

# **MISSING CHILDREN IN INDIA GOVERNMENT INITIATIVES AND COURT ORDERS**

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### **Missing Children- India – Govt Initiatives and Court Orders**

The link between Missing persons and Human Trafficking was first reported in the NHRC Action Research (Sen/ Nair) in 2004. Across the country hundreds of women and children disappear daily and a large no of them continue to remain missing. The law enforcement agencies in the absence of any technical and monitoring mechanism remain clueless about the whereabouts of the missing persons. Only a half hearted approach happens where they transmit the case details to there district and State offices. After sometime a hue and cry notice is published and sfter some time the case becomes part of the State and the National Crime Records Bureau Data and Statistics.

It has been seen in many cases that even FIR is not registered. States Police across the country leaving a few states just enter the data in the missing person's dairy and hence the real cases of trafficking of children and women are never tabulated or gets reflected in the cognizable offence section of the National Crime Records Data. The Crime record data thus remains incomplete and most of these cases continue to remain pending in the missing persons list.

In cases of missing children there is also a huge number of cases which never gets reported as many parents and relatives fear to go to the Police Stations for reporting the case as traffickers by fraud and deception obtain the consent of the parents or relatives. Such cases are never reported as the relatives or parents fear that they may be prosecuted.

The NHRC Action Research 2004 brought out very clearly the linkages between missing cases and Trafficking . Many NGOs working on Anti Trafficking have also reported that in many cases of recovered and rescued victims of trafficking they are able to trace the missing persons report at the local police station level.

India has recently ratified the Un Protocol on Trafficking . It has accepted and acknowledged the fact that Trafficking is an organised crime. This organised crime is the second largest money spinning illicit trade . It has a wide network of traffickers across the country who procure women and children from deep rural areas where there is low awareness on the issue or back breaking poverty. The traffickers move in the community as placement agencies , recruitment agencies , job agents or contractors etc. Some of the women and children especially young girls are recruited by professing love and promise of marriage and lured to elope. In most of the cases local level traffickers are involved . The huge demand for

victims fuels the supply. Hundreds of women and children get sucked into the trade through this organised crime and end up in life of slavery. Many of these cases are never reported. Some cases are reported by parents only after a considerable period of time has passed. Apart from this many children are abducted and kidnapped by gangs operating in the source areas. Investigations by many police agencies report presence of such organised crime syndicates which are operating openly with much ease and fear of the law . Finally many of these victims who are trafficked just become numbers and are reflected in the Crime Records Bureau Data.

The response of the law enforcement agencies continue to be luke warm in absence of any response mechanism as the police has very limited scope for search of these cases.

Research by many agencies and also by the NHRC Action Research has proved the fact that the traffickers use well defined route for transiting a procured person from the source areas to the destination. Many source areas have fixed destination and this makes it very clear that if a rapid response system of reporting and search is put in place many of these victims can be rescued before they are exploited and sold during the transit period itself.

The Government of India after recommendations by the NHRC action research report has seriously contemplated to have an infrastructural support network for tracing of missing persons and their rescue.

The Supreme Court of India gave a detailed guidelines on 14-11-2002 , while hearing the Writ Petition (Crl) No 610 of 1996 filed by Horilal vs Commissioner of Police , Delhi and Ors with regards to effective and emergency steps to be taken in case of tracing out the missing women and children.

The Nithari Case in 2007 once again brought the plight of missing children and women before the nation. The case was a classic example of how the law enforcement agencies treat the missing persons as regular cases and even fail to recognise a set pattern emerging out of the cases . In this particular Police Station several children and women were reported missing in a span of time and the Police Station failed to recognise that most of them were being killed and exploited in a single house. In this particular case committee was set up by the Ministry of Women and Child , Government of India and also by the National Human Rights Commission to study and analyse the case.

Post Nithari episode the National Human Rights Commission set up a panel to examine the cases of missing children across the country . The NHRC panel provided to the Nation a well set out roadmap for combating cases of missing persons.

In 2009 the Ministry of Women and Child under the Integrated Child Protection Scheme recognised the need of a portal and a network to be created for tracing missing children by including the same in the ICPS policy document. It took the Ministry of Women and Child almost four years to announce the creation of the missing children portal.

In 2010 the Delhi High Court ordered detailed guidelines for Delhi Police. Among the various guidelines it was mentioned that the Police have to register FIR in all cases of missing children.

In 2011 the Ministry of Home Affairs published a detailed Advisory to all states for taking steps for tabulating each and every missing cases and also the various ways and methods the Police can recover these cases. The Advisory recognised the fact that trafficking in human beings was a organised crime and the response to the same should also be organised. The Ministry of Home Affairs advisory was again a well researched document and resulted from a series of zonal workshops held across the country.

In the period 2007-2012 Delhi Police collaborated with other neighbouring states to set up the zip net network. West Bengal Police also initiated a missing person portal which has also been able to very carefully profile each and every missing case reported in west Bengal.

In 2012 Bachpan Bachao Andolan published a report on missing persons which clearly reflected that the actual number of missing persons are much more than what is being reported in the NCRB Data.

With the ratification of the UN Protocol on Trafficking and India accepting the UN definition of Human Trafficking and also the organised nature of the trafficking syndicates it is imperative that the Government of India should come out with a response plan for tracing missing persons . The National Portal is of course needed but the same should be supplemented by a very strong infrastructure and communication network with the technology for fast collection and dissemination of Information. It also calls for convergence among all stakeholders so that fast and quick action can be taken across the country and even abroad without loss of time. It also requires profiling of traffickers and the organised crime racketeers. All the enforcement agencies along the travel routes taken by traffickers should be well connected.

The Government of India has taken steps to create machinery and institutional mechanism across the country with the roll out of Integrated Child Protection Scheme and the Integrated Human trafficking Units. In both these schemes NGOs and Civil Society is an integral part of the system. Now the time has come to create a robust technological system for profiling , publishing and disseminating

information as fast as possible among all stakeholders and also a synergy and convergence among all agencies.

### **Recommendations of the NHRC Action Research on Missing Persons (2001-03) [\[1\]](#)**

The study of the data on missing women and children and its possible linkages with trafficking brought out the out the inherent weaknesses in the existing law-enforcement scenario. The report stated that the issue of missing persons needs to be given serious attention by the law-enforcement agencies. There should be proper documentation and monitoring of the enquiries. Since the information about the missing persons is entered in the Station Diary (SD) and not registered as an FIR, the follow-up is usually nil. It is worth considering if at least a 'Zero FIR' can be registered in all such cases, even if it makes out no cognisable offence, to start with.

The Report advocated that vigilance and surveillance systems by police personnel and activists need to be augmented. Children seen loitering around parks, bus stands, etc. are to be monitored and accounted for. Since this is a mammoth job, especially in the metropolitan cities, the police cannot handle this in isolation, for want of manpower and resources. It also advocated for integrating the police system with childcare services run by the concerned NGOs. These agencies should take on the social responsibility of educating the children and their parents about the steps that should be taken and the care that one should bestow upon children so that they do not go missing. It stated that efforts to locate the missing persons cannot be handled in a haphazard and adhocist manner. It was obvious that the police agencies, despite best efforts, have not been able to rescue and retrieve several thousands of missing women and children due to various factors. The resources and time at their command are limited, priorities are low and, above all, the issue of missing persons has not received the required sensitive handling, except in a few instances. By and large, there is no involvement of other government agencies. The efforts to locate the missing persons need to be synergised to build up an effective and functional system where the various partners work in a concerted, coordinated and integrated manner. The report also put a strong reliance on utilisation of advanced technologies, skills and training for the same. It also called for appropriate attitudinal changes and stated the need of A National Centre for Missing and Exploited Children (NACMEC) which could be set up, with functional linkages between government and non-governmental agencies working across the country.

### **Guidelines for search of Missing Children laid down by Supreme Court**

**HORI LAL Vs Commissioner of Police , Delhi & Ors Respondents  
(14.11.2002)**

*The Court in its order dated 14/11/2002 laid out the following guidelines for effective search of the Kidnapped minor girls , which are to be followed by the Investigation Officer in all the States:*

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 the complaint .Photographs of a missing person shall be given wide publicity at all the prominent outlets of the city /town / village concerned that is at the Railway Stations , Inter state 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 the 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 neighbourhood , the place of work/study of the missing girl from friends colleagues , acquaintance , relatives 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 persons 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 , neighbours , 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 officer/agency shall:**

1. Diligently follow up to ensure that the records requested from the parents are obtained and examine them for clues.
2. Hospitals and Mortuaries to be searched immediately after receiving the complaint
3. The reward for furnishing clues about missing person should be announced within a month of her disappearance.
4. Equally Hue and Cry notices shall be given within a month.
5. The Investigation should be made through women police officers as far as possible.
6. 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.

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 to her.

### **General Pattern of Investigation Followed for 'Missing Children'**<sup>[2]</sup>

Normally, the investigation of a crime commences with the registration of a First Information Report (FIR) in a police station. The registration of an FIR presupposes a cognizable offence. However, in the case of a missing child, there is no system of registering an FIR across the country. Complaints of missing children, by and large, are treated as any other non-cognizable offence and only an entry is made in the General Station Diary (GD) that is followed by an enquiry. In other words, just as in the case of a missing person, no FIR is registered but only an entry is made in the GD of the police station concerned, the same procedure is followed in the case of missing children. The follow-up procedure thereafter entails the Station House Officer in the police station forwarding the information to all concerned, as well as to the Superintendent of Police or to the Deputy Commissioner of Police who in turn forwards it to the Chief of Police. At the field level, local police officials publicize the particulars of the missing child in the media by circulating the available identification details and photographs.

The message concerning missing child/ children that reaches the Police Headquarters normally is taken care of by the Missing Persons Bureau. At the State level, this Bureau is often a wing of the CID of the State police. While taking action, they also forward the message to the State Crime Records Bureau who, in turn, transfers the information to the Missing Persons Wing at the National Crime Records Bureau (NCRB) in New Delhi, which operates under the Ministry of Home Affairs. The NCRB, at best, transmits this message to the Chiefs of Police in other States. The research wing of the NCRB coordinates this information and further transmits it to other places. The NCRB, under the TALASH Information System, maintains a national level database of missing persons under the following broad categories – 'missing', 'kidnapped', 'arrested', 'deserted', 'escaped', 'proclaimed offender', 'wanted', 'unidentified dead body', 'unidentified person' and 'traced/ found'. Earlier, data on missing children under the broad category of 'missing' was not available. However, this is now available for both the sexes under the age group 0-12 and 13-18. The NCRB, by and large, functions as a 'Documentation Centre' or at best a 'Transfer Desk' because as of today the NCRB neither investigates, nor does it monitor or facilitates the recovery of missing children as a pro-active organization. The Police Stations, too, generally do not give any feed back to the NCRB when the missing child is rescued, traced or returned. Hence the data lacks accuracy. Thus, despite being the national repository of 'crime data', the NCRB is unaware both of children who are traced and of those who remain untraced.

Interestingly enough, though the category of missing children has come to be reflected in the TALASH Information System, there is no mention or analysis of it to date in the Crime in India Report being published by the NCRB. This is in spite of the fact that Chapter Six therein titled ‘Crime Against Children’ categorically affirms that “Generally, the offences committed against children or the crimes in which children are the victims are considered as Crime Against Children”. It then goes on to highlight crimes committed against children that are punishable under the Indian Penal Code 1860 and crimes committed against children that are punishable under the Special and Local Laws. Apart from the NCRB, there are some regional police websites like the Zonal Integrated Police Network (ZIPNET) and a few State police websites, which provide data on missing persons, including data on missing children. But the information provided therein remains largely incomplete. Awareness about these databases — particularly, among police personnel is low, it has not adequate attention in the investigation and tracing of missing children. It is pertinent to mention that sending “look out” notices and publishing photographs and other details in local visual and print media is somehow not mandatory in every State/ Union Territory. In addition to this, there area host of other factors – absence of effective supervision and follow-up, lack of interest on account of low priority accorded to the problem of missing children, lack of resources, lack of coordination and lack of national strategy to deal with the challenge – due to which cases of missing children do not receive the desired attention that they really deserve. With the passage of time, routine efforts to locate missing children have also been abandoned. As a result, a large number of missing children remain untraced. Sustained efforts to locate the missing children are rare.

### **NHRC Recommendations on Missing Children<sup>[3]</sup>**

The NHRC Committee has proposed for prioritization of the issue of missing children /women among law enforcement agencies. It has asked all DGPs to take appropriate steps so that the issue may be prioritized. It has asked for creation of a missing persons desk which will monitor and document each and every case of missing persons in the Police Station. In this regards it has advocated that the Juvenile Police Units can be utilized for the purpose. This Squad/Desk should have a Registering Officer who should be made responsible of registering complaints of missing children and to maintain complete records of efforts made by them to trace missing children as well as by the Special Squad. The Registering Officer should also write incident reports and keep them on record in Station Diary / case diary, as the case may be. In addition to this, the Registering Officer should also work as an Enquiry Officer whereby he/ she should be made responsible for following up the entire procedure of tracing/ tracking the missing child. The report also gave strong recommendation for the implementation of Supreme Court Guidelines given on 14/11/2002 in Writ Petition (Cri.) No 610 of 1996 filed by Horilal Vs. Commissioner of Police, Delhi & Ors. in all police stations across the country. This would entail prompt and effective steps for tracing missing children. Also it has asked for the collaborations between the CBI. The committee urged the

authorities concerned to hold district administration accountable for dereliction in discharging this responsibility of care and protection of children especially child labour. It stated that if this exercise of regular inspections undertaken with all earnest, will ensure linking back a large number of children missing from their homes.

The Report recommended that State Police Headquarters should evolve a system of mandatory reporting whereby all incidents of missing children across the country should be reported to the National Commission for Protection of Child Rights (NCPCR) within 24 hours of occurrence. Failure to report promptly would give rise to the presumption that there was an attempt to suppress the incident. The reporting should be done promptly and the procedure could be the same as is being followed by the concerned authorities for reporting custodial death cases to the NHRC. The report has also advocate for involving the community / Panchayats for reporting of missing persons. Involvement of NGOs in places where vulnerable groups of children are found in large numbers, there is need for enforcement agencies to evolve some kind of a mechanism in partnership with non-governmental organizations and social workers, whereby apart from rendering counseling to them, awareness raising activities are also carried out. This would not only instill confidence in them but also strengthens them and give them special protection so that they are in no way lured by external agencies/factors. This initiative could be taken by the Missing Children Squad / Cell in the Districts. The DGPs need to ensure action on this initiative.

The NHRC Committee emphasized the need of establishing a National Tracking System that would encompass the grass-root level in locating and tracing missing children at NCRB. There should be prompt reporting of not only missing children cases, but also of return rescue/ recovery. All instances where children are rescued from places of exploitation including places of sexual exploitation and also exploitative labour, should be dovetailed into the NCRB data base. The database should be updated on a regular and systematic basis.

The NHRC Committee has stated that as of now the issue of missing children is not a cognizable offence and the very fact of missing of a child does not convey occurrence of a crime. It has been to register FIR if a missing child does not come back or not traced within a reasonable time. The State Governments were advised to consider issue of appropriate directions to the law enforcement agencies to set a time limit of 15 days from the date of reporting that if a missing child is not traced back within 15 days, a presumption may be made of some malafide and an FIR registered with respect to all such issues of missing children. It has also been advised in the recommendations to order the law enforcement agencies for regular rescue and recovery of children in need of care and protection. The State Governments have also been advised to issue I Cards to all children and database of photographs need to be maintained. The report has also strongly emphasized the need to keep special vigils at railway stations, bus-stands, airports, sea- ports and

such other places, which act as transit points for missing children, including children who run away or are made to run away. In this context, the Government Railway Police, the Railway Protection Force, Airport and Seaport authorities needs to be oriented about the issue of missing children.

The Committee also recommended survey and research on the issue of missing persons / women and children. It stated that existing legislation requires the State and district authorities to periodically carry out inspections/ surveys of places where children are employed with a view to identifying missing children and those engaged in bonded labour/child labour. This task has remained a low priority area. There was an urgent need for the State administration to undertake micro studies especially at the places where children are reportedly vulnerable. A village-wise survey of all children who have gone missing or even recovered is an urgent need to understand the realistic dimensions of the problem. Studies by academic institutions into various factors behind the vulnerability of children are recommended in order to generate right response.

### **Delhi Police Issues Orders for Registration of all missing cases as FIR**

The Delhi High Court had taken a suo moto cognizance on 2 March 2009 . The Court stated that since in most of the cases of missing children the parents cannot pursue the case the court issued orders to Delhi Police to promptly, without any delay register all complaints of missing children as FIRs. The Court among other things gave the following directions:

1. Delhi Police will ensure strict compliance with its revised Standing Order NO. 252 dated 18th March, 2009. The information with regard to missing children shall be immediately uploaded on Delhi Police's web bases Zipnet programme. The Home Ministry is directed to issue appropriate directions to neighbouring States of Delhi to adopt web based Zipnet programme with regard to missing children.
2. It shall be mandatory for Delhi Police to forward both by e-mail and by post a copy of each FIR registered with regard to missing children to Delhi Legal Services Authority (hereinafter referred to as "DLSA") along with addresses and contact phone numbers of parents of the missing children.
3. DLSA will in turn constitute a team comprising a lawyer and a social worker to follow up the case with the Delhi Police. The said team will not only provide all possible legal aid to the parents and families of the missing children but shall also act as an interface between the parents of the missing children and the Delhi Police. DLSA will maintain a record of all cases of missing children.
4. Both DLSA and the Delhi Police shall ensure that the Supreme Court interim directions/guidelines pertaining to missing/kidnapped children passed in Writ Petition (Crl.) No. 610/1996 (Horilal vs. Commissioner of

Police, Delhi) and I the case of Lalita Kumari vs. State of U.P. & Ors.(Writ Petition(Crl.) No. 68/2008) are strictly complied with.

5. Whenever a missing child is traced or he/she comes back on his/her own, the Investigating Officer will examine all relevant angles such as involvement of organized gangs, application of provisions of Bonded Labour Act and such other relevant Acts.
6. Whenever, the involvement of any organized gang is found, it shall be the responsibility of the Investigating Officer to refer the matter to the Crime Branch of Delhi Police or the Special Cell constituted in the CBI.

### **Initiatives By the State Police Agencies :**

The main objective of the ZIPNET Project of Delhi Police is to share Crime and Criminal Information in real-time. Project has been approved by the Ministry of Home Affairs, Government of India. The information published on it, relates to Public Interest. Prior to ZIPNET, the information use to circulate through offline modes like Papers, TPM, Wireless Communication. It provides Search Engines to match information from Central repository in Online environment. Initially, it was brought forward with the collaborative efforts of Delhi, Haryana, Uttar Pradesh, Rajasthan Police in the year 2004. Subsequently, in the year 2008, Punjab and Chandigarh Police also joined it. Uttrakhand Police has also joined it in the month of October, 2008. Himachal Pradesh Police joined the project on 25.1.2012. Among the various modules missing children and missing persons is an important segment. This project enables a wider distribution of information real time across seven police agencies.

In West Bengal the Missing Persons Bureau in the CID, West Bengal has been actively profiling each and every reported case in the CID West Bengal Website. It ensures that each case is given wide publicity through public media i.e. Doordarshan, All India Radio, Daily News Paper and also through Criminal Intelligence Gazette, Missing Persons Website of CID, West Bengal and other Government Office to trace out the missing persons. West Bengal police also runs a National Portal in collaboration with the Department of Social Welfare (<http://www.trackthemissingchild.gov.in/>) . This portal is dedicated to the cause of tracking missing children. The portal holds the database of missing / recovered children. Many Police agencies like Andhra Pradesh , Maharashtra, Assam etc are uploading real time data on missing children on their Police Website.

### **Advisory on Missing Children (Ministry of Home Affairs)**

The Ministry of Home Affairs, Government of India has issued an advisory on Missing children –measures needed to prevent trafficking and trace the children. The advisory was issued on 31<sup>st</sup> January 2012 after wide scale consultations with State Police agencies through zonal workshops and national level workshops with various stakeholders. The details in the advisory inter alia include:

1. Implementation of the guidelines of Honourable Supreme Court of India dated 14/11/2002 in Horilal vs Commissioner of Police Delhi and court orders issued on 12/10/2011 in Sampurna Behrua case. These instructions need to be complied and monitoring ensured.
2. Implementation and Monitoring of NHRC guidelines on Missing Children.
3. A officer of the rank of DIG should be declared Nodal Officer in each State.
4. Supervision of investigation of cases by senior police officials of the rank of Addl. SP /Dy. SP.
5. Heinous offences related to organized crime should be transferred to the State CID.
6. Convergence between District Missing Children Unit and Missing Persons squad needs to ensured.
7. All cases of trafficking should be treated as organized crime and real time data and profile of the gang members need to be maintained.
8. Police officials need to be sensitized and trained on Procedural laws, Investigation techniques and data collection and compilation.
9. AHTU should be involved in the Missing persons work at the district level.
- 10.SP should review all cases of missing children in the Monthly District Review.
- 11.In International trafficking investigators can network with Interpol for search of the missing child.
- 12.All missing cases should be uploaded at the District level and data disseminated and the same needs to be updated.
- 13.At the Police Station Level SHO should ensure that the data on missing children is shared with DCRB and SCRB.
- 14.Integration of Childline in the search and recovery of missing children needs to be ensured.
- 15.Police should be trained to take preventive steps.
- 16.Involvement of Community/Panchayats/Resident Welfare Association needs to be ensured for prevention and protection measures.
- 17.Community awareness on missing children needs to be ensured at District level. School level sensitization should also be ensured.
- 18.Appointment of Nodal NGOs at the state level needs to be ensured. Wherever possible NGOs partnership should be evolved for counseling and awareness raising activities.
- 19.The protocols and SOPs developed by MHA-UNODC project including protocols on interstate transfer of rescued victims should be effectively utilized