibition and Regulation) Act, 1986

Section	Provision	Cognizable/ Non- Cognizable	Explanation
Section 3 prohibits the employment of children in certain occupations and processes set forth in Part A and Part B respectively			
Section 14	Imprisonment: Min-3 months, Max-1 year; Fine: Min- Rs. 10,000, Max- Rs. 20,000 For repeat offence, imprisonment of at least 6 months and max of 2 years	Non-cognizable, bailable	



LAWS THROUGH SUPREME COURT JUDGEMENTS

Bachpan Bachao Andolan vs Union of India and Others (2011) 5 SCC 1

- Defined the crime of “Trafficking” for the first time in India
- Prohibited employment of trafficked children in circuses
- Lead to India ratifying the Palermo Protocol, 2000 (The Protocol to the Convention Against Transnational Organised Crime) on the 5th of May, 2012.
- Detailed guidelines brought out for the enforcement of the Juvenile Justice (Care and Protection) Act, 2000.



LAWS THROUGH SUPREME COURT JUDGEMENTS

Bachpan Bachao Andolan vs Union of India and Others(10th May, 2011)

- Defined Missing Children as, **“a person below eighteen years of age, whose whereabouts are not known to the parents, legal guardians and any other person, who may be legally entrusted with the custody of the child, whatever may be the circumstances/causes of disappearance.”**
- In **all cases of missing children compulsory registration of FIR was ordered under the presumption of the crime of kidnapping or trafficking unless proven otherwise from investigation. Even after recovery of the child, police would investigate the case to look into the possibility of any linkage with trafficking.**
- Computerized Network to be developed and linked to all districts which will be a data base for missing children.



LAWS THROUGH SUPREME COURT JUDGEMENTS

Bachpan Bachao Andolan vs Union of India and Others(10th May, 2011)

- All cases of crimes against children to be compulsorily investigated, either under Section 154 or 155, after getting the required permission from the magistrate.
- No child may be put in a children's home/ shelter home without producing them before a child welfare committee and proper procedures as per the Juvenile Justice Act.



LAWS THROUGH SUPREME COURT JUDGEMENTS

PUDR vs Union of India 1982 3 SCC 235

- Defined of 'force' and 'forced labour'

“Any factor that deprives a person of alternatives and compels him to choose a particular course of action is **force**”

“Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word **'forced labour'**as described in Article 23 of the Indian Constitution”



LAWS THROUGH SUPREME COURT JUDGEMENTS

Bandhua Mukti Morcha vs Union of India 1982 2 SCC 253

“...Whenever it is shown that a labour is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic considerations received by him and is, therefore , a bonded labour...”

“... bonded labourers must be identified and released and on release, they must be suitably rehabilitated...”



LAWS THROUGH SUPREME COURT JUDGEMENTS

Adoption and Trafficking:

Lakshmikant Pande vs. Union Of India

To eliminate all together the possibility of profiteering and trafficking in children

Child Labour

M.C.Mehta vs. State of Tamil Nadu (AIR 1997 SC 699)

“...The inspectors appointed under section 17 would see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000 which sum could be deposited in a fund to be taken as Child labour Rehabilitation-cum-Welfare Fund....”



DELHI HIGH COURT ON INTERAGENCY COLLABORATION AND COMPREHENSIVE LEGAL ACTION

Save the Childhood Foundation vs. Union of India and
others (Delhi High Court 15th July, 2009)

Action Plan on Elimination of Child Labour by NCPCR

(further adapted by Delhi, Uttarakhand, Rajasthan, Bihar, Punjab, Karnataka, etc.)

·All law enforcement agencies must work together, with specific roles and responsibilities assigned to Police, Labour Department, Department of Social Welfare, M.C.D, Department of Health, Department of Education, etc.

·**Recovery of fine of Rs. 20,000** as arrear of land revenue immediately **and DOES NOT REQUIRE CONVICTION**

·Compulsory registration of cases in all child labour rescues

·Cancellation and suspension of license.



HIGH COURT OF DELHI ON ECONOMICS OF TRAFFICKING

Save the Childhood Foundation vs. Union of India and
others (Delhi High Court 27th May, 2012)

“....Notwithstanding any other law being in force, if an establishment is found employing child labour, the establishment may be sealed and or its registration or license issued by any authority, to conduct business, may be suspended or cancelled till such time that it pays all the dues including Rs. 20,000 as rehabilitation compensation in accordance with the judgment of Hon’ble Supreme Court of India in M.C Mehta Vs. State of Tamil Nadu and other dues including minimum wages, in respect of the children so rescued....”]



HIGH COURT OF DELHI ON ECONOMICS OF TRAFFICKING

**Save the Childhood Foundation vs. Union of India and
others**

Impact – 15th July , 2009 – 31st May, 2013

CHILDREN RESCUED – 3734

Traffickers arrested – over 500

Fines recovered from Traffickers/ employers – over 3,80,00,000

Buildings/ establishments sealed- over 250

INSTITUTIONAL RESPONSE ON CHILD PROTECTION

VICTIM CENTRIC

**INSTITUTIONALISATION
OF RESPONSE**

**COMPREHENSIVE
POLICIES FOR
RESCUE AND
REHABILITATION**

**CAPACITY BUILDING
AND EMPOWERMENT
TO CREATE
KNOWLEDGE BASE**

COMBATING CHILD ABUSE

Demand and supply chain

SOURCE

Awareness
Generation:



ROUTE

Sensitisation and
Capacity Building of Law
Enforcement Agencies
and NGOs:

Case Study:

July, 2012: On specific intelligence gathered from source areas, the Delhi Police Crime Branch AHTU organised a midnight rescue operation resulting in the rescue of 42 children and arrest of 21 traffickers.

MARKET

Regular Rescue
Operations for
Children in
exploitation:

In Delhi alone
more than 323
operations from
2009 till May,
2013

PROCESS OF RESCUE (VICTIM CENTRIC)

IDENTIFICATION



**RESCUE FROM FORCED LABOUR/SEXUAL EXPLOITATION
(SOP to be followed)**



MEDICAL CARE & PSYCHOLOGICAL COUNSELLING



**SHELTER HOMES/CHILDREN' HOMES
(Further Care and Counselling till Repatriation)**



REPATRIATION



COMPREHENSIVE REHABILITATION



EDUCATIONAL

ECONOMIC

PSYCHOLOGICAL



REHABILITATION

Statutory Response:

- Bonded Labour System (Abolition) Act, 1976

Financial Rehabilitation: Compensation under,

- M.C. Mehta Guidelines
- Section 357A of the Code of Criminal Procedure, 1973

Educational Rehabilitation:

- National Child Labour Policy, 1987
- Fundamental Right to Free and Compulsory Education (Article 21 A, Constitution of India)



INSTITUTIONALIZATION OF RESPONSE

**ANTI HUMAN
TRAFFICKING UNIT (AHTU)
&
Crime Bureau of Investigation -
AHTU**

COMMISSIONS AT THE CENTRE:

- National Human Rights Commission
- National Commission for Protection of Child Rights
- National Commission on Women

ACCESS TO LEGAL AID:

- National Legal Services Authority
- All India Legal Aids Cell On Child Rights
- State Legal Services Authority
- District Legal Services Authority

OTHER STATE AGENCIES:

- Child Welfare Committee (District)
- Special Juvenile Police Units (All Police Stations)



POLICIES

- National Child Labour Policy , 1987
- National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children, 1998
- National Policy for the Empowerment of Women, 2001
- National Plan of Action for Children, 2004
- Integrated National Plan of Action to Prevent and Combat Trafficking of Human Beings.
- National Policy on Children, 2013
- Prevention through Right of Children to Free and Compulsory Education Act, 2009
- And Others



CAPACITY BUILDING

Regular Training by AHTU

- Training of Trainers
- Training of law enforcement personnel
- Judiciary
- Public Prosecutors

Regular issue of Advisories by the
Concerned Ministry of Home Affairs

CHALLENGES & GAPS

- Enforcement of law
- National Policy on Rehabilitation
- Inter Agency Protocol for
 - Cross Border Trafficking
 - Intra State Trafficking across different State Borders
- Protocol on Repatriation and Rehabilitation of Victims And Prosecution of Offenders



WAY FORWARD

PREVENTION	PROTECTION	REHABILITATION
<ul style="list-style-type: none">• THROUGH LEGAL DETERRENT – STRICT ENFORCEMENT OF LAW AND POLICIES• THROUGH STATUTORY REHABILITATION	<ul style="list-style-type: none">• PROTECTING VICTIM DURING AND AFTER RESCUE• DURING TRIAL – TO PREVENT VICTIMS/ WITNESS FROM GIVING INCORRECT STATEMENTS IN FEAR/ DURESS/ COERCION• ENSURING VICTIM/ WITNESS PROTECTION• ENSURING VICTIM FRIENDLY PROCESSES DURING TRIAL AND OTHER JUDICIAL PROCESSES	<ul style="list-style-type: none">• STATUTORY AS WELL AS CENTRE BASED REHABILITATION• ECONOMIC REHABILITATION THROUGH FINES, JOBS, COMPENSATION, ETC.• EDUCATIONAL REHABILITATION• CENTRALLY SPONSORED SCHEMES FOR REHABILITATION OF BONDED LABOURERS/ TRAFFICKING VICTIMS

Stop child trafficking



**Bachpan
Bachao
Andolan**

**FOR MORE INFORMATION, CONTACT:
ALL INDIA LEGAL AID CELL ON CHILD RIGHTS**

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