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PRE-EMPTING A RISE IN HUMAN TRAFFICKING: A DEADLY SIDE EFFECT OF THE COVID-19 PANDEMIC

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Abstract

The impact of the COVID-19 pandemic on human trafficking has not even spared the deceased. In India, the body of a 42-year-old man, who allegedly died of coronavirus, was exhumed after two months of his death in a case of suspected organ theft. Human Trafficking can adjust to any type of situation and the COVID-19 pandemic is a jackpot for traffickers. Human trafficking during the COVID-19 pandemic has expanded from sex work. The traffickers all over the world have now shifted their energy into capturing victims fit for child sexual exploitation, forced labour, bonded labour and organ trafficking which is the focus of this paper. This paper also addresses the root causes of human trafficking during the COVID-19 pandemic and how the traffickers have not deterred in targeting their victims during nation-wide lockdowns, ban on cross-border movement and other restrictions. Poverty, economic inequality and unemployment are some of the vulnerability factors of human trafficking which have been further exacerbated by the COVID-19 pandemic. This paper analyses how traffickers have made use of the internet to their advantage to zero in on susceptible victims without fearing repercussions. Special emphasis has been given to the conditions of human trafficking in India during the pandemic. Accordingly, this paper identifies the problems that intensify human trafficking in India amid the pandemic and provides preventive methods to control the same.

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Introduction

The on-set of the pandemic caused by the novel virus, COVID-19 has devastated the human lives, economy and education system of several countries. Nations all over the world have imposed curfews, lockdowns and travel bans to break the chain of the virus. However, while the gargantuan efforts of every nation to curb the spread of COVID-19 is appreciated, these restrictions have led to an increase in criminal activities against those who are economically vulnerable.[1] As per the warnings of the United Nations Office on Drugs and Crime (hereinafter referred to as "UNDOC"), the economic upheaval caused by the outbreak of the pandemic has led criminal enterprises to illegally profit via human trafficking.[2] Human trafficking is the unfortunate aftermath of infectious diseases. It is targeted at men, women and children for sexual exploitation, forced labour, removal of organs, begging, prostitution, forced marriage, etc. In 2014, trafficking of orphans was a consistent danger in West Africa after the outbreak of Ebola.[3] Similarly, it is apprehended that human trafficking will thrive in the changing circumstances caused by the COVID-19 pandemic. The stay-at-home quarantine has not derailed traffickers in their quest to trap vulnerable victims. On the contrary, the traffickers have chosen the internet as their modus operandi to entice gullible adolescents and adults surfing various social media platforms. With the rise in casualties due to the pandemic, States have had to divert their resources from combatting the growing illegal trade in human trafficking to other significant community needs. Part I of this paper outlines the growing global pandemonium caused by human trafficking during the COVID-19 pandemic. Further, it focuses on how the victims of human trafficking are selected amid a pandemic. It also brings into perspective how the traffickers have adapted to the 'new normal' through the internet and used it to their advantage. Part II of this paper throws light on the measures taken against the elevated risk of human trafficking in India during the COVID-19 pandemic, or lack thereof. The COVID-19 pandemic has questioned the competency of the Anti-Human Trafficking regime in India thus, this paper, endeavors to bring forth recommendations to combat human trafficking in India without overburdening one particular sector with all the responsibility.

1 David S. Abrams, *COVID and Crime: An early Empirical Look*, J Public Econ, (2021); Suyash Das & Soumya Bhowmick, *Pandemic-induced unemployment in India: Criminal activities on the rise*, Observer Research Foundation (Mar. 23, 2021, 10:45 AM), https://www.orfonline.org/expert-speak/pandemic-induced-unemployment-india-criminal-activities-rise/.

2 United Nations Office on Drugs and Crime, *Impact of the COVID-19 Pandemic on the Trafficking of Persons*, (May 17, 2021, 11:00 AM), https://www.unodc.org/documents/Advocacy-Section/HTMSS_Thematic_Brief_on_COVID-19.pdf.

3 Catherine Z. Worsnop, *The Disease Outbreak-Human Trafficking Connection: A Missed Opportunity,* 17(3) Health Security, 181-192 (2019).

The Uphill Trajectory of Human Trafficking during the Covid-19 Pandemic: A Global Perspective

The Evolution of Human Trafficking over the years

In laymen terms, human trafficking or trafficking in persons is defined as "the crime of carrying someone into slavery by force or by fraud, regardless of whether or not the person goes willingly with the trafficker."[4] Human trafficking has been predicted not only to be one of the largest growing businesses in the world[5] but also the world's fastest-growing crimes.[6] It has been more than 2 decades since the negotiation of the Palermo Protocol on Trafficking[7] in 2000 and the trafficking regime has expanded from the exclusive preoccupancy in prostitution[8] to the exploitation of other marginalized communities like the labour sector in the form of modern slavery and forced labour.[9] The International Labour Organization estimated that the business of forced labour generates the US $ 150 billion of illegal profit every year.[10] However, not every victim of trafficking is either subjected to sexual exploitation or forced labour. Trafficked persons may also be used for other purposes like organ harvesting. It is a basic understanding that victims of trafficking are captured through coercion, intimidation or threat of grievous hurt however, there is more complexity to human trafficking than that. Poverty, unemployment and other alike disparaging means have opened up avenues for organized crime groups and are now the root causes for human trafficking.

Human Trafficking: A Crime of Opportunity

Human trafficking is a crime that flourishes in situations of disparity. Armed conflicts and

4 Cassandra E. DiRienzo & Jyoti Das, *Human Trafficking and Country Borders*, 27(4) International Criminal Justice Review, 278-288 (2017).

5 Toby Zhu et al., *Curriculum in Action: Teaching Students to Combat Human Trafficking*, 52 Education And Urban Society 1351-1371 (2020).

6 Dr. Ewelina U. Ochab, *The World's Fastest Growing Crime*, Forbes, (Jun. 8, 2021, 2:01 PM), https://www.forbes.com/sites/ewelinaochab/2017/07/29/the-worlds-fastest-growing-crime/?sh=7308a3283aae.

7 United Nations Human Rights, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, (Jun. 8, 2021, 2:07 PM), https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx.

8 Rutvica Andrijasevic, *Beautiful Dead Bodies: Gender, Migration and Representation in Anti-Trafficking Campaigns*, 86 FEMINIST REVIEW, 24–44 (2007).

9 Prabha Kotiswaran, *The Sexual Politics of Anti-Trafficking Discourse*, 29 Fem. Leg. Stud., 43–65 (2021).

10 International Labour Office, *Profits and Poverty: The economics of forced labour*, 13 (2014).

wars are classic examples that drive human trafficking.[11] During the dire times of war and armed conflicts, women and children were the scapegoats for traffickers.[12] Refugees and migrants also found themselves in a state of vulnerability.[13] Similarly, the lockdowns in 2020 pushed by the pandemic affected 81% of the world's workforce[14] and forced around 71 million people into poverty.[15] The education system of 194 countries took a serious hit with 90% of the world's students being affected by the closure of schools.[16] Thus, it would be unwise to not apprehend the rise in human trafficking cases during the COVID-19 pandemic. Despite being aware of the dangers of human trafficking, several countries had no other option but to focus all their resources to overcome the COVID-19 pandemic. Countries all around the world were in a catch-22 situation as humanitarian operations were stopped worldwide owing to the measures taken against the pandemic.

The new social distancing norms forced on the society during the COVID-19 pandemic would make one assume that there would be a decline in human trafficking cases however, that is not the case. One must also not forget that human trafficking during the 'new normal' does not only bring out a new generation of victims but also intensifies the exploitation of those victims who are currently in need of rescue but are stuck in limbo. To prevent the COVID-19 pandemic from turning into a trafficking pandemic, we must identify the vulnerable communities susceptible to trafficking. Through this paper, the author endeavors to highlight the fact that the marginalized section of society is at an imminent risk during this pandemic. Recognizing the most likely victims of trafficking during the COVID-19 pandemic is the first step towards eradicating the abhorrent trade of human trafficking.

The Victims

The UNDOC Report on trafficking in persons in 2018 estimated that out of all the trafficking victims, 59% were used for sexual exploitation, 34% were victims of forced labour and the remaining 7% were trafficked for miscellaneous purposes.[17] The traffickers have set up a

11 United Nations Office on Drugs and Crime, Global Report On Trafficking In Persons – In The Context Of Armed Conflict (2018).

12 *Id.*

13 *Id.*

14 International Labour Organisation, (Jun. 8, 2021, 3:46 PM), https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_740877.pdf.

15 Daniel Gerszon et al., *Updated Estimates of the Impact of COVID-19 on Global Poverty,* World Bank Blogs (May 18, 2021, 12:21 PM), https://blogs.worldbank.org/opendata/updated-estimates-impact-covid-19-global-poverty.

16 United Nations Educational, Scientific and Cultural Organization, *Education: From Disruption to Recovery*, (May 19, 2021, 5:06 PM), https://en.unesco.org/covid19/educationresponse.

17 United Nations Office on Drugs and Crime, Global Report on Trafficking in Persons (2018).

pattern wherein mostly the economically affected, marginalized groups, adolescents, single mothers and labourers are preyed upon.[18] According to Ghada Waly, the executive director of UNDOC, women and girls makeup over 70% of the trafficking victims whereas one third is covered by children.[19] From the pattern adopted by the traffickers. it may be safe to deduce that over time, the victims of human trafficking are being selected not so much for the nature of the work but for the conditions of the work. The dependency of human traffickers on the catastrophe caused by COVID-19 is a testimony to the same.

There has been a paradigm shift in the nature of victims of human trafficking. Some of the most affected categories of victims prone to be targeted for trafficking during the pandemic are children and labourers. Commercial sexual exploitation of children is increasing given the confinement measures and the financial hardships brought about by the pandemic.[20] Unskilled workers and unaccounted migrants with no social protections are most vulnerable to human trafficking.[21] Another form of human trafficking expected to boom during the pandemic is organ trafficking. It has been growing since the pre-COVID-19 era.[22] Organ trafficking succeeds in hiding in plain sight due to its tricky nature. In some countries, organ trade seems to be consensual however, there is always an element of deceit in it. 10% of all organ transplants are reckoned to be done via organ trafficking.[23] Kidney being the most prominent organ for the illicit trade, it is estimated that around 10,000 kidneys are trafficked annually worldwide in the black market.[24] Males from rural areas representing the marginalized sections of the society and facing financial crises are likely to be tricked into the clutches of traffickers.[25] Ban on cross-border travel to curb the spread of coronavirus

18 Trafficking In Persons Report 2012, (May 19, 2021, 6:00 PM), https://2009-2017.state.gov/documents/organization/192587.pdf

19 United Nations Office on Drugs and Crime, *World Day against Trafficking in Persons Statements (2020)*, (May 17, 2021, 12:59 PM), https://www.unodc.org/endht/en/statements.html.

20 Europol, *Catching the Virus Cybercrime, Disinformation and the COVID-19 Pandemic* (2020).

21 United Nations Office on Drugs and Crimes, *Trafficking in Persons & Smuggling of Migrants*, (May 20, 2021, 4:05 PM), https://www.unodc.org/e4j/en/tip-and-som/module-7/key-issues/root-causes.html.

22 Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Trafficking in Human Beings for the Purpose of Organ Removal in the OSCE Region: Analysis and Findings*, (2013).

23 Channing May, *Transnational Crime and the Developing World*, Global Financial Integrity, (May. 27, 2017, 8:34 AM), http://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational_Crime-final.pdf.

24 Denis Campbell & Nicola Davison, *Illegal kidney trade booms as new organ is sold 'every hour*, The Guardian, (May 21, 2021, 1:37 PM), https://www.theguardian.com/world/2012/may/27/kidney-trade-illegal-operations-who.

25 Victor Jack, *COVID-19 a 'Perfect Storm' for Organ Trafficking Victims*, Sci. Dev. Net. (May 21, 2021, 2:30 PM), https://www.scidev.net/global/features/covid-19-a-perfect-storm-for-organ-trafficking-victims/.

and the stigma of receiving organs of a deceased COVID-19 patient has resulted in a lack of transplant surgeries in hospitals.[26] Fewer altruistic organ donations might lead to a low supply and high demand thereby increasing the trade of organ trafficking globally.[27]

The Role of the Internet in Facilitation of Human Trafficking during the COVID-19 Pandemic

On March 23, 2020, a statement by the Federal Bureau of Investigation (FBI) was released warning parents against online child exploitation.[28] It was apprehended that school closures and social distancing measures enforced to mitigate COVID-19 would potentially increase the online presence of children thereby putting them at an inadvertent risk.[29] It is an indisputable fact that children and adults alike would be depending on the internet to flee from the boredom of self-isolation during the pandemic. Thus, it would be safe to assume that the warnings published against online exploitation should be heeded by all. Human trafficking organizations are like organisms adapting to varied environmental changes. These adaptations make the organizations strive for survival by taking up unconventional methods. The usage of the internet is one such method for the exploitation of unexpected opportunities.

An experiment was conducted by an internet-monitoring app for parents called Bark to illustrate the dangers of grooming by online predators.[30] In this experiment, a 37-year-old mother went undercover and posed as an 11-year-old-girl online using photo manipulation wherein she was approached by online sexual predators on social media platforms like Instagram, Snapchat, TikTok and Kik within minutes.[31] Thus, if left unsupervised, impressionable children can be subject to sexual grooming and psychological abuse.[32] COVID-19 has exacerbated the conditions of online sexual exploitation of children. The worsened situation can be observed where:

i. Parents who are under immense stress due to the 'work from home' policy are

26 *Id*.

27 Seán Columb, *Tracking Down Organ Traffickers and their Victims*, Thomas Reuters Foundation News (May 21, 2021, 2:46 PM) https://news.trust.org/item/20200923161904-x3ozy.

28 FBI National Press Office, *School Closings Due to COVID-19 Present Potential for Increased Risk of Child Exploitation*, (May 20, 2021, 5:25 PM), https://www.fbi.gov/news/pressrel/press-releases/school-closings-due-to-covid-19-present-potential-for-increased-risk-of-child-exploitation.

29 *Id*.

30 Bark, *Social Media Dangers Exposed by Mom Posing as 11-Year-Old, 20 February 2020*, (May 28, 2021, 7:43 AM), https://www.youtube.com/watch?v=dbg4hNHsc_8.

31 *Id*.

32 *Id*.

not in a shape to keep an eye on their child thereby allowing them to entertain themselves online without any parental restrictions;[33] and

ii. Parents who have lost jobs, especially in marginalized sections, are forced to live-stream sexual abuse of their children in exchange for payment.[34]

It is quite unbelievable to imagine a scenario where parents – the epitome of protection – are themselves endangering the lives of their offspring to bring food to the table. Nevertheless, humans never fail to surprise. In April 2020 two people were arrested in Cebu and Luzon for the cybersex trafficking of eight minors aged between three and fourteen including their children and cousin.[35] Monitoring of young girls has been halted with the shut-down of schools and social service institutions due to the Covid-19 pandemic. Taking unscrupulous advantage of this, older men are approaching gullible female adolescents on apps like Tinder, Instagram, Twitter, Snapchat, YOLO, and Lemon to 'groom' them and gain their trust till schools reopen.[36] Traffickers, under the garb of sexual exploitation, are soliciting these trapped victims to expand their drug ring.[37]

There are several Samaritans who believe in using social media platforms for the better good. The same is demonstrated by the posts and tweets circulated by Indians for COVID-19 relief resources all over the country.[38] However, good is always accompanied by evil. There are several children in India who have lost both their parents to the second wave of the pandemic thereby putting them at risk of child trafficking. 'Save the Children' a children-centric organization is urging people not to share the details of these orphaned

33 John Carr Obe & David Danelo, *Keeping Children Safe Online During Lockdown*, Global Initiative Against Transnational Organized Crime (May 24, 2021, 1:06 AM), https://globalinitiative.net/analysis/keeping-children-safe-online-during-lockdown/.

34 Tech Against Trafficking, *The Effect of COVID-19: Five Impacts on Human Trafficking*, (May 26, 2021, 4:28 PM), https:// techagainsttrafficking.org/the-effect-of-covid-19-five-impacts-on-human-trafficking.

35 Rappler, *'Trapped with abusers,' 7 kids rescued from sex trafficker in Luzon*, (May 29, 2021, 6:54 PM), https://www.rappler.com/nation/258987-trapped-with-abusers-children-rescued-from-sex-trafficker-luzon.

36 Criminal Investigations and Network Analysis, The Effects Of The Covid-19 Response On Criminal Network Activity And Investigations (2020).

37 Thomas A. Reppetto, *Crime Prevention and the Displacement Phenomenon*, 22 Crime And Delinquency, 166–177 (1976).

38 Jennifer Hassan, *In Desperate Hunt for Oxygen and Hospital Beds, India Turns to Twitter*, The Washington Post (May 27, 2021, 9:48 AM), https://www.washingtonpost.com/world/2021/04/28/india-coronavirus-social-media-help/.

children online to protect them from being seized by traffickers.[39] As the saying goes, one bad apple spoils the entire bunch, similarly, the illegal acts of traffickers through the internet tarnishes the good it is used for.

Trafficking of organs illegally is not a new phenomenon but using the internet to take part in such a trade openly is a digital liability. The year 2012 saw a collaboration between Facebook and the transplant surgery team at John Hopkins wherein an initiative was taken to allow people to specify their organ donor status on their Facebook pages.[40] On the first day of this initiative, there was a 2,200% increase in the online organ donor status registration in the United States of America[41] and a net six-fold increase in fourteen days.[42] The aforesaid initiative was derived to encourage more organ donation through technology. However, the same can be very easily misused by organ traffickers. Organ trafficking can take place anywhere on the web, be it under the comments section of an article or on the posts of a social media platform like Instagram.[43] The EU law requires the removal of such illegal content as soon as it comes into the knowledge of the authorities.[44] However, this is a global stumbling block that needs to be addressed with responsibility. The promotion of illegal organ trafficking on such social media intermediaries is the current norm. With no legislative intent to hold such websites or social media platforms accountable, a boost in the trafficking industry in the near future is inevitable.

The onslaught of the COVID-19 pandemic gave traffickers an opportunity to tap into the niche online trafficking trade. Loss of income and employment during the pandemic has made people try out unconventional practices to overcome their financial hardships. People are trying their hand at earning money through social media by selling their organs online.[45] Organs are now synonymous with prized currency on the 'red-market' due to low supply. It is not only the traffickers who are the orchestrators; several people in desperate need of money are also reaching out to others by advertising their organs. A Delhi based

39 Save The Children Fears Trafficking And Abuse Amid Social Media Pleas To Adopt India's Covid Orphans, (May 29, 2021, 5:30 PM), https://www.savethechildren.net/news/save-children-fears-trafficking-and-abuse-amid-social-media-pleas-adopt-india%E2%80%99s-covid-orphans.

40 Andrew M. Cameron, *Social Media and Organ Donation: The Facebook Effect*, 36 Journal Of Legal Medicine, 39-44 (2015).

41 Andrew M. Cameron et al., *Social Media and Organ Donor Registration: The Facebook Effect*, 13 Am. J. Transplantation, 2059, 2060-2062 (2013).

42 *Id.*, at 2060–2061.

43 Charlotte Aagaard, *Instagram Used as Platform for Illegal Organ Trafficking*, Danwatch, (May 30, 2021, 6:49 PM), https://danwatch.dk/en/instagram-used-as-platform-for-illegal-organ-trafficking/#:~:text=%E2%80%9CHi%20Sister%2C%20do%20you%20want,trafficking%20takes%20place%20in%20Iran.

44 *Id.*

45 Jack, s*upra* note 25.

homosexual youth worker, after having lost his jobs and sick of living with his homophobic parents posted his desire to sell a kidney on various Facebook pages[46] after being influenced by several other similar pages.[47] The page, 'Selling of Kidney' has been active for almost a year and the comments of the sellers increased two-fold from April 2020 to September 2020 (the lockdown period) as compared to the previous eight months.[48]

To use the internet to facilitate human trafficking one needs, a smartphone, an internet connection and means to receive payment all of which are readily available today. It is not only easy to enter the industry of human trafficking but also to access, download and produce content promoting the same.

The Ramifications of Covid-19 on Human Trafficking in India

India is a hub for the trafficking of persons. In 2019, the National Crime Records Bureau (hereinafter referred to as "NCRB") recorded up to 2,260 reported cases of human trafficking all over India.[49] Out of the 6,616 victims, 2,914 were children and 3,702 were adults.[50] Whereas the rescued victims accounted for a whopping number of 6,571.[51] However, the statistics do not match up to the menace of human trafficking thereby making one assume that there is a vast underrepresentation of the actual cases. Shame and stigma are reasons that prevent victims from coming forward. It is also imperative to point out that the rescued victims include those trafficked victims that were captured a year or two before. Blissfully ignorant, the authorities are tied up during the COVID-19 pandemic in other ventures to monitor underground trafficking. The data pertaining to human trafficking in India has been published only till 2019 making the statistics of human trafficking in 2020 the most dreaded after the descent of the COVID-19 pandemic. At the beginning of the first wave, all humanitarian projects were put on hold by the government to tackle the rapid rise of coronavirus cases. Consequently, the government of India imposed a lockdown for its 1.3 billion residents and focused all its energy to curb the spread of coronavirus. The lockdown has led millions of people in rural as well as urban areas to surge on the path

46 Facebook, (May 31, 2021, 3:42 PM), https://www.facebook.com/pages/category/Hospitality-Service/Do-you-want-to-sell-your-kidney-for-money-112291630421319/.

47 Jack, s*upra* note 25.

48 *Id.*

49 The National Crime Records Bureau, *Crime in India, 2019, Statistics*, 3 MHA, 973-975 (2019).

50 *Id.*

51 *Id.*

of unemployment during the first and the second wave of COVID-19.[52] India is indicated to be emerging as a poverty-stricken nation post-COVID-19 with 12 million poor people being added to its population.[53] Poverty and economic disparity are magnets that attract human trafficking.[54] The government of India made herculean efforts to protect its citizens from the first wave of the COVID-19 mayhem by focusing on the medical conditions of the country. However, they did not factor in the long-term effects of COVID-19, human trafficking is one of them, on the marginalized section of our societies.

Child Trafficking: The Reality of COVID-19

During the first wave in 2020, over 11 days of lockdown, 92,000 cases of child abuse were reported.[55] Female children as young as 12 were being trafficked for forced marriages by their parents since they would have one less mouth to feed.[56] A daily wage worker in construction, grasping at straws for survival tried to sell his four-month-old baby to a rich couple.[57] The lack of internet access in rural regions is an impediment in attending daily classes thereby making children vulnerable to child labour.[58] According to the National Commission for Protection of Child Rights (hereinafter referred to as "NCPCR"), the pandemic has left 1,742 children orphaned, 7,464 children with only one parent and 140 children abandoned.[59] Thus, making children the prime target for human trafficking. To make matters worse, the data collected by NCPCR is not yet complete.

COVID-19 is nothing short of a disaster[60] and in the event of disasters, children are bound to become primary targets for exploitation.[61] In 2005, the National Disaster Management Authority (hereinafter referred to as "NDMA") was set up under the Disaster Management

52 Mahesh Vyas, *Double-digit Unemployment Rate Returns*, Economic Outlook (May 31, 2021, 10:36 PM), https://www.cmie.com/kommon/bin/sr.php?kall=warticle&dt=2021-05-24%2011:01:18&msec=696.

53 Neha Nimble, *COVID-19: How the Pandemic May Increase Human Trafficking in India,* Feminism India (May 31, 2021, 11:04 PM), https://feminisminindia.com/2020/06/22/covid-19-human-trafficking-increase-in-india/.

54 H.D. Pandya, *Human Trafficking and Poverty: A Critical Connection*, 2 Proceeding Of 2nd International Conference On Poverty And Sustainable Development, 1-6 (2015).

55 Leeza, *Human Trafficking and Exploitation in India During the COVID-19 Pandemic*, Migration & Anti Human Trafficking Cartias (May 31, 2021, 10:50 PM), https://www.caritas.org/2020/07/human-trafficking-and-exploitation-in-india-during-the-coronavirus-pandemic-hitting-children-hard/.

56 *Id.*

57 *Id.*

58 *Id.*

59 Re: Contagion of COVID 19 Virus in Children Protection Home, Suo Moto W.P. (C) No. 4 of 2020 (India).

60 The Disaster Management Act, 2005, § 2(d), No. 53, Acts of Parliament, 2005 (India).

61 Bachpan Bachao Andolan v. Union of India and Ors., W.P. (C) No. 75 of 2012 (India).

Act, 2005 for prevention, management and recuperation of disasters. In the wake of COVID-19, the NDMA should have had the hindsight to formulate a plan[62] to protect and rehabilitate victims of trafficking.

Recognising the increasing peril of child trafficking and receiving information of potential trafficking cases after relaxation of lockdown, a Public Interest Litigation was filed before the Supreme Court of India by an NGO namely, Bachpan Bachao Andolan.[63] In this particular matter, the petitioner urged the Hon'ble Court to direct the NDMA to frame Policies or Guidelines to prevent the trafficking of children in the wake of COVID-19 and see to its mandatory implementation.[64] Furthermore, it was requested that the Ministry of Home Affairs be directed to activate Anti-Human Trafficking Units to take adequate action against child trafficking including but not limited to identification of potential and/or known traffickers, sharing and monitoring of intelligence with the Centre.[65] Apart from this, The Hon'ble Court also mulled over the formation of a committee of eminent personalities to look into this menace.[66]

Anti-Trafficking Regime in India during the COVID-19 Pandemic: Is it a Farce?

The increasing tidal wave of trafficked cases in India during the pandemic disproportionately impacted the vulnerable section of society. In response to these concerns, The National Human Rights Commission (hereinafter referred to as "NHRC") constituted a committee of experts to analyze the human rights of the people vis-à-vis the impact of the COVID-19 pandemic. The committee recommended the issuance of a 'Human Rights Advisory on Combatting Human Trafficking in Context of the COVID-19 pandemic' (hereinafter referred to as "the Advisory").[67] The Advisory furnished by the NHRC in December 2020 aimed to help the Central Ministries and State Government(s) battle human trafficking. The Advisory focused on the following measures to combat human trafficking in India:

Security and Preventative Measures

Some security and preventive measures include starting a 24/7 toll-free helpline for active reporting, tracking and monitoring of human trafficking cases. Special surveillance is to be

62 *Supra* note 60, at § 6(2).

63 Bachpan Bachao Andolan v. NDMA and Ors., W.P.(C) No. 000483 of 2020 (India).

64 *Id.*

65 *Id.*

66 *Id.*

67 National Human Rights Commission, *Human Rights Advisory on Combatting Human Trafficking in Context of the COVID-19 Pandemic* (2020), (Jun. 1, 2021, 2:36 PM), https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20on%20Human%20Trafficking.pdf.

installed at every transport hub to trace suspicious persons and hone in on the exclusive spots for trafficking. Repatriated and rescued victims to be made comfortable by recording their testimonies via video conferencing in courts. Data on rescued victims and missing persons to be updated expeditiously. Particular attention is to be given to rural areas by providing livelihood opportunities through existing schemes, monitoring non-attendance of school by children and intercepting cases of trafficking by setting up a Vigilance Committee.

Accessible Legal Benefits

The District Legal Service Authorities (hereinafter referred to as "DSLAs") was recommended to create awareness on the horrors of human trafficking, appoint advocate for requisite legal help and provide compensation[68] to the survivors of human trafficking.

Rehabilitation of the Survivors of Human Trafficking

The survivors are to be compensated financially under different Acts. The Magistrate may be authorized to disburse the financial compensation to the victims. Monitoring cells to be set up for timely payment of minimum wages to the labourers. Vocational training and online skill development programs to be set up in view of the COVID-19 protocol and resumption of online education of child victims.

Operation of Anti-Human Trafficking Units

Anti-Human Trafficking Units to be set up in all districts of States/Union Territories with priority to districts prone to trafficking. The Anti-Human Trafficking Units must be well equipped with physical and digital infrastructure and ensure police enforcement agencies to be sensitized with the standard operating procedures on the prevention of human trafficking vis-à-vis COVID-19 containment guidelines. These units must include 24/7 open protection homes for rescued victims with adequate counselling to those who are traumatized. The norms of social distancing and the necessary protocols must be maintained by the victims and the staff of the protection homes.

An Anti-Human Trafficking Unit acts as law enforcement with an anti-crime structure. However, it must be questioned whether such units are the only solution to contain human trafficking? A study evaluating the status and efficacy of Anti-Human Trafficking Units all over India between 2010-2019 intimated that only 27% of the Anti-Human Trafficking Units in 16 States and Union Territories were operational and 225 units existed only

68 The Code of Criminal Procedure, 1973, § 357A, No. 2, Acts of Parliament, 1974 (India).

in bureaucratic files.[69] Pushing for implementation of such Units especially during the COVID-19 pandemic seems nothing short of a token response rather than a genuine effort. The NHRC has placed too much dependency on the Anti-Human Trafficking Units without taking into consideration that establishing such units just might not be enough. Thus, on May 31, 2021, the NHRC issued three more advisories to the Centre and State/Union Territories regarding:

i. The mental health of vulnerable populations,[70]

ii. Release and rehabilitation of bonded labourers;[71] and

iii. Safeguarding rights of informal workers.[72]

Fragile mental health, violation of the rights of bonded labours and the disparaging plight of informal workers witnessed during the beginning of the COVID-19 pandemic are some of the conditions that make prime targets for human trafficking. Accordingly, the NHRC has addressed a letter to the secretaries of Union Ministries of Health and Family Welfare, Labour & Employment and Women & Child Welfare, the chief secretaries of states and administrators of UTs to submit reports on action taken within four weeks.

It is commendable that the NHRC had the insight to produce several advisories addressing the issues of human trafficking while juggling the destruction caused by the COVID-19 pandemic. However, after a thorough perusal of the Advisories, it is painstakingly clear that they have been created under obligation and their recommendations might be too impractical to implement. The recommendations made by the advisories require significant financial aid and might be fruitful only if the Central Government and State Government(s) are up to the task. The NHRC requires an 'Action Taken Report' to follow up on the conditions of the victims of human trafficking during the pandemic. It is pertinent to keep in mind that

69 Sanjog & Tafteesh, *A National Study on the Status of Anti Human Trafficking Units in India (2010-2019)* Ahtu Watch, (Jun. 1, 2021, 3:06 PM), https://www.sanjogindia.org/wp-content/uploads/2021/04/AHTU%20Watch%20-%20A%20National%20Study%20on%20Status%20of%20Anti%20Human%20Trafficking%20Units%20in%20India%20(2010%20to%202019).pdf.

70 National Human Rights Commission, *Human Rights Advisoty on Right to Mental Health in view of the second wave of COVlD-19 pandemic* (Advisory 2.0), (Jun. 1, 2021, 2:38 PM), https://nhrc.nic.in/sites/default/files/ADVISORY%20MENTAL%20HEALTH.pdf.

71 National Human Rights Commission, *Advisory to identify, release and rehabilitate bonded labourers during Covid-19 pandemic*, (Jun. 1, 2021, 2:40 PM), https://nhrc.nic.in/sites/default/files/ADVISORY%20BONDED%20LABOURERS.pdf.

72 National Human Rights Commission, *Human Rights Advisory on safeguarding the rights of informal workers during the second wave of the COVlD-19 pandemic (Advisory 2.0)*, (Jun. 1, 2021, 2:42 PM), https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%202.0%20on%20Informal%20Workers.pdf.

the Advisory on Combatting Human Trafficking in Context of the COVID-19 pandemic was issued in December 2020. Five months later, the second wave of the COVID-19 pandemic has exacerbated the living conditions of our society, however, the Action Taken Report against human trafficking has not been furnished by either the Central Government or the State government(s). Theoretically, these Advisories are the way to go forward in the fight against human trafficking, however, without the political will, inter-departmental coordination in every State and accountability mechanisms, they are only paper.

Conclusion & Recommendations

The COVID-19 pandemic has created havoc worldwide by not only spreading its severe acute respiratory syndrome but also magnifying the ever-growing business of human trafficking. The pandemic has been the cause for self-isolation and financial distress which have further given birth to inter-personal violence, homelessness, unemployment, disrupted family life and increased internet screen time by gullible children. To top it all, the situation has been aggravated by overwhelmed health care providers, under-staffed law enforcement agencies and under-qualified social workers. The impact of COVID-19 on the status of human trafficking in India is currently in the grey zone with incomplete data, however, the history of human trafficking and its sweet spots is insightful. India, stricken with poverty after the destruction of the COVID-19 pandemic may very well be welcoming an elevated risk of trafficking during and after the pandemic. The efforts taken to fight human trafficking in the midst of the COVID-19 pandemic by the Indian government is abysmal, to say the least. The author is, thus, compelled to make the following recommendations:

Involvement of Healthcare Service Provider

The healthcare professionals of the country must also have a trained eye for probable indicators of disguised trafficking and must offer resources to such victims which may not be available elsewhere. The healthcare service system can be used as a tool for community awareness against the factors and dangers of human trafficking. Healthcare facilities can display posters on human trafficking. These posters, apart from reinforcing stereotypical sex trafficking victims can also display other vulnerable modes of trafficking like organ removal, begging etc. and garner the attention of a diverse community.

Healthcare facilities can make at-risk patients aware of their options by providing them with human trafficking helplines, location of shelter homes and other services. The COVID-19 pandemic has revolutionised telemedicine and taking advantage of the same, healthcare providers can keep an eye out for red flags for possible exploitation at home in any form.

The healthcare facilities can voluntarily collaborate with non-governmental agencies providing necessities like food, clothes and shelter and make them accessible to patients/ victims. Healthcare providers can also advocate for timely minimum wages to informal workers and unskilled labourers in the healthcare sector.

Involvement of the Private Sector and Entrepreneurial Thinking

The private sector currently needs to sensitize itself to the financial position of labourers and must do its part by not being responsible for unemployment in the labour sector. Coalitions between the private sector and government encouraging entrepreneurial spirit is crucial. They can create a workspace for the unemployed by engaging in online platforms and creating new ventures to provide opportunities for those who may succumb to human trafficking if left to their own devices. This model prevents the human trafficking of the unemployed altogether.

A Human Rights-Based Approach

There is a significant amount of reliance on Anti-Human Trafficking Units to combat human trafficking however, it is advisable that a holistic approach must also be adopted alongside the enforcement of the law. While there is a need for rule of law to prevail, the responses against human trafficking must also be based on human rights. The amalgamation of human rights, healthcare and social services should be prioritized.

Active Involvement of NGOs for Collection of Data

The whole world is currently ravaged by the COVID-19 pandemic and no one is immune to it. Nevertheless, some countries have handled the containment measures better than others. The pandemic does not affect every country uniformly and one should make use of this. The data on prevention, risk and rehabilitation of human trafficking during COVID-19 is different for various countries. It is thus, vital to accumulate the same from other countries and apply it judiciously. It would be appropriate to set up NGOs specifically for the collection of accurate data on the impact of COVID-19 on trafficking in persons instead of overwhelming the Anti-Human Trafficking Units. The United Nations Trust Fund for Victims of Human Trafficking can offer financial help to the leading NGOs of every country who need more support during the COVID-19 crisis.

Accountability on Platforms Fuelled by the Internet

There is no question that the internet is a bane in context with human trafficking, more so during the COVID-19 pandemic. Unsupervised children and impressionable young adults

can easily be trapped by human traffickers. Therefore, social media platforms should be burdened with responsibility if they are alerted with irregular content promoting organ trafficking and the sexual exploitation of children.

Indian legislature has promulgated the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 wherein social media platforms are considered intermediaries enabling 'online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services.[73] Illicit content depicting sexual abuse or rape is to be regulated by social media intermediaries.[74] Thus, traffickers can be prevented from exploiting victims online by making these intermediaries accountable. The online content regulators must immediately track the person behind posts, articles and stories that even hint at human trafficking.

Bridge the Lacunae of the Transplantation of Human Organ Act, 1994

The Transplantation of Human Organ Act, 1994 was promulgated to criminalize the illegal sale of organs and streamline the process of organ donation. The implementation of this legislation has been severely criticized because of a significant increase in illegal kidney and liver transplants. The destitute and the unemployed have taken to the illegal sale of organs during the COVID-19 pandemic as iterated above. There is a very big flaw in the Transplantation of Human Organ Act, 1994 which encourages traffickers to victimize the vulnerable. The committee in charge of authorizing altruistic donations can monitor the same however, they do not have the authority to check bank accounts for payments because of illegal organ trafficking. It would be beneficial to overcome this particular legal loophole.

Certain areas of the world, including India, are going to struggle against the lashes of the COVID-19 pandemic for the unforeseeable future. Just as the government of India is preparing for the third wave of the pandemic, it is suggested that human trafficking may also be taken into the loop in the battle against a humanitarian pandemic in a pandemic.

73 The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, § 2(1) (w) (India).

74 The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, § 2(4) (India).