

**EMERGING DIMENSION OF HUMAN TRAFFICKING:  
A CRITIQUE THE EFFICACY OF LEGAL FRAMEWORK**

A DISSERTATION TO BE SUBMITTED IN PARTIAL  
FULFILMENT OF THE REQUIREMENT FOR AWARD OF  
THE DEGREE OF MASTER OF LAWS

**SUBMITTED BY:**

NAMRATA TRIPATHI  
1220997024  
SCHOOL OF LEGAL STUDIES

**UNDER THE GUIDANCE OF:**

PROF. (Dr) SUDHIR AWASTHI  
DEAN, SCHOOL OF LEGAL STUDIES



**BBD UNIVERSITY**

**SESSION 2022-23**

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Date-

Place- Lucknow

**NAMRATA TRIPATHI**  
**1220997024**  
**LL.M. (2022-23)**

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I wish her success in life.

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Place- Lucknow

**PROF. (Dr) SUDHIR AWASTHI**  
**Dean, School of Legal Studies**

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**Date**

**Place : Lucknow**

**NAMRATA TRIPATHI**  
**1220997024**  
**L.L.M. (Criminal and Security Law)**  
**Session: 2022-2023**

## **ABBREVIATION**

ATPO - Anti Trafficking Police Officer  
ATSEC - Action against Trafficking and Sexual Exploitation of Children (an NGO network)  
CBI - Central Bureau of Investigation  
CBO - Community Based organization  
CrPC - Criminal Procedure Code  
CSE - Commercial Sexual Exploitation  
CWC - Child Welfare Committee (Constituted under the JJAct 2000)  
DM - District Magistrate  
DSPE - Delhi Special Police Establishment (CBI)  
FCC - Family Counseling Centre  
FIR - First Information Report (Registered at the PS)  
INGO - International Non-Governmental Organization  
IPC - The Indian Penal Code  
ITPA- Immoral Traffic (Prevention)Act 1956.  
JJAct - The Juvenile Justice (Care and Protection of Children) Act, 2000  
JM - Judicial Magistrate  
MM - Metropolitan Magistrate  
NGO - Non governmental organization  
NHRC - National Human Rights Commission  
PS - Police Station  
PRI - Panchayat Raj Institution  
PW - Prosecution witness  
SAPAT- South Asian Professionals against Trafficking  
SDM - Sub Divisional Magistrate  
SI - Sub Inspector of Police  
SPO - Special Police Officer (notified u/s 13 ITPA)  
SOC - Scene of Crime  
U/S - Under Section (of a particular law)  
UNIFEM - United Nations Development Fund for Women  
UNODC - United Nations Office on Drugs and Crime  
UTI - Urinary Tract Infection  
WPO - Woman Police Officer

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# CHAPTER - 1

## INTRODUCTION

This Chapter tries to demystify certain concepts about trafficking which have often been misunderstood and distorted. The clarity of these concepts is essential for proper understanding of the trafficking situations and for taking appropriate response.

Trafficking does not mean prostitution. They are not synonymous. In order to understand trafficking, one should delink it from prostitution. As per the existing law, Immoral Traffic (Prevention) Act 1956 (ITPA<sup>1</sup>) prostitution becomes an offence when there is commercial exploitation of a person. If a woman or Human is sexually exploited and any person gains out of the same, it amounts to commercial sexual exploitation (CSE), which is a legally punishable offence wherein the culpability lies against all exploiters. Trafficking is the process of recruiting, contracting, procuring or hiring a person for CSE<sup>2</sup>. Therefore, trafficking is a process and CSE is the result. The demand in CSE generates, promotes and perpetuates trafficking. This is a vicious cycle. Trafficking could also be a means for other types of violations such as for developing pornographic material, for promoting sex tourism, for sexual exploitation under the facade of bar tending, massage parlours etc, or even for exploitative labour where sexual abuse may or may not coexist. ITPA envisages only trafficking for CSE. Commercial activity need not be in a brothel, but could also occur in places including a residential dwelling, a vehicle, etc. Therefore a police officer who is acting under ITPA has powers to take steps in all such situations where trafficking leads to or is likely to lead to CSE in any form, including those under the facade of massage parlours, bar tending, tourist circuit, escort services, friendship clubs. Trafficking in human beings, a modern-day slavery, is a complex and multidimensional problem that has spread worldwide. Like pollution trafficking has permeated our day to day lives.

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<sup>1</sup> Immoral Traffic (Prevention) Act 1956

<sup>2</sup> commercial sexual exploitation

The present situation of trafficking in human beings is a clear manifestation of the lopsided economic development, lack of political will and social disintegration. The failure of the state machinery including law enforcement puts vulnerable sections of the society at the receiving end of this multi-dimensional problem.

The last few decades have seen significant development of the response in combating trafficking in human beings at the national, regional and international levels. However, critical and concrete efforts have been lacking to curb the menace of human trafficking. The transnational nature of this crime requires an integrated global action with the involvement of different stakeholders. Much work has been done in terms of research on human trafficking, but reliable data both at national and international level is lacking. There is a lot of repetition in the work. It seems that the studies undertaken are replica of one parent research, which has created a lot of confusion about the existence and the conceptual dimensions of human trafficking. However, testimonies of various stakeholders clearly confirm its existence worldwide. Consequently, human trafficking has been put at the top of the international agenda and various efforts have been made to curb this crime. Most importantly, in this regard, the United Nations Convention against Transnational Crime<sup>1</sup> has been a path breaking achievement. For more than a century human trafficking has been linked only to one form of exploitation namely, commercial sexual exploitation, but the United Nation's Trafficking Protocol defined trafficking in persons in such a way that it diluted the age old belief that human trafficking is just for the commercial sexual exploitation. The Trafficking Protocol, currently forms the basis of various State human trafficking laws.

The United Nations Convention against Transnational Crime (UNCTC) is a 2000 United Nations sponsored multi-lateral treaty against transnational organized crime. This Convention was adopted by a resolution of the United Nations General Assembly on 15 Nov. 2000.

1. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred as the Trafficking Protocol or UNITIP Protocol) is a Protocol to the Convention against Transnational Organized Crime. It is one of the Palermo Protocols, the others being the Protocol against the Smuggling of Migration

by Land, Sea and Air and the Protocol against the Illicit Manufacturing and Trafficking in Firearms.

2 Trafficking in persons is both a human rights as well as a criminal justice issue. More importantly, the issue of commercial sex work is highly controversial and sensitive.<sup>3</sup>The UN Protocol was preceded by the Convention for the Suppression of the Traffic in Persons, 1949, but this Convention got a mixed reaction. It was not widely signed and ratified by the States. This, clearly reveals that the international community is divided on this issue. However, the UN Trafficking Protocol subsequently expanded the definition of trafficking in persons without dealing with the issue of states regulating internal prostitution. It is due to this liberal approach that within a few years the Protocol has obtained more ratifications than the Convention for the Suppression of the Traffic in Persons. The main focus of the Protocol is on three main elements which can eradicate various forms of exploitation. The Trafficking Protocol also proposes the three P's approach namely, measures to prevent trafficking in human beings, prosecution of the traffickers, and protection of the trafficked victims. However, it must be considered that the Human Trafficking Protocol is mainly a criminal law instrument, focusing more on the prosecution of traffickers rather than the protection of victims of offence. Therefore, in this regard, states must follow and rely on other recommendations laid down in various soft law instruments like the UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking and the UNICEF Declaration for the Protection of the Rights of the Human and Victims of Human trafficking.<sup>4</sup>

Most importantly, as regards the children, the Convention on the Rights of the Child<sup>4</sup> can to a large extent provide impetus to protection of the rights of children and prevention of Human trafficking. There are other numerous international instruments which if consistently implemented, reduce if not eliminate any form of exploitation including trafficking in human beings.

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<sup>3</sup> Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery*, Oxford University Press, (2008), p. 206

<sup>4</sup>Ibid.

<sup>4</sup> U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons

There has been an improvement in this area on account of the establishment of the mandate of the Special Rapporteur on Trafficking in Human Beings. The work assigned to this new establishment is the annual submission of reports on human trafficking to the Human Rights Council. It also conducts State visits and receives information about the menace of human trafficking from different stakeholders. This Rapporteur along with other Rapporteurs (Violence against Women, Migrant Workers and Sale of Children) to a great extent fills in the loopholes which exist in the monitoring mechanism of the Human Trafficking Protocol.<sup>5</sup>

At the regional level, the SAARC nations have drafted a well formulated Convention namely, the Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution in 2002. The main objective of this Convention is to promote cooperation amongst the member countries to deal effectively with the various aspects of prevention, interdiction and suppression of trafficking in women and children, the repatriation and rehabilitation of victims of trafficking, of the use of women and children in international prostitution networks, particularly if the SAARC member countries (Bhutan, Bangladesh, India, Maldives, Nepal, Sri Lanka, and Pakistan) are countries of origin, transit and destination. This legal instrument is legally binding on its signatory parties and is the first regional anti-trafficking treaty to emerge from Asia. As of March 2004, the Convention was ratified by all member countries of the SAARC except Nepal and Sri Lanka.

Trafficking in human beings is undoubtedly a criminal justice issue. However, it affects the territorial integrity of the nations as well. As in many cases trafficking in human beings involves facilitations of illegal crossing of borders in clear violation of national immigration laws and policies. It also to a large extent threatens the rule of the law of the nations, because traffickers and violators most often resort to violence, corruption and complicity in order to advance their guilty plans.

<sup>5</sup> Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored.

Thus, in order to check this growing phenomenon at the national level many steps have been taken. First and foremost, the Constitution of India expressly prohibits trafficking in human beings.<sup>6</sup> To carry forward the mandate of the Constitutional provisions and responsibility of International agreements, the Immoral Traffic (Prevention) Act, 1956 has been enacted to tackle the problem of immoral trafficking of human beings. However, this legislation only focuses on trafficking for commercial sexual exploitation. There is no mention of other forms of human trafficking like forced labour, bonded labour, organ trade, begging etc. in this legislation. Although the Act has been amended twice till now,<sup>7</sup> there is no visible reduction in trafficking. This is largely due to the reason that no efforts have been made to consider other forms of trafficking in human beings and the lack of effective implementation.

Apart from the Immoral Traffic (Prevention) Act there are a number of provisions in the Indian Penal Code, which in one way or another help in the prevention of crimes like human trafficking. Recently, after the Delhi Nirbhaya gang rape there has been a widening of focus on the gender related issues which in turn paved the way for the appointment of the Justice Verma Committee. The Verma Committee submitted its reports within a short time of one month. Following the Verma Committee recommendations, the President of India passed an Ordinance which was followed by the enactment of Criminal Law (Amendment) Act, 2013. By this amendment section 370 of the Indian Penal Code was substituted by sections 370 and 370(A). These provisions provide for stringent punishment for offences like human trafficking.

Other relevant legislations which address the issue of human trafficking in India are; the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006; Andhra Pradesh Devdasi (Prohibiting Dedication) Act, 1989; the Karnataka Devdasi (Prohibition of Dedication) Act, 1982; the Human Labour (Prohibition and Regulation) Act, 1986; Information Technology Act, 2000; and the Goa Children's Act, 2003. Besides these, there are other collateral laws which are relevant to trafficking in human beings.

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<sup>6</sup> Constitution of India, 1950, Article 23, Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

<sup>7</sup> Amended in 1978 and 1986.

These are the Indian Evidence Act, 1872; Young Persons (Harmful Publications) Act, 1956; Bonded Labour System (Abolition) Act, 1976; Human Marriage Restraint Act, 1929; Probation of Offenders Act, 1958; Criminal Procedure Code, 1973; Indecent Representation of Women (Prohibition) Act, 1986;

### **Transplantation of Human Organs Act, 1994**

Anti-trafficking legislations are problematic to enforce because victims of human trafficking are hesitant to identify traffickers for fear of violent consequences at the hands of traffickers. Furthermore, trafficking in human beings is a crime that crosses borders and jurisdictions. Applying international law to a person who resides in another State is a costly affair and a complex endeavour and is not amenable to an easy solution. Additionally, human trafficking usually violates several laws at one time, and is not a single shot event. Building a case against violators and traffickers can take a great deal of time, resources and energy. In countries like India, where the resources are limited, these complexities can hinder The Verma Committee submitted its reports within a short time of one month.

One more dilemma of enforcing anti-trafficking legislations is the lack of training of the local enforcement officers or special police officers as referred under the ITP Act within the state. Moreover, even if the State has implemented such laws, it is not likely that the local police officers and other enforcement constituents are well-versed in the international or domestic laws with regard to human trafficking. Victims of human trafficking are mostly treated like criminals or illegal immigrants, and are either arrested or deported. Additionally, since trafficking victims are usually not located in their country of origin, there is often a language barrier between enforcement officers and the victims, making information-gathering problematic.<sup>8</sup> On analysing the role of law enforcement, it becomes evident that human trafficking is an epidemic and the existing international and national laws do not have the teeth to curb this growing menace.

As far as the vibrant judicial organ of the country is concerned, we find that there is clear inaction on the issue of human trafficking. Though the Indian judiciary has played an active role in many areas, but this area of human rights jurisprudence remains

<sup>8</sup> <http://www.du.edu/korbel/hrhw/researchdigest/trafficking/InternationalLaw.pdf>, (Accessed on 01.04.2014)

neglected. The judiciary alone cannot be held responsible for this neglect. There are many reasons; firstly, human trafficking cases rarely come before the courts because of the under reporting of such cases. Secondly, the existing law is such that it gives much time and space to offenders to escape punishment. Thirdly, police inaction in collecting relevant evidence and information and proving offenders guilty is shocking.

The Supreme Court of India in two important landmark judgements touched the issue of human trafficking. First one is *Vishal Jeet v. Union of India*<sup>9</sup> and second one is *Guarav Jain v. Union of India*<sup>10</sup>. The Bombay High Court in the case of *Prerana v. State of Maharashtra*<sup>11</sup> stated that cases relating to trafficking in women and children should be disposed off expeditiously. Trial Courts ought to record the victim's statement within one month and complete the trial within six months of the charge sheet being filed.

## **HISTORY AND DEVELOPMENT OF HUMAN TRAFFICKING**

The definition of trafficking can be found in the various sections of ITPA<sup>12</sup>. Section 5 speaks about procuring, taking and even inducing a person for the sake of prostitution. According to this section, even attempt to procure and attempt to take or cause a person to carry on prostitution amounts to trafficking. Therefore trafficking has been given a broad scope.

A detailed definition of trafficking is available in the Goa Children's Act 2003. Though it is focused on Human trafficking, the definition is comprehensive. Under section 2 (z), Human trafficking means *the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise*".

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<sup>9</sup> AIR 1990 SC 1412.

<sup>10</sup> AIR 1998 SC 2848.

<sup>11</sup> [(2003) 2 BOMLR 562].

<sup>12</sup> Immoral Traffic Prevention Act



The offence of trafficking, essentially, has the following ingredients:

### **Displacement of a person from one community to another**

The displacement could be from one house to another, one village to another, one district to another, one state to another or from one country to another. Displacement is also possible within the same building. An example will clarify the point. Presume that the brothel keeper controls several young women who are inmates and that one of the women has a teenage daughter staying with her. If the brothel keeper, by duress or bribe, manages to get the mother to agree to allow the teenager to be used for CSE, the teenager has been moved out of the mother's community and into the brothel community. This displacement is adequate to constitute trafficking.

### **Exploitation of the trafficked person**

The ITPA and related laws envisage sexual exploitation of the trafficked person. The process of exploitation may be manifest, as in a brothel, or latent, as in certain massage parlours, dance bars, etc, where it takes place under the facade of a legitimate commercial activity.

### **Commercialization of the exploitation and commodification of the victim**

The trafficked victim is exploited as if she is a commodity. The exploiters generate revenue out of the exploitation. They may share a part of the revenue with the victim too. The victim who is getting a share of the money generated is often branded as an accomplice and arrested/charge-sheeted and even convicted.

The trafficked victim, whose freedom even to think, let alone move out, is dictated by the exploiters, should never be treated as an accomplice. Even if she gets a share of the earnings, the fact that she has been trafficked to CSE does not alter her status as a victim.

The organized crime of trafficking:

Human trafficking is a crime of crimes. It is a basket of crimes. In this basket one can dig out the elements of abduction, kidnapping, illegal detainment, illegal confinement, criminal intimidation, hurt, grievous hurt, sexual assault, outraging modesty, rape, unnatural offences, selling and buying of human beings, servitude, criminal conspiracy, abetment etc. Therefore, multiple abuse and abusers located at different points of time and place together constitute the organized crime of trafficking. A host of human rights violations like denial of privacy, denial of justice, denial of access to justice, deprivation of basic rights and dignity etc constitute other part of the exploitation. Therefore, there is no doubt that trafficking is an organized crime.

### **The Trafficked person**

In the context of ITPA (especially S.5 ITPA) and related laws, a trafficked person could be a male or a female of any age who has been trafficked for CSE in a brothel or any place where CSE takes place. ITPA provides punishment even for attempt to traffic a person. Therefore, even before the person is physically trafficked, the law comes into operation.

### **Child**

Human is a person who has not attained the age of 18 years. Any Human who is vulnerable to trafficking is considered a person in need of care and protection under the JJ Act<sup>13</sup>. Law enforcement agencies are duty bound to rescue such children, produce them before the Human Welfare Committee and extend all care and attention.

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<sup>13</sup> Juvenile Justice (Care and Protection of Children) Act, 2000

## **Trafficked adult**

Regarding adults, the mere consent of the person does not exclude the possibility of trafficking. If the consent was obtained under duress, coercion, fear or any pressure, then the consent has no meaning and, therefore, all such instances amount to trafficking. Thus, even when an adult woman is picked up from a brothel on the charge of soliciting, it cannot be presumed that she is guilty of soliciting unless and until the *mens rea*' (i.e., the intention) is investigated. A woman trafficked for CSE is a victim of CSE and not an accused.

## **Traffickers and other exploiters**

Trafficking is an organized crime. There are several persons involved at several places, starting with (a) place of recruitment, (b) places of transit and (c) places of exploitation. Therefore, the list of exploiters includes the following:

The brothel in charge and other exploiters in the brothel, or the final place of exploitation, which would also include: The brothel madam or the person in charge of the dance bar or massage parlour or such other place where exploitation takes place. The managers and all other *dramatis personae* in such places. The hoteliers or persons in charge of hotels, etc where exploitation takes place. This includes keepers of places/vehicles used as a brothel (S.3.1 ITPA), persons who allow premises to be used as a brothel (S.3.2 ITPA), persons who detain victims in brothels and other places of exploitation (S.6 ITPA), and those who allow public places to be used for prostitution (S.7.2 ITPA).

The customer or clientele, who is the abuser of the trafficked woman, is undoubtedly, an exploiter. He is the one who perpetuates demand and CSE and is, therefore liable under ITPA and other laws. (Mentioned in para 3.2.3). The financiers: All those who finance the various processes involved in trafficking are part of the nexus. This may include those who finance recruitment, transportation, stay, accommodation, and even those who indulge in money lending and borrowing at the brothels.

The abettors: All those who abet or support the exploitation or any process involved in trafficking are triable under ITPA (sections 3, 4, 5, 6, 7, 9 ITPA, read with Chapter V of IPC dealing with abetment of offences).

Those who are living on the earnings of CSE: Any person who knowingly lives, wholly or partly, on the earnings of prostitution is liable (S.4 ITPA). This includes all those who have a share in the illegal benefits derived from the exploitation. The financiers who lend or collect money from the brothels (or hotels) and do business out of such transaction are also liable under this section. The hotelier who profits from the exploitation of girls is undoubtedly an accused u/s 4 ITPA.

The spotter, the recruiter, the seller, the purchaser, the contractor, the agent or anybody acting on their behalf. The transporters, the harbourers and those who provide shelter are also part of the racket. All conspirators: In nearly all trafficking situations, several persons conspire at the various stages involved in the process of exploitation, thereby constituting a case of conspiracy. If there is a meeting of minds, followed by an overt act in pursuance thereof, the law of conspiracy (S120 B IPC) is attracted. According to the ITPA, those who conspire to allow any premises to be used as a brothel (S. 3) or those who live on the earnings of exploitation, even partly (S.4), or those who procure or induce or take the person for prostitution (S.5) are all considered conspirators.

Therefore, the list of exploiters and abusers is inevitably long, undulated and not always apparent at first glance. Only professional investigation can expose the linkages involved and bring all such persons to book.

## **Conclusion**

During the research period many NGO's were visited by the researcher. NGO's are the first players in highlighting and addressing the problem of human beings. They play a vibrant role by making the masses aware about the menace of human trafficking. However it was found that their work is highly affected by a series of problems such as lack of funds and lack of effective co-operation from government departments mostly police and other sectors.

Undoubtedly, many active steps have been taken over the past few years at the international, regional and national levels for the protection of the vulnerable sections of society and for the eradication of trafficking in human beings. Nonetheless much work still remains to be done to reach the final goal where by this menace of human trafficking will be eradicated forever from this planet. Therefore, in this regard, some specific suggestions and recommendations have been formulated which may contribute to a large extent in the eradication and abolition of this unacceptable modern day slavery of trafficking in human beings. These suggestions and recommendations are based on my field research by way of structured and unstructured questionnaires and discussions with eminent personalities working in the area of human trafficking and gender related issues.

## **CHAPTER –2**

# **NATIONAL LEGISLATIVE MEASURES FOR PROTECTING HUMAN TRAFFICKING**

### **INTRODUCTION**

In the existing scenario, trafficking is usually confused with prostitution and therefore, there is no proper understanding of the seriousness of trafficking. It would be appropriate here to list out the wrongs, violations, harms and crimes that are committed by various persons on a trafficked victim. These violations can be realized only during a careful interview of a trafficked person. Once the victim is allowed, facilitated and promoted to speak, the unheard story will reveal a long list of violating acts perpetrated on her. As a typical example, under the Indian Penal Code, a trafficked girl Human has been subjected to a multitude of violations. She has been:

1. Displaced from her community, which tantamount to kidnapping/ abduction (Sections 361, 362, 365, 366 IPC may apply).
2. Procured illegally (S.366 A IPC). Sold by somebody (S.372 IPC).
3. Bought by somebody (S.373 IPC).
4. Imported from a foreign country (if she hails from a foreign country, or even from J & K State, and is under 21 years of age – S.366 B IPC).
5. Wrongfully restrained (S.339 IPC). Wrongfully confined (S 340 IPC).  
Physically tortured/injured (S.327, 329 IPC). Subjected to criminal force (S. 350 IPC).
6. Mentally tortured/harassed/assaulted (S. 351 IPC).
7. Criminally intimidated (S.506 IPC).
8. Outraged of her modesty (S 354 IPC).
9. Raped/gang raped/repeatedly raped (S 375 IPC).
10. Subjected to perverse sexual exploitation (unnatural offences\_) (S.377 IPC). Defamed (S 499 IPC).
11. Subjected to unlawful compulsory labor (S.374 IPC). Victim of criminal conspiracy (S 120 B IPC).

This list is only illustrative and not exhaustive. Undoubtedly, in every case, the trafficked person is a victim of at least one or more of the violations listed above. Oftentimes victims become pregnant as they are subjected to non-protective sex. If the victim has been subjected to miscarriage then the liability of the offender falls under the Sections 312 to 318 IPC<sup>14</sup>. In some cases, the process of exploitation has proven fatal wherein the victim succumbs to the direct effects of the harm or to the consequential problems arising thereof. This means that the offence of homicide/murder is also attracted.

The offences envisaged under the ITPA are specific to the context of CSE. They are briefly listed out below: Keeping or managing (or assisting in keeping or managing) a brothel or allowing premises to be used as a brothel (including vehicles) – S. 3 ITPA. Living on earnings of prostitution (even partly) – S.4 ITPA. Procuring, inducing, trafficking or taking persons for the sake of prostitution (S. 5 ITPA). Even attempt to procure or take would constitute the offence. Detaining a person in any premises (brothel or any other) where prostitution is carried out - S. 6 ITPA. Anybody who carries on prostitution, or anybody with whom such prostitution is carried on, in the vicinity of public places (which includes hotel, vehicles, etc) S.7 ITPA.

Seducing or soliciting for the purpose of prostitution in any public place or within sight of a public place - S. 8 ITPA. Seduction of a person in custody (which includes causing or assisting seduction for prostitution of a person in custody) – S. 9 ITPA.

The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act 2000) also has penal provisions. Anybody in control of a Human who assaults, abandons, exposes or willfully neglects the Human or procures him to be assaulted, abandoned or exposed causing the Human unnecessary mental or physical suffering, is liable under S. 23 JJ Act. There are so many Human Rights violations that take place on trafficked person. The list includes the following:

<sup>14</sup> Indian Penal Code 1860

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Deprivation of the right to life (slave-like conditions). Deprivation of the right to security. Deprivation of dignity. Deprivation of the right to access to justice and redressal of grievances. Denial of access to health services. Denial of right to self determination (e.g. when the victim is re-trafficked). Denial of right to return to own community. Double jeopardy (e.g., a person trafficked across a border is sometimes convicted for non-possession of passport/visa, etc. and is simultaneously punished for soliciting). Denial of right to representation. Denial of right to be heard before decision making. The list of rights violations is long and several such violations can be listed out depending on the provisions of the Constitution/Protocols/Conventions.

### India's Current Human Trafficking Laws and Realities Measured Against the UN Trafficking Protocol

India's recent adoption of the Amendment Act moves India closer to compliance with international standards set by the UN Trafficking Protocol. However, there are several areas in which India's laws and realities do not comply with the UN Trafficking Protocol's requirements and recommendations, including: 1) labour trafficking, 2) safety, compensation and rehabilitation, 3) prevention, and 4) migration, decriminalization and repatriation. The following sections measure India's domestic laws against the UN Trafficking Protocol on a subject-by-subject basis.

## LABOUR TRAFFICKING

India's human trafficking laws and efforts have historically focused nearly exclusively on trafficking for sexual exploitation purposes despite the fact that the majority of human trafficking in India is for the purpose of forced labour.<sup>60</sup> Thus, until the passage of the recent Amendment Act, the majority of human trafficking victims in India – namely those who had been trafficked for purposes of forced labour – were not recognized as such because they were not trafficked for purposes of sex. These victims of human trafficking fell outside the bounds of India's trafficking laws.<sup>15</sup>

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<sup>15</sup> See, e.g., The Bonded Labour System (Abolition) Act, supra note 18, § 4, which abolishes the bonded labour system, defined in Section 2(g) as the system of —forced, or partly forced labour under which a debtor enters, or has, or is presumed to have entered into an agreement



## **UN trafficking protocol obligations**

Article 3 of the UN Trafficking Protocol provides that human trafficking includes forced labour or services and other forms of servitude, as quoted above. According to Article 3, trafficking in persons must be for the purpose of exploitation, whereby exploitation is defined as including:

(a) at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

In addition, Article 5 of the UN Trafficking Protocol states that States party to the treaty must criminalize an attempted violation of Article 3:

(1) Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses the conduct set forth in article 3 of this Protocol, when committed intentionally.

(2) Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offenses:

(a) Subject to the basic concepts of its legal system, attempting to commit an offense established in accordance with paragraph 1 of this article.<sup>16</sup>

Thus, the UN Trafficking Protocol prohibits both actual and attempted trafficking of persons for the purposes of labour. The Protocol does not emphasize sex trafficking as a more egregious offense than labour trafficking.

## **India's laws and policies**

### **a. India's Bonded Labour System (Abolition) Act, 1976**

India's failure to consistently recognize and punish labour trafficking as a form of human trafficking is reflected in its Bonded Labour System (Abolition) Act (hereafter, referred to as The Act). The Act defines bonded labour in terms similar to those used for labour trafficking in the UN Trafficking Protocol, but it fails to specify that persons may be trafficked for the purposes of bonded labour. Further, the language of the Act

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<sup>16</sup> UN Trafficking Protocol, supra note 5, art. 3.

itself indicates that the punishment for the offence is a very limited one and hinges on the labour falling within the scope of a bonded labour system<sup>17</sup> as defined under the Act: Punishment for enforcement of bonded labour. Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term, which may extend to three years and also with fine, which may extend to two thousand rupees.<sup>17</sup>

Where bonded labour has not been rendered, i.e., where a creditor-debtor relationship does not exist, punishment is not possible according to the language of this Act.<sup>18</sup> Thus in a situation where a person, who is not indebted to the trafficker or another person compelling bonded labour, is rescued from the trafficker, the Act does not offer any remedy for the labourer. Indeed, even where a person has been trafficked and labour has been rendered, the Act would not allow for prosecution of the traffickers if the labour relationship does not constitute a "bonded labor system." The Act, then, does not criminalize the trafficking of persons for forced labour a form of trafficking proscribed by the UN Trafficking Protocol.<sup>19</sup>

### **India's Amendment Act**

The newly adopted Amendment Act's definition of human trafficking is nearly duplicative of the language in the UN Trafficking Protocol. However, there are several gaps between the language of Articles 3 and 5 of the UN Trafficking Protocol and the corresponding portions of the Amendment Act. The most significant departure from the UN Trafficking Protocol lies in the Act's exclusion of labour trafficking from the definition of human trafficking. The Act does not include in the definition of human trafficking, trafficking for the purposes of forced labour, a form of trafficking included in the UN Trafficking Protocol.

Trafficking for the purposes of "forced labour" is not included in the Act's definition of human trafficking, although it is included in the UN Trafficking Protocol. However, the Criminal (Amendment) Ordinance, issued by the President prior to the Act, did include

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<sup>17</sup> Bonded Labour System (Abolition) Act, supra note 18, § 16.

<sup>18</sup> Sannasomannara Somashekarappa v. Gorappa Rudraswamy, I.L.R. 2004 Kar. 4606 (India).

<sup>19</sup> UN Trafficking Protocol, supra note 5, art. 3.

forced labour.<sup>20</sup> The final formulation of the Act's definition of human trafficking replaced the term forced labour with physical exploitation. Although forced labour could be understood to be included within the term physical exploitation, this is not a certainty as physical exploitation is not defined within the Act or the UN Trafficking Protocol. The term forced labour is the only term that is excluded from the Amendment Act's definition of human trafficking as compared to the UN Trafficking Protocol's definition within Articles 3 and

#### 5. The Justice Verma

Committee Report did not advocate for the utilization of the term physical exploitation in lieu of forced labour; in fact, the text of the Verma Committee report makes no such reference to physical exploitation at all.

The Amendment Act similarly falls short in penalizing persons who utilize victims of trafficking for purposes of labour. According to Section 370A of the Indian Penal Code, as amended by the Act, those who knowingly or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term of three to five years and also a fine.<sup>21</sup> However, the Amendment Act does not create a similar punishment for those who engage such victims for physical exploitation. As noted above, the majority of human trafficking in India is for the purposes of labour.<sup>22</sup> Thus, Section 370's proscription against engaging sex trafficking victims fails to protect the majority of trafficking victims in India.

The UN Office of Drugs and Crime (UNODC) International Framework for Action to Implement the Trafficking in Persons Protocol underscores the importance of penalizing all forms of human trafficking (included bonded labour trafficking) and provides that State parties to the UN Trafficking Protocol must have trafficking in persons legislation that covers at a minimum those forms of exploitation mentioned in the Protocol. The exclusion of the term forced labour from the Act implies that the Amendment Act does not cover, as required by the UNODC, those forms of

<sup>20</sup> United Nations Office on Drugs and Crime, Factsheet on Human Trafficking, available at [http://www.unodc.org/documents/human-trafficking/UNVTF\\_fs\\_HT\\_EN.pdf](http://www.unodc.org/documents/human-trafficking/UNVTF_fs_HT_EN.pdf) (last visited May 13, 2014); see Bonded Labour System (Abolition) Act, supra note 18, §2 (g) (defines —bonded labour system).

<sup>21</sup> PEN. CODE § 370A(2).

<sup>22</sup> U.S. STATE DEPT, supra note 31, at 184.

exploitation mentioned in the Protocol. This failure to accord labour trafficking the same or similar treatment as sex trafficking is problematic. The Act's limited definition of human trafficking is therefore a major failing of the Amendment Act, and signifies a legislative gap that implicates India's obligations as a State Party of the UN Trafficking Protocol. The Act should be amended, in line with the UN Protocol, to explicitly include forced labour under the definition of human trafficking. However, until such time, the term physical exploitation<sup>11</sup> should be interpreted to encompass forced labour as required by India's obligations under the Protocol.

### **Realities and enforcement**

As noted above, the overwhelming majority of trafficking in India is for labour related activities. Therefore, the use of the term —physical exploitation<sup>11</sup> in lieu of forced labour is a foundational problem with notable potential down-stream effects. As the term physical exploitation<sup>11</sup> is not defined in the Amendment Act nor included nor defined in the UN Trafficking Protocol, its meaning is largely ambiguous. Policy makers, law enforcement, or judges may exploit this ambiguity to depart from the jurisprudence on forced labour that has developed under the UN Trafficking Protocol, and to deny that physical exploitation includes trafficking for the purpose of forced labour. This may thus lead to a significant narrowing of the scope of conduct prohibited by Section 370 of the Indian Penal Code. It remains to be seen whether this consequence will result from the legislative gap or whether courts and government actors will consistently interpret the Amendment Act to include forced labour among the proscribed forms of exploitation.

### **Identified gaps**

As the discussion above illustrates, several gaps exist between the UN Trafficking Protocol and India's legislative treatment of labour trafficking. These include: A definition of human trafficking in Indian law that does not include the term forced labour as a form of exploitation.

The law's differential treatment of sex trafficking and labour trafficking.

## **SAFETY, RECOVERY AND COMPENSATION**

There are a limited number of laws and policies establishing and funding procedures and resources for the recovery, safety and compensation of survivors of human trafficking. Our interviews and review of the literature revealed that victims have trouble accessing compensation and achieving a safe recovery due to fragmented policies and implementation failures.

### **UN trafficking protocol**

Article 6 of the UN Trafficking Protocol establishes standards for the recovery, safety, and compensation of trafficking victims. According to Article 6:

1. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons.
2. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within the territory.
3. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 6 recommends that victims of trafficking be given access to appropriate housing, counsel, medical assistance, educational and training opportunities, and employment.

#### **2. India's Laws and Policies**

- a. Ujjawala: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation

The Ujjawala: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation, under the Ministry for Women and Human Development, attempts to provide rehabilitation services both immediate and long-term to the victims by providing basic amenities/needs such as shelter, food, clothing, medical treatment

including counseling, legal aid and guidance and vocational training. The Ujjawala Scheme provides victims with funding to meet the travel costs incurred en route to being restored with their families, as well as seed money of 5,000 INR (roughly \$83) to each victim.

b. Swadhar Greh: A Scheme for Women In Difficult Circumstances

Swadhar Greh: A Scheme for Women in Difficult Circumstances, also under the Ministry of Women and Human Development, represents another such programme.<sup>87</sup> The Swadhar Greh Scheme is meant to provide temporary accommodation, maintenance and rehabilitative services to women and girls rendered homeless due to family discord, crime, violence, mental stress, social ostracism or [who] are being forced into prostitution and are in moral danger.<sup>88</sup> Beneficiaries of the Swadhar Greh Scheme include trafficked women/girls rescued or runaway from brothels or other places where they face exploitation. Both schemes, however, only apply to persons trafficked for the purposes of sexual exploitation. Juvenile Justice (Care and Protection of Children) Act

The Juvenile Justice (Care and Protection of Children) Act, 2000 defines a Human in need of care and protection to include a Human who is found vulnerable and is likely to be inducted into trafficking. The Act establishes procedures for the recovery and social reintegration of such children, including the creation of shelter homes and the provision of foster-care services. However, this scheme only applies to minors defined as persons below the age of eighteen years.

### **Code of criminal procedure**

Responsibility for providing compensation to trafficking victims is fragmented between the central government and individual states.<sup>23</sup> This is largely the result of Section 357, Code of Criminal Procedure, which states that the Central Government should be responsible for compensating victims of any crime (not limited to trafficking) who have suffered loss or injury. However, it fails to note the form or degree of such compensation.<sup>24</sup> According to the Section:

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<sup>23</sup> CODE CRIM. PROC. § 357A.

<sup>24</sup> Ibid

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment order the whole or any part of the fine recovered to be applied .

(b) In the payment to any person of compensation for any loss or injury caused by the offence, which compensation is, the opinion of the Court, recoverable by such person in a Civil Courtl

The Section addresses the compensation of trafficking victims; however, it allows for the individual State's determination of compensation procedures and amounts. As a result, there is no centralized compensatory system for trafficking victims in India. The Centrally Sponsored Rehabilitation Scheme for Bonded Labour mandates a rehabilitation grant of Rs. 20,000 (roughly \$330) to each bonded labourer as well as assistance for rehabilitation. Unfortunately, this amount is fixed regardless of the amount of time the labourer has provided bonded service.

### **Realities and enforcement**

#### **(a) Recovery**

Interviews with law enforcement officials revealed that India's trafficking recovery laws and policies are piecemeal and haphazardly applied. During an interview, Dr. P.M. Nair of the Indian Police Service in New Delhi noted that the government's rehabilitative efforts are often ad-hoc and ineffective—they are hampered by a lack of coordination among the police and government agencies concerned at every step along the way, from rescue to rehabilitation.<sup>98</sup> The United States 2012 Trafficking in Persons Report stated that many NGOs have reported difficulty in receiving timely disbursements of national government funding for their shelters. Our interviews of government officials and NGO stakeholders suggest that services provided by both non-state actors and the government are often ineffective and of low-quality. For example, according to Dr. Smarajit Jana of the Sonagachi Research and Training Institute, the holding facilities for rescued trafficked girls often have miserable conditions and may be worse than the brothels in which they had previously been housed. Dr. Jana noted that—even a government report showed how bad the conditions are at some remand homes, girls have been physically and sexually tortured. Interviews with NGOs overwhelmingly indicated that government-run shelter homes suffer from

poor hygiene and limited services. The United States 2013 Trafficking in Persons Report similarly found that India's government-run shelter homes were overcrowded and unhygienic, offered below average food and provided only limited services. In some shelters, moreover, victims are not permitted to leave, in violation of international law.

Male victims of human trafficking face a double barrier to protection because not only are they less easily identified and thus less likely to be rescued, but they are also left without any recourse after they have been rescued from their traffickers. Recovery homes and related programmes, though far from ideal, are often not available to men and boys at all.<sup>106</sup> The Ujjawala scheme, in which the government invested \$118 million from 2011-2012, only applies to female victims and does not cover male victims.

In addition, the services that government-run recovery homes offer may be counterproductive for the victims of human trafficking they are supposed to assist. For example, Mr. Ramesh Halbavi of the Department of Women and Human

Development (DWC) in Karnataka noted that shelter homes try to convince women to get married in order to reintegrate them back into society, believing that the girl or woman will be in a better social position after being married. Such actions reify a woman's secondary position in society by negating her ability to be an independent, productive member of society in her own right and failing to provide her with the tools needed to be economically independent.

**(b) Safety**

Interviews with members of the sex workers collective Durbar Mahila Samanwaya Committee (DMSC) offer a unique perspective on the safety barriers facing victims of sex trafficking. First, interviews with DMSC and law enforcement officials suggest that victims of trafficking remain vulnerable to harm and intimidation from their trafficker or their trafficker's associates even after they have been rescued.<sup>25</sup> Second, interviews with DMSC highlighted the important difference between sex workers and sex trafficking victims and revealed that law enforcement officials often erroneously conflate sex workers with sex trafficking victims when enforcing anti-trafficking laws.

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<sup>25</sup> See, e.g., Interview with Ravi Kant, Shakti Vahini, New Delhi (Oct. 7, 2012); Interview with Mr. Shafiq, Empower People, New Delhi (Oct. 11, 2012).



Not all women engaged in sex work are victims of trafficking, and not all forms of trafficking involve sex work. This distinction is clearly recognized by international law, which includes in its definition of trafficking the exploitation of the prostitution of another but does not impose obligations on states to either prohibit or permit adult sex work. This has resulted in improper detention of sex workers who were mistakenly identified as victims. The mistaken conflation of legal sex work and human trafficking has historically led to ineffective and misguided anti-trafficking efforts. Thus, India's anti-trafficking laws, policies and enforcement efforts should not conflate trafficking with sex workers.

The board of DMSC undertakes significant efforts to locate victims and return them, if need be, to their home countries or home regions of India. Sex workers and other members of DMSC are trained to identify signs of sex trafficking and to report to the board. Once DMSC receives a report of a person trafficked into the district for sex, the board will interview him or her (most often a woman or girl) and will take steps to remove the victim from the situation to safety.

Interviews with DMSC sex workers repeatedly highlighted cases of police harassment and sexual and physical abuse of victims of sex trafficking once they are taken into police custody. Dr. Jana noted the importance of DMSC's involvement in anti-sex trafficking measures in light of poor and, in some instances, abusive conduct by police and governmental officers: Unofficially, DMSC doesn't usually try to involve the police when returning a victim to their home country. This is because the police have handled victims poorly in the past. Trafficking victims [originally from Bangladesh] have had a very bad experience sometimes, languishing in jail while the Bangladesh government says, 'not my citizen.' Her life becomes miserable in the police station or remand home. One of the biggest problems is when the police make raids on sex worker homes. During the raids, they beat them or treat them in all sorts of noxious ways. Then they take money to release some of them this is a common practice.

Furthermore, interviews with the board of DMSC showcased the dire predicament of many of these victims. Once away from their traffickers, they are often without the financial means or support networks to successfully evade re-trafficking by their previous traffickers or associate traffickers.

In addition, victims of human trafficking may face barriers within the legal system that serve to their vulnerabilities. In particular, trafficking victims are often intimidated into

refusing to testify against their trafficker. Although judges may use their discretionary powers to order that victims receive police protection, this is not automatically provided to all victims of trafficking and is dependent on the sensitivity of each judge towards issues related to human trafficking. Even in cases in which a judge orders police protection for the victim, this protection may be limited to the victim, thus leaving the victim vulnerable to a trafficker's threat of harm to family members and friends.

Moreover, interviews indicated that apart from such discretionary judicial measures, there is no legislative provision (such as legally-mandated witness protection programmes) for the protection of vulnerable victims of human trafficking. There is also no provision mandating that legal proceedings involving human trafficking victims must be confidential. This is inconsistent with the obligations laid out by the UN Trafficking Protocol requiring the protection of the privacy and identity of victims of trafficking.

**(c) Compensation**

Interviews with government officials and NGO directors revealed that victims of human trafficking are not compensated effectively. First, according to interviews, there is no streamlined process for obtaining compensation. Second, those who are entitled to compensation by law often have difficulty accessing that compensation. In interviews, members of local anti-trafficking NGOs and shelter home officials noted that legal aid, including assistance accessing legal compensation systems through government schemes, is amongst the most important services that could be provided to trafficked victims. However, at present, facilitating meaningful access to compensation often falls to non-governmental actors. Victims of human trafficking, who usually have little or no knowledge of the legal system, struggle to navigate the complex and often bureaucratic government processes necessary to receive the compensation to which they are entitled.

**Identified gaps**

There are several gaps between the UN Trafficking Protocol and India's laws, policies and realities in regards to safety, recovery and compensation. These include: Inadequate protections to guarantee the victims' safety, including measures to protect his or her privacy and the confidentiality of his or her identity.

Poor conditions and violations of victim's rights in both government and NGO-run recovery homes.

Lack of access to shelter and other recovery services for male trafficking victims. Lack of employment, educational and training opportunities.

Ineffective domestic compensation systems for human trafficking victims.

## **PREVENTION**

### **1. UN Trafficking Protocol Obligations**

Article 9 of the UN Trafficking Protocol requires State Parties to establish comprehensive policies, programmes and other measures to prevent and combat human trafficking.<sup>26</sup> Specifically, the Protocol provides that such measures shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.<sup>27</sup> Furthermore, State Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity. In addition, State Parties must also adopt measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

### **India's laws and policies**

India's current laws and policies do not comply with India's obligations to adopt measures to prevent human trafficking under the UN Trafficking Protocol. The Immoral Traffic (Prevention) Act (ITPA) (hereafter referred to as the ITPA) authorizes the Central Government to constitute an authority for the prevention of trafficking in persons.<sup>29</sup> However, outside of this enabling provision to establish such an authority, the ITPA predominantly focuses on the punishment of trafficking offenses as well as

<sup>26</sup> Bonded Labour System (Abolition) Act, supra note 18.

<sup>27</sup> Bonded Labour System (Abolition) Act, supra note 18, Preamble.

<sup>29</sup> Immoral Traffic (Prevention) Act (1956), supra note 21, § 13A.

rehabilitation efforts (i.e., rehabilitation homes). There is little mention of prevention within the ITPA. Furthermore, the ITPA does not address trafficking for any purpose outside of sexual exploitation. The Bonded Labour Act similarly neglects to create human trafficking prevention measures. The Preamble of the Bonded Labour Act states that the Act is intended to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of people.<sup>28</sup> However, the Act does not address prevention efforts at any other point within the text.<sup>28</sup>

As discussed above, the Ujjawala scheme for the Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation<sup>29</sup> aims to —prevent trafficking of women and children for commercial sexual exploitation through social mobilization and involvement of local communities, awareness generation programmes, generate public discourse through workshops/seminars and such events and any other innovative activity.<sup>30</sup>

The Ujjawala scheme breaks down its prevention efforts into a five pronged approach of assistance: 1) formation of community vigilance groups; 2) formation and functioning of Balika (adolescent girls)/Balak(adolescent children) Sanghas (consortiums); 3) sensitization workshops/seminars; 4) awareness generation through mass media including kalajathas (folk theatre, songs and processions), street plays, puppetry or any other arts forms, preferably traditional; and 5) development and printing of awareness generation material such as pamphlets, leaflets and posters (in local languages).

### **Realities and enforcement**

India has made considerable progress in its human trafficking prevention efforts; however, there is room for continued growth. In 2012, the Bureau of Police Research and Development held trainings on human trafficking and missing children.<sup>140</sup> In 2013, the Ministry of Home Affairs has continued to create and implement Anti Human

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<sup>28</sup> UN Trafficking Protocol, supra note 5, art. 9.

<sup>29</sup> Ministry of Women and Human Development, supra note 84.

<sup>30</sup> *ibid* <sup>33</sup>Id.

at 198. <sup>34</sup>

*Ibid*

Trafficking Units (AHTUs) that work to create collaborative efforts between law enforcement and rehabilitation sectors to prevent trafficking. Unfortunately, such AHTUs have been criticized as being ineffective. Other government efforts to prevent trafficking include safe immigration awareness campaigns by the Ministry of Overseas Indian Affairs, and the Ministry of Labour and Employment's project to prevent bonded labour in Tamil Nadu, Andhra Pradesh and Odisha.<sup>33</sup> Finally, to reduce demand for sex trafficking, the government began prosecuting the clients of sex workers under Section 370A of the Amendment Act.<sup>34</sup>

The Indian government has conducted collaborative meetings with the Government of Bangladesh in an effort to promote international cooperation efforts in prevention of human trafficking. After a meeting between the Indian and Bangladeshi home secretaries in December 2012, India and Bangladesh issued a joint statement that the two countries would cooperate to prevent human trafficking. However, as of the date of publication of this policy brief, there is no finalized and enforceable agreement between the two countries in this regard. Bangladesh and India have established a Taskforce Regarding Rescue, Recovery, Repatriation and Integration (RRRI), but this cooperative programme applies only to Human victims.

According to our interviews, the Indian Government's prevention efforts often are not effective in practice.<sup>31</sup>

The police were frequently cited as being one of the key points of failure in the chain of prevention. As Dr. Jana stated, The police engage because it's part of their job. But more than that, in India, they are engaging in anti-trafficking programmes to make money, not to prevent trafficking. According to Dr. Jana, on an average ten to twenty women per year are rescued from the police themselves. Furthermore, interviews with DMSC's regulatory board and peer counselors revealed a fraught and sometimes hostile relationship between the sex workers collective, which itself is engaged in anti- trafficking efforts, and law enforcement.<sup>36</sup>

<sup>31</sup> Agreed Minutes of the Second Meeting of the Task Force of India and Bangladesh on Human Trafficking Held in Kolkata From 8-10 April, 2012,  
— MINISTRY — OF HOME AFFAIRS,  
<http://stophumantraffickingmha.nic.in/writereaddata/AGREED-MINUTES-OF-SECOND-TASKFORCE-MEETING-ON-HT-HELD-INKOLKATA.pdf> (last visited May 13, 2014).

In interviews, DMSC noted that the organization often makes its own independent efforts to rescue cross-border trafficking victims and safely return them to their home country without the assistance of the police as, according to interviewees at DMSC, the police often allowed such victims to languish unnecessarily in recovery homes or failed to provide repatriation assistance. According to DMSC's regulatory board, efforts by DMSC to prevent trafficking, such as regular checkups on brothels to scan for recently trafficked or under aged girls, are unsupported by police. Furthermore, law enforcement does not cooperate with and at times attempts to impede DMSC's efforts to repatriate trafficking victims.

In contrast, workers at the NGO Shakti Vahini, an organization that addresses the needs of sex trafficking victims and works to reduce demand for sex workers, noted in interviews that the NGO worked closely with the police and collaborated to ensure the conviction of those accused for the crime of trafficking. According to interviews with the Director of Shakti Vahini, Mr. Subir Roy, Shakti Vahini coordinates with the police during raid and rescue operations and also participates in police follow-up investigations. Therefore, police cooperation with the NGO anti-human trafficking sector varies considerably.

### **Identified gaps**

There are several gaps between the UN Protocol's obligations on the prevention of human trafficking and India's laws and policies, including:

Focus of prevention efforts on sex trafficking to the exclusion of other forms of trafficking.

Absence of binding and effective bilateral and multi-lateral agreements to alleviate factors contributing to trafficking.

In view of the order dated 26 July 2012 in Criminal Appeal 135/2010 – Budhadev Karmaskar vs State of West Bengal & Ors the present debate and controversy stirred up by the NCW Chairperson Lalita Kumarmanglam on Legalization of sex trade is a contempt of Supreme Court Orders. The National Commission of Women has been a party to the case and are aware of the Bench clarification dated 26 July 2012.

Speaking to the Times Of India she said that I will only speak about the issue after the national consultation on November 8, It is my personal and professional view that sex work should be legalized but the commission must make an informed decision and I am open to listening to all views. I will be using a lot of time next week to hold informal consultations on the issue, talking to all advocacy groups and others to understand what their apprehensions are.

On October 28, Kumara mangalam told a daily that legalization will bring down trafficking of women and lower the incidence of HIV and other sexually-transmitted diseases. She also said she intends to put forth the proposal at the November 8 meet of the SC appointed Panel.

Bharti Dey of Durbar Mahila which supports the Legalisation Debate has stated Policevery often get paid to let off traffickers. Regulation will decriminalize the trade,says Dey, whose organization currently runs self-regulation units and has sent at least eight traffickers to jail. She also points out that many of those entering the profession are extremely poor, have few options and know what they are getting into.

But they make it to our communities through traffickers and middlemen. Legalizing will remove these middlemen, she says.

Supreme Court Lawyer and President of Shakti Vahini Ravi Kant while opposing the statement of the NCW Chairperson statement stated Prostitution is Organised Crime and Violation of Fundamental Rights. Trafficking and sexual slavery is worst form of Human Rights Violation. No women joins this inhuman trade out of choice. More then 95% of the women have been trafficked and forced into the sex trade.

He further elaborated that Immoral Traffic Prevention Act 1956 criminalizes the organized crime of Prostitution. Organized Prostitution creates a demand for young girls for the brothels which is met by trafficking of minor girls from across the Country. Giving Prostitution a legal status will be giving boost to demand of young minor girls who will be trafficked. In countries where such legalization has happened it has led to exploitation of women and girls and also commodification of women bodies.

He added that there here is no doubt that women who have been caught in the sex trade need access to all Government facilities and schemes and efforts must be made to see that they join the mainstream and are properly rehabilitated. Also those who indulge in this organized crime of human trafficking which leads to kidnapping of young girls from across the country need to be properly punished.

On the role of the Governmental agencies he lamented The sad part is that inspite of various recommendations from the Supreme Court in various cases no genuine efforts have been made by any Government to see that this social malice which results from Organized Crime be eradicated.

Kant further stated The statement of the National Commission for Women Chairperson for legalising prostitution is deplorable. It is time that the Government of India ammends the Immoral Traffic Prevention Act and brings in harsher punishments to the people who are involved in this organised crime.

The Supreme Court in its order dated 26 July 2012 has clarified that its endeavor to provide right to life and access to governmental schemes should not be construed as an encouragement to prostitution. The clarification had come from a bench of Justices Altamas Kabir and Gyan Sudha Mishra after additional solicitor general P P Malhotra had drawn the court's attention to its July 19 order in which it had sought suggestions from the SC-constituted panel on creating conditions conducive for sex workers who wish to continue working as sex workers with dignity.

Malhotra had said there was a danger of the order being construed as an incentive to indulge in an activity that had been termed as an offence under the Immoral Traffic Prevention Act, 1956.

### **Police busting an international trafficking racket**

The Judges on the bench passed had passed separate orders, but both meant to clarify that the panel would recommend steps to create conditions conducive for sex workers to live with dignity as per provisions of the Constitution Article 21.



Justice Kabir added a precautionary clarification The above modification should not be construed to mean any attempt made to encourage prostitution.

Hearing the Petition Justice Mishra had clarified, I prefer to add...sex workers have a right to live with dignity but the collective endeavour must be on part of the sex workers to give up the trade in case they are given alternate platform.

The Detailed Order of the Bench Dated 26 /07/2012 is as follows :

1. CRLMP.NO.12415 of 2012, has been filed on behalf of the Union of India, for modification of the order passed by this Court on 19th July, 2011, referring certain issues to the Committee which had been constituted by the said order itself.
2. The first modification sought by the Union of India is for deletion of the Durbar Mahila Samanwaya Samiti, from the panel. The second modification sought is with regard to the third term of reference, which reads as follows:-

Conditions conducive for sex workers who wish to continue working as sex workers with dignity.

3. Appearing in support of the application, the learned ASG, Mr. P.P. Malhotra, submitted that the Samiti in question had been actively advocating the revocation of the Immoral Traffic(Prevention) Act, 1956, and had also been advocating the recognition of sex trade being continued by sex workers. The learned ASG submitted that the continuance of such Samiti in the panel is giving a wrong impression to the public that the Union of India was also inclined to think on similar lines. The learned ASG submitted that this wrong impression should be removed by excluding the Samiti from the panel.
4. As far as the second issue is concerned, the learned ASG submitted that wording of such reference could be suitably modified so as not to give an impression that

the Union of India was in favour of encouraging the sex workers, in contravention of the provisions of the aforesaid Act.

5. We have heard Mr. Pradip Ghosh, learned senior advocate and Chairman of the Committee, as also learned senior advocate, Mr. Jayant Bhushan, who is also a member of the Committee and its co- Chairman and Mr. Grover, learned senior advocate, on the issue.
6. It has been submitted by Mr. Ghosh that at the meetings of the Committee, the members of the Samiti had contributed a great deal towards the understanding of the problems of the sex workers and it was not as if the said Samiti was encouraging sex trade, but were providing valuable inputs into the problems being faced by people engaged in the trade. Mr. Ghosh, Mr. Grover, and Mr. Bhushan, in one voice urged that the presence of the Samiti in the Committee was necessary even to function as a sounding board in respect of the problems that are faced by this marginalised and unfortunate section of society.
7. We agree with the submissions made by Mr. Ghosh, Mr. Grover and Mr. Bhushan, learned senior counsel, and are not, therefore, inclined to delete the Samiti from the Committee, as prayed for by the Union of India, and such prayer is rejected.
8. As to the second issue, it will not in any way make any difference to the terms of reference, if the wording of the third term of reference, is modified to the following effect:-  
  
Conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution.¶
9. The above modification, should not, however, be construed to mean that by this order, any attempt is being made to encourage prostitution in any way.
10. CRLMP.NO.12415 of 2012, is, therefore, disposed of in term of the aforesaid order.

11. Let this matter now be listed for consideration of the Sixth and Seventh Interim Reports, filed by the Committee, on 22nd August, 2012, at 3.00 p.m.
12. Let this Bench be reconstituted on the said date and time for the aforesaid purpose.

Trafficking in Women and Children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives.

The Indian Constitution specifically bans the traffic in persons. Article 23, in the Fundamental Rights section of the constitution, prohibits "traffic in human beings and other similar forms of forced labor". Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement

/transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users etc., exploit the vulnerability of the trafficked person. Trafficking shows phenomenal increase with globalization. Increasing profit with little or no risk, organized activities, low priority in law enforcement etc., aggravate the situation. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs.

Trafficking in human beings take place for the purpose of exploitation which in general could be categorized as (a) Sex -based and (b) Non-Sex-based. The former category includes trafficking for prostitution, Commercial sexual abuse, Pedophilia, Pornography, Cyber sex, and different types of disguised sexual exploitation that take place in some of the massage parlors, beauty parlors, bars, and other manifestations like call girl racket, friends clubs, etc. Non sex based trafficking could be for different types of servitude, like domestic labor, industrial labor, adoption, organ transplant, camel racing marriage related rackets etc. But the growing traffic in women is principally for the purpose of prostitution. Prostitution is an international problem which can be found

in both developing and industrialized nations. Unfortunately, society remains tolerant of this abominable crime against women. There are ways of getting women into prostitution that are common to many countries; then there are particular methods unique to a country. Probably the three most common methods are false employment promises, false marriages and kidnapping. But what makes women and girls vulnerable are economic distress, desertion by their spouses, sexually exploitative social customs and family traditions.

In a recent survey in India, prostituted women cited the following reasons for their remaining in the trade, reasons that have been echoed in all concerned countries. In descending order of significance, they are: poverty and unemployment; lack of proper reintegration services, lack of options; stigma and adverse social attitudes; family expectations and pressure; resignation and acclimatization to the lifestyle.

The two principal Indian laws that address trafficking and prostitution in particular are: The Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA) and The Immoral Traffic (Prevention) Act of 1986 (ITPA), colloquially called PITA, an amendment to SITA. Neither law prohibits prostitution per se, but both forbid commercialized vice and soliciting. Aside from lack of enforcement, SITA is problematic in several ways. One of its drawbacks is that the prescribed penalties discriminate on the basis of sex: a prostitute, defined under SITA as always a woman, who is arrested for soliciting under SITA could be imprisoned for up to a year, but a pimp faces only three months. SITA allowed prosecution of persons other than the prostitutes only if the persons involved "knowingly" or "willingly" made women engage in prostitution. Accordingly, pimps, brothel owners, madams, and procurers could feign ignorance of prostitution and escape punishment. The client, moreover, was not viewed as an offender and could not be sanctioned under SITA. Finally, SITA only addressed street prostitution; prostitution behind closed doors was left alone -- a loophole that actually promoted the establishment of brothels.

SITA, a penal law, was passed in 1956 and enforced in 1958 as a consequence of India's signing the Trafficking Convention, rather than as a result of any mass social welfare

movement. SITA did not seek the "abolition of prostitutes and prostitution as such and to make it per se a criminal offence or punish a person one prostitutes oneself." Its stated goal was "to inhibit or abolish commercialized vice, namely the traffic in persons for the purpose of prostitution as an organized means of living." Prostitution was defined as the act of a female who offers her body for promiscuous sexual intercourse for hire. Accordingly, the engagement by a woman in individual, voluntary, and independent prostitution was not an offense.

The law permitted penalization of a woman found to be engaged in prostitution under certain conditions. For example, Section 7(1) penalized a woman found engaged in prostitution in or near a public place. Section 8(b) did the same for a woman found seducing or soliciting for purposes of prostitution. The law also permitted a magistrate to order the removal of a person engaged in prostitution from any place and to punish the person upon refusal. Offenses under SITA were bailable, but a woman picked up from the street by the police usually did not have either the money or the influence to keep her out of custody or free from fines.

Several studies across India have shown that this is the most abused section of the ITPA, used more as a tool for harassment and extortion by the law enforcement. Women are apprehended from known red-light areas whereas their brothel keepers and pimps are left untouched. In cases of organized prostitution, this results in continual debt bondage for the amount paid by her keepers as a fine or as a bail amount. In fact, sometimes the brothel keepers are alleged to collude with policemen and arrange the arrests of "their" women so they can continue to serve in bondage.

India is said to have adopted a tolerant approach to prostitution whereby an individual is free to carry on prostitution provided it is not an organized and a commercialized vice. However, it commits itself to opposing trafficking as enshrined in Article 23 of the Constitution which prohibits trafficking in human beings. India is also a signatory to international conventions such as the Convention on Rights of the Human (1989), Convention on Elimination of all forms of Discrimination Against Women (1979), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) and the latest South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002).

A trafficked victim is therefore, a victim of multiplicity of crimes, and extreme form of abuse and violation of human rights. The constitution of India, under article 23 specifically prohibits trafficking in human beings. At present the legal regime to trafficking of women and children for commercial sexual exploitation includes the following.

- a. Indian Penal Code 1860
- b. ITPA-1956
- c. J.J. Act-2000.
- d. Special laws of various states.
- e. Rulings of Supreme Court and High Court.

The lack of understanding of trafficking by the legal system could arise from one or more of these factors: first, there is no definition of "trafficking" or "trafficker" under the Act. Therefore, the police and the judiciary do not have an understanding of the complexities involved when a woman is trafficked, the different types of traffickers, and their strategies. Neither does the court attempt to hear the trafficked woman and her experiences. Second, the Act also focuses on establishing "the purposes of prostitution" for every offence which conveniently takes the attention away from trafficking. For example, even to convict a trafficker for the act of keeping a brothel, it becomes important to establish that prostitution was taking place. So, when a woman who is trafficked is kept in captivity for a period of time, it cannot amount to an offence unless the place satisfies the criteria of a "brothel." Similarly we find that in every case involving a raid there is also an elaborate description of how the woman was clothed when the raiding party found her in order to prove that she was getting ready for sexual intercourse with the decoy witness and thus her existence for the "purpose of prostitution" could be established beyond "reasonable doubt." That the clothing or actions of a woman at that point of time should not negate the fact that she was trafficked seems to slip away from the adjudication process. The Act thus misses out on what actually constitutes trafficking--the elements of force, deception, and coercion, which go on overtly and covertly over a period of time. Thirdly, in spite of the definition of prostitution having changed from "the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise" to "sexual exploitation or abuse of persons for

commercial purpose," there is no perceptible attitude shift in the lawmakers and enforcers from taking efforts to curb prostitution to curbing trafficking. Moreover no powers are given to the Magistrate to order eviction of traffickers.

Thus there exists a need for a specialized legislation in India to deal with trafficking even though the existing Indian Penal Code (IPC), 1860, deals with the offences of kidnapping, abduction, and buying and selling of minors (Sections 359-373 of IPC). The IPC is narrower in scope to deal with the wide range of activities involved in trafficking which do not neatly fit into "kidnapping" or "abduction." For example luring, coaxing individuals in vulnerable positions with false promises of better jobs, contract work as domestic workers, mail order brides, and situations where the women are sold in connivance with the parents or husband. The IPC is thus less adept in dealing with the nuances involved in organized trafficking.

In order to ensure effective implementation of the existing law there is a need for sensitization of all concerned in the criminal justice system, including judicial officers, prosecutors, medical experts, Police officers. Moreover there should be partnership with the NGOs so as to ensure law enforcement, rescue, prevention, counseling, rehabilitation, reintegration, social empowerment etc.

#### Piloting Good Practices:

1. Compulsory Registration of birth with special focus in vulnerable areas.
2. More than 70% of victims belong to SC and backward castes that are desperately poor. Need to improve the lot of people especially women by specially targeted programmes.
3. Devise a system to monitor missing persons across district and state borders.
4. Creating a database on trafficking including routes, vulnerable areas, information about traffickers and their whereabouts, information about NGOs working in this filed in different districts and states, information about local bodies, Panchayats and self-help groups in the vulnerable areas.
5. Drawing up specific guidelines for investigation and prosecution of trafficking.
6. Identifying areas for law reforms in the area of trafficking including both substantive as well as procedural law.

7. Coordination among different state police departments working in this field including sharing of information regarding interstate traffickers.
8. Permanently closing brothels known for repeated offences.
9. Improvements in victim care at government run facilities. These shelter homes should have counselors, nurses, physicians, psychiatrists etc. Such effort has been made by Maharashtra's Social Defense Department in coordination with NGOs which led to an overall improvement in the environment of shelter homes.
10. Victim Compensation Fund to be created so as to provide vocational trainings, give loans etc. so as to enable victim to become economically independent.
11. Provision for confiscation of property and assets of traffickers and agents of organized prostitution/flesh trade.
12. Formation of Community Vigilant groups in vulnerable areas.
13. Setting up of crisis centers at Railway Stations and bus stops in trafficking prone areas/routes. These may be manned by a group consisting of NGOs and police.
14. Drop in centers and night care services for children in red light areas.
15. Promoting programs to stop second generation trafficking by providing educational options to the children of sex workers and other vulnerable children.

Thus the lack of an integrative approach towards prevention, rescue, repatriation and reintegration presses for a new legislation and in the view of the United Nations High Commission there exists a need for initiation of public information campaigns to make both potential victims and the general public aware of the terrible exploitation and possible loss of life inherent in trafficking in women and children.

## **Conclusion**

Human Trafficking in India is a more widespread phenomenon than generally acknowledged and awareness must be raised in order to combat this crime and punish the perpetrators. Women empowerment and reducing of female trafficking are impossible with the lack of proper health, education, nutrition and nourishment and security of the female in the society. Education is crucial in halting the flow of women, children and men into forced bondage. It is through education that we can elicit the



most direct influence in the fight against human trafficking. Interventions by competent social work practitioners need to include not only case management and advocacy skills, but also an understanding of the ecological Perspective in assessment and treatment techniques to work with the multidimensional and Comprehensive needs of the survivor.

## **CHAPTER -3**

### **INTERNATIONAL PROVISIONS FOR PROTECTING HUMAN TRAFFICKING**

ITPA, being a special legislation, has comprehensive, stringent and effective provisions to address the issues in trafficking and consequent exploitation. However, there is no bar in utilizing the provisions of ITPA along with IPC etc. In any given context, the investigating police officer should file charge-sheet against the accused under the graver sections of all laws which are applicable. Do not hesitate to involve the provisions of ITPA along with IPC, JJ Act, and other legislations which would apply to the facts and circumstances of the case under investigation. One has to be careful in applying proper sections of law. Never victimize a trafficked woman u/s 8 ITPA or any other section of any law. When investigation brings home the point that she has been sexually exploited against her informed consent, charge sheet be filed against all her exploiters not only under ITPA, but also under the relevant sections of IPC, dealing with sexual assault (376, 377 etc.). Consent obtained under lure, deceit, duress, coercion, compulsion, force etc is not consent in the legal sense. Furthermore, if the victim is a girl child, the offence is complete even if there was consent.

ITPA is a comprehensive legislation which gives power and strength to the law enforcement/justice delivery agencies to combat and prevent trafficking. Since its enactment in 1956, the legislation was amended by the Indian Parliament twice, in 1978 and 1986. The latter amendment focused on prevention, a provision which is not so common in the legal regime across the world. However, for various reasons, the different provisions of this special law are not being use.

Furthermore, these are often misused and abused. One of the main reasons, as research has shown, is ignorance and lack of understanding of these provisions. Therefore this checklist is a reference guide to the law enforcement agencies and other stake-holders, providing answers to several frequently asked (or not yet asked) questions and frequently overlooked aspects.

The legal regime relevant in the context of trafficking:

- I. Immoral Traffic (Prevention) Act, 1956 (ITPA).
- II. The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act 2000).
- III. The Goa Children's Act, 2003 (applicable only in the state of Goa).
- IV. The Indian Penal Code, 1860 (applicable sections of IPC have been discussed earlier).
- V. Procedural laws (Criminal Procedure Code i.e. CrPC, The Indian Evidence Act, etc).
- VI. Preventive Sections of CrPC<sup>32</sup>.
- VII. Other special laws relevant to the context (e.g, if the trafficked victim is exploited to develop pornographic materials and the porn is circulated through electronic media or internet, then the Provisions IT Act<sup>33</sup> [Say, Section 67 IT Act] will also be attracted).

## **THE INHERENT STRENGTHS OF ITPA**

The law applies to trafficking of males and females. Commercial sexual exploitation of anybody (irrespective of age or sex) is an offence. The law gives specific attention to women's rights and Human rights. The law provides a specific mandate for NGOs and civil society in addressing trafficking. Perhaps there is no parallel where NGOs have been given powers in law enforcement on anti human trafficking. The thrust of the law is addressing trafficking and not prostitution, as is often misunderstood. This legislation gives specific powers to judicial magistrates and also to executive magistrates. This legislation gives special protection to the police officers and NGOs taking part in search, rescue etc from any criminal or civil proceedings against them (S.15(6)ITPA).

<sup>32</sup> Code of Criminal Procedure 1973

<sup>33</sup> Information Technology Act, 2000

## **THE OFFENCES UNDER ITPA**

- i. S.3 ITPA: Keeping or managing (or assisting in keeping or managing) a brothel or allowing premises including vehicles to be used as a brothel.
- ii. S.4 ITPA: Living on the earnings of prostitution (even partly).
- iii. S.5 ITPA: Procuring, inducing, trafficking or taking persons for the sake of prostitution. Even attempt to procure or take would constitute this offence.
- iv. S.6 ITPA: Detaining a person in any premises (brothel or any other) where prostitution is carried out.
- v. S.7 ITPA: Any body who carries on prostitution, or any body with whom such prostitution is carried on, in the vicinity of public places (which includes hotel, vehicles, etc).
- vi. S.8 ITPA: Seducing or soliciting for the purpose of prostitution in any public place or within sight of a public place.
- vii. S.9 ITPA: Seduction of a person in custody (including causing or abetting seduction for prostitution of a person in custody).

## **WHETHER CLIENTELE (CUSTOMER) IS LIABLE**

The answer is yes. Firstly, he should be booked u/s 5(1) (d) and u/s 7(1) ITPA. He is a person who causes or induces another person to carry on prostitution and is, therefore, liable u/s 5(1)(d). (*Cherian Vs. Kerala*,<sup>39</sup>) Moreover he is a person —with whom prostitution is carried on and is therefore liable u/s 7(1). Further subsection IA of section 7 ITPA makes it clear that if the offence of prostitution is committed in respect to a Human or minor then the person committing the offence (i.e. including the

customer/clientele) is liable for a graver punishment and fine with a mandatory minimum imprisonment of 7 years.

Besides these provisions of ITPA, he is an abettor to all violations on the victim, which attracts S.114 IPC. If the victim is a child, S.376 IPC (rape) should be added to the charges against the —customer|. If the victim is an adult, S.376 IPC will come into operation if it can be established that she had not given informed or willing consent.

<sup>39</sup>1973 Cr.L.J 839

Moreover perverse sexual acts on the victim invite liability under S.377 IPC.

## **LIABILITY OF TRAFFICKERS**

U/S 5 ITPA, trafficking committed, contemplated or even attempted is punishable, regardless of consent of the trafficked person. The modus operandi could include procuring, attempting to procure, inducing, taking, attempting to take, causing a person to be taken, causing or inducing a person to prostitute etc.

If the offence of trafficking is committed against the will of the person, then the offender is liable for graver punishment. If the trafficked victim is a child, the minimum punishment is 7 years of rigorous imprisonment.

Depending on the facts and circumstances of the case, the traffickers are also liable u/s 4, 6, 9 ITPA. Moreover as abettors and/or conspirators they are also liable under IPC (as discussed earlier).

## **JURISDICTION OF POLICE AND COURTS**

In which police station can a trafficking offence be registered? Which Court has jurisdiction? Trafficking is a continuing offence and therefore may be tried in either of the following places: (Refer provisions u/s 5(3) ITPA). The place from where the

person (victim) has been procured, induced to go, taken or caused to be taken or from where an attempt to procure or take the person (the victim) is made. This means the place where trafficking took place i.e, the source point.

At the place to which the person (the victim) may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made. This means the destination point or the point of exploitation and the transit points where the exploitation continues.

Since the court of law has jurisdiction in the source, transit and the destination points, the police stations in all these points also have jurisdiction. In this context, the following are the do's and don'ts. In a case of trafficking, police agencies at the source point, the transit point and at the destination point have a duty and responsibility to register FIR in their police station.

There is no legal bar in having FIRs registered both at the source point and destination point if the former is only on charge of trafficking and the latter is only on the charge of sexual exploitation. However, the best situation would be to have the FIR at one of the two places and, thereafter, the investigation should cover the entire spectrum of the offences from its origin to the last part.

In the event of registration of two FIRs at both the source and destination points, the investigation can be clubbed together, as and when the linkage is established in evidence. Thereafter, police is free to file a charge report before the court of law at either place (i.e. the source point or the destination point) and simultaneously close the investigation in the other place, so as to avoid double jeopardy. Since attempt to trafficking is also a specific offence under this section, it gives very strong weapon to the law enforcement agencies to bring to book the traffickers as well as abettors and conspirators in trafficking.

Law of double jeopardy will not be attracted if the offences alleged (though they are essentially part of a continuing offence) are independently acted upon. For e.g., there is no legal wrong if the FIR in one place is u/s 5 ITA for trafficking and the FIR in

another place is for exploitation u/s 7 ITPA, 376 IPC etc, both with respect to the same victim.

The doctrine of presumption as a good weapon for preventing and combating trafficking:ITPA gives so much strength to the law enforcement agencies by virtue of the fact that the specific provisions of presumption casts onus of proof on the accused. The following are the provisions. Section 3 provides punishment for keeping a brothel or allowing premises to be used as a brothel. It shall be presumed, u/s 3 (2A), that the concerned person (owner, tenant, lessee, occupier, in-charge of any such premises) has knowledge of the same if: a report is published in a newspaper with local circulation that the premises concerned are being used for prostitution, as revealed during a search. a copy of the search list is made available to the person concerned. If any person A, over 18 years of age, is proved to have exercised control, direction or influence over the movements of another person B, in such a manner as to show that A is aiding, abetting or compelling B to prostitute, it shall be presumed that A is knowingly living on the earnings of prostitution of another person and is liable u/s 4 ITPA. If a person is found with a Human in a brothel, it will be presumed that the person has detained the Human for CSE and is, therefore, liable for the same u/s 6(2) ITPA. If the medical examination shows that the child, who has been detained in a brothel, was sexually assaulted, it will be presumed u/s 6 (2A) ITPA that the Human was detained for CSE and was sexually exploited. This legal presumption is a good tool to establish liability of the person. According to S.6 (3) ITPA, a person shall be presumed to have detained a woman or girl (of any age) in a brothel or upon any premises for CSE, if the person withholds from her any of her property (like jewellery, dress, money etc), with intent to compel/induce her to remain there. He is also liable if he threatens her with action if she takes away any such property lent/supplied to her by, or on the direction of, such a person. CSE of child/minor: Law views CSE of children/minors as a grave offence and therefore, has the following special provisions u/s 7 ITPA:

Consent is immaterial. Enhanced punishment for prostituting a child/minor. Minimum punishment is rigorous imprisonment for 7 years. Mandatory fine along with jail. If

sexual exploitation of a Human takes place in a Hotel, the hotel license can be cancelled.  
(See proviso of S.7(2)(c).

Who can order rescue of a trafficked person (victim of trafficking) S.16 ITPA authorizes rescue of any person (irrespective of age) who is made to carry on prostitution in a brothel. The powers are given to both Judicial Magistrates (MM or JM) and Executive Magistrates (DM or SDM). Therefore, any of these officials may be moved for an order for the rescue of any such person. The Magistrate can order rescue of any person if he has reason to believe that any person is carrying on or is being made to carry on prostitution in a brothel.

S.15 ITPA gives powers to Special Police Officers to search without warrant and carry out rescue u/s 15(4). This gives enormous powers to SPO. Can any civilian (say, an NGO) move the Magistrate and seek orders for rescue of any person?

The answer is yes. u/s 16, the Magistrate has powers to direct any police officer (not below the rank of SI of police) to rescue any person if the Magistrate has reason to believe that the rescue is required. The source of information for the Magistrate could be government agencies or otherwise and, therefore, it includes any of the following:

- I. Police
- II. Any person authorized by the State Government
- III. Any NGO

If a notified police officer is not available, is rescue possible? Yes u/s 16 ITPA, the Magistrate can authorize any police officer (whether notified u/s 13 ITPA or not), provided the police officer is of the rank of SI of police or above. How to prevent/combat misuse of public places The legal provisions u/s 7 ITPA envisage a very important role of law enforcement agencies in not only taking action against the offenders who misuse public places, but also in preventing such misuse. In this context, the following aspects be taken note of.



## What is a public place?

Public place, u/s 7 ITPA, includes the following:

- i. Any premises within an area notified by the Government.
- ii. Any premises within a distance of 200 meters of any place of public worship, educational institution, hotel, hospital, nursing home or other official/public domain.
- iii. Any hotel (As defined under S.2(6) of the Hotel Receipts Tax Act, 1980, any place where residential accommodation is provided by way of business, for a monetary consideration, is a hotel).
- iv. Any transport or vehicle to which public has access.
- v. —Any place intended for use by, or accessible to the public is a public place.  
—It is not necessary that it must be public property, —Even if it is a private property, it is sufficient that the place is accessible to public. *Gaurav Jain vs UOI*,<sup>34</sup>.

Can a hotel licence be suspended if prostitution is carried on in the hotel?

Yes, u/s 7(2) (c) ITPA, if the public place which is misused happens to be a hotel, the hotel licence may be suspended for a period not less than 3 months and may be extended to one year. Therefore in such circumstances, the police officer should move the concerned court (District Magistrate is the competent court) for the suspension of the hotel licence., u/s 7(2) (c) ITPA, if it can be proved that the victim of prostitution or CSE in the hotel happens to be a Human or minor (i.e. any person, male or female, who

<sup>34</sup> AIR 1997 SC 3021

is under 18 years of age), then the hotel licence is liable to be cancelled. The police officer has to move the court of the District Magistrate for the same.

liable for misuse of public places U/s 7 ITPA, the persons liable are:

- i. Any person who carries on prostitution.
- ii. Any person with whom such prostitution is carried on (customers/clientele etc). Any keeper of a public place who permits such misuse.
- iii. Any tenant, lessee, occupier or person in charge of any premises (as discussed earlier) who permits the place or part thereof for misuse.
- iv. Any owner, lesser, landlord of any such place, or their agents, who lets the place or part thereof for misuse or is willfully a party to the same.

### **CLOSURE AND EVICTION OF BROTHELS AFTER NOTICE**

The District Magistrate (DM) u/s 18(1) ITPA, can act on information from police or NGO or anybody else. The Commissioner of Police or any other official who has been vested with the powers of DM is also empowered to take action under this section of law.

The information should be that any house, room, place or portion thereof, located within a distance of 200 meters of any public place is being used as a brothel by any person, or is being used for commercial sexual exploitation of anybody.

DM can issue notice to the owner, lesser, landlord (of the house, room, place or portion thereof) or their agent, as well as the tenant, lessee, occupier of, or any other person in charge of such house, room, place or portion thereof. The notice sent to them by the

DM directs that show cause be filed within 7 days of the receipt of the notice stating why the property should not be attached for misuse. The DM should hear the party before taking a decision. After hearing, if the DM is satisfied about the misuse, he can

(a) direct eviction of the occupier within 7 days of the order and (b) direct that prior approval of the DM be obtained before letting out the place again during the following one year (and during the following 3 years if a Human or minor has been found during the search of the premises).

The order of the DM is non appealable nor stayable as per S. 18(3) ITPA. Since closure of brothel would entail loss of income for the exploiters, and no relief is available by way of appeal, this is a stringent section of law which the administrators, police, prosecutors and NGOs can effectively utilize to combat and prevent trafficking. The Sub Divisional Magistrate (SDM) also can exercise all these powers.

## **CLOSURE AND EVICTION OF BROTHELS WITHOUT NOTICE**

According to S.18 (2) ITPA, the court convicting a person of any offence under S.3 ITPA (keeping a brothel, etc.) or S.7 ITPA, (misuse of public places for CSE) may pass orders of closure and eviction without any notice to any such person. Therefore in the event of a conviction u/s 3 or 7 ITPA, the police/ prosecutor should immediately move the court for closure/eviction u/s 18 ITPA. However, the eviction order of the judicial magistrate is a sequel to the conviction of the person to be evicted, and cannot precede conviction (*A.C. Aggarwal and another Vs. Mst. Ram Kali*,<sup>41</sup>)

## **NO APPEAL AGAINST ORDER OF CLOSURE/EVICTION**

According to S. 18 (3) ITPA, orders passed by the DM u/s 18(1)ITPA and orders by the convicting court u/s 18(2)ITPA shall not be subject to appeal and shall not be stayed or set aside by any court, civil or criminal. Therefore, the finality of order by a competent court is a very powerful tool to combat CSE. Special provisions against CSE of Human (under 16) and minor (under 18): Anybody involved in CSE of a child/minor is liable

for conviction for a minimum term of 7 years imprisonment which may go upto life imprisonment, u/s 7(1A). In such convictions, along with imprisonment, fine is also mandatory. If the abuse takes place in a hotel, and the victim is a Human or minor, the hotel license shall be liable to be cancelled u/s 7(2) (c) ITPA.

## **SURVEILLIANCE OF CONVICTED PERSONS**

According to S 11 ITPA, any person, who has earlier been convicted under ITPA or relevant sections of IPC (363, 365, 366, 366A, 366B, 367, 368, 370, 371, 372 or 373 ), is again convicted under ITPA, for a period of 2 years or more, may be subjected by the court to notify, according to the rules made by the State Government in this regard, of any change of his residence or any absence from such residence after release, for a period upto 5 years. If the State rules exist, this is a potent weapon for the law enforcing agencies to keep surveillance on the movement and activity of the convicted person so as to prevent any such crime in future. If there are no rules, the

<sup>41</sup>1968 Cri L.J.82

state government be moved for bringing out comprehensive Rules under ITPA.

## **EXTERNMENT OF CONVICTED PERSONS**

According to S. 20 ITPA, the District Magistrate, Sub-Divisional Magistrate, or an Executive Magistrate authorized by the State Govt, has power to extern (remove) a convicted person to another place within or outside the limits of his jurisdiction. This is a powerful weapon against convicted exploiters so that they are prevented from carrying on further exploitation. The police has to move the concerned Magistrate immediately after conviction so that the Magistrate can start the externment proceedings.

## **FINALITY OF PROCEEDINGS AND FAST TRACK MECHANISMS**

ITPA is a special legislation which has certain inherent provisions to ensure that the legal proceedings are not long drawn. These provisions and restrictions are meant to be invoked by the agencies concerned (police, prosecutors and judiciary) so that the trial is expedited and justice is delivered without delay. The following are the provisions. U/s 18 ITPA, there is neither appeal nor stay against the order of eviction by a Magistrate or Court. Any appeal against the order for protective custody u/s 17 (4) ITPA, issued by the Magistrate (SDM, DM, MM or JM), shall go to the Court of Sessions, whose decision shall be final. Therefore, there is no appeal beyond the Sessions Court.

Special Courts (including Exclusive Courts) for the trial of offences under ITPA can be constituted not only by State Government (u/s 22 A) but also by the Central Government (u/s 22 AA ITPA). Summary Trial: Whenever necessary, the State Government may authorize the Court to try cases summarily (in accordance with the provisions of CrPC dealing with Summary Trial, ie. Sections 262, 263, 264 and 265 CrPC). However, the maximum punishment in Summary Trial is up to 1 year. If the Court thinks that enhanced punishment is called for, then the case can be reverted to regular trial.

## **SPECIAL POLICE OFFICER OF THE STATE GOVERNMENT**

U/s 13 (1) ITPA the State Government can notify one or more police officers, not below the rank of Inspector of Police, as SPO having powers over a specific jurisdiction, which may include the entire state. Since many trafficking cases have inter-district and even inter-state ramifications, it is better to issue such notifications, without jurisdictional restrictions. The jurisdiction of the SPO is to be at least coterminus with

—that of the offender so that the SPO can carry out unrestricted investigation. (A case in point is the Anti-trafficking Act, 2000 of USA, where the law enforcement agency has jurisdiction anywhere and everywhere in the world where the investigation of the crime leads him.)

If there is a shortage of police officers in the district, is there any mechanism to overcome the situation in addressing trafficking? Yes, S.13 (2A) ITPA authorizes the District Magistrate to notify any retired police officer (who, when retired, was not below the rank of Inspector of Police) or any retired military officer (who, when retired, was a Commissioned Officer) as SPO. It is advisable that the Superintendent of Police identifies appropriate retired officials and moves the DM for notification.

### **Is women police officer essential?**

U/s 13(3) (a) ITPA, the SPO notified by the State government shall be assisted by an adequate number of Subordinate Police Officers including women police officers, wherever practicable. The best situation would be to notify a combination of male and female police officers for each unit. Wherever women police officers of the rank of Inspector or above are available, they should be notified as SPO. If woman police official is not available, the SPO should take assistance of woman NGO/social worker. Can Government of India notify special police officers under ITPA? U/s 13(3) (4) ITPA, Govt. of India can notify Anti-trafficking police officers (ATPO) with powers throughout India. Such ATPO can be appointed for investigating offences

Under ITPA Under any law dealing with sexual exploitation of persons committed in more than one State. Therefore, a notified ATPO will have powers to investigate, crimes relating to not only trafficking but also other such crimes, relating to pornographic rackets, sale and purchase of women etc., which have inter-state and international ramifications.

The Government of India (refer notification No.2 – 27/2001-CP dated 28th August 2001 of the Department of Women and Human Development, Ministry of Human Resource Development), has appointed officers of and above the rank of Inspector of Police in CBI (Central Bureau of Investigation) as (anti) Trafficking Police Officers having jurisdiction throughout India to investigate any offence under ITPA or any other law dealing with sexual exploitation of persons committed in more than one State.

### **How to invoke CBI investigation**

Since CBI derives its strength under the DSPE (Delhi Special Police Establishment) Act, and since law and order is a State subject under the Constitution of India, the State Govt has to issue notification u/s 6 DSPE Act authorizing CBI to take over such crimes. This is to be followed by a notification of Govt. of India u/s 5 DSPE Act, extending the powers of CBI to carry out the task. Therefore, despite the notification dated 28 August 2001 by the Govt. of India, quoted in the previous paragraph, CBI takes over investigation of a crime of trafficking when the State Police, having original jurisdiction over the case, hands over the case file to CBI. However, if there is an order by the Supreme Court or any High Court, directing CBI to take over such a case, CBI cannot and will not wait for the notifications by the Govt. Often such directions of the High Court or the Apex Court arise out of Public Interest Litigation (PIL).

Role of NGOs in law enforcement and justice delivery under ITPA : ITPA is a social legislation which envisages a large role for NGOs/CBOs and social workers. The following are noteworthy: Advisory Body: The State Govt. may notify, u/s 13(3) (b) ITPA, a non-official advisory body of leading social workers (upto a maximum of five persons), including women social workers. This body has powers to advise the SPO on questions of general importance, regarding the working of ITPA. Therefore, this body can advise and facilitate the police to (a) carry out rescue, (b) ensure that the rights of rescued persons are protected (c) initiate steps for victims' best care and attention, keeping in view victims' best interests, (d) take steps for empowerment and rehabilitation of victims (e) take steps for stringent action against traffickers and other exploiters and (f) initiate and implement steps for prevention of trafficking and (g) network with all concerned government and non government agencies. Accompanying Police during search: The SPO while carrying out search for victims or even accused persons should arrange two or more respectable persons of the locality (one of whom should be a woman, as provided u/s 15(2) ITPA to attend and witness the searches. NGOs are the appropriate agencies to be contacted by police in such situations. The male witness should be from the locality, whereas the female witness could be from anywhere, vide proviso to S.15 (2) ITPA. It would be better to take a lady social activist along. Police officials should maintain a list (ready reckoner) of women activists and NGOs, whose services can be called upon in such situations. This section gives a legal right to NGOs to be part of the rescue process.

Interviewing rescued/removed persons: U/s 15(6A) ITPA, any female person rescued or removed during a search (this includes victims, suspect and accused) can be interviewed by the police officer only in the presence of a female police officer or a female member of NGO. This gives a legal right to NGOs to be part of the investigation process.

Home verification of rescued persons: A mandatory duty is cast upon the Magistrate u/s 17(2) ITPA to cause home verification of the rescued person before taking a final decision regarding her rehabilitation. Direction is to be given to the Probation Officer (under the Probation of Offenders Act, 1958). The Magistrate can call upon NGOs to carry out the task. Even the Probation Officer who has been tasked for the same can, in turn, entrust the job to NGOs. This gives a legal right to NGOs to be part of the rehabilitation process.

#### **NGOs to advise magistrate on rehabilitation:**

The Magistrate may, as provided u/s 17(5) ITPA. Summon a panel of five respectable persons, three of whom shall be women, to assist him in taking decision in home verification and rehabilitation of the rescued person. It would be better that the Magistrate is provided with a list of NGOs who are working in the field so that their services can be utilized at the appropriate time. This section also gives a legal right to NGOs to be part of the justice delivery process and an opportunity to ensure that the processes conform to the principles of human rights and the decisions are in the best interest of the rescued person.

#### **Can a Witness Refuse to Cooperate with Police in Search and Rescue?**

As per S.15 (3) ITPA, any person who, without reasonable cause, refuses or neglects, to attend and witness a search when called upon to do so by an order in writing, delivered or tendered to him, shall be deemed to have committed an offence u/s 187



IPC (Refusal to assist public servant when bound by law to give assistance). Though, it is a non-cognizable and bailable offence, it entails punishment upto 6 months imprisonment and fine.

### **How to carryout Home verification of the Rescued persons?**

As per the mandatory requirements u/s 17(2) ITPA, Home verification of the rescued person needs to be carried out. The points of verification include (a) the correctness of age, (b) character and antecedents, (c) the suitability of the parents/ guardian/husband for taking charge of the person, (d) the nature of the influence which the condition in the home is likely to have on the person if she is sent home, (e) the personality of the person and (f) the prospects of rehabilitation u/s 17(5) ITPA. Since the task of verification can be entrusted to NGO\_s, the law enforcement officials need to network with appropriate NGO\_s and bring to the notice of the Magistrate the name, address and other details of the NGO\_s. Once the task is assigned to the NGO\_s, it needs to be facilitated and followed up so that the verification is expedited. Objectivity is called for in the process of verification. The verifying authority should consult the victim, her well-wishers, friends, parents, guardians, neighbours and all persons who can share information. There are instances where the guardians themselves have indulged in trafficking. Therefore extreme care is called for in arriving at conclusions (See

Patkar, 2004, for details on Home Verification). Protection and safety (estoppels) for police officers and NGO\_s against litigation. S. 15(6) ITPA provides a safety clause for bonafide work. The authorized police officer, the witnesses, and the NGOs who take part, attend, or witness a search shall not be liable to any litigation, civil or criminal proceedings, against them for any bonafide work in connection with or for purposes of the search being carried out u/s 15 ITPA.

### **Conclusion**

During the research period many NGO's were visited by the researcher. NGO's are the first players in highlighting and addressing the problem of human beings. They play a vibrant role by making the masses aware about the menace of human trafficking. However it was found that their work is highly affected by a series of problems such as

lack of funds and lack of effective co-operation from government departments mostly police and other sectors.

Undoubtedly, many active steps have been taken over the past few years at the international, regional and national levels for the protection of the vulnerable sections of society and for the eradication of trafficking in human beings. Nonetheless much work still remains to be done to reach the final goal where by this menace of human trafficking will be eradicated forever from this planet. Therefore, in this regard, some specific suggestions and recommendations have been formulated which may contribute to a large extent in the eradication and abolition of this unacceptable modern day slavery of trafficking in human beings. These suggestions and recommendations are based on my field research by way of structured and unstructured questionnaires and discussions with eminent personalities working in the area of human trafficking and gender related issues.

## **CHAPTER – 4**

# **ROLE OF POLICE FOR PROTECTING HUMAN TRAFFICKING**

Special police officer (SPO) can search without warrant u/s 15 ITPA and carry out rescue. Therefore the SPO is free to act on his own and promptly. The Magistrate can authorize any police officer (SI and above) u/s 16 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. Delay denies justice delivery and also exacerbates exploitation. Do gather intelligence and act in time. 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, neighbouring 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 woman u/s 15(2) ITPA. Utilize the services of local NGOs. Do network with NGOs in the area. Interview of rescued person should be done only in presence of or by WPO or woman from an NGO, as per Section u/s 15

(6A) ITPA. Maintain list of NGOs 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, 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 intimidatory 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 be 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. They are children in need of care and attention and, therefore, are to be handled by the Human Welfare Committee (CWC) set up under the JJ Act.

The police officers need to know before hand 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 NGOs 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. In a case of

rescue in Mumbai in 2002, the document which was left behind by the rescue party included a register maintained by the brothel owner regarding the details of money received in CSE and payments made to various exploiters, abettors and conspirators. Thorough investigation of the document would have brought out the nexus in trafficking and brought all offenders to book. For details see the case study in the NHRC report of 2004 on the Research on Trafficking in women and children.<sup>35</sup>

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.

### **Postrescue**

Interview the rescued persons to know about their personal details like age, nativity, health status, family history, etc and also to identify their best interests so that actions can be oriented accordingly. Interview is essential in the investigative process to identify the traffickers and other exploiters so that they can be brought to book. NGOs and trained counselors are useful in de-traumatizing the person and helping in ice breaking so that the police officials can carry on with the interview. Interview must be carried out by a female police officer or in the presence of a female NGO worker as mandated u/s 15(6A) ITPA.

There can be one or more statements u/s 161 and 164 CrPC. Hence do record statements as the story unfolds and when the victim is comfortable to speak, especially after counselling. Do not delay production of the rescued persons (usually called victims or

<sup>35</sup> published by Orient Longman, 2005

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survivors) before the Magistrate (s.17 ITPA). SPO can produce the rescued person before any Magistrate (s.17 ITPA). Intermediate custody can be obtained for a period not exceeding 10 days by which time the person has to be produced before the appropriate Magistrate (s.17 ITPA). Rescued children should be produced before the Human Welfare Committee (CWC) constituted under the JJ Act. During the pendency of verification the person can be kept in a recognized rehab institution after obtaining orders from the Magistrate concerned. Home verification is to be done by Probationary Officer, who can utilize services of NGOs. Suitability of the rehabilitation home should be verified before the person is lodged. Magistrate may utilize the services of five NGOs (including 3 female NGO workers) for home verification and also consult with them in the process of decision making u/s 17(5) ITPA. For trauma counseling of victims, it is ideal to utilize the services of NGOs. A list of such volunteers/NGOs, who have specialization in this field, be maintained at the police station. The Family Counseling Centres (FCC) available at certain police stations in certain states have trained counselors whose services can be utilized.

For legal counseling, networking with lawyers/NGOs is advisable. A list of willing lawyers should be maintained at the police station. Contact Bar Council and District Legal Services Authority for the same. Medical care and attention (including mental health) should be provided immediately after rescue. Also make arrangements for expert care, if required. Besides specialist doctors in hospitals, Medical Associations can be contacted for such services. Network with appropriate agencies (government, NGO and corporates) for rehabilitative steps.

### **Can an adult person be sent to protective custody?**

The answer is yes. S. 17 ITPA applies to children and adults. If the inquiry reveals that the person, irrespective of age, is in need of care and attention, the Magistrate, as provided u/s 17(4) ITPA, should direct protective custody in a protective home. Registering the Crime (FIR) at the Police Station (PS).

### **There should not be any delay in registering FIR.**

The FIR has to be on the statement of the complainant. The statement cannot be altered or amended by the police. If the complainant is the victim herself, she may be traumatized and, therefore, may not be able to recall the events which constitute specific offences. The police officer can help her to recall such events. Even otherwise, the statement of the victim u/s 161 or 164 CrPC, recorded in due course, should bring in all details, including those which have been missed out in the FIR.

**Anybody can be the complainant. If nobody comes forth, the police official should be the complainant:**

Jurisdiction of the PS need not be disputed. As trafficking is a continuing offence, the FIR can be lodged at the source or destination. Both courts have jurisdiction. This has been specifically provided u/s 5(3) ITPA. However if two or more FIRs are lodged at different PS on the same issue, the police officials can consult each other and transfer the evidence and case documents to one of the PS, who can follow it up thereafter.

The copy of the FIR has to be given free of cost to the complainant. Female witnesses/victims are to be interviewed at the place of their choice. Police should go to them for the interview, and not vice versa. No female witness should be summoned to the police station after sunset. Do not deny the right of the victim/complainant to know the progress of information. Do maintain proper and regular contact with the victim and her well wishers, including the NGO who is attending to her. FIR is the first document in the process of justice delivery. The steps that follow are mostly dependent on the FIR. Distorted FIR where the victim has been shown as accused entails further violations and harm to the victim. Therefore, victim must be projected as victim and this be done loud and clear from the FIR onwards. Do register cases under the relevant provisions of ITPA and other laws which are applicable, viz IPC, special legislations like Bonded Labour System (Abolition) Act, 1976, Human Labour (Prohibition and Regulation) Act 1986, Children (Pledging of Labour) Act 1933, Maharashtra Control of Organised Crime Act 1999 etc.

All cases of trafficking be treated as Grave Crimes or Special Report Crimes (depending on the terminology in vogue) and be investigated and supervised by senior police officials, specially those who are sensitized and trained for the same.

The SP/DCP can take initiative in this.

## **INVESTIGATION OF TRAFFICKING CRIMES**

### **Salient features**

Distinguish victim from the suspect/accused by a process of intelligence collection and interviewing. Do not treat victims as suspects or accused. While ensuring that the rights of accused are protected, do not forget to ensure that the victim's rights are ensured. This includes the following: Do not allow suspects and accused to mix up with victims. Do not intimidate or abuse victims by words/action/gesture/demeanor. No publicity should be allowed. Ensure anonymity. Support the victim. Validate the harm done to her. Make her feel and realize that she is a victim, that she has been harmed and that she is never at fault. Empower the victims. Make them aware of their rights so that they can also ensure that their rights are not violated further. See that the victim gets possession of all her belongings, assets, etc and without any delay. See that the children of the victims are provided due care and attention and are not separated from the mother, if they were living together before rescue. Help the victim to get all her dues and rightful claims, as most brothel keepers are reluctant to part with her earnings.

Ensure physical safety of victims during rescue and post-rescue transfers and movements. Get the medical examination of the victim done without delay. Utilize the services of female doctors/para medical staff, as far as possible. Do provide lady constables to accompany the victim. Age verification is also a part of the medical exam. If any malafide is suspected, especially with reference to age assessment, do get the matter referred to a Medical Board after obtaining orders of the competent judicial authority. Utilize the services of female social workers/NGOs in these activities. Do get them notified in the Advisory Body as envisaged u/s 13(3) (b) ITPA. Even if they are not notified, nothing stops the police in associating them in their activities. Considering



the social stigma attached to prostitution, there is a tendency to look down upon trafficked persons by branding them as prostitutes. This should be condemned and not allowed to happen, as the victim of trafficking is neither accused, accomplice nor abettor.

The victim's status should be maintained and ensured all through. All protection and care be extended for the same.

The process of investigation should not be intimidatory or violative of victim's rights. For example, avoid repeated interviewing by several levels of police officers as the victim is made to recall and relive the trauma repeatedly. If the statement of the victim is to be recorded u/s 164 CrPC, do it at the earliest so that restoration/repatriation is not held up. Additional statements u/s 161 and 164 CrPC are possible, hence do not hurry to close down, especially when the victim is still in trauma.

Investigation be based on a plan of action which is to be drawn up (in consultation with colleagues and other professionals), keeping the victim's rights in focus. Dissect the law and list out the elements of the offence. Thereafter attempt to check out the contents of each of these elements. Carry out investigation into each element so that none of the elements is missed out. The evidence be marshaled element-wise so that the presentation is cogent and convincing. The elements vary with the offence alleged, though there are certain common points in all the offences. A check list will ensure that no aspect is omitted.

## **SCENE OF CRIME (SOC) INVESTIGATION**

The investigating officer (IO) should see that the investigation is not perfunctory or superficial. Usually the SOC is perceived to be a room in a brothel. This is incorrect. The scene of crime extends to the place from where the person was trafficked, the places where she was taken to, the transit places, the final destination where she was exploited, etc. Therefore the SOC should include: the source point (e.g., place of recruitment) the trafficking routes (including mode of transport) the transit points (e.g., halting places enroute) the destination point the points of exploitation (e.g. brothel) the places where the products of exploitation were transferred to (eg. in a case where the CSE was to

produce pornography, the SOC includes places where the pornographic materials were sent to, stored, transported, and places where they were sold/purchased, etc).

A trafficking map should be developed and kept as part of the case diary. The map should link up the source-transit-demand places. Documents at the SOC: Investigation should be caused into the records maintained in the various SOC (e.g., the register in the brothel regarding income, expenditure and persons involved). Role of the various exploiters whose names may find mention in the register are to be investigated and evidence extracted against them. These documents have tremendous value, informatory and evidentiary, if investigated properly.

Photograph/video graph of the SOC: Electronic documents can make a visible impact of the extent and intensity of exploitation and therefore, are advisable. Care should be taken to see that the photographs and videographs do not violate the rights of the victims. (e.g., avoid exposing the identity of the victims).

## **IDENTIFICATION AND ARREST OF OFFENDERS**

Investigation should bring to book all the exploiters. Their roles are linked and, therefore, sustained investigation will open up the linkages one by one and will bring out the role of each. Do use the organized crime approach and investigate into the cross linkages of crimes in the past and elsewhere. It is a real challenge for investigators to dig out evidence, present them in the charge sheet and get them convicted in the court of law. Conviction, no doubt, is the true test of professional investigation. In this context, the following are the dos and don'ts.

- a. Who are the exploiters who should be investigated ?
- b. the traffickers (i.e. the recruiters, their agents, their bosses, the masterminds, etc).

- c. the transporters (those who transport, arrange transport and arrange halting places).
- d. the conspirators (all those who contribute to the various steps involved in trafficking and exploitation).
- e. the abettors (all those who abet the various processes through their presence, their involvement or by acts of omission/commission).
- f. the financiers (all those who finance the various activities and those who contribute to the perpetration of the debt bondage of the trafficked victims in the places of exploitation).
- g. the abusers (includes the customers, the clientele, the pimps, the managers or madams of brothels etc, and all those create the demand, especially where exploitation takes place.).

These are only some examples of the many exploiters involved. As and when investigation unfolds, further linkages of these persons and many others will also come up. The task of the investigator is to go into the depth of the case, covering all aspects and to dig out the evidence. This calls for the following efforts:

**Search of SOC:** The scene of crime provides a lot of evidence for a discerning eye. Search should be systematic and scientific. Secure the place beforehand to avoid disturbance. The victim can lead the IO to the various locations especially the places where trafficked persons are kept hidden. Chain of custody has to be ensured while seizing, labeling and transporting. Linking up role of suspects: Statement of victim and other witnesses are to be recorded in detail to link up the role of the various suspects involved in the entire process of trafficking and exploitation. Record the statement in the language in which the person speaks. Do not miss the emotions, feelings and other expressions conveyed by the person.

Medical examination of the suspects be carried out at the earliest. In a crime where the accused has been caught in a compromising position, the medical examination can

reveal the level of exploitation. Medical examination should be followed by other scientific examination such as forensic examination of the materials recovered from the SOC. Interview of the suspects: Interviewing helps to identify the suspects\_ background, and to understand the strengths and weaknesses of the person, which can be utilized to develop themes during interrogation. Interrogation should be scientific to lead the accused through the various events. As per the Indian Evidence Act (S.25) confession before police officer is not admissible in the court of law unless it leads to a recovery (u/s 27). Therefore IO should strive for recoveries and discoveries during interrogation. However admission and confession of accused before police do provide a lot of inputs for further investigation. The alibi of the accused should be further verified and, if found wrong, should be negated by facts. Evidence to rebut the same, including oral statement of witnesses, should be incorporated in the case diary.

Interrogation of suspects should be in detail, with an aim to bring out the role of other suspects, the extent of the crime, involvement in other crimes, the various dimensions of not only the process of trafficking, but also the exploitation, the money generated, the expenditure, the assets created and the investments made etc. All these should be brought on record so that in the event of conviction, these illegal assets could be forfeited and confiscated. Therefore, the IO should question the suspect on all dimensions of the crime, (i.e., WHAT, WHO, WHEN, WHERE, WHY and HOW.)

Arrest of offenders should be done at the appropriate time. There is no point in rushing to arrest, as it will delimit the time available for filing a charge sheet. As per S. 167 CrPC, if the charge sheet is not filed within 60 days (90 days in cases of graver offences) of arrest, the arrestee will be bailed out. It is worth mentioning here that in most of the cases, CBI carries out arrest only at the end of the investigation. If the evidence could be adequately built up and marshaled before arrest, it would be useful for opposing his bail in the court of law. However, in certain situations, (for e.g., where the accused, if not detained, would go underground and be untraceable or would commit further crimes or would harm the victim or the witnesses or would damage the case) arrest has to be done without any delay.

Under ITPA, even attempt for trafficking is an offence. Therefore the IO has a long list of persons who can be brought into the trafficking net. Anybody who is involved in any

act, even partly, or contributes to, or leads to the process of trafficking, should be investigated and brought on record. The offender's intention and knowledge are two relevant aspects to establish the offence. Even if the person had no intention, but had the knowledge that the act indulged in by him contributes to trafficking, it would suffice to bring him under the realm of offender. Therefore investigators should probe not only into the acts of omissions and commissions by the suspects but also into the frame of mind behind such acts.

### **ARREST OF ACCUSED: THE LEGAL PROVISIONS IN ITPA**

The cognizable offences are S.3, 4, 5, 6, 7, 8 and 9 ITPA. Utilize appropriate sections of ITPA and also IPC as well as other laws which are attracted. Graver sections of law will act against easy bail. Invoke the provisions of special laws wherever applicable (for example, the Bonded Labour System (Abolition) Act, 1976, Human Labour (Prohibition and Regulation) Act, 1986, Children (Pledging of Labour) Act, 1933, Maharashtra Control of Organized Crime Act 1999, Goa Children's Act, etc).

- a. A notified SPO is fully empowered to arrest without warrant (u/s 14(i) ITPA).
- b. SPO can authorize and order any police officer in writing for arrest (u/s 14(ii) ITPA).
- c. SPO can authorize any police officer u/s 14(iii), even without a written approval, in case of urgency if:
  - d. The accused is likely to escape.
  - e. The identity of the accused is suspect.
- f. The grounds for authorization should be specifically recorded in police documents (General Diary and Case Diary).

The authorization should be by name and not a general authorization. Authorization for arrest is distinct from authorization for investigation. Only the competent and notified official can take up the investigation of the crime. Technical errors often lead to discharge of the case in the court. The arrest of the accused is guided by the provisions of CrPC and Evidence Act, as it applies to any other offence.

## **MAPPING THE HARM DONE TO THE VICTIMS**

This is an area usually neglected in the present day investigation process. Do map and document the entire harm and damage done to the victims. This includes Injuries of physical assault (beating, cigarette burning, etc). Injuries of rape and other sexual assaults. Injuries consequential to the various act of exploitation (e.g. abortion due to denial of safe sex methods). Injuries consequential to the denial of medical care and attention (e.g. UTI, which arises due to lack of timely treatment of earlier injuries).

The medical status including STD, HIV etc. (HIV testing is possible only if the person consents). The psychological harm (ie. the mental torture, trauma, tension, etc on the person) not only due to exploitation, intimidation, and denial of privacy and dignity but also as a result of neglect of oneself, one's children, and abuse of children). Physical and mental harm to the children of the victim, especially those who are staying with them. The mapping of harm could be professionally done with the expert assistance of doctors, forensic experts, psychiatrists, and psycho-social experts. However, documenting the victim's own experience and the observation of the NGOs, counselors, etc associated with the victim are also relevant. They should be well recorded and presented in the case records. Record the statement in the language spoken to by the victim. Do not ignore the emotions, the feelings, etc conveyed by the victim. Do document them all. As regards Human victims, their own version of the events be appropriately recorded without editing the language and content.

## **MAPPING THE EXPLOITER'S PROFIT**

This is another investigative component, usually neglected. In cases of trafficking, the exploiters gain monetarily and otherwise, while the victim continues to be harmed and

exploited. Additionally younger the girl, higher the level of exploitation and, consequentially, more earning for the exploiter. The NHRC study has brought out the unbelievably high profits that the traffickers and other exploiters have made at low or no cost to themselves. Therefore it is essential to map these assets and take appropriate action to prevent and combat trafficking. The following are the dos and don'ts in this context: Investigate into and bring on record all assets, incomes, earnings, profits and expenditures related to trafficking. Establish the linkage of the crime of trafficking to the —fruits of crime through documentary and oral evidence. (e.g., investigate the movable and immovable property acquired by the traffickers, the extravagant lifestyle and expenditure by them etc.). Collect intelligence regarding these aspects from the trafficked victims, their parents/wards, etc through careful interviewing. Conduct sustained interrogation of the accused and suspects to bring out the details of profit, places of deposit, utilization of money/assets, etc.

Investigate into the assets and profits of the traffickers to expose the linkages with other exploiters and profiteers. This will also bring to focus the gravity and extent of the exploitation. The case diary should specifically list out the details of investigation in this regard and should invite the attention of the court during trial so that in the event of conviction, the court could be moved to attach and confiscate the properties.

## **INTERVIEWING VICTIMS**

Female victims should be interviewed by WPO. If WPO is not available, involve women NGO\_s or counselors during interview. Ensure that the accused/suspected offenders are nowhere in the vicinity. Conduct the interview at a place where she is comfortable. It should be a place of her choice. Keep the ambience Human friendly, if the victim is a child. Do not associate the person whom she is comfortable with. A

Human minder, a counselor etc would be appropriate.

Avoid onlookers, interventions and interruptions during interview. Include psychiatrists and forensic experts, as and when required. Avoid repeated interviews, unless essential. Senior officers and supervisory officers should ensure that they participate in the

interview alongwith the IO. Repeated interviews be avoided so that the victim does not have to relive the trauma.

Effort should be made to help the victim come out of trauma so that she is able to recall events properly, logically and fully. Support the victim. Validate the harm done to her. She should be made to feel and realize that she is a victim, that she has been harmed and that she is never at fault. Listen to the victim carefully and empathetically. Do understand her from her perspective. A Human victim may not know the adult language and terminology. I.O has to go to her level of understanding. Avoid making value judgements, comments and criticisms.

Remember that the victim is the best witness to speak about all aspects of trafficking and exploitation. Therefore her statement should be logical, detailed and should incorporate all aspects of the trafficking process, such as the exploitation, the role of various persons involved and the entire chain of events. Prepare a check list of events, facts and themes on which the victim needs to be interviewed. As the interview progresses, new events, facts and themes will emerge and the interview has to be logically oriented to bring out all the relevant details.

Interviewing of victims must be carried out with care and caution. See that the investigative processes do not traumatize her any further. It is essential to adopt sensitive techniques (i.e., cognitive interviewing) to help the victim recall all the facts which are of evidentiary value. The victim may not know about the significance of these facts, whereas the police officers ought to know. The interview processes should be done keeping in mind her best interest and not anybody else's. With the victim's informed consent, electronic documentation (eg. videography) of the recording of the statement can be arranged which can be eventually used in the court of law. However, every effort should be made to protect her anonymity. Facilitate the victim to ask questions and raise doubts. It will open up the conversation. Record statement in the victim's language. Translation can be done later. Do not forget to include the emotional content and body language as displayed during the interview. The police officer recording statement should sign and record his full name, designation and address.



There should be no publicity of the victim and her statements. Ensure anonymity at all occasions, including the period of transfer to court and back.

If re-examination is required, do seek her consent and convenience. Do not delay in recording the statement of the victim u/s 161 and 164 CrPC as it would delay restoration /repatriation. However one should not be in an unusual hurry. There is no bar in having additional statements recorded, as and when the victim desires to speak. Provide proper escort by WPO at all places of stay and movement. Do look after victim's comforts. Ensure that there is place of rest, easement, etc. Provide food, water, tea, etc. as and when required.

Human victims need special attention regarding

choice of food. Ensure that the actions taken by police are in the best interest of the victim. The thumb rule for decision making should be —victim's best interest. Do not forget to thank the victim after interview.

## **MEDICAL CARE AND ATTENTION OF VICTIMS**

All examinations should be done by a female doctor. If no female doctor is available, do associate other female persons like nurses/counselors/NGO workers during medical examination.

Male police officers and attendants should keep away, if female officials are available. The doctor should do a mapping of not only physical injuries but also the psychological harm. If required associate a psychiatrist. Medical exhibits should be carefully preserved and the chain of custody be ensured. Do not delay medical attention. Timely care helps to de-stress and detraumatise the victim.

## **PSYCHOSOCIAL CARE OF VICTIM**

Mental health care is an area often neglected by the police and other after-care agencies, despite its crucial role in victim care and rehabilitation. Do associate appropriate government/non-governmental agencies to attend to this issue. As an untrained

counselor can cause further damage and trauma to the victim, it is very important to associate a trained and qualified expert, from the very beginning itself. Trauma counseling should be ensured even at the home/lodging house. This should be a continuous process as the victim will take time to get over the trauma. Moreover the counselor/psychiatrist will be an important witness in the court of law. Hence he/she should be cited as an expert witness in the charge sheet filed against the accused persons.

There are many strategies available for psychosocial counseling. However the focus should be to empower the victim. Therefore it needs to be ensured that all steps and initiatives are Rights-based and are in the best interest of the victim (for details, refer to *The Sounds of Silence; A Manual for Forming Therapeutic Relationships*<sup>36</sup>, by DrAchalBhagat of SAARTHAK).

## **AGE VERIFICATION/ASSESSMENT**

The Magistrate, before whom the rescued person is produced, shall u/s 17(2) ITPA, cause verification of the age of the person. Age is crucial in deciding on the application of IPC Sections like 372, 323, 375, 366 A, 366 B etc and that of JJ Act. If the person is less than 18 years of age, JJ Act comes into effect and the Magistrate should refer the person to the appropriate authority, ie, the CWC. Therefore, correct assessment of age of the rescued person is an important step. Though u/s 49 JJAct the competent authority is authorized to take steps in determining the age, in practice, it is left to the rescuing officials to take a prima facie decision as to whether the rescued person is an adult or a child. The following are the dos/don'ts in this regard. Presumption of age, at first sight, be drawn in favour of the rescued person. Interview the person to arrive at objective yardsticks, like date of birth in school records etc. There are several events in the life of a person which can reveal her age. Associate social workers, CWC members etc, in assisting the police official in age determination. Do not go by the age spoken to by the brothel madam or the exploiters. They will confuse. The victim may be under pressure by the exploiters to speak out wrong age. Careful interviewing of the victim

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<sup>36</sup> The Sounds of Silence; A Manual for Forming Therapeutic Relationships

can bring out the truth. Age verification by the medical/professionals and forensic experts involve ossification test and other parameters. Do involve these professionals as early as possible. If the expert is not able to categorically state the exact age, but opines it to be falling under a range (say 17-19 years) the benefit of doubt should go to the person (and in this case the person should be treated to be a Human of 17 years).

## **INVESTIGATING THE ORGANIZED CRIME OF TRAFFICKING**

Trafficking is an organized crime. Therefore all principles of investigating other organized crimes should be invoked into the investigation of trafficking. In this context, the following are important: Intelligence on traffickers and exploiters in one

case of trafficking can be appropriate inputs for investigating another crime of trafficking. One case can lead to another. Therefore, such intelligence should be shared at once with all concerned and, as far as possible, documented. Data base on traffickers, and exploiters, including their modus operandi, origin, place of activity, movements and influence, the communication linkages, the income generated, transmitted, invested etc, the expenditure patterns, the operational linkages among the exploiters, the linkage between the source area the transit area and the demand area etc., be developed. Searches conducted earlier at the scene of crime, documents in this regard including police documents and even media reports are relevant not only as evidence but also as clues for investigation into the organized linkages. In case of inter district crime, the SSP should take initiative for follow up. In case of inter state crimes, the police managers and CID wing should take initiative to provide support to the investigators. Nothing legally stops an IO to investigate anywhere in India. Involve NGOs for intelligence collection. As of today, NGO networks like ATSEC, CBATN, SAPAT etc have developed networks across the boundaries and do have intelligence sharing on trans-border traffickers. Their services could be effectively utilized by the Law Enforcement Agencies. Nothing prevents the Law Enforcement officials from associating competent NGOs.

Recording of statements of witnesses: Do get the witness statements, especially the important ones, recorded and/or video-recorded by a Magistrate u/s 164 CrPC, so that do not turn hostile. If they do so, it would invite prosecution for perjury. (*ZahiraHabibullah Sheikh vs Gujarat*,<sup>37</sup>) In case of a transnational crime like AHT, investigations may have to be caused abroad. For legal and officials transfer of evidence, Letters Rogatory (LR) are to be prepared, sent and followed up. (For details, see Nair PM, *Combating OrganisedCrime 2002*, Konark Publishers) Electronic documentation of the material exhibits will be of immense help in transfer of evidence in such crimes. However, the services of NGO networks having linkages across the borders (eg. ATSEC) could be utilized for collection and collation of information which can, if required as legal evidence, be brought over through official channels, by sending LR.

## **PROSECUTION OF TRAFFICKING CRIMES**

Expediting trial -Ensure timely intimation to witnesses and facilitate their appearance in the court. Delayed trials are mostly due to non-appearance of witnesses. Witness care requires that transport and other contingencies are taken care of. Provide protection to the witnesses against undue publicity To encourage experts to appear in the court as witnesses, it is essential to maintain their address, contact telephones, e-mail and networking.

Maintaining regular personal contacts is advisable. Police officials who are witnesses do get transferred out. Therefore, keep an update of their addresses and contact numbers. Ensure liaison with

the prosecutors and court staff for timely redressal of the problems and issues which come up in trial. Liaison between the Presiding Officer of the court, the Prosecutor and the Police official concerned is a *sin-qua-non* for removing all bottlenecks and ensuring early and prompt delivery of justice. Prosecutor is the officer of the court and, therefore should take initiative in ensuring this liaison.

Prosecutor has a large role to play in the delivery of justice by bringing to the notice of the court any major flaw or deficiency in investigation. This would facilitate the court to take an appropriate decision whether to proceed further or to refer the case back to police for further /fresh investigation or draw the attention of senior police officers/or

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<sup>37</sup> 2004 (91) AIR 3114SC

refer the case to specialized agency like CID etc for investigation. S.22 ITPA provides for special courts to be constituted by the State Government or the Central Government. Prosecutor should take initiative in this direction as this is an important step in delivering justice expeditiously.

Ensure that all facts are brought to the notice of the court. — It is as much duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice ( *Shakeela Abdul Khan Vs Vasant Dhote*, <sup>38</sup> and *Zahira Zaifullah Vs Gujarat*,<sup>39</sup>). Victim and witness care & protection during trial

: Do orient and counsel them. Assure them that their rights will not be violated and that their truthful version of all facts is essential for delivery of justice which is in their interest and also in the larger public interest.

Victims require briefing on the facts of the case, especially to recall the events in a logical way. This should be done before she is put in the witness box. Prosecutors ought to ensure that the defense-side does not violate the rights of the victim. Embarrassing questions need to be avoided. Intervention of the court should be sought immediately to prevent any such violations. All efforts should be made to ensure the anonymity of the victim. Anonymity provides strength and confidence to the victim. Move the court for allowing in-camera trial. The Supreme Court of India

(Refer Judgement dated 26 May 2004, in *Sakshi vs Union of India*) has directed that in-camera trial should be extended to all cases of sexual assault on children. A screen has to be provided in the trial court so that the Human victim is not exposed to the suspect and accused persons. A Human counselor should be provided to assist in the court. Adequate recess should be allowed during trial proceeding so that the Human victim gets rest. This is a landmark judgement in ensuring Human rights and, therefore, needs to be implemented in letter and spirit. The police and prosecutors should move the trial courts for the same.

<sup>38</sup> 2003 (7) SCC 749

<sup>39</sup> 2004 (4) SCC 158

Video conferencing is an ideal mechanism to prevent victimization of the trafficked victim. It should be done whenever possible. The Supreme Court, in its landmark decision, *in State of Maharashtra vs Dr. Praful B. Desai*<sup>40</sup>, has underscored the validity of video conferencing and enumerated the safeguards to be ensured during the trial of cases. Victim care and protection also requires the following: Depute a sensitive liaison officer with the victim, preferably a WPO. Brief the victim on the facts of the case before trial starts. Orient the victim to the court scenes before the trial. Debrief the victim immediately thereafter. Follow up on the debriefing and make required amendments. If the victim speaks a different language, make arrangements for appropriate translators. Ensure transportation of the victim to and fro. Provide for contingency expenditures. Court has funds for this. In some states like Tamil Nadu, Government has provided special funds for this work. Take care to return the victim to the concerned destination. Do look after other logistics and contingencies such as providing facility for rest, easement, etc. Do not forget to thank the victim/witnesses and all those who assisted in getting the victim to the court. Do ensure their safe and comfortable return. Post Conviction Matters requires special attention by the prosecutor. This includes the following major steps: Seeking enhanced punishment for repeated offences/offenders. Moving the court to impose fine alongwith punishment (refer section of law discussed earlier where fine is mandatory). Seeking compensation for the victim from the offender (refer section 357 CrPC). Seeking compensation from the state (refer supreme court decision in *Delhi Domestic Working Women's Forum vs UOI*). Taking steps for closure and eviction of brothels u/s 18 ITPA.

Taking steps for surveillance of convicted. Initiating steps for externment of the convicted person. Victim/ witness protection systems There are several constitutional, legal and administrative provisions in India for ensuring the rights and protection of witness/victim. Some of these are listed below which can be of ready reference to the law enforcement agencies: Right to anonymity is a legal right (*S.C in Smt Sudesh Jakhu vs Narender Verma 2004*)

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<sup>40</sup> 2003 (4) SCC 601

In camera trial, u/s 327 CrPC is essential in rape crimes. The provisions of in camera trial have been extended to all crimes of sexual assault against children (*refer Sakshijudgement*). Therefore in camera trial should be invoked in all crimes of trafficking of children for CSE. Video Conference is allowed in the trial of crimes (*refer Praful Desaijudgt*). This ensures not only anonymity but also protection to the victims and witnesses.

Provision of free atmosphere: In *Sakshi vs UOI*, it was held that —the whole inquiry before a court is to elicit the truth. It is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. .... A screen or some such arrangements be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Recess during court proceedings: In *Sakshi vs UOI* the Supreme Court directed that whenever a Human or a victim of rape is required to give testimony, sufficient breaks should be given as and when required. Legal representation is a legal right. In *Delhi Domestic Working Womens Forum vs UOI*,<sup>41</sup>) The requirement of legal representation and counseling has been extended to the victim right from the Police Station itself.

Victim can have Private Lawyers who can assist the Public Prosecutor and even submit written arguments, nevertheless functioning under the public prosecutor, vide Section 301(2) CrPC. Victim is never an accomplice (*Gurcharan Singh vs Haryana*,<sup>49</sup>). Right of accused to cross examine the victim/witness, though a legal right, is restricted by *Sakshijudgt*, in such a way that in a case of sexual assault of children, the defence cannot question the victim directly, but has to furnish the questions to the court and the court will, in turn, communicate it to the victim.

Compensation is an entitlement of the victim for injury/loss, u/s 357 CrPC. Compensation can be awarded to the victim from the convicted person even if there was no fine as part of the sentence (*BodhiSattwaGautamvs SubraChakroborty*,<sup>50</sup>). Compensation can be awarded to the victim even without conviction and even during pendency of trial (*Delhi Domestic Working Womens Forum vs UOI*).

<sup>41</sup> 1995 (1) SCC 14.

Age assessment of the victim should be done, when in doubt, in favour of the victim. *In State of Karnataka vs Majamma*, it was held that even if the prosecution has not proved that the girl was less than 16 years, her own statement should be trusted and accepted. Delay in reporting of the case will not affect the case if reasonable explanation is given/brought out during investigation (*Harpal Singh vs HP*,<sup>51</sup>).

Defective Investigation: Flawed investigation is no ground to deny justice to the victim.

—It would not be right to acquit an accused person solely on account of defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective (*Karnal Singh vs MP*,<sup>52</sup> and *Zahira Habibullah vs Gujarat, 2004 (4) SCC 158*).

Prosecutrix need not be examined: in *State of Himachal Pradesh vs Mohan Misra*,<sup>53</sup> the Supreme Court held that —merely because the victim girl is not examined, this can never be a ground to acquit an accused if there is evidence otherwise available

<sup>49</sup>AIR 1972 SC 2661 <sup>50</sup>1996 1 SCC 490 <sup>51</sup>1981(1) SCC 560 <sup>52</sup>1995 5 SCC 518 <sup>53</sup>1995 CrLJ 3845 proving the criminal act of the accused. Character and antecedents of the victim has no bearing or relevance... and can never serve either as mitigating or extenuating circumstance. No stigma should be implied against the victim/witness. —After all it is the accused and not the victim of sex crime who is on trial in the court—. (*Haryana vs Prem Chand and others*,<sup>42</sup>, *Maharashtra vs Madhukar Narayen Marvikar*<sup>43</sup>, *State of Punjab vs Gurmit Singh*,<sup>44</sup>).

On reliability: The evidence of a victim of sexual offence is entitled to a great weight, absence of corroboration notwithstanding (*Punjab vs Gurmeet Singh*) The rule of prudence that the evidence of a victim of sexual assault must be corroborated in material particulars has no application (*Maharashtra vs CPK Jain*,<sup>45</sup>). On corroboration: In *Punjab vs Gurmeet Singh* it was held that the statement of the rape victim who was between 15-17 years, inspired confidence for acceptance and, therefore corroboration of evidence was not needed. Held that there is no legal compulsion to look for

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<sup>42</sup> 1990 (1) SCC 249

<sup>43</sup> , AIR 1991 SC 207

<sup>44</sup> AIR 1996 SC 1393

<sup>45</sup> AIR 1990 SC 658



corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted (*Himachal Pradesh vs Raghubir Singh*) There is no rule of practice that there must in every case be corroboration before a conviction can be allowed to take place (*Rameshwar vs Rajasthan*,<sup>46</sup>). On discrepancy in the statement of victim/witness: In cases involving sexual assault minor contradictions or insignificant discrepancies in the statement of the witnesses should not affect the case (*Punjab vs Gurmeet Singh*,<sup>47</sup> and *Andhra Pradesh vs Gangula Satyamurthy*,<sup>48,49</sup>). It was held that the court must appreciate the evidence in totality of the background of the entire case and not in isolation.

On medical report: *In Rampal vs State of Haryana*,<sup>61</sup>, conviction was based on the sole testimony of the prosecutrix. Though the doctor did not find any visible injuries, the court held that, there was no reason to suspect the testimony of the victim and upheld the conviction of the accused. Expedient trial is an essential ingredient of reasonable, fair and just procedure guaranteed by Article 21 (*Menaka Gandhi vs State*, 1978

(1) SCC 248). It is the constitutional obligation of the state to devise such a procedure as would ensure speedy trial (*Sheela Barse vs UOI*,<sup>50</sup>). Courts need to take participative role to deliver justice to victim. —The Courts have to take a participative role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. S.311 of CrPC and S.165 of Ev. Act confer wide and vast powers on presiding officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process (*Zahira Habibullah vs Gujarat*,<sup>51</sup>).

Witnesses to turn up in trial: In order to ensure fair trial, a duty has been cast on the prosecution to produce witnesses on time. —The presence of the Investigating Officer at the time of the trial is must. It is his duty to keep the witness present. If there is a

<sup>46</sup> AIR 1952 SC 54

<sup>47</sup> AIR 1996 SC 1393

<sup>48</sup> JT 1996 (10) SC 550

<sup>49</sup> Supp(3) SCC 656

<sup>50</sup> 1986 (3) SCC 632

<sup>51</sup> 2004 (4) SCC 158

failure on the part of the witness to remain present, it is the duty of the court to take appropriate action ( *Shailendra Kumar vs Bihar*,<sup>52</sup>).

**Right to be rescued:** Section 16 ITPA provides powers to Executive Magistrates and Judicial Magistrates for directing any police officer of the rank of SI and above to rescue a person based on information received from any source. This accrues a right to the victim to notify the Magistrate, by whichever means possible, and a duty is cast on the Magistrate to ensure steps for rescue.

**Right to restoration to a safe place after rescue:** Section 17 ITPA provides that a rescued person shall not be restored to or placed in the custody of a person who may exercise a harmful influence over the person. This section of law calls for Home verification to verify whether the original home of the rescued person is safe enough for her return. **Role of prosecutor in prevention of trafficking** The prosecutor has a large role to play in preventing trafficking. If the trafficker is convicted and kept behind bars, as a corollary, the trafficker is being deprived from indulging in trafficking. Therefore, by aggressive law enforcement, prosecutors can ensure prevention of trafficking. If the post conviction measures discussed in the previous paras, are taken properly against the trafficker and other exploiters, it will make a tremendous impact in preventing trafficking.

Eviction of brothels and such other places of commercial sexual exploitation carried out effectively, is another method of preventing trafficking. Prosecutor should take initiative u/s 18 ITPA. Post rescue care and attention of victims and survivors, if carried out properly, in such a way that they are rehabilitated according to their best interest, would mean prevention of re-trafficking. Prosecutors can play a role in such post rescue activities by involving the government department or the civil society either directly or by taking up with the concerned Magistrate (Judicial or Executive) depending on the issues concerned and getting an appropriate direction issued by the Magistrate to the concerned government agency/NGO.

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<sup>52</sup> 2002 (8) SC 13

## **Conclusion**

During the research period many NGO's were visited by the researcher. NGO's are the first players in highlighting and addressing the problem of human beings. They play a vibrant role by making the masses aware about the menace of human trafficking. However it was found that their work is highly affected by a series of problems such as lack of funds and lack of effective co-operation from government departments mostly police and other sectors.

Undoubtedly, many active steps have been taken over the past few years at the international, regional and national levels for the protection of the vulnerable sections of society and for the eradication of trafficking in human beings. Nonetheless much work still remains to be done to reach the final goal where by this menace of human trafficking will be eradicated forever from this planet. Therefore, in this regard, some specific suggestions and recommendations have been formulated which may contribute to a large extent in the eradication and abolition of this unacceptable modern day slavery of trafficking in human beings. These suggestions and recommendations are based on my field research by way of structured and unstructured questionnaires and discussions with eminent personalities working in the area of human trafficking and gender related issues.

## **CHAPTER –5**

### **ROLE OF NGOs IN LAW ENFORCEMENT**

#### **PROCEDURES**

##### **POST-RESCUE ROLE OF NGOs**

NGOs can play a large role in the post-rescue activities. This includes:

- a. Counseling of victim and de-traumatisation.
- b. Interviewing the victim, as mandated u/s 15(6A) ITPA.
- c. Helping the police to identify the best interest of the victim so that police officers can act accordingly.
- d. Helping police to get clues in investigation, especially regarding the traffickers and the process of trafficking.
- e. Providing translators, when required.
- f. Facilitating victim empowerment and rehabilitation programmes such as: Providing orientation and motivation to the victim.
- g. Identifying the appropriate programmes for the victim.

- h. Empowering the victim with knowledge, skills and resources for rehabilitation. Resources should include adequate funding sources. Do involve MNCs and those dealing with CSR of corporates.
- i. Providing networks to sustain the programmes.
- j. Marketing the products and facilitating marketability.
- k. Ensuring sustenance of the programmes and thereby preventing re-trafficking of the victim.
- l. NGOs provide the appropriate linkage between police and civil society as well as between the victim and civil society. The box presents a few examples of rehabilitation by NGOs.

*Prayas Bharti*, an NGO based at Patna, was instrumental in rehabilitation of a trafficked girl of 16 years, who was lodged in jail for two years on the charge of soliciting. The villagers refused to accept her back, branding her as prostitute. *Prayas Bharti* spent one full day with the entire villagers, speaking to them, coaxing them, and finally convincing them that the girl is a victim of trafficking and a Human in need of care and protection. The commendable initiative by this NGO helped proper rehabilitation of the girl. *STOP*, based at Delhi, took initiative to assist the rescued young women locate partners and facilitated their public marriage. The empowerment programmes by *STOP*, coupled with marriage to a suitable partner, could ensure that these young women were rehabilitated and that there would be no re-trafficking. *Prajwala*, Hyderabad and *Prayas*, Delhi worked with the corporate sector and rehabilitated several young women, who were victims of trafficking and sexual assaults for a long period. They tied up with AMUL cooperative, to help train these young women in the sale processes and, thereafter, the corporate sector utilized their services for sale and marketing of their products. This is a landmark initiative in involving the corporate sector in the rehabilitation and empowerment of trafficked girls. This has been recognized to be a good practice in permanent rehabilitation.

*SANLAAP*, based at Kolkata, networks with police and BSF and ensures that the women and children trafficked from Bangladesh are not pushed back (as is the usual case with illegal immigrants) but are properly transferred to responsible NGOs across the border. The networking of *SANLAAP* with the NGOs and government agencies across the borders have ensured not only proper rehab but also prevented re-trafficking and further violations of the trafficked persons. Role of NGOs in the trial of cases in courts: NGOs can play a constructive role in the process of trial of accused persons and, thereby, help in the conviction of offenders. This is an area which is largely untapped, though there are some examples of good practices in the past. The police and prosecutors can associate NGOs in the following ways:

NGOs are of great help as counselors to orient and prepare the victim/ witness to face the court and proceedings in the court. They can assist in interpreting children's perceptions and views. NGOs can act as Human minders in the court to help out the Human victim. The Supreme Court of India, in its judgement dated 26<sup>th</sup> May 2004, (*Sakshi vs UOI*) directed that such provision be made in the trial of all cases of sexual assault on children. NGOs can assist in providing translators when the victim speaks a different language (i.e. *STOP*, a Delhi-based NGO assisted the court in translating Bengali to Hindi when Human victims trafficked from Bangladesh to Delhi were tendering their evidence in the Delhi Court).

NGO as prosecutor: According to an order passed by the High Court of Calcutta, *SLARTC*, a Kolkata-based NGO, has been authorized to handle the prosecution work of all trafficking cases. The NGO has substituted State prosecutors and is utilizing the services of private lawyers to argue the case on behalf of the victim and the state. This experiment has been working well for several years. NGO Networks are a very good tool for police in addressing inter-state and trans-border trafficking. Several strong and effective networks of NGOs are available. Their services can be utilized for rescue, repatriation, transfer of information and such other services and processes in combating and preventing trafficking. Since government agencies are bound by rules and procedures which have jurisdictional restrictions, NGOs come handy as they have no such limitations. However, all such information and intelligence need to be formally brought through official channels, if they are to be utilized as evidence in the court of

law. Moreover confidentiality of the information and the integrity of the NGO are relevant issues in decision making. NGO Resource centres: Many NGOs have set up vast resource centres and networks which can be effectively utilized by the police in understanding the issues, for training and sensitization, as reference manuals and as guide books. (for example, the Resource centre of PRERANA, an NGO based at Mumbai). These resource centres are also helpful for evidence collection against offenders and in understanding the processes involved in trafficking.

Training police and other law enforcement agencies: Experience shows that NGO association has been fruitful and effective in the training processes, for developing training modules, getting appropriate resource persons, organizing training camps, supplying resource materials, process documentation of training programmes and impact assessment. During training sessions, NGOs can present the other side of the story which the law enforcement official may not be aware of. This would help in getting a complete picture and a holistic understanding of the issues. Research: The services of NGOs can be effectively utilized for carrying out macro and micro research projects. The NHRC research on Trafficking in India, (2002-2004) carried out through an NGO, *Institute of Social Sciences*, was a macro-study and a pioneering work in the field. (Also see studies by Balaji Pandey, Sanlaap etc.) There are several issues which require micro studies and research. Impartial research by NGOs can provide appropriate inputs to the law enforcement agencies to modify and orient their activities and services.

## **CONCLUSION**

Human Trafficking in India is a more widespread phenomenon than generally acknowledged and awareness must be raised in order to combat this crime and punish the perpetrators. Women empowerment and reducing of female trafficking are impossible with the lack of proper health, education, nutrition and nourishment and security of the female in the society. Education is crucial in halting the flow of women, children and men into forced bondage. It is through education that we can elicit the most direct influence in the fight against human trafficking. Interventions by competent social work practitioners need to include not only case management and advocacy skills, but also an understanding of the ecological perspective in assessment and treatment techniques to work with the multidimensional and Comprehensive needs of the survivor.

## **CHAPTER - 6**

# **JUDICIAL CONTRIBUTION IN PROTECTION OF HUMAN TRAFFICKING**

Prevention is the *summbonum* of all activities that one can do to address trafficking. It includes prevention of re-trafficking too. Law enforcement processes should be integrated and comprehensive. There should be a combination of steps for Prosecution (of offenders), along with Protection (and care of victims) and Prevention (of trafficking). An integrated P-P-P model is essential. Adequate attention should be paid to all the three legs and the efforts should be dove-tailed. Prevention of trafficking requires attention at all the scenes of crime. Accordingly they can be classified into three :

### **PREVENTION AT THE DEMAND POINT**

This requires proper investigation, prosecution, conviction, addressing the demand effectively and all post conviction measures. This also involves proper care and protection of victims to ensure prevention of re-trafficking.

### **PREVENTION AT THE TRANSIT AREA**

Trafficking when carried out from one place to another involves transit places. The major hub of such transit are railway junctions, bus stops, ports, border entry posts etc.

Rights intervention centre started by the NGO SEWA of Gorakhpur at Sanauli, with the partnership of local police, is a classic example of prevention of trafficking. In a span of nine months, 65 girls could be prevented from exploitation, by interception at the transits place (for details see the case study in the NHRC book). Effective surveillance and watch on suspects at the transit places by deputing spotters in association with NGOs can be a good method. The details of transit routes, mode of



transport and the names of persons involved could be gathered on careful interviewing of victims and interrogation of suspects.

## **PREVENTION AT THE SOURCE POINT**

It requires several steps, like addressing vulnerabilities, attending to missing persons, networking with the civil society and Panchayati Raj institutions, empowering the vulnerable sections along with other police strategies on prevention. The details of these strategies are discussed below:

Do ensure conviction, punishment and stringent action against traffickers and all exploiters (see discussions in the earlier chapters). Do ensure post conviction steps. This includes closure and eviction of brothels and other places of exploitation, externment of the convicted persons, surveillance and dossiers on convicted and suspected persons, confiscation of illegal assets etc (see discussions in the earlier chapters). Address the demand factor effectively. This calls for a strategic intervention, depending on the persons who demand. All traffickers and intentional abusers, who are usually called —customers, should be prosecuted and firmly dealt with. Further, all those who perpetuate the demand, including financiers, colluders, conspirators, abettors etc be prosecuted. Adolescents/youths also come in as \_customers\_ and contribute to the demand. They require a different treatment, as they have the knowledge but may not have the intention to exploit. Advocacy and orientation of such persons, with the help of NGOs, on issues of sexuality, gender, women's rights, Human rights, etc. be carried out to address the demand in this sector. Protection and care of victims commence with proper rescue processes. Do not criminalize them. FIR should be only against traffickers and abusers, but never against the victims. All further steps in investigation and justice delivery should follow this principle. Simultaneously, do see that the victims are empowered and properly rehabilitated. Often police officials think that they have nothing to do with the rehabilitation of the victims. This is a mistaken notion. Prevention of crime is a mandate to police under the Police Act. To prevent re-trafficking, it is essential to rehabilitate the trafficked victim. Preventing re- traffickingThe NHRC study has established the fact that a large number of rescued persons are re-trafficked. The reasons are many. Victimization of the victims, arrest of

trafficked persons as accused and their criminalization are some of the reasons. Improper/inadequate rehabilitation/empowerment lead to lack of livelihood options which, in turn, make these persons highly vulnerable and subjects of prey by traffickers. Therefore the following can be done to prevent re-trafficking..Provide proper counseling, rightbased empowerment and appropriate livelihood options, including adequate resources, skills and marketing facilities, to the rescued persons.

Police should network with other departments of government (i.e.. women\_s development, Human development, social welfare, health care, etc.) as well as with NGOs and INGOs working in the related fields, in addition to Corporates who would like to be associated, and involve them in the various processes of empowerment. Ensure that the repatriated/rehabilitated person is reintegrated properly by taking regular feedback. Accountability be cast on the village-level functionaries to monitor the same. Do involve Panchayat Raj Institutions in this task.

Do remember that re-trafficking is more often done by known traffickers and their coteries. Hence strict action/surveillance on such persons can be an effective tool to prevent re-trafficking. Addressing vulnerable persons/areas is an important strategy in the prevention of trafficking. Police should develop synergy with the concerned governmental and non governmental organizations and undertake the following steps:

Identify the vulnerable persons/areas and focus attention on them. Empower them. Let this be a priority. Pay special attention to the most vulnerable persons (e.g., children in brothels). This needs to be top priority. Mount surveillance for suspects and look-out for victims at possible transit/transfer points like bus stands, railway stations, wayside hotels (Dhaba), beach resorts, etc. Facilitate empowerment programmes by networking with government departments, MNCs etc. Involve multiple agencies to provide sustainable livelihood options. Adopt a —Human Rights approach in all activities and programmes and discard the —welfare act orientation.

This requires change of mind- set. Proactive policing, with the support of NGO\_s, can stimulate such a change. Networking with other government agencies: Partnership with the departments of women and Human Development, Social Welfare, Paramilitary agencies manning the borders, viz., BSF, SSB, ITBPetc is essential, depending on the area of functioning.

In

fact, it should be a process of mutual assistance. Agencies like BSF should have anti- trafficking cell with its network extending to State Police Systems, Human Rights agencies, NGO\_s etc. Similarly police agencies should network with Human Rights Commission, Women Commission etc so that preventive steps could be meaningful, effective and institutionalized. Networking with Civil Society Members: Since concerted efforts are called for, the law enforcement officials should develop synergy with NGO\_s, CBO\_s, Social activists, academia, lawyers etc. Panchayat Raj Institutions can play a large role in identifying and addressing vulnerabilities, keeping surveillance on exploiters and in public awareness/empowerment programmes. Tamil Nadu (Dept of Social Defence) has developed a good model in this direction. Issue of Missing Persons:

There is a strong linkage between trafficking and missing persons. The research report of NHRC on trafficking (2004) shows that in one year more than 30,000 children are reported missing and one-third of them remain untraced. This study has established with examples that many of these missing children are, in fact, trafficked. Hence prevention of trafficking requires the following:

Do realize the linkage between missing persons and trafficked persons, because many who are reported missing have been, in fact, trafficked. Do cross-check the list of persons rescued from brothels and other places of exploitation with the list of persons reported missing from anywhere in India. The linkage will also help to expose the traffickers, trafficking routes and trafficking processes. Do follow up missing women and children till a logical conclusion is arrived at. Constitute special teams to go into the root of the issue and ensure rescue/return/recovery of the missing person. Follow- up all the leads in this process to ensure that those responsible for making the person missing are brought to book. Any slight suspicion should immediately be taken cognizance of a proper FIR registered, followed by sustained investigation. It is often seen that the trafficked person is blamed as if he /she is responsible for being missing. One should realize that more often children who were missing are from the vulnerable sections of the society and are essentially children in need of care and protection.

Provide the details of missing children to the police agencies and NGOs who are working in the rescue of trafficked persons so that they could also follow up. Network

with NGOs/ Helpline/ Human line, etc. to identify the linkage. Expand the database of missing persons to link it up with trafficked and rescued persons. Do a mapping of missing persons for a specific time in a particular place (i.e. for one year period in the area of a police station) and undertake special operations to locate them. One linkage to a brothel elsewhere in the country could be a clue for locating many who are still missing. Utilizing preventive sections of CrPC: Section 110 CrPC provides enough scope for preventing offences. Executives Magistrates are vested with the powers. The Magistrate can bind down the persons for ensuring good behaviour. Steps u/s 111, 116, 121, 122 CrPC will further affirm the preventive actions against likely offenders.

**Helplines:** The Police Managers (especially the SsP, DCP) should establish proper and functional networks with the existing help-lines like child-line, Women's helpline etc. Such help-lines should be linked up to the police control rooms and police stations for prompt response. **Strengthening Police Stations:** Institutionalization of the response systems requires that the police stations, being the fundamental unit of police administration and public service, be strengthened. Besides empowering the police stations with the required human and material resources, their capabilities need to be enriched by regular training and discussions. The methodology prescribed for the functioning and training of STF are applicable here too.

**Involving local self government agencies:** The Panchayat Raj Institutions (PRIs) have lot of sway over the local public. Therefore their services can be effectively channelised towards the prevention strategies. Tamil Nadu has started this process through a Government order issued in 2002 followed by training/orientation programmes for PRI members on preventing trafficking. This model could be adopted by others too. Police officers should network with the PRIs, orient them, sensitize them and involve them in the anti trafficking processes. District level and village level Monitoring Committees could be set up by the DM/SP, involving all stake holders and PRIs. **Data-base:** One of the essential ingredients of crime management is to develop a proper data base. It is utmost essential for not only combating trafficking but also prevention of trafficking. As of today lack of database is one of the major impediments in law enforcement. Since the Investigating officials are more or less confined to their limited jurisdictions, the police managers like SP/DCP and other higher formations should take initiative in

developing the data base, not only on traffickers and exploiters, but also on victims and survivors. The data should include the profile of the offenders, the area of operations of the traffickers, their networks, the details of source, transit, destination etc. This should be regularly updated. The second aspect of data base is data analysis. This would facilitate in developing criminal intelligence. The third aspect of data base is sharing of criminal intelligence with all concerned and initiating appropriate action for combating and preventing trafficking. Collation, analysis and dissemination of data and intelligence are professional aspects of policing and therefore the responsibility for the same is with the police managers. It is advisable to involve appropriate NGOs working in the field and associate them fully in all activities mentioned above.

Anti Human Trafficking Unit (AHTU): An in-depth understanding of the dimension of trafficking will clearly bring to focus the essentiality of multi stake holder partnership in preventing and combating trafficking. The law enforcement agencies need to have close association with other departments like health, social welfare, labour, department of women and child, department of correctional administration, development department, panchayati raj institutions etc. These government agencies need to have symbiotic partnership with the NGOs working in this field. The police managers especially the SP/DCP should take initiative in setting up an AHTU by developing close partnership of the police with all these responders. Such an AHTU will be the best mechanism in the given situation to prevent and combat trafficking. The officials and NGOs who are put in the AHTU should be specially trained and oriented. Protocols should be drawn up to demarcate the role of each stake holder. The scope of AHTU can be widened to include Corporates so that they could lend the services of their corporate social responsibility(CSR) for not only funding the programmes but also giving appropriate back up support in empowering the survivors, utilizing the services for productive activities, marketing their produces etc.

## **PROPOSED AMENDMENT IN IMMORAL TRAFFIC (PREVENTION) ACT, 1956**

Section Existing Provision Amendments proposed 2(aa) "Child" means \_a person who has not completed the age of sixteen years\_ "Child" means a person under the age of eighteen years. 2(ca) "major" means \_a person who has completed the age of eighteen years\_ May be deleted 2(cb) "minor" means \_a person who has completed the age of sixteen years but who has not completed the age of eighteen years\_ May be deleted

2(k) After the existing entries after 2(j) add clause 2(k) a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) have been used; c) The recruitment, transportation, transfer, harbouring or receipt of a Human for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a);

3(1) Punishment for keeping a brothel or allowing premises to be used as a brothel Punishment for keeping a brothel or allowing premises to be used as a brothel Any person who keeps or manages, or acts or assists in the keeping or management of a brothel shall be punishable on first conviction with RI for a term of not less than one year and not more than three and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with RI for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees. Any person who keeps or manages or acts or assists in the keeping or management of a brothel shall be punishable on first conviction with RI for a term of not less than three years with fine which may extend to ten thousand rupees and in the event of second or subsequent conviction with RI for a term of not less than seven years and also with fine which may extend to two lakh of rupees. 7(1A) Where

an offence committed under Subsection (1) is in respect of a Human or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine. Where an offence committed under Sub-section (1) is in respect of a person of less than 18 years, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine.

8. Seducing or soliciting for purpose or prostitution May be deleted. whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not- (a) by words, gestures, willful exposure of her person (whether by sitting by a window or on the balcony of a building or a house or in any other way) or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of any persons for the purpose of prostitution; or (b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public places or to offend against public decency, for the purpose of prostitution, May be deleted Shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year and also with fine which may extend to five hundred rupees. Detention in a corrective institution May be deleted Detention in a corrective institution.

10(a) Where (a) a female offender is found guilty of an offence under Sec.7 or Sec.8 and (a) a female offender is found guilty of an offence under Sec. 7; and (b) the character, state of health and mental condition of the offender and (b) the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instructions and discipline as are conducive to her correction, It shall be lawful for the Court to pass, in lieu of a sentence of imprisonment, an order for detention in corrective institution for such term, not being less than two years and not being more than five years as the Court thinks fit. It shall be lawful for the Court to pass, in lieu of

a sentence of imprisonment, an order for detention in corrective institution for such term not being less than two years and not being more than seven years.

13(2) The Special Police Officer shall not be below the rank of an inspector of police The special police officer shall not be below the rank of a subinspector/ inspector of police.

13(3)(b) The State Government may associate with the special police officer a nonofficial advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers, wherever practicable) to advise him on questions of general importance regarding the working of this Act The State Government shall associate with the special police officer or officers a non- official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers, wherever practicable) to advise him/them on questions of general importance regarding the working of this Act. New provision proposed.

(i) Provisions for confiscation of property and assets of traffickers and agents of organized prostitution/flesh trade as under:

(1) As from the commencement of the amended act, it shall be lawful for any person to hold any illegally acquired property either by himself or through any other person on his behalf;

(2) Where any person holds any illegally acquired property in contravention of the provision of Sub-section (1), such property shall be liable to be forfeited to the Central/State Governments in accordance with the provisions of this Act.

(ii) A provision providing protective mechanisms, immunities and safeguards for the members of voluntary agencies who take initiatives for preventing, trafficking, facilitating rescue or carrying out victims protection activities to be included in consultation with the Ministry of Law and Justice. Consequential changes in various sections where the term his or her has been used. The words his and her wherever occur in the Act should be substituted by a gender neutral.

## **Conclusion**

During the research period many NGO's were visited by the researcher. NGO's are the first players in highlighting and addressing the problem of human beings. They play a vibrant role by making the masses aware about the menace of human trafficking.



However it was found that their work is highly affected by a series of problems such as lack of funds and lack of effective co-operation from government departments mostly police and other sectors.

Undoubtedly, many active steps have been taken over the past few years at the international, regional and national levels for the protection of the vulnerable sections of society and for the eradication of trafficking in human beings. Nonetheless much work still remains to be done to reach the final goal where by this menace of human trafficking will be eradicated forever from this planet. Therefore, in this regard, some specific suggestions and recommendations have been formulated which may contribute to a large extent in the eradication and abolition of this unacceptable modern day slavery of trafficking in human beings. These suggestions and recommendations are based on my field research by way of structured and unstructured questionnaires and discussions with eminent personalities working in the area of human trafficking and gender related issues.

## CHAPTER– 7

### CONCLUSION AND SUGGESTION

**Raise Awareness**—inform the world of this crime and mobilize people to stop it

Strengthen prevention—warn vulnerable groups and alleviate the factors that make people vulnerable to trafficking, such as poverty, underdevelopment and lack of opportunity

**Enrich Knowledge**—Deepen understanding of the scope and nature of human trafficking through more data collection and analysis, joint research initiatives and the creation of an evidence-based report on global trafficking trends

**Empowering women**—improving maternal health, combating HIV/AIDS, eradicating poverty, Improving education and developing a global partnership for development Knowing the facts about human trafficking Raising awareness of human trafficking Having knowledge regarding state laws Having knowledge regarding health care professionals, social services professionals and law enforcement professionals Keep learning about trafficking, its victims and its survivor.

Human Trafficking in India is a more widespread phenomenon than generally acknowledged and awareness must be raised in order to combat this crime and punish the perpetrators. Women empowerment and reducing of female trafficking are impossible with the lack of proper health, education, nutrition and nourishment and security of the female in the society. Education is crucial in halting the flow of women, children and men into forced bondage. It is through education that we can elicit the most direct influence in the fight against human trafficking. Interventions by competent social work practitioners need to include not only case management and advocacy skills, but also an understanding of the ecological Perspective in assessment and treatment techniques to work with the multidimensional and Comprehensive needs of the survivor.

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