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Handbook for Facilitators on Trafficking to Sensitise Children

Acknowledgements

Tharuni sincerely thanks the **British Deputy High Commission, Hyderabad** for helping us in bringing out a Handbook for facilitators on Trafficking and spread awareness on the same. Project "*Combating human trafficking by building capacities of stakeholders – Students, law enforcement and other relevant government officials in Yadadri & Bhuvanagiri towns*" aims to sensitise children and youth on the perils of human trafficking, building capacities of law enforcement agencies on the processes and provisions of law to ensure justice and protect victims and create a platform of stakeholders to initiate action and counter the issue of Trafficking in Yadadri Bhuvanagiri in Telangana State.

This Handbook is a compilation from various sources and we recommend you go through other available material to make yourself technically sound about the subject being discussed. We wish and hope this information will help the relevant stakeholders in understanding the magnitude of the subject along with its possible solutions.

In addition, Tharuni is indebted to **Sri Mahesh Bhagwat**, IPS, Commissioner of Police, Rachakonda to have extended his invaluable support, and everybody else in making a welcome move as an attempt to reduce the evil of trafficking through this project.

Dr. Mamatha Raghuveer Achanta

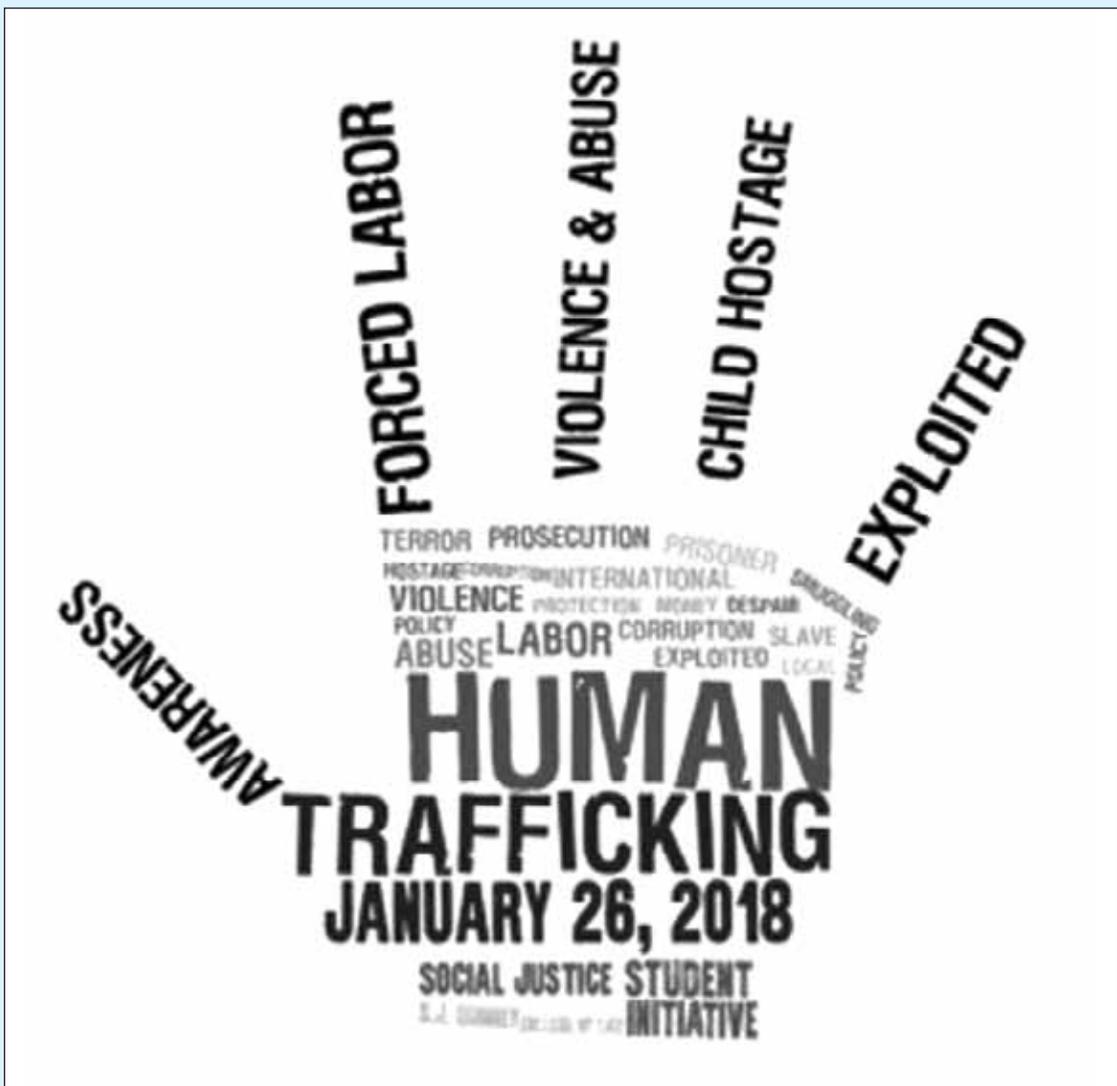
Founder, Tharuni

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INTRODUCTION:

A woman approached a Buddhist monk and said: "When I was 12, my parents who were very poor, sold me to a brothel and I have had to do this work ever since. I must beg your forgiveness for my sin." The monk replied: "There is no need to beg forgiveness from me. It is I and the world who should beg your forgiveness, for we have not done enough to protect you. Please forgive me and the world for having failed to protect you."

India is a source, destination, and transit country for men, women, and children subjected to forced labour and sex trafficking. Forced labour constitutes India's largest trafficking problem; men, women, and children in debt bondage—sometimes inherited from previous generations—are forced to work in brick kilns, rice mills, agriculture, and embroidery factories.



The majority of India's trafficking problem is internal, and those from the most disadvantaged social strata—lowest caste *Dalits*, members of tribal communities, religious minorities, and women and girls from excluded groups—are most vulnerable. Within India, some are subjected to forced labour in sectors such as construction, steel, and textile industries; wire manufacturing for underground cables; biscuit factories; pickling; floriculture; fish farms; and ship breaking. Thousands of unregulated work placement agencies reportedly lure adults and children under false promises of employment for sex trafficking or forced labour, including domestic servitude.

In addition to bonded labour, some children are subjected to forced labour as factory and agricultural workers, domestic servants, and beggars. Begging ringleaders sometimes maim children to earn more money. Some NGOs and media report girls are sold and forced to conceive and deliver babies for sale.

Experts estimate millions of women and children are victims of sex trafficking in India. Traffickers use false promises of employment or arrange sham marriages in India or Gulf States, and then subject women and girls to sex trafficking. In addition to traditional red light districts, women and children increasingly endure sex trafficking in small hotels, vehicles, huts, and private residences. Traffickers increasingly use websites, mobile applications, and online money transfers to facilitate commercial sex. Children continue to be subjected to sex trafficking in religious pilgrimage centers and tourist destinations.

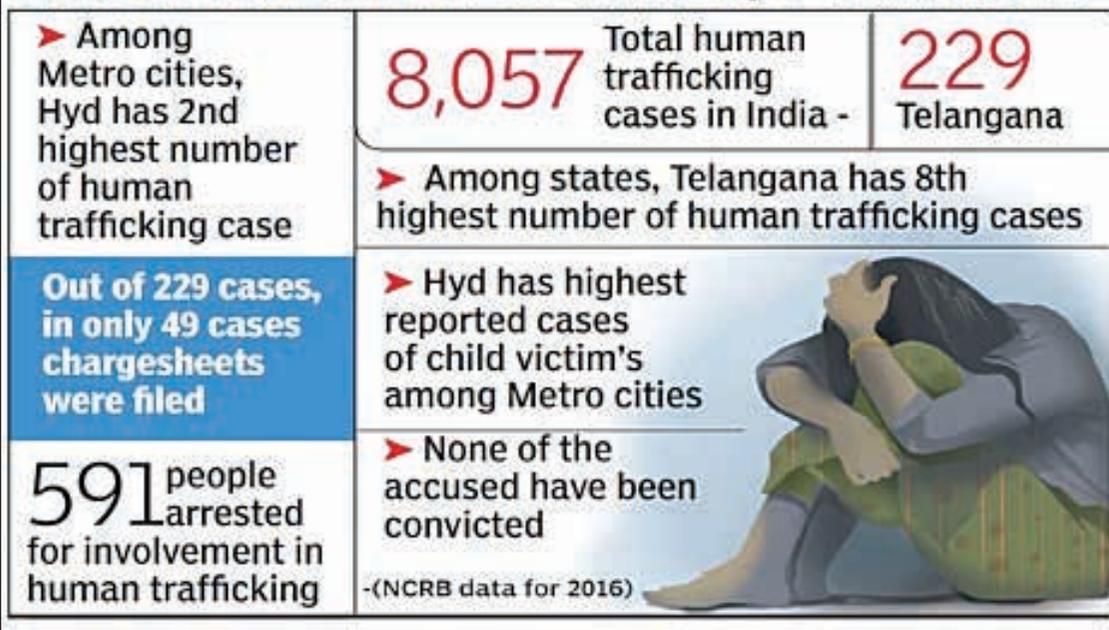
According to *Crime in India, 2016*, 2992 cases of child trafficking (under Sections 370/370A, 366-B, 366-A of Indian Penal Code (IPC) and the Immoral Traffic Prevention Act, 1956 (ITPA) were reported in 2015, a drop from 3490 cases in 2015. 9034 children were reportedly victims of trafficking in 2016 constituting 58.74% of all trafficked victims 14183 children were rescued from trafficking of which boys constituted approximately 61%. Of the total, cases under the ITPA constituted only 1.66%, cases under Sections 370 and 370A comprised 6%, while 89% of the cases were lodged for procurement of minor girls under Section 366-A, IPC. The conviction rate for cases of child trafficking stood at 14.3% in 2015, while the pendency rate was 92%.

These figures are however only a fraction of the children who are missing or go missing in India, and many cases go unreported.

STATISTICS:

According to the National Crime Records Bureau, more than 8,000 cases were registered in 2016. The National Crime Records Bureau has revealed that 23,000 victims, including 182 foreigners, were rescued. Of these, 9,034 (58%) are under 18 years of age.

SHOCKING DATA: 229 CASES, 0 CONVICTS



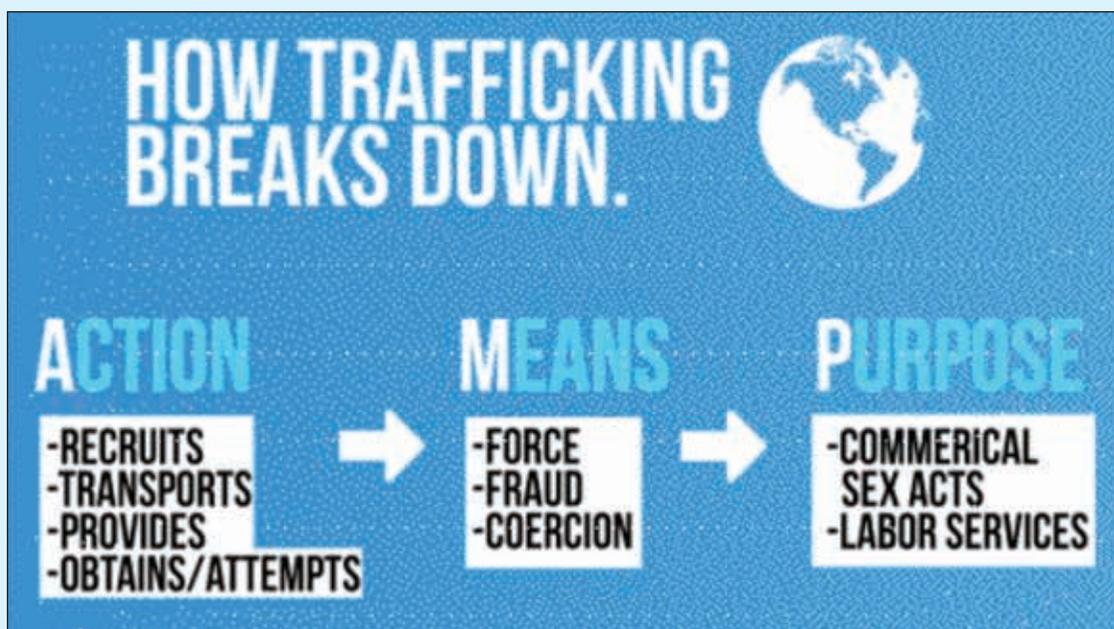
- West Bengal is ranked first with 3,579 (44%) cases of human trafficking, Rajasthan with 1,422 (17.5%) cases, and Telangana, as part of United Andhra Pradesh in 2014 (274 cases in Andhra Pradesh) stood third.
- The victims of trafficking in the country are identified as middle and small class communities that are particularly economically and socially troubled.
- Statistics of state Aids Control Societies indicate that there are about 9 lakh women in the country in the country, with approximately 1.5 lakh of them in Andhra Pradesh. (Though all of these are line-listed under the targeted interval program but there are many who are not registered). It is sad that 25 to 85 per cent of girls in different brothels in the country are from Andhra Pradesh
- Surveys conducted in Andhra Pradesh - 60% of women in brothel are in the state, 28% are 14-16 years old, 20% between 16-18 years and 16% 14+ years.
- Around 112 families in Yadaguri Gutta town are in prostitutes, a study conducted by the district police department said. In particular, they live in constant residence in Gandhinagar, Ganesh Nagar and Yadagiripalli streets.
- There are 176 girls and 147 women from 427 tribes. 104 men are helping them.
- Crime Investigation Department (CID) March, 2018 Almost 40 girls and women are raided. The locals say that this is a place of adultery for the last few decades, although it is a popular temple and it is well known.

PURPOSES OF HUMAN TRAFFICKING, MODUS OPERANDI OF TRAFFICKERS AND THE PROCESS OF TRAFFICKING

Purposes of Human Trafficking

Trafficking in persons is done for several purposes and the destination sectors are

- Commercial sexual exploitation - for prostitution, child sex-tourism, pornography and paedophilia.
- Labour exploitation - forced / exploitative / bonded labour.
- Others sectors - organ trading, forced marriages, begging, illicit adoption, drug peddling, entertainment and sports - like camel racing, exotic dancing or performing in circuses.

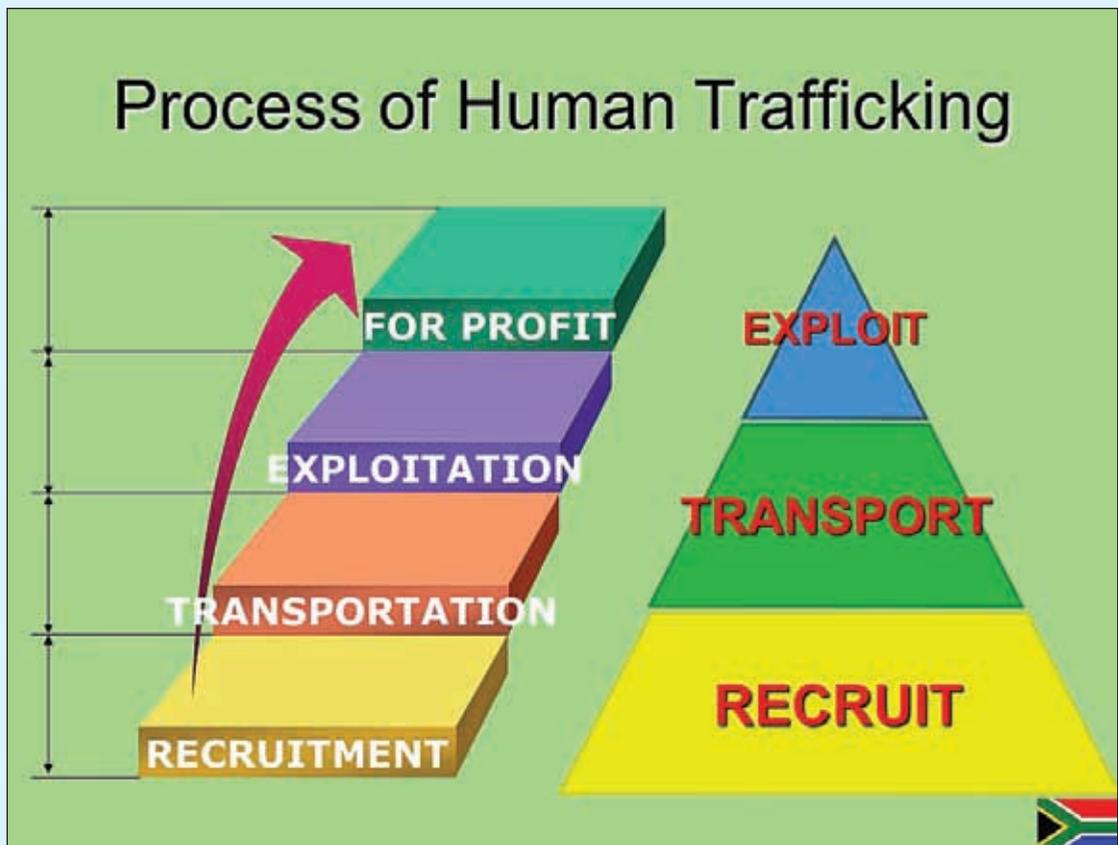


Modus Operandi of the Traffickers

The NHRC study brought out several methods used by traffickers to establish contact with potential victims. In a majority of trafficking cases, indirect channels are used where contact was made through family members, relatives and other familiar persons. Thus, in the majority of cases, the traffickers relied on their networking skills. In some cases, victims were directly contacted by the traffickers themselves. In such cases, the traffickers usually belong to the same village as the victims or frequently visit the village, often disguised as petty businessmen or contractors who take up casual jobs. The traffickers who directly approach the victims do so at railway stations, bus stands, city markets and in running trains. Their strategy is to identify

Process of Trafficking

Central to the organization of trafficking are the people who become “highly profitably, low risk, expendable, reusable and re-sellable commodities”. In all the literature and reports on human trafficking there is broad agreement on the stages involved throughout trafficking process. They are listed as RECRUITMENT of people from a village or city (Source); TRANSPORTATION to a designated location/transit point (Transit); possible shift to a central location; before the move to their ultimate EXPLOITATION (Destination). Sometimes the trafficked persons are shifted several times before they arrive at their final destination, where the ‘ sale’ takes place.



DIFFERENCE BETWEEN TRAFFICKING IN PERSONS (TIP) AND SMUGGLING OF MIGRANTS (SOM)

A. Definition of Trafficking in Persons - Article 3 (a) of Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol) provides the following definition -

“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.



Definition of Smuggling of Migrants - Article 3 (a) of Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol) provides the following definition -

“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

Key Differences Between Migrant Smuggling and Trafficking in Persons: -

1. Consent

Migrant smuggling generally involves the consent of those being smuggled. Victims of trafficking, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the improper means of the traffickers.

2. Trans-nationality

To smuggle a person means to facilitate the person’s illegal border crossing and entry into another country. Trafficking in persons, on the other hand, need not involve the crossing of any border. Where it does, the legality or illegality of the border crossing is irrelevant. Thus, while migrant smuggling is always, by definition, transnational, trafficking in persons need not be.

3. Exploitation

The relationship between smuggler and smuggled migrant usually ends after the facilitation of the border crossing. Smuggling fees are paid up front or upon arrival. The smuggler has no intention to exploit the smuggled person after arrival. Smuggler and migrant are partners, albeit disparate, in a commercial operation that the migrant enters willingly. Trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers. It is the intention of the trafficker that the relationship with the exploited victims will be a continuous one and extend beyond the crossing of the border in the final destination. Smuggling can become trafficking, e.g. when the smuggler sells the person and the accumulated debt, or deceives / coerces / forces the person to work off transportation costs under exploitative conditions.

4. Source of the profit

One important indicator of whether a case is one of smuggling or of trafficking in persons is how the offenders generate their income. Smugglers generate their income from fees to move people. The trafficker in contrast continues to exert control over the trafficked victim in order to achieve additional profits through the ongoing exploitation of the victim.

5. Appropriate charges

The offence of trafficking in persons may involve many different acts and many different actors. The offence is committed by acts of 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. Trafficking cases, by their nature, are very likely to involve other offences. These offences may be an integral part of the trafficking process, and can be used to prove that an element of the trafficking in persons offence has been committed. They can also be charged separately or utilized as alternative charges, depending on the legal system. They can also be called underlying offences to trafficking.

WHO IS A 'VICTIM' OF TRAFFICKING FOR COMMERCIAL SEXUAL EXPLOITATION (CSE)'

- (i) Any trafficked person.
- (ii) Persons above the age of 18 who through force or threat of force, coercion, abuse of power, were / are required to perform sexual acts without their consent, by any person(s).
- (iii) "Children" who have not completed the age of 16 years and "minors" who have completed the age of 16 years but have not completed the age of 18 years, who are found in places of CSE (under Sections 2 (aa) and (cb) ITPA).
- (iv) Any child likely to be trafficked is a "child in need of care and protection" under Section 2 (d) of the Juvenile Justice (Care and Protection of Children) Act, 2000 and is therefore, a victim who should be rescued.
- (v) Anybody who has been recruited, harboured, transported, detained, obtained, or procured for CSE.
- (vi) Any person who has been detained in a brothel, with or without consent (Section 6 (1) ITPA).
- (vii) Any person who has been detained in any premises with the intent of CSE (Section 6(b) ITPA).
- (viii) Any person found **in** a brothel, or any place of CSE, whose jewellery, wearing apparel, money or other property has been withheld (Section 6 (3) (a) **ITPA**).
- (ix) Any person who has been seduced for prostitution by any person having custody / charge / care of/ or a position of authority over that person (Section 9 ITPA).
- (x) A person who's trafficking has been attempted by someone (Section 5 ITPA).

NOTE: The list above is illustrative and not exhaustive. There may be other similar situations wherein a person becomes a victim of trafficking. For example, the child of a victim of CSE living with the mother in a brothel could be lured/ deceived/ coerced by the brothel owner for CSE. In such a situation, trafficking, though not apparent, has been committed.

REMEMBER

- All children and minors are victims.
- All trafficked persons are victims, irrespective of proclaimed/ apparent voluntariness.
- Any person who is made to have sex with another person for profit / gain of a third person is a victim.
- In borderline cases, where there is doubt regarding age, presume that the person is a child or a minor.
- When persons are rescued from any place of CSE, there is a high probability that such persons may have been trafficked.

WHO ARE THE TRAFFICKERS/ OFFENDERS IN CRIMES OF TRAFFICKING

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

- (i) 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 and lodges, where exploitation takes place. This includes keepers of places / vehicles used as a brothel (Section 3 (1) ITPA); persons who allow premises to be used as a brothel (Section 3 (2) ITPA); persons who detain victims in brothels and other places of exploitation (Section 6 ITPA); and those who allow public places to be used for prostitution (Section 7 (2) ITPA).

**TRAFFICKERS COME IN
ALL COLOURS, SHAPES
AND SIZES;**



**THEY ARE JUST LIKE
YOU, ME AND US!**

- (ii) The “customer” or “clientele”, who is the abuser of the trafficked person, is undoubtedly, an exploiter. He is the one who perpetuates ‘demand’ for CSE and is, therefore liable under ITPA and other laws.
- (iii) *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.
- (iv) *The abettors*: All those who abet or support the exploitation or any process involved in trafficking are liable to be tried under ITPA (Sections 3, 4, 5, 6, 7, 9 ITPA, read with Chapter V of IPC dealing with abetment of offences).
- (v) *Those who are living on the earnings of CSE*: Any person who knowingly lives, wholly or partly, on the earnings of prostitution is liable (Section 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 under Section 4 ITPA.
- (vi) The spotter, the recruiter, the seller, the purchaser, the contractor, the agent or anybody acting on their behalf.
- (vii) The transporters, the harbourers and those who provide shelter are also part of the crime.
- (viii) *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 (Section 120B Indian Penal Code) is attracted. According to the ITPA, those who conspire to allow any premises to be used as a brothel (Section 3) or those who live on the earnings of exploitation, even partly (Section 4), or those who procure or induce or take the person for prostitution (Section 5) are all considered conspirators.
- (ix) Parent(s) / Guardian(s) who knowingly sell/ cause to sell/ traffic their children/ wards.
- (x) Any other person who is knowingly involved in any act of commission and / or wilful omission in the process of human trafficking.

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

ROOT CAUSES OF HUMAN TRAFFICKING - THE 'PUSH AND PULL' FACTORS

Some of the vulnerability factors that lead to human trafficking are -

Personal circumstances

People with personal characteristics of low self-esteem and lack of self-control are reported to be vulnerable; low levels of literacy, awareness and information are also risk factors. Economic deprivation due to various reasons and its associative conditions are among the most important factors that lead to vulnerability. A high percentage of trafficked people belong to lower income groups. Greater the degree of impoverishment, higher is the risk of falling prey to trafficking. A dysfunctional home environment, break-up of the family, marital discord, physical abuse, sexual abuse, drug use, family pressures, large families, families facing uncertain times, children in substitute care, gender discrimination within the family, desertion by husbands, husbands' acquiring a second or a third wife makes people vulnerable to trafficking.

Structural factors

Environments lacking livelihood options or economic opportunities, with the accompanying pressures to work and earn, make peoples' lives an ongoing 'battle for survival'. The structural factors influencing and determining these circumstances are listed as industrialization and globalization; economic crises, decline, disruption or underdevelopment; economic policies like privatization, liberalization, promotion of sex tourism, withdrawal of subsidies and commercialization of agriculture; the consequent erosion of subsistence agricultural practices, loss of traditional livelihoods and inflation.



Some of the political factors are conflicts, disruption and instability; immigration policies, human rights violations, and the gaps between government rhetoric and practice. Poor governance, limited law enforcement or implementation of labour standards also creates vulnerabilities. Environmental calamities and disruptions may also put people at risk. Discriminatory practices and social exclusion exacerbate the vulnerabilities of groups like Scheduled Tribes, Scheduled Castes, Other Backward Castes, ethnic minorities, tribal communities, undocumented migrant workers, stateless people or people in refugee camps.

The feminization of poverty and migration increases vulnerability to traffickers. Driven by the pressing need for gainful employment, with scarcity of jobs in their home bases, women and children are easy prey for the designs of unscrupulous agents, offering 'choices' and assistance with travel, particularly across borders, for jobs.

Spatial location of vulnerable groups

Street children and those living in slums; the orphaned and the disabled; children living in brothels or in communities practicing religious and cultural prostitution; children who have been stigmatized by abuse or molestation; children in custodial and educational institutions away from families; and children of bonded labourers and those working as domestic help have been identified as those at risk.

MYTHS VIS-A-VIS REALITIES ABOUT TRAFFICKING FOR COMMERCIAL SEXUAL EXPLOITATION

SR. No.	MYTHS	REALITIES
1.	Trafficking in human beings is only done for prostitution	Prostitution is only one of the reasons for trafficking. Trafficking is done for various purposes, such as begging, forced labour, debt bondage, illicit adoption, marriage, organ transplant, camel jockeying, for performance in circus, for child sex – tourism, and for the use of adults and children in pornography.
2.	'Human smuggling' or 'voluntary illegal migration' is the same as trafficking in human beings.	<p>Human smuggling - is the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries' laws, either clandestinely or through deception, such as the use of fraudulent documents.</p> <p>Human trafficking - unlike smuggling, which is often a criminal commercial transaction between two willing parties who go their separate ways once their business is complete, trafficking specifically targets the trafficked person as an object of criminal exploitation.</p> <p>The purpose from the beginning of the trafficking enterprise is to profit from the exploitation of the victim. It follows that fraud, force or coercion all play major role in trafficking.</p>
3.	Prostitution is "the world's oldest profession" and a necessary evil.	Prostitution is the world's oldest oppression of women and girls. The root cause of prostitution and trafficking for the purpose of sexual exploitation is the male demand for women and girls who can be bought and sexually exploited. Without the demand, the supply of women and girls would not be necessary and the market would collapse ¹² .

4.	An adult woman should be free to make her own choice even if the choice is to be in prostitution.	It would be more accurate to say that a victim of commercial sexual exploitation complies with the extremely limited options available to her. Her compliance is required by the fact of having to adapt to conditions of inequality that are set by power disparities based on gender, race, ethnicity and poverty. Moreover, given the substantial risk of physical, sexual and psychological injuries women face in prostitution, it is the harm to and exploitation of the person that is the governing international standard. Moreover, choice should be based on 'informed consent'. The person should be made aware of all the options and consequences so as to make a 'choice' ¹³ .
5.	Poor women can earn a lot of money through prostitution.	In fact, the majority of women's time in prostitution is spent in debt bondage. A whole chain of traffickers, from recruiters, to transporters, to pimps and brothel managers, ensure that the woman gets a very small cut of her earnings. At the end of the day, women are left with disease-ridden bodies, children and no savings.
6.	Women and girls in prostitution enjoy what they do.	Most women are induced or forced into sex trade, under conditions of near or absolute slavery. They have been lured / cheated / abducted / coerced or forced to come to this stage. Once they get caught they become optionless unless rehabilitated.
15.	A Police Officer can register a case of trafficking only after rescue.	Rescue normally takes place at the point of final destination, whereas trafficking offences commence at the source itself and continues through transit to the destination point and even thereafter. If a police officer gets information about any person having been transferred from source point or being trafficked through transit place, the police officer of those areas should register FIR for the offence of trafficking under Section 5 (3) of ITPA.
16.	"These women" can never be rehabilitated.	With appropriate measures the victims can be rescued, repatriated and reintegrated into society. Efforts should be self sustaining and based on the 'best interest of the victim' ¹⁴ .

With a view to tackle the menace of human trafficking, Ministry of Home Affairs, Government of India has undertaken a number of measures such as:

Administrative measures and interventions

Anti-Trafficking Cell (ATC): Anti-Trafficking Nodal Cell was set up in the Ministry of Home Affairs (MHA) (CS Division in 2006 to act as a focal point for communicating various decisions and follow up on action taken by the State Governments to combat the crime of Human Trafficking. MHA conducts coordination meetings with the Nodal Officers of Anti Human Trafficking Units nominated in all States/UTs periodically.

Advisories: To improve the effectiveness in tackling the crime of human trafficking and to increase the responsiveness of the law enforcement machinery, MHA has issued following comprehensive advisories to all States/UTs:



- Advisory for preventing crime of human trafficking date 9.9.2009.
- Advisory on crime against children dated 14th July, 2010.
- Advisory on missing children dated 31st January, 2012.
- Advisory on Preventing and Combating cyber-crime against children dated 4.1.2012.
- Advisory on Human Trafficking as Organised Crime dated 30th April, 2012.

- Advisory on Preventing and combating human trafficking in India-dealing with foreign nationals dated 1.5.2012.
- SOP to handle trafficking of children for child labour dated 12.8.2013.
- Advisory on MHA Web Portal on Anti Human Trafficking dated 5.5.2014.
- Advisory dated 23.7.2015 for associating SSB and BSF in crime meetings.

These advisories/SOP are available on MHA's Web Portal on Anti Human Trafficking at www.stophumantrafficking-mha.nic.in

Ministry of Home Affairs' scheme: Ministry of Home Affairs under a Comprehensive Scheme. Strengthening law enforcement response in India against Trafficking in Persons through Training and Capacity Building, has released fund for establishment of Anti Human Trafficking Units for 270 districts of the country.

Strengthening the capacity building: To enhance the capacity building of law enforcement agencies and generate awareness among them, various Training of Trainers (TOT) workshops on Combating Trafficking in Human Beings for Police officers and for Prosecutors at Regional level, State level and District level were held throughout the country.

Judicial Colloquium: In order to train and sensitize the trial court judicial officers, Judicial Colloquium on human trafficking are held at the High court level. The aim is to sensitize the judicial officers about the various issues concerning human trafficking and to ensure speedy court process. So far, eleven Judicial Colloquiums have been held at Chandigarh, Delhi, Himachal Pradesh, Maharashtra, Chhattisgarh, Tamil Nadu, Andhra Pradesh, Bihar, Uttar Pradesh, Jharkhand and Odisha.

WHAT THE LAW SAYS:

What are the constitutional & legislative provisions related to Trafficking in India?

Trafficking in Human Beings or Persons is prohibited under the Constitution of India under Article 23 (1)

The Immoral Traffic (Prevention) Act, 1956 (ITPA) is the premier legislation for prevention of trafficking for commercial sexual exploitation.

Criminal Law (amendment) Act 2013 has come into force wherein Section 370 of the Indian Penal Code has been substituted with Section 370 and 370A IPC which provide for comprehensive measures to counter the menace of human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude, or the forced removal of organs.

Protection of Children from Sexual offences (POCSO) Act, 2012, which has come into effect from 14th November, 2012 is a special law to protect children from sexual abuse and exploitation. It provides precise definitions for different forms of sexual abuse, including penetrative and non-penetrative sexual assault, sexual harassment.



There are other specific legislations enacted relating to trafficking in women and children **Prohibition of Child Marriage Act, 2006**, Bonded Labour System (Abolition) Act, 1976, Child Labour (Prohibition and Regulation) Act, 1986, Transplantation of Human Organs Act, 1994, apart from specific Sections in the IPC, e.g. Sections 372 and 373 dealing with selling and buying of girls for the purpose of prostitution.

State Governments have also enacted specific legislations to deal with the issue. (e.g. The Punjab Prevention of Human Smuggling Act, 2012)

Linkage with Missing Children/ Persons

A Delhi High Court judgment highlighted that of the 44,000 children that are reported missing annually, only 11,000 get traced. The NHRC Action Research (2002-04) had brought out evidence to show linkages – that many missing children, though reported as missing, had indeed been trafficked. Taking into consideration these issues, the Supreme Court directed in 2013 that all missing cases be registered as FIR with a presumption that a missing child has been trafficked/ abducted. If the child is not traced in four months, the investigation should be

handed over to the Anti Human Trafficking Unit (AHTU). The order further directed that the AHTU should report progress of such cases to the District Legal Services Authority (DLSA).

Trafficked child victim is a “child in need of care and protection”

Any child found vulnerable or likely to be inducted into trafficking is a child in need of care and protection (CINCP) under Section 2(14)(ix) of the JJ Act, 2015. Such a child can be produced before the Child Welfare Committee (CWC) by any police officer or Special Juvenile Police Unit (SJPU) or officer of the District Child Protection Unit (DCPU), labour inspector, Childline, public servant, probation officer, Child Welfare Officer, social worker, public spirited citizen, nurse, doctor, or management of a hospital or nursing home, or by the child herself/himself. Rehabilitation and restoration/repatriation of a trafficked child will have to be in accordance with the JJ Act, 2015.



Offences relevant to trafficking of children

Under the IPC, the following provisions would apply to a case of trafficking for commercial sexual exploitation of a person below 18 years:

- Procurement of minor girl under 18 years – Section 366-A
- Importation of girl under 21 years from foreign country – Section 366-B
- Trafficking of minor – Section 370 (4)
- Trafficking of more than one minor – Section 370 (5)



- Punishment for repeat trafficker of minors – Section 370 (6)
- Exploitation of a trafficked minor – Section 370-A(1)
- Habitual dealing in slaves – Section 371
- Selling minor girl for purposes of prostitution – Section 372
- Buying minor girl for purposes of prostitution – Section 373

Under ITPA, the following provisions are relevant:

- Punishment for keeping a brothel or allowing premises to be used as a brothel – Section 3
- Punishment for living on the earnings of prostitution of a child – Section 4
- Procuring, inducing or taking child for the sake of prostitution – Section 5
- Trafficking/abetment of trafficking – Section 5B

- Person visiting brothel for sexual exploitation of trafficked victim – Section 5C
- Detaining a person in premises where prostitution is carried on – Section 6
- Prostitution in or the vicinity of public place in respect of a child – Section 7

While the POCSO Act, 2012 does not expressly use the term “trafficking”, according to Explanation III to Section 16, employing, harbouring, receiving or transporting a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any sexual offence under the Act would constitute aiding the offence and amount to abetment.

The following offences will be relevant to trafficking for commercial sexual exploitation under the JJ Act, 2015:

- Penalty for non-reporting a child found separated from guardian – Section 33
- Punishment for cruelty to child – Section 75. Under this provision, assault, abandonment, abuse, exposure or wilful neglect of a child or causing or procuring a child through such acts in a manner likely to cause the child unnecessary mental or physical suffering is an offence.
- Cruelty by person employed or managing an organization responsible for care and protection of child – Section 75, second proviso
- Disability caused due to cruelty – Section 75, third proviso
- Exploitation of child employee – Section 79
- Sale and procurement of children for any purpose – Section 81

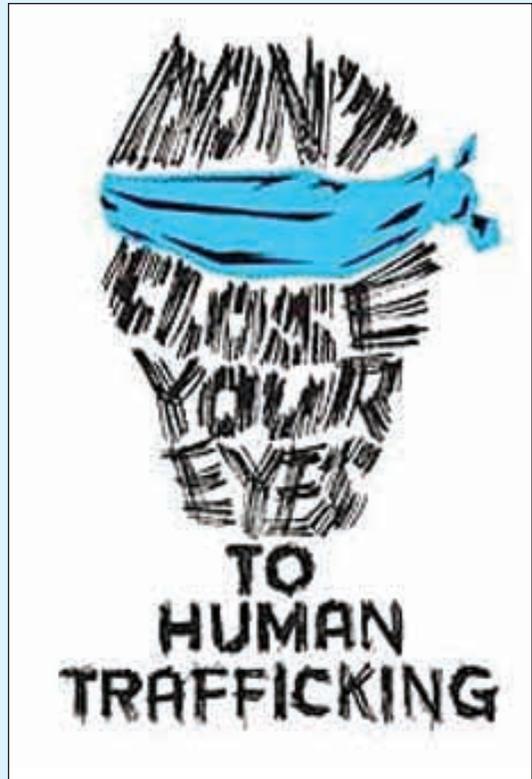
Under the Goa Children’s Act, 2003, exploitation of child for commercial sexual exploitation is an offence under Section 9(4).

Presumptions in Law

Under the ITPA, the ‘doctrine of presumption’ is a good weapon for preventing and combating trafficking by virtue of the fact that the specific provisions of presumption casts onus of proof on the accused. The relevant provisions are:

- 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, over 18 years of age, is proved to have exercised control, direction or influence over the movements of another person who is below 18 years of age, in such a manner as to show that he/she is aiding, abetting or compelling the other person to for prostitution, it shall be presumed that he/she is living on the earnings of prostitution of another person and is liable under Section 4 of ITPA.



- If a person is found with a child in a brothel, it will be presumed unless the contrary is proven that the person has detained the child in a premise where prostitution is carried on.
- If medical examination of a child or minor found in a brothel reveals sexual abuse, it will be presumed unless the contrary is proven that the child or minor had been detained in the brothel for the purpose of prostitution or was sexually exploited for commercial purposes.
- According to Section 6 (3) of ITPA, a person shall be presumed to have detained a woman or a girl 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.

Relevant authorities

Act	Investigation	Departments	Adjudication	Care & Protection, Rehabilitation
IPC	Police and special units like AHTU	Home	Sessions Court	CWC
ITPA	Special Police Officer/AHTU		Metropolitan Magistrate/ Judicial Magistrate of First Class	CWC
POCSO Act, 2012	Police/SJPU	Department dealing with Children	Special Court	CWC Special Court

Investigating authorities and their powers

- Under Section 370, IPC and other offences related to child trafficking, there is no legal prescription or restriction on the minimum rank of the investigator.
- Under ITPA, State Governments are required to appoint a special police officer not below the rank of an Inspector of Police in specified areas to deal with offences under the Act.
- Special Police Officers must be assisted by subordinate police officers including women police officers wherever practicable. Five leading social welfare workers including women workers can be associated with the Special Police Officer and advise them about questions of general importance about the implementation of the ITPA.
- Powers available to the Special Police Officer can be conferred by the District Magistrate upon any retired police officer not below the rank of Inspector before or retired military officer not below the rank of a commissioned officer, for specific cases or classes of cases or to cases generally.
- The Central Government can appoint police officers as Anti-trafficking police officers for investigating offences under the ITPA or under any other law for dealing with sexual exploitation of persons and committed in more than one State. These officers can exercise powers and discharge functions all over India. The Government of India has notified officers of the rank of Inspectors and above in CBI under this provision of law.

CHALLENGE: DETERMINING THE CORRECT AGE OF THE RESCUED VICTIM

One of the crucial pre - trial processes is Age Determination of the rescued person. This procedure often poses maximum challenges for a court due to multiple reasons, such as, victim giving wrong age and claiming that she is an adult (due to tutoring by the traffickers/ brothel keepers / managers / pimps); victim providing wrong name which hinders age determination from documentary sources during the Home Investigation / Verification procedure; absence of readily available documentary evidence; and victim genuinely not knowing her correct age due to illiteracy and absence of relevant records.

In the absence of documentary evidence regarding age of the victim, and as mandated under Section 15 (5A) of ITPA, the Magistrate may send her for medical examination, *inter alia* for the purpose of age determination. In some instances, the victim who looks to be a child / minor is declared to be an adult after medical examination. However, if the Magistrate still considers her to be a child / minor, s/he may send the victim for re-examination to determine her age correctly. After re-examination, if the doctor still holds the person to be an adult (and in the absence of any documentary proof to the contrary), the Magistrate may have to concur with the medical opinion.

RESCUE DOs AND DON'Ts

- Children are to be dealt with under the provisions of the JJ Act, 2015 also. Therefore, while rescue is going on, do segregate the children from the adult victims and proceed with them under JJ Act. They are children in need of care and protection and should therefore be produced before the Child Welfare Committee (CWC) set up under the JJ Act, 2015.



DOs



DON'Ts

- The police officers need to know beforehand as to where the Rescue Home is available. If there is a need for such Homes, it should be taken up with the concerned authorities. Of late many NGO's have set up such Homes. Keep a ready list of their address, telephone, contact person, etc.
- As and when the rescue is done, 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; along with the authorities under the JJ Act of 2015.
- Rescue party should have adequate number of vehicles so that the rescued persons could be transported without publicity and glare. Accused and suspected persons should never be allowed to mix up with the rescued persons.
- Search and seizure of all material evidence, including documents in the brothel, is an important job. This should be done at the first available opportunity so that evidence is not destroyed or made to disappear by anybody, especially the exploiters.
- Training of police officials on victim protocols is a pre-requirement to see that they are aware and sensitized to the issues concerned. A copy of this handbook, translated in the local language, would be an appropriate tool kit.
- Ensure accountability of all the officials taking part in the rescue. Brief them well in advance on all the points mentioned above and ensure compliance. Accountability demands appreciation of good work as well as condemnation of all wrong-doings, including acts of omission and commission. Utilize the services of reputed NGOs, as independent agency, to understand and assess how things are and were during the search so that appropriate steps could be taken accordingly.

POST RESCUE DOs AND DON'Ts

- 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 counsellors 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/ Section 15(6A) ITPA.

- There can be one or more statements u/ Section 161 and 164 Cr.P.C. 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 before the Magistrate (Section 17 ITPA).
- SPO can produce the rescued person before any Magistrate (Section 7 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 (Section 17 ITPA).
- Rescued children should be produced before the Child Welfare Committee (CWC) constituted under the JJ Act, 2015.
- During the pendency of verification, the child can be kept in a child care institution after obtaining orders from the CWC 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/ Section 17(5) ITPA; including following of the procedure under the JJ Act of 2015.
- For trauma counselling 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 Counselling Centres (FCC) available at certain police stations in certain states have trained counsellors whose services can be utilized.
- For legal counselling, 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 corporate offices) for rehabilitative steps.

Anti-Human Trafficking Unit (AHTU)

AHTUs have been setup by the government to prevent and combat human trafficking by the Police with the support of all concerned especially prosecutors, relevant govt. agencies and NGOs. AHTU is a task force with powers to collect intelligence, take up investigation of cases and file prosecution reports, as well as undertake other deterrent actions like eviction of places, etc. In certain states, AHTUs have been notified as a police station and therefore, they can register FIR as *suo motu* and proceed with investigation. In other states where they are not notified as police station, the superintendent police should get the case registered with the jurisdictional police station and thereafter get the case investigated by the AHTU. As per the configuration envisaged, every AHTU should have at least one NGO as its component. The SP of the district needs to ensure this.

Role of NGOs in Anti-human Trafficking

ITPA of 1956 envisages a large role of NGOs/ CBOs and social workers. Following are the some of the responsibilities that NGOs can perform: -

- **Advisory Body:** Under Section 13(3)(b) of ITPA, the State Govt. may notify a non-official advisory body of leading social workers to advise the SPO on questions 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:** Under Section 15 (2) of ITPA, the SPO should arrange two or more respectable persons of the locality to attend and witness the searches. NGOs are the appropriate agencies to be contacted by police in such situations. Out of the male and female accomplice, the male witness should be from the locality, whereas the female witness could be from anywhere, preferably a lady social activist. There should be a list of women activists and NGOs (ready reckoner) whose services can be called upon in such situations. NGOs have been given a legal right to be part of the rescue process.

- **Interviewing rescued/removed persons:** Under Section 16 (6a) of ITPA, any female 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:** Under Section 17(2) of ITPA, it is mandatory for the Magistrate to cause home verification of the rescued person before taking a final decision regarding her rehabilitation and to direct 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; as also under the JJ Act of 2015. In the case of child victims of trafficking, the CWC should call for a Social Investigation Report (SIR) based on which it can conduct inquiry and pass rehabilitation orders. The CWC can direct a NGO, Probation Officers, DCPU or Child Welfare Officers to conduct the SIR and submit a report.
- **NGOs to advise Magistrate on rehabilitation:** Under Section 17(5) of ITPA, the Magistrate may summon a panel of five respectable persons, three of whom shall be women, to assist him/her in taking decision in home verification and rehabilitation of the rescued person. In the case of children, all decisions related to rehabilitation will be taken by the CWC. It would be better that the CWC 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 provision 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.
- Private lawyers are allowed to assist prosecution and take up the cause of victim.

Prevention of Human Trafficking

Human trafficking can be prevented by concerted action. The following are some of the steps, which need to be considered:

- Law enforcement should be undertaken in an integrated manner with focus on prosecution (investigation and charge sheet, arrest etc. of all offenders), protection of the victim (restoration, repatriation, rehabilitation etc.) and undertaking preventive steps at source, transit and destination areas.
- Punishing the clientele and confiscating the illegal assets are important deterrents, leading to prevention.

- Vulnerability factors need to be identified and concerned development agencies notified to undertake timely action. Coordination with the DCPU is necessary as it has been vested with the responsibility of identifying families at risk and children in need of care and protection and assessing number of children in difficult circumstances.
- While undertaking rescue of missing persons, professional investigation should be done to locate the traffickers and to bring them to book.
- The database on traffickers and their modus operandi need to be carefully built in, updated and disseminated to the concerned law enforcement agencies.
- AHTUs need to be strengthened with adequate manpower, associating appropriate NGO and even Panchayat Raj Institutions for addressing demand as well as vulnerability.
- Empowering the youth to fight against human trafficking and to undertake steps in prevention can be an effective step in prevention. In order to associate the youth, anti-human trafficking clubs can be set up in the educational institutions as well as in the youth organizations like Nehru Yuwak Kendra, self-help groups and so on.

Rehabilitation of Trafficked Victims

Child Victims of trafficking may be rehabilitated both under the JJ Act as well as the ITPA although the JJ Act is the overriding law in respect of all matters relating to children in conflict with the law and children in need of care and protection. Under the ITPA Act, following a child's rescue, s(he) is to be mandatorily produced before a Magistrate who is required to conduct an inquiry with the help of a Probation Officer. The inquiry will assess the age, character and history of the victim as well as the suitability of her parents, guardian or husband for taking charge of her. The inquiry will additionally also look into the prospect of rehabilitation of the child.

During the period of inquiry, the Magistrate may place the child in safe custody, including in a Children's Home for a maximum period of three weeks. Post the enquiry, if satisfied that the child is in need of care and protection, the Magistrate may pass orders requiring the child to be placed in a Protective Home or in any other custody for a minimum period of one year and maximum period of three years. A Protective home refers to an institution set up by the Government under the ITPA for the purpose of care and protection of victims of trafficking.

FAQs

- **Should a male child found in a brothel be treated as child in need of care and protection or child in conflict with the law?**



While the manner of treatment would depend on the facts and circumstances of the case, a male child living in a brothel could be treated as a child in need of care and protection if they are being or are likely to be used for unconscionable gains, or are vulnerable and are likely to be inducted into drug abuse or trafficking or are likely to be abused, tortured, or exploited for sexual abuse or illegal acts. The Delhi High Court's decision in *Delhi High Court Legal Services Committee v. Union of India* (Crl. Rev. No. 443/2009 & Crl. M.A. No.3071/2010, Delhi High Court decision dated 12.08.14) is instructive. It was held that a child involved in trafficking should be treated as a child in need of care and protection.

- **Can a child be treated as child alleged to be in conflict with the law for allegedly trafficking a person for sexual exploitation?**

Section 8(3)(g), JJ Act, 2015, recognizes that a child in conflict with the law can also be a child in need of care and protection and enables the JJB to transfer the matter to the CWC and there is a need for both authorities to be involved. For instance, if the child alleged to have trafficked a girl for sexual exploitation is herself a victim of trafficking, such child could be treated a child in need of care and protection.

- **Can a child victim of commercial sexual exploitation be directly taken to the CWC if the police feel she is below 18 years, or does she have to be produced before the Magistrate first?**

A child victim of commercial sexual exploitation should be produced before the CWC in accordance with the JJ Act, 2015 as such a child falls within the ambit of a child in need of care and protection.

- **The rescued person says that she is 19 years, whereas, the police feel that she is below 18 years. Age verification may take some time. Can the police make the presumption that she is a 'child'/'minor' and take action accordingly?**

Yes, such a presumption can be drawn and the child can be produced before the CWC. The CWC can then undertake the age determination process.

- **If a child victim is rescued by an NGO and is directly produced before the CWC, will the CWC direct the NGO to take the child victim to the police for registering FIR or will the CWC attend to the child? If so, what steps will be taken?**

The child victim could be placed in a Children's Home or a fit institution and the NGO could be asked to lodge a FIR. It is not necessary for the child victim to be taken to the police station. Upon the registration of the FIR, the police could visit the Child Care Institution in which the child is placed to record the child's statement.



About Tharuni

Tharuni is an organisation working for the welfare of adolescent girls and young women since 2000. It aims at creating equal rights and opportunities to women on par with men. Tharuni has been fighting against the evils of Child Marriage, Trafficking & Child Labour ever since its inception.

With the formation of Balika Sanghas, it has been able to empower the lives of 13,000 adolescent girls and was able to stop hundreds of Child Marriages by playing a key role in bringing policy level changes.

Tharuni could save children from working in Ginning Mills and Brick Kilns in Warangal. While continuing to impart life skills to adolescents, it has been able to reduce illegal trafficking of children.

Tharuni is the Technical Partner of Bharosa – An Integrated Support Centre for Women & Children, an initiative by Hyderabad City Police. It provides a host of services from Legal, Medical, Psychotherapeutic and Prosecutorial to women & women who are victims of violence.

In collaboration with Terre des Hommes-Netherlands, Tharuni is currently leading the implementation of Girls Advocacy Alliance to safeguard Child Rights in the State of Telangana.

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