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### **All Missing Cases are Not Human Trafficking but all Human Trafficking are Missing Cases: Critical Analysis**

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#### **Abstract**

The relation between missing person and trafficked person was first reported by Sankar Sen and P.M. Nair in their report "A Report on Trafficking in Women and Children in India 2002-2003". During my interview with Jagdalpur Legal Aid Group for this research, I found that some where the police officers failed to handle the cases of missing person which was actually a case of trafficking especially in those places where trafficking rate is high. In a recent human trafficking case dealt by JagLag (Jagdalpur Legal Aid Group) where they had rescued three women name Suvita Tati d/o Balsu Tati, Pode Tati d/o Phagnu Tati and Ramdehi Kashyap d/o Lachu Kashyap, age 20, 21 and 23 respectively missing from 28th July, 2014 from village Karli, PS Geedam, District Dantewada, Chattisgrah and when the family members of the missing ladies went to the local police station in Geedam to lodge a complaint on 18.8.2014, the police station in-charge registered only a missing persons complaint and refused to file a FIR. But the police officer finally registered the F.I.R after the interference of JagLag along with the local leader of Aam Aadmi party, Soni Sori. Finally, the ladies were rescued from Indore with the help of a local NGO working there. From this case also we find a strong relationship between both the missing person and trafficking cases. It should be the duty of the police officer to register immediately a cognizable offence by filling a FIR in cases of missing cases. Especially in those areas, where trafficking cases is higher in consideration to other states, in such areas FIR should be registered immediately for a missing person without making any delay.

Even Supreme Court has laid down certain guidelines in Writ Petition (Crl.) No. 610/1996 **Hori Lal Vs Commissioner of Police, Delhi & Ors Respondents** relating to FIR registration of missing girls or women and also the duty of the investing officer in cases of missing person. But from my interview with JagLag I found that either the police officer was unaware of the Supreme Court guidelines for registering a FIR for missing person or there was lack of proper training to deal with the same.

From past few years through several researches, it have been found that every trafficking cases is a missing cases, and to combat with such cases NGO can play an important role to rescue the trafficked person. And in areas where the trafficking or missing person rate is high the special police team should be formed to deal with such cases from the first day of complaint. Even NGO can spread awareness through awareness camp among the villagers to protect them from becoming the victim of trafficking.

**Keywords:** trafficking; missing; F.I.R; exploitation and forced labor.

## Introduction

Chhattisgarh has become a major hub of human trafficking of girls and women to other towns and cities in the pretense of work. But in most cases these women and girls are exploited, sold and pushed into domestic slavery, commercial sexual exploitation or forced marriage. They were subject to forced labor as factory workers and beggars. In last year, Jagdalpur Legal Aid Center has experience of various incidents of human trafficking in huge numbers. According to NCRB data, since 2008 more than 16000 cases under human trafficking of girls and women were report throughout the country. The Bastar region of Chattisgarh, marred by poverty is the most badly affected area in Chhattisgarh. The lack of awareness and sensitivity amongst the investigating officers is one of the major reasons why this organized crime goes unchecked as per JagLag. In most of the missing cases, even FIR is not registered and police just enter the information in the missing person's diary. Thus, even the NCRB data is an underestimate of the reality. JagLag also had a similar experience in one of the trafficking cases where three women, Suvita Tati d/o Balsu Tati, Pode Tati d/o Phagnu Tati and Ramdehi Kashyap d/o Lachu Kashyap, age 20, 21 and 23 respectively from village Karli, PS Geedam, District Dantewada were missing since one month. According to the families, a woman named Kiran informed the local people that she needed workers for an agarbatti factory situated in Kondagaon, Chhattisgarh and took them along with her. Around 28th July, 2014, she took the above-mentioned three young women with her ostensibly to work in the agarbatti factory after which the families lost contact with the women. The families themselves visited Kondagaon, Chhattisgarh and did not find any agarbatti factory there. On the other hand, they uncovered previous history of that above-mentioned Kiran, who has trafficked young women from different area earlier in the name of job. Armed with the information, regarding the phone number of Kiran and the place (shajapur, near indore, MP) where she took previously trafficked women, they went to the local police station in Geedam (district Dantewada) to lodge a complaint on 18.8.2014, but the police station in-charge registered a missing persons complaint and he refused to file an FIR, or to give a copy of the complaint. It was only after the interference of one of the lawyers from JagLag office along with the local leader from Aam Aadmi party, Soni Sori went to the police station, meet the Superintendent of Police for 2 days consequently, and pressurized the police to register the FIR and finally the police registered an FIR. The villagers were bluntly, even after the FIR, told that the tracking device shows Shajapur as the correct location and asked the families to go by themselves and find if the three women are there. However, it was only after the help from a local woman's group in Indore and complaint to the anti human trafficking cell over there, that the local police from Geedam finally sent a team to locate the girl. Finally, the girls were rescued and told the police that the woman Kiran was trying to sell them and marry them off to some old/disabled men.

## Methodology

For this research, I have used doctrinal and non-doctrinal research methods. In doctrinal research, I have gone through various researches done by others in missing person cases as well as literature review. And in non-doctrinal research, I have used interview methods for collecting data.

## Relationship between missing and trafficking cases

The relation between missing and trafficking person was first discussed by P.M. Nair and Sankar Sen in their report "A Report on Trafficking in Women and Children in India 2002-2003". In their research they found that's in most of the missing cases whether it's a child or women the police officer haven't even registered any F.I.R for missing person. They only registered a missing complaint for the missing person and they never initiate any investigation to rescue the missing person or to find out the missing person. One thing, which is important to mention here, was the case of Reddiarpalayam, P.S. Case no. 70/98<sup>†</sup> where first time the relation between missing and trafficking person was found. The story of this was that a 15 years girl was missing and her parents register a missing entry. The police made a normal enquiry for the missing entry. But after some time it was found that the girl was trafficked and sold out in a brothel from where she was rescued

\* P.M. Nair and Sankar Sen, *A Report on Trafficking in Women and Children in India 2002-2003*, NHRC - UNIFEM - ISS Project at 203, <http://nhrc.nic.in/Documents/ReportonTrafficking.pdf>

† Ibid at 204

later. Normally whenever a girl above 18 years is missing from their house her parents approach police to register a F.I.R. In such cases police normally took these matters very casually with comments that your daughter is adult, she might have gone with her lover to some other place for getting married etc, without searching for the actual scenario. That`s why, the girl is missing especially those areas where already trafficking rate is higher than in other area. In such areas police must take special care about the missing cases and should register F.I.R also. As it was already proved in the Reddiarpalayam, P.S. Case no. 70/98 about the linkage between missing and trafficking cases. It is also found that the police only register a missing entry without entering a F.I.R and it becomes the reason why missing person were never rescued and remain untraced. Even to deal with the missing cases of person NHRC\* has given certain guidelines in their report. In their research they find that there is a possible linkage between the data of missing women and children with trafficking. They also found that there is an inherent weakness in the existing law enforcement system. It is also mentioned in their report that the issue of missing persons needs to be given serious attention by the law enforcement agencies. There should be prepared proper documentation and monitoring of the enquiries.

As we know that only in cognizable cases like trafficking F.I.R is directly lodged by the police under section 154 of Criminal procedure code and it`s only after the lodging of the F.I.R where investigation goes started. But not treating missing cases as F.I.R is a grave injustice to the victim of trafficking and towards the society also.

#### **Judgements and guidelines on missing person cases**

In Writ Petition (Crl) No 610 of 1996 filed by *Hori Lal vs Commissioner of Police, Delhi* and Ors, the Honorable Supreme Court has given the following guidelines while dealing with missing girls cases:

“(1) Publish photographs of the missing persons in the Newspaper, telecast them on Television promptly, and in case not later than one week of the receipt of complaint. Photographs of a missing person must be given wide publicity at all the prominent outlets of the city /town/ village concerned that is at the Railway Stations, Interstate bus stands, airport ,regional passport office and through law enforcement personnel at Border checkpoints. This should be done promptly and in any case not later than one week of the receipt of complaint. But in case of a minor/major girl such photographs shall not be published without the written consent of the parents /guardians.

(2) Make inquiries in the neighborhood, the place of work/study of the missing girl from friend`s colleagues, acquaintance, relatives and etc. immediately. Equally all the clues from the papers and belongings of the missing person should be promptly investigated.

(3) To contact the principal, class teacher and students at the missing person`s most recent school/educational institutions. If the missing girl or woman is employed somewhere, then to contact the most recent employer and her colleagues at the place of employment.

(4) Conduct an inquiry into the whereabouts from the extended family of relatives, neighbors, school teachers including school friends of the missing girl or woman.

(5) Make necessary inquiries whether there have been past incidents or reports of violence in the family. There after the investigation the officer/agency should:

(a) Diligently follow up to ensure that the records requested from the parents are obtained and examine them for clues.

(b) Hospitals and mortuaries to be searched immediately after receiving the complaint

(c) The reward for furnishing clues about missing person should be announced within a month of her disappearance.

(d) Equally hue and cry notices shall be given within a month.

(e) The investigation should be made through women police officers as far as possible.

(f) The concerned police commissioner or the DIG/IG of the State Police would find out the feasibility of establishing a multitask force for locating girl children women.

\* Shakti Vahin, *Missing Children-India – Govt Initiatives and Court Orders*, NATIONAL LEGAL RESEARCH DESK, [http://trackthemissingchild.gov.in/trackchild/readwrite/News\\_Clippings/NATIONAL\\_LEGAL\\_RESEARCH\\_DESK.pdf](http://trackthemissingchild.gov.in/trackchild/readwrite/News_Clippings/NATIONAL_LEGAL_RESEARCH_DESK.pdf)

(g) Further, in the Metropolitan cities such as Delhi, Mumbai, Kolkata and Chennai the Investigating Officer should immediately verify the red light areas and try to find out the minor girls. If any minor girl (may or may not be recently brought there) is found her permission be taken and she may be taken to the children's home (Sec 34 of the Juvenile Justice (Care and Protection of the Children) Act 2000, and the I.O. to take appropriate steps that all medical /other facilities are provided for her. “\*

So these were the guidelines by the Supreme Court in ***Hori Lal vs. Commissioner of Police, Delhi*** and Ors. But in this present case study we find that no F.I.R was even registered for the missing women. And also no enquiry was initiated. Its means somewhere our law enforcement body is lacking behind to execute the guidelines given by Supreme Court to deal with missing cases. Even we know that India is one of the top countries where trafficking rate is high. Trafficking of women does not always means trafficking of women for prostitution, it may be done for forced labor, egg donor for surrogacy and for surrogate mother and also etc. So in missing cases special care should be taken by the police team and they must be updated with all Supreme Court guidelines to deal with such cases.

*“Governments have to do more to guarantee children and young people their right to protection from trafficking. There is hope, and real and practical solutions exist. Trafficking of children for sexual purposes happens in virtually every country in the world –developed and developing –and we must see governments uphold their commitments to those solutions.*

*- By Carmen M Madrinan, Executive Director, End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT International)†”*

Even ***Lalita Kumari v. Govt. of U.P W.P.(Crl) No; 68/2008‡***, Honorable Supreme Courts in its judgment strictly said that in every Cognizable offence except in cases of matrimonial cases FIR should be registered immediately by Police Officer under section 154 Criminal procedure Code and failing of which strict action will be taken against the police officer. So, in that sense the missing cases are also cognizable offence according to this judgment, so FIR should be registered immediately.

Even Supreme Court in ***Writ Petition (Civil 75/ 2012) Bachpan Bachao Andolan vs Union of India and Others***, on the issue of children missing and there trafficking, following directions were given by Hon'ble Chief Justice of India Mr. Justice Altamas Kabir and comprising of Hon'ble Mr. Justice Vikramajit Sen and Hon'ble Mr. Justice Sharad Arvind Bobde:

- “All cases of missing children in India to be registered as a cognizable offence (as First Information Report) and investigated.
- In cases where First Information Reports have not been lodged at all and the child is still missing, an F.I.R. should be lodged within a month - this figure is 75,808 for the period 2009 - 2011 alone.
- In all missing children cases, there will be a presumption of the crime of kidnapping or trafficking unless proven otherwise from investigation - this is a landmark precedent as for the first time of "presumption of crime" for vulnerable sections of society is recognized.
- All complaints regarding children (for non cognizable offences), to be investigated after referring them to a magistrate.
- Each police station should have, at least, one Police Officer, especially instructed and trained and designated as a Juvenile Welfare Officer to investigate crimes against children.
- National Legal Services Authority (NALSA) to appoint para-legal volunteers, so that there is, at least, one para- legal volunteer, in shifts, in the police station to keep a watch over the

\* <http://nlrd.org/wp-content/uploads/2012/02/HORILAL-ORDER-MISSING-CHILDREN.pdf>

† Preventing and Combating the Trafficking of Girls in India Using Legal Empowerment Strategies, IDLO, at 4 <http://www.idlo.org/Publications/FinalReportGirlsProject.pdf>

‡ National Legal Research Desk, FIR Registration Is Mandatory & Action Will Be Taken If Fir Is Not Registered: SC, <http://nlrd.org/childs-rights-initiative/supreme-court-latest-orders-and-judgements-child-rights-initiative/fir-registration-is-mandatory-action-will-be-taken-if-fir-is-not-registered-sc>

manner in which the complaints regarding missing children and other offences against children, are dealt with.

- A computerized programme (website), which would create a network between the Central Child Protection Unit as the Head of the Organization and all State Child Protection Units, District Child Protection Units, City Child Protection Units, Block Level Child Protection Units, all Special Juvenile Police Units, all Police stations, all Juvenile Justice Boards and all Child Welfare Committees, etc. to be created as a central data bank.
- Photographs of the recovered child to be put up on the website and through the newspapers and even on the T.V. so that the parents of the missing child could locate their missing child and recover him or her from the custody of the police.
- A Standard Operating Procedure (SoP) must be developed to handle the cases of missing children and to invoke appropriate provisions of law where trafficking, child labour, abduction, exploitation and similar issues are disclosed during investigation or after the recovery of the child.
- BBA to assist in developing the Standard Operating Procedure (SoP), and also, BBA to be the nodal agency for All India Legal Aid Cell on Child Rights, flagship scheme of NALSA to provide legal aid to any child in need of care and protection in the country.
- A missing child has been defined 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. The child will be considered missing and in need of care and protection within the meaning of the later part of the Juvenile Act, until located and/or his/her safety/well being is established.”
- Even after recovery of the missing child, the police shall carry out further investigation to see whether there is an involvement of any trafficking in the procedure by which the child went missing.
- The State authorities shall arrange for adequate Shelter Homes to be provided for missing children, who are recovered and do not have any place to go to within 3 months.“\*

Supreme Court in both *Horilal vs Commissioner of Police, Delhi* and *Ors* and in *Bachpan Bachao Andolan vs Union of India and Others* has given strong instruction for compulsory registration of F.I.R in case of missing person whether it a child or women. But some where law enforcement body fail to handle the cases of missing person. In many trafficking which was actually a missing cases delay in registering F.I.R gives chances to the culprit to runaway from the crime site along with the victim. This is great injustice towards the society. Even though repeatedly Supreme Court in the above two decision given a clear direction that for missing cases FIR must be registered without making any delay. But the JagLag story is quite different in reality.

The following are the some of the Dos and Don'ts which have been mentioned by Dr P. M Nair in the **Handbook For Law Enforcement In India** “TRAFFICKING WOMEN AND CHILDREN FOR SEXUAL EXPLOITATION”<sup>†</sup> for the police officer:

- “Under section 15 of THE *IMMORAL TRAFFIC (PREVENTION) ACT*, a Special police officer (SPO) can search without warrant and carry out rescue and thus the SPO is free to act on his own and promptly.
- Even the Magistrate has the power to authorize any police officer (SI and above) u/s 16 of ITPA to rescue anybody any time. If SPO has not been notified, the available police officer should feel empowered under this provision. He/she should go to the Magistrate, get orders and then move for rescue.
- Do not delay rescue at any cost. Delay denies justice delivery and also exacerbates exploitation. Do gather intelligence and act in time.

\*Supreme Court Of India Directs Registration Of Over 75,000 Cases Of Missing Children, BACHPAN BACHAO ANDOLAN, May 21, 2013, <http://bba.org.in/?q=content/supreme-court-india-directs-registration-over-75000-cases-missing-children>

<sup>†</sup> Dr. P. M Nair, *Trafficking Women And Children For Sexual Exploitation*, (UNODC, 2<sup>nd</sup> edition)

- Information source for rescue could be anybody, although NGOs play a significant role.
- Magistrate can take cognizance of report by anybody including NGO (S.16 ITPA).
- Magistrate can be anybody from the categories of JM/MM/SDM/DM (S.16 ITPA), having jurisdiction over the area.
- The search/rescue party should have two women police officers (WPO) as required u/s 15(6A). Maintain a list of WPOs residing in the jurisdiction of the PS, neighboring PS and other nearby locations. If there is shortage of WPO, get retired WPO notified as SPO u/s 13 (2 A) ITPA.
- Two respectable persons are required as witnesses (PW) during search and one of them shall be a women u/s 15(2) ITPA. Utilize the services of local NGO's. Do network with NGO's in the area.
- Interview of rescued person should be done only in presence of by WPO or woman from an NGO, as per Section u/s 15 (6A) ITPA. Maintain list of NGO's in the P.S.
- Rescued persons are to be produced before the Magistrate forthwith (S.16 ITPA).
- Keep the victims segregated from the accused and suspects, so that they do not intimidate or violate the rights of the victims.
- Rights of rescued persons are to be ensured during rescue and post rescue situations. This includes the following:
  - Facilitate the rescued person to carry along with her all her possessions like clothes, money, jewellery and etc.
  - If the rescued person has children, they should be allowed to accompany her. Extra care should be taken to see that the children are not left behind in the brothel.
  - One should be careful in the use of language/gestures/demeanors. They should not be abusive or intimidator and should no way violate her rights.
  - Avoid publicity of the victims so that anonymity is maintained.
  - Carry out a brief interview of the victims at the place of rescue to know their age (so that the applicability of JJ Act could be decided) and to locate their assets and possessions (which could be carried along with them before leaving the place). One or two officials should be earmarked exclusively for this purpose.
  - Ensure proper handing over of victim's possessions to her at the appropriate place and time (i.e., the victim's clothes, etc should be delivered to her immediately after recovery).
  - Provide counselors for trauma counseling. Keep a list of NGOs and trained counselors who are willing to work in this field.
  - Legal counseling be provided to the victim. Keep a list of lawyers willing to work for the victims.
  - Immediate medical relief is provided. Medical relief should include mental health as well. As per s.15(5A) ITPA, the Magistrate has to order medical examination for:
    - Age determination
    - Injuries
    - Sexual assault
    - Presence of STD
- Children are to be dealt under JJ Act. Therefore, while rescue is going on, please do segregate the children from the adult victims and proceed with them under JJ Act. The children need to be handled by the Child Welfare Committee (CWC) set up under the JJ Act.
- The police officers need to know beforehand as to where the Rescue Home is available. If there is a need for such Homes, it should be taken up with the concerned authorities. Of late many NGO's have set up such Homes. Keep a list of their address, telephone, contact person, etc.
- As and when the rescue is done, please notify the authorities of the concerned Home regarding the number of persons going to be lodged so that they could be prepared to receive them and organize themselves.

- Rescue Party should have adequate number of vehicles so that the rescued persons could be transported without publicity and glare. Accused and suspected persons should never be allowed to mix up with the rescued persons.
- Search and seizure of all material evidence, including documents in the brothel is an important job. This should be done at the first available opportunity so that evidence is not destroyed or made to disappear by anybody, especially the exploiters.
- Training of police officials on victim protocols is a pre-requirement to see that they are aware and sensitized to the issues concerned. A copy of this handbook, translated in the local language would be an appropriate tool kit.
- Ensure accountability of all the officials taking part in the rescue. Brief them well in advance on all the points mentioned above and ensure compliance. Accountability demands appreciation of good work as well as condemnation of all wrong-doings, including acts of omission and commission. Utilize the services of reputed NGOs, as independent agency, to understand and assess how things are and were during the search so that appropriate steps could be taken accordingly.”\*

### **Suggestion**

The following are some suggestion to deal with the missing person cases:

1. FIR should be registered immediately.
2. Special training must be provided to police officer to deal with the missing cases.
3. There should not be any delay in registering FIR especially in places where trafficking cases are high in number.
4. NGO can play an important role for tracking the missing person by keeping eye on the surrounding where trafficking cases are high in number.
5. Government can also play an important role to minimize the cases of trafficking women cases by providing job to them in there home town.
6. Either it is a case of missing or trafficking the foremost duty of the family members of the victim is to make report in the nearest Police station and asked the officer in charge to register a FIR and GD.
7. There should not be any delay in starting the search operation for the victim person.
8. Special Police team must be there in places where missing person cases and trafficking cases are high in number. So, that this police personal can take proper care of such cases without making any delay in investigation.
9. All Supreme Court judgment related to trafficking of women and child should be circulated to each police station of the state. And where training is required they should be trained from the professional.

### **Conclusion**

From the above research I find that if the law and order administrator follow the guidelines given by Supreme Court in time to time then the society will be free from such crimes. Whatever law we have to deal with the cases of trafficking, that is sufficient for us the only thing which is needed is proper implementation of this law. And in sensitive zone where missing cases and human trafficking is high in those areas the law and order administrator must be active to initiate the investigation without making any delay. And in such areas NGO can also play an important role to educate the people, so that they can protect themselves from becoming the victim of any form of trafficking. And one must keep on eye in his or her surrounding. And any suspicious activity or any information about any suspicious person should be reported to police station or to a NGO. In this way we can tackle the problem of human trafficking from our side.

### **Acknowledgement**

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\* Id.23 to 25.

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