



ANDHRA PRADESH AND TELANGANA TRAINING MANUAL

**FOR
JUDICIAL OFFICERS AND PROSECUTORS
ON
VICTIM FRIENDLY JUSTICE SYSTEM
IN
TRAFFICKING OF PERSONS RELATED CRIMES**



Prajwala, 2018

Year of Publication: 2018

A publication of Prajwala, Hyderabad

Survey No. 64/2, 65/3,
Basavaguda Road,
Mankhal (Vill & Post),
Maheshwaram (Mandal),
Ranga Reddy (Dist),
Telangana State - 501 359
praj_2010@yahoo.com

Disclaimer

Prajwala has developed this document for Project “Combating Trafficking in Persons Through Victim-Centered Approaches in India”, of Catholic Relief Services (CRS).

This manual was funded in part by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the authors and do not necessarily reflect those of the United States Department of State.

Designed by:

Parrot Communications

www.parrotcommunications.com

Printed at:

Pragati Art Printers

www.pragati.com

TABLE OF CONTENTS

FOREWORD	i
FOREWORD	iii
PREFACE	v
FROM THE AUTHOR'S DESK	vii
INTRODUCTION TO THE TRAINING MANUAL	1
3 Days Session Plan	3
MODULE 1 - THE CONTEXT OF TRAFFICKING OF PERSONS	7
Training Methodology	8
Resource Material for Module 1	20
MODULE 2 – CONCEPTUAL CLARITY ON TRAFFICKING OF PERSONS	33
Training Methodology	34
Resource Material for Module 2	39
MODULE 3 – THE LEGAL FRAMEWORK OF TRAFFICKING OF PERSONS	63
Training Methodology	65
Resource Material for Module 3	70
MODULE 4 – PROSECUTION OF TRAFFICKING OF PERSONS CASES - PRE-TRIAL PROCEDURES	103
Training Methodology	104
Resource Material for Module 4	116
MODULE 5 – PROSECUTION AND TRIAL PROCEDURES OF TRAFFICKING OF PERSONS CASES	171
Training Methodology	172
Resource Material for Module 5	182



Foreword

“The secret of greatness is simple: Do better work than any other man in your field – and keep on doing it”

said Wilferd A Peterson.

Justice – Social, economic and political as enshrined in the preamble of our Constitution can only become a reality if the legitimate rights of the victims of crime are protected through an uncompromising justice delivery system. Courts cannot claim to have done justice only by convicting the criminals. To justify such a claim courts should do justice also to the victims. Doing justice to the victim involves adopting of victim friendly atmosphere in the Courts, understanding the nuances and agony of the victims, and extending helping hand to them through providing sufficient security, food and shelter and ultimately granting them compensation from the wrong doers and the State depending upon the facts and circumstances.

The Courts, overloaded with cases find no time to look at the plight of the victim. The offenders go scot free due to lapses in investigation and the poor victims are left helpless and hopeless. Law has become more dynamic providing all suitable solutions to very pertinent and burning questions relating to criminology.

The training manual titled **“Telangana Training Manual for Judicial Officers and Prosecutors on Victim Friendly Justice System in Trafficking in Persons related crimes”** in my opinion is a right step towards combating human trafficking in women and children. The scheme of the book and the five modules speak for themselves. These five modules are sure to develop the skills of the duty holders i.e., the Judicial Officers and Prosecutors in addressing the core issues and providing good remedies to the questions that come before the Courts of Law while dealing with the cases concerning trafficking. The documentaries **“One life - no price”** and **“Anamika - the nameless”** are heart touching and soul stirring. The

author succeeded in covering all major fields touching victim protection. The language is simple and the content is clear.

I am immensely happy that this work is the outcome of the joint efforts of Prajwala and A.P Judicial Academy. I congratulate Smt. Sunitha Krishnan, a pioneer in the field of protection of rights of victims of trafficking and destitute children for being instrumental in bringing out this book. I also compliment Smt C. Sumalatha, the Director of A.P Judicial Academy for extending her support in preparing the module.

I am confident that this work would satisfy the inquisitive minds of trainers, trainees and professionals of all cadres. I hope the Bench, Bar and the Police Department will find the book useful to reach their ultimate goal.


JUSTICE C.V. NAGARJUNA REDDY



PRAJWALA

PREFACE

Trafficking of Persons brutally violates the human rights of victims, who may be men, women and children. It is also an intensely complex issue, with no straight solutions and answers. The Government of India, comprehending the need for a consistent and harmonized approach, is trying to find solutions through a new legislation on human trafficking; by amending and strengthening the older legislations, which directly or indirectly impact this crime; in setting up specialized Anti Human Trafficking Units (AHTU) at the level of the police station with a specialized team of police officers as the first responders to the crime; creating a compensation scheme for rehabilitation of victims; and through training and capacity building of law enforcement machinery.

This Training Manual is an attempt to strengthen the efforts of judicial officers and prosecutors in combating human trafficking in the State of Andhra Pradesh and Telangana. The Manual is written bearing in mind the end-user, as a practical implementation tool, rather than merely as an academic document.

Although written primarily for implementation in 2 States, this Manual is useful for training to be conducted in any other State.

The Manual seeks to build knowledge and awareness, tackling issues related to any bias or prejudice vis-à-vis trafficking victims, and building understanding on the effective way of implementation of the laws on human trafficking.

The starting premise in drafting of the Manual is done believing that the judicial officers and prosecutors are already trained in dealing with prosecution and trial of all crimes. This Manual therefore, exclusively seeks to focus on trafficking related prosecutions and trial, with a strong victim-centred approach. The victim has been kept as a pivot around which the entire Manual has been drafted. All actions of the judicial officers and prosecutors in this Manual are focused on the victim, not treating her merely as a witness to her own crime, but taking all actions to protect and nurture the victims – towards their effective rehabilitation as the end-goal.

FROM THE AUTHOR'S DESK

Globally, millions of children, women, and men are victims of human trafficking for sexual, forced labour and other forms of exploitation. The crime of Trafficking of Persons impacts on a wide range of law enforcement and development issues - from poverty to social inclusion, from law enforcement to justice and rule of law issues, and thus has relevance for criminal justice practitioners as well as those of the development community.

Human trafficking in its various forms continues to offer significant challenges for judicial officers and prosecutors. There is a growing need for strengthened judicial and prosecutorial responses associated with the prosecution and trial of human trafficking crimes, and the protection of victims - with a wide-ranging focus on a victim-centred approach.

One strategy for a forceful and vigorous response by the justice delivery system is through training of judicial officers and prosecutors – thereby, strengthening knowledge, building capacity and skills, and fostering appropriate attitudinal orientation vis-à-vis interface with the victims. This Training Manual seeks to provide training institutions with hands-on and practically applicable resource material, as well as adult-learning oriented training methodology to be used in conducting training programmes for judicial officers and prosecutors – focusing on all actions with a victim-centric perspective.

I remain eternally hopeful that the Training Manual would be functional instead of theoretical, and will be useful towards - bringing about effective prosecutions in human trafficking cases.

I place on record my deepest appreciation for the guidance received from Dr. Sunitha Krishnan in envisioning this document in its present form and providing all technical inputs and finer nuances in its drafting. I also thank all Technical Advisory Group members for their committed and constant support, feedback and advise during the drafting process.

I am immensely grateful to Prajwala for the opportunity afforded to me to draft this Training Manual for Judicial Officers and Prosecutors and contributing a tiny bit in ensuring justice for victims of human trafficking.

Dr. Geeta Sekhon

Guidelines for using the Manual

This Manual has 5 Modules, each written chronologically to develop understanding and skills on dealing with crimes of human trafficking. The first three Modules strive to build conceptual clarity on the crime of trafficking and the legal framework of dealing with it; and the next two Modules are written in a process-driven approach – that is, the pre-trial procedures; and the prosecution and trial procedures of Trafficking of Persons' cases.

Each Module is divided into two sections – the first provides the '**Training Methodology**', outlining a set of Activities for the trainer on how to deliver the content, which is provided in the second section, which is the '**Resource Material**' for that particular Module. The Activities are drafted keeping in view adult-learning methodologies - working on case studies, presentations by the participants, group and open discussions, power-point presentations, using audio-visual mediums, exercises, and questions and answer sessions between the trainer and the participants. The trainees will be required to be active participants in the training, rather than being passive recipients of information being imparted by the trainer.

Each Module is a stand-alone source of resource material, but linkages and cross-references are drawn at relevant places, as and when required.

Guidelines for the Training Agency

Some important pointers for the Training Agency as the training is being planned on the basis of this Manual are –

1. Training Environment and Facilities – should be chosen with care keeping in view the creation of a conducive environment for learning and experience sharing. The training venue should make available adequate space for case study solving by participants in different groups, and creating practical demonstrations on certain subjects. Ensure that all training material and equipment is available for projecting power-point presentations, showing films, etc. during the training.

2. Selection of Trainers - The Training Agency may consider the following pre-requisites in choosing appropriate Trainers -

- In depth knowledge of substantive and procedural aspects of the Modules assigned to them.
- Previous practical experience in dealing with trafficking cases of any kind.
- Understand the specific requirements of adult learning and training.
- Effective communicator.
- Flexible in using different training methodologies.
- Committed to devoting the required time for training.
- Prior experience of training on human trafficking.

A multi-disciplinary, victim-focused approach is the key principle of this training. To be effective, the Training Agency should involve not just judicial officers and prosecutors as trainers, but also police, labour department officials, NGOs, forensic experts, lawyers and counselors.

It is essential that all trainers are informed in advance the respective Modules that they are expected to

cover. Provide the full Manual with all Modules, so that –

- The trainer is well acquainted with the resource material and the training methodology to deliver the Module.
- The trainer knows the other Modules and what the other trainers would cover, which prevents overlap of the same information being conveyed.

3. Selection of Trainees - The most important criteria for selecting trainees should be officials–

- Assigned TIP cases for prosecution and adjudication;
- Representing districts with high number of trafficking cases;
- Special Public Prosecutors under the Protection of Children from Sexual Offences (POCSO) Act, 2012;
- Judicial officers and Prosecutors of the Special Court under ITPA, 1956;
- Any other official for whom the training would be relevant.

Guidelines for the Trainers

It is sometimes correctly said, “a training is as good as the trainer”. The trainer should not only be someone who can convey information, but a multi-dimensional personality, who can make the session interesting, participative, motivational and create a sense of empowerment in the trainees.

To conduct training on a difficult and complex subject of human trafficking, it is essential for the trainer to allow participants to raise questions, voice concerns, discuss challenges, and provide solutions. Value all opinions, be open to discuss all viewpoints logically and cogently, avoid being judgmental of the questions raised by participants or the views held by them, encourage mutual respect during discussions so that all views are heard, howsoever, controversial they may be.

Some of the steps in planning an effective training are –

1. **WHY** - Know the aims and objectives of the training, and what is sought to be achieved through it. What are the learning needs of this group of participants?
2. **WHO** – Be well informed on who are the recipients, the beneficiaries, the participants, and why have they been selected for the training. What is the profile of the trainees, which will decide what are their requirements from this training?
3. **WHAT** – Be informed of the available content, and the time frame within which it is to be delivered. Avoid overlaps of content from other Modules, to prevent repetition.
4. **HOW** – Training methods that are most suitable for this group of participants should be chosen, which are aligned with adult learning and training. Try and use mix-and-match methods of training, such as, lectures, group discussions, Q&A, role play, games, energizers, case studies, practical demonstrations, etc., to break the monotony of power point presentations and lectures.

Note for the Trainers – The training will involve professionals, and a challenge at every training programme is how to handle questions of lack of infrastructure, lack of human and other resources, etc. in fighting human trafficking. Whilst the trainer should provide space for such discussions on the challenges faced by the professionals in their work, with special respect to anti trafficking responses, the discussions should not become self-limiting, and disempowering. The training should be empowering and inspiring for the trainee, and solutions could be found through experience sharing on how someone else had handled an equally challenging situation.

3 Days Session Plan

The timetable of training is based on 0900 hours to 1730 hours working day (total of 8 and a half hours). The timings of the Session Plan may be modified and customized by the Training Agency as per local requirements, and as per the routine of the Training Agency.

Prior to the formal commencement of training, the registration of participants and distribution of training kits may be completed.

DAY 1		
TIME	MODULE AND ACTIVITY	TRAINER
0900 - 1000	Inauguration of the Training Programme	Training Coordinator
1000 - 1045	Introduction of Participants Ice-Breaking Exercise Setting Ground Rules of Training Brief Review of the Training Programme and Resource Material	Training Coordinator
1045 - 1100	Tea Break	
1100 - 1330	Module 1 - The Context of Trafficking of Persons (Total time – 2 Hours 30 Minutes)	Name of Trainer
1330 - 1430	Lunch Break	
1430 - 1530	Module 2 – Conceptual Clarity on Trafficking of Persons (Total time – 2 Hours 30 Minutes)	Name of Trainer
1530 - 1545	Tea Break	
1545 - 1725	Module 2 – Conceptual Clarity on Trafficking of Persons (Contd.)	Name of Trainer
1725 - 1730	Brief Review of Activities of Day 1 and Information on Day 2	Training Coordinator
DAY 2		
TIME	MODULE AND ACTIVITY	TRAINER
0900 - 0905	Recap of Day 1 and Overview of the Schedule of Day 2	Training Coordinator
0905 - 1100	Module 3 – The Legal Framework of Trafficking of Persons (Total Time – 5 Hours)	Name of Trainer
1100 - 1115	Tea Break	
1115 - 1330	Module 3 – (Contd.)	Name of Trainer

1330 - 1430	Lunch Break	
1430 - 1515	Module 3 – (Contd.)	Name of Trainer
1515 - 1530	Tea Break	
1530 - 1730	Shelter Home Visit (Total Time – 2 Hours) Brief Review of Activities of Day 2 and Information on Day 3	Training Coordinator
DAY 3		
TIME	MODULE AND ACTIVITY	TRAINER
0900 - 0905	Recap of Day 2 and Overview of the Schedule of Day 3	Training Coordinator
0905 - 1100	Module 4 – Prosecution of Trafficking of Persons Cases - Pre-Trial Procedures (Total Time – 3 Hours)	Name of Trainer
1100 - 1115	Tea Break	
1115 - 1215	Module 4 – (Contd.)	Name of Trainer
1215 - 1330	Module 5 -Prosecution and Trial Procedures of Trafficking of Persons Cases (Total Time – 3 Hours)	Name of Trainer
1330 - 1430	Lunch Break	
1430 - 1530	Module 5 – (Contd.)	Name of Trainer
1530 – 1545	Tea Break	
1545- 1615	Module 5 – (Contd.)	Name of Trainer
1630 - 1730	Closing Ceremony	Training Coordinator

MODULE

1

THE CONTEXT
OF
TRAFFICKING
OF PERSONS

MODULE 1 - THE CONTEXT OF TRAFFICKING OF PERSONS

Module Goal

To strengthen the ability of judicial officers and prosecutors in understanding the background and context of trafficking in persons in their State.

Time: 2 Hours and 30 Minutes

Session Plan:

Sr. No.	Topic	Objectives of Module 1	Resource Material	Time
1.1	<p>The Background</p> <p>1.1.1 The Global Scenario of Trafficking in Persons</p> <p>1.1.2 The National Scenario of Trafficking in Persons</p> <p>1.1.3 The State Specific Scenario of Trafficking in Persons in Andhra Pradesh and Telangana</p>	<p>Know the background and context within which trafficking takes place internationally, nationally and within the State.</p>	<p>Refer 1.1, 1.1.1, 1.1.2 and 1.1.3</p> <p>Handout of state specific scenario of trafficking</p>	<p>90 min</p> <p>(1.1.1 + 1.1.2 - 20 min)</p> <p>(1.1.3 - 20 min)</p> <p>(Root causes of TIP - 20 min)</p> <p>(Crime figures - 10 min)</p> <p>(Movie - 20 min)</p>
1.2	<p>What is Trafficking in Persons?</p>	<p>Comprehend the meaning and legal definition of trafficking as given in the Indian Penal Code and Immoral Traffic (Prevention) Act, 1956.</p>	<p>Refer 1.2</p>	<p>20 min</p>
1.3	<p>Process of Trafficking</p>	<p>Know the entire process and different stages of trafficking of a victim for exploitation.</p>	<p>Refer 1.3</p>	<p>20 min</p>
1.4	<p>Myths and Misconceptions vis-à-vis Realities of Human Trafficking</p>	<p>Clarify the fundamental issues connected to trafficking and the myths associated with TIP.</p>	<p>Refer 1.4</p> <p>Handout on myths versus realities</p>	<p>20 min</p>

Training Methodology

Activity 1: Open discussion on the Background to Human Trafficking at the International and the National Level

Objective of the Session	To make the participants know the international and national scenario with respect to TIP, so as to set the background for further discussions on the situation of human trafficking in the state.
Estimated Time	20 Minutes
Methodology	Open discussion
Material Required	Handout of the Background from the reading material Charts and markers
Expected Outcome	This session will enable the participants to understand the general situation of trafficking at the international and national level.

Process for the Trainer

Step 1: Ensure that the Handout of the Background sourced from the Reading Material is already provided to the participants in their training material kit. The Trainer may add any other elements as desired in presenting the background of the State.

Step 2: Prepare a few slides of the content (provided below) and present in a Power Point presentation to be used for discussions.

The image shows two presentation slides side-by-side. The left slide is titled "International and National Scenario on TIP" and has a small number "1" in the bottom right corner. The right slide is titled "The Global Scenario of TIP" and contains a bulleted list of five points. Below the list, it cites the source as "United Nations Office on Drugs Crime Global Report on Trafficking in Persons of 2016" and has a small number "2" in the bottom right corner.

International and National Scenario on TIP

The Global Scenario of TIP

- No country is immune from trafficking in persons
- Profile of victims
- Victims and traffickers often have common background
- Trafficking is done for many exploitative purposes
- Conflict increases trafficking
- Children remain the most vulnerable to trafficking

Source: United Nations Office on Drugs Crime Global Report on Trafficking in Persons of 2016

The National Scenario of TIP

- India is a source, destination, and transit country for men, women, and children subjected to forced labour and sex trafficking.
- Traffickers use false promises of employment or 'boyfriend' relationship, or arrange sham marriages and lure women and girls into sex trafficking.
- Traditional brothel based prostitution is reducing and forced prostitution in small hotels, vehicles, massage parlours, beauty parlours, and primarily in private residences is increasing.

3

- Online and cyber crime element of TIP is escalating due to the anonymity it provides to the traffickers.
- Forced/ bonded labour or debt bondage exists in many sectors - brick kilns, rice mills, agriculture, and embroidery factories, construction, steel, and textile industries, wire manufacturing for underground cables, biscuit factories, pickling, floriculture, fish farms, and ship breaking, and domestic servitude.

4

- Indian migrants who willingly seek employment in the Middle East and, GCC countries face forced labour, often following recruitment fraud and exorbitant recruitment fees charged by agents and brokers.
- Crime in India Report of 2016 and other reports from NGOs have shown that some States are only source or destination areas for victims; whilst some are source-transit-destination for trafficking in persons.

5

Step 3: Hold a discussion with all the participants, asking them to express their views on the following questions:

- What do you think is the magnitude of TIP internationally?
- What do you think is the magnitude of TIP at the national level?
- Why does TIP affect almost all countries, developed as well as developing economies?
- Is a high rate of economic growth a guarantee against human trafficking? Which other factors can make people vulnerable to trafficking, despite good levels of prosperity?

Step 4: Note down the points made by participants on a chart in bullet point format to collate the whole discussion.

Step 5: Sum up the discussion and conclude by informing the participants that this is the foundational knowledge based on which the entire human trafficking situation should be understood in the State.

Activity 2: Open Discussion on situation of trafficking in the States

Objective of the Session	To enable participants to understand the situation of human trafficking in their State.
Estimated Time	20 Minutes

Methodology	Open discussion
Material Required	Flip chart and marker
Expected Outcome	This session will enable the participants to map out the entire situation and context, geography, demography and economy of their State, within which human trafficking takes place in their State.

Process for the Trainer

Step 1: Keep the map of your State with its districts on display on a chart or slide. Keep another map of India to show the movement of persons from different districts in your State to other states for trafficking. Whilst discussing the source, transit and destination areas, call for a volunteer participant to chart the routes with a pen on the map.

Step 2: Conduct this session in a question answer format discussion with participants on the basis of the following questions –

- What do you think is the relevance of the geography of your State and the surrounding States in understanding the movement of people for purposes of trafficking?
- Can you explain what is the impact on vulnerable populations, such as the Scheduled Castes and Scheduled Tribes OR the large proportion of the population living in rural areas that do not get work throughout the year?
- Is only the poor and rural population more vulnerable to trafficking in the State?
- Is a high rate of economic growth a guarantee against human trafficking? Which other factors can make people vulnerable to trafficking, despite good levels of prosperity?
- What are the different forms of trafficking seen in the State?
- Are there any new emerging forms of trafficking, such as, cyber trafficking, etc.?
- What are the source areas from where victims are ‘recruited’?
- Which are the new emerging ‘Hot Spot’ source areas for recruiting victims?
- What are the trafficking routes from where traffickers take victims to different destination areas?
- What are the destination states/ cities/ areas where victims are taken for exploitation?
- What is the *modus operandi* of traffickers? How and where do they approach victims?
- Which are the new emerging types of *modus operandi* for recruiting victims by traffickers?
- What are the specific reasons for vulnerability to trafficking in the State?
- Are women and children more vulnerable to human trafficking in the State?
- According to the participant’s personal experience, what is the – victim’s profile, age, gender, and background – which makes them vulnerable to trafficking?
- Are there any newly emerging social-economic-psychological reasons of vulnerability of victims, such as physical, social, financial, psychological, etc.?

Notes for the Trainer

Encapsulate for the participants that building a comprehensive understanding of the specific situation of trafficking in their State, will sharpen their responses and will help them better identify the ‘hot spot’ vulnerable areas, the potential and actual victims, the traffickers, and their *modus operandi*.

Activity 3: Exercise on Mapping the Root Causes of Trafficking in Persons

Objective of the Session	To enable participants to understand the root causes and vulnerability factors of trafficking in their State.
Estimated Time	20 Minutes
Methodology	Open discussion
Material Required	Flip chart and marker
Expected Outcome	This session will enable the participants to formulate the 'push' and 'pull' factors creating vulnerabilities for trafficking.

Process for the Trainer

Step 1: Prepare a chart prior to the session, with the following picture drawn on it.



Step 2: Request the participants to provide root causes of human trafficking and note them on the roots of the tree.

Step 3: When all reasons are collated, read the reasons and ask participants to list them in order of priority. Following are some of the reasons, which may emerge during discussions. These are, illustrative and not exhaustive: -

1. Poverty
2. Illiteracy
3. Unequal distribution of wealth, employment and livelihood options
4. Increase in demand for children for purposes of labour and sexual exploitation
5. Political instability / natural disasters
6. Uneven law enforcement and implementation
7. And some more ...

Notes for the Trainer

When concluding the exercise, emphasize that whilst poverty may emerge as the predominant cause for trafficking, it is not necessarily the only basis and the Trainer may discuss the possibility for 'abuse of power' by the perpetrator of the 'position of vulnerability' of a potential victim. The

need to look beyond poverty alone as the prime cause should be stressed by the Trainer; and the emerging aspirations of people and societies along with other factors need to be emphasized.

Activity 4: Power point Presentation and Open discussion on the Crime Scenario of Trafficking in Persons in the State

Objective of the Session	To enable participants to know the crime statistics for human trafficking from their State.
Estimated Time	10 Minutes
Methodology	Open discussion
Material Required	Slide from Power Point presentation
Expected Outcome	This session will enable the participants to question whether the crime data is an accurate reflection of the extent of trafficking in the State.

Process for the Trainer

Step 1: Prepare the following slides in a power point presentation and show to the participants.

Crime Scenario of Trafficking in Persons in the States of Andhra Pradesh and Telangana

1

**National statistics on TIP
National Crime Record Bureau,
Crime in India, 2016**

- Total cases of TIP in 2016 - 8,132
- Total number of victims trafficked - 15,379
- Female victims - 10,150
- Male victims - 5,229
- Total number of victims below the age of 18 years - 9,034
- Total number of rescued victims - 23,117 (rescued persons may include persons trafficked in previous year also since victims rescued are more than victim trafficked during the year)

2

Crime in India, 2016

No. of cases for different forms of trafficking in Andhra Pradesh

Forced Labour	Sexual Exploitation for Prostitution	Other forms of Sexual Exploitation	Domestic Servitude	Forced Marriage	Petty Crimes
2	736	11	36	0	3

3

Crime in India, 2016

No. of cases for different forms of trafficking in Telangana

Forced Labour	Sexual Exploitation for Prostitution	Other forms of Sexual Exploitation	Domestic Servitude	Forced Marriage	Petty Crimes
0	314	7	0	1	0

4

Step 2: Pose the following questions to the participants –

- Do the TIP crime statistics reflect the correct reality of the situation in the State?
- Are these numbers accurate or under-reflect the true extent of the crime?
- What is the reason for less reporting of the TIP crimes?
- Can anyone share an experience of a victim's/ parents' unwillingness to file a complaint against the trafficker?

Step 3: Conclude the discussion by emphasizing that cases of trafficking are often under-reported due to multiple reasons, such as, fear of retaliation by the traffickers; social stigma; lack of faith in institutions; and others. Highlight that it is the responsibility of all concerned, including law enforcement agencies, to build trust among communities so that victims/ parents/ guardians can come forward to lodge complaints against their exploiters.

Activity 5: Screening of documentary film - “One Life ... No Price”

Objective of the Session	To enable the participants to summarize and capture the contents of Module 1 through and audio-visual medium.
Estimated Time	20 Minutes
Methodology	Audio-Visual, Group Discussion
Material Required	Projector, Laptop Speakers, Extension box, Movie CD “One life No Price”, Chart and Marker
Expected Outcome	The participants will have an understanding of all the sub-topics covered within this Module and will clarify any doubts from the previous discussions.

Process for the Trainer

Step 1: Screen the documentary film.

Step 2: Conduct a general open discussion by asking participants of their understanding of the film and the elements from it that were common to the sub-topics covered within the Module.

Step 3: List in bullet points the discussions of participants.

Step 4: Sum up the movie along with the key points covered in this Module.

Activity 6: Draw a table of the elements of the definition of trafficking in persons

Objective of the Session	To develop in the participants a basic understanding of the definitions in Indian Penal Code and Immoral Traffic (Prevention) Act, 1956 of trafficking in persons.
Estimated Time	20 Minutes
Methodology	Collective activity
Material Required	Charts and markers, chits for activity

Expected Outcome

This session will enable the participants to know the criminal activities and the elements that are required to prove the crime of trafficking.

Process for the Trainer

Step 1: Take 3 flip charts and give each chart the following three headings –

- Activities
- Means/ Methods
- Purpose/ Reason

Trafficking in Persons		
Activities	Means/ Methods	Purpose/ Reason

Step 2: Prepare the following stick-on chits in advance with the following word/ group of words on each chit -

Recruits – Transports – Harbours – Transfers - or Receives, a person or persons -

Using threats - Using force, or any other form of coercion – abduction – fraud - deception- abuse of power - inducement - giving or receiving of payments or benefits - achieve the consent of any person - prostitution - other forms of sexual exploitation - forced labour or services - slavery - practices similar to slavery – servitude - forced removal of organs.

Step 3: Distribute the stick-on chits among the participants at random.

Step 4: Ask the participants to start placing the chits according to the 3 elements of trafficking on the respective charts – (1) Activities, (2) Means, and (3) Purpose.

Step 5: Show the following table in a slide in a power point presentation –

**Trafficking in Persons
Definition
Sec. 370, IPC**

1

Key Elements	Sec. 370, IPC
Purpose (any of these) – Why they do it	Exploitation - prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

2

Key Elements	Sec. 370, IPC
Means/ Methods (any of these) – How they do it	Using threats or; using force, or any other form of coercion, or; by abduction, or; by practising fraud, or deception, or; by abuse of power, or; by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received.

3

Key Elements	Sec. 370, IPC
Activities (any of these) – What traffickers do	Recruits, Transports, Harbours, Transfers, or Receives, a person or persons.
The “consent” of the victim is immaterial in a determination of the offence of trafficking.	

4

Step 6: Show the definition of Section 370A, IPC on a slide -

Sec. 370A - Exploitation of a trafficked person - (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by 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 which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

Step 7: Inform the participants that IPC has a specific provision on punishing a person who employs a trafficked person/ child for labour.

Step 8: Show the definition of Section 5 of the Immoral Traffic (Prevention) Act, 1956 (ITPA, 1956) on a slide -

5. Procuring, inducing or taking person for the sake of prostitution - (1) Any person who -

(a) procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or

- (b) induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
- (c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; or
- (d) causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section, -

- (i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and
- (ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.

[2] (2) [**** **]

(3) An offence under this section shall be triable, -

- (a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or taken such persons made; or
- (b) in the place to which she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.

Step 9: Inform the participants that the definition of human trafficking existed in Indian laws since 1956 under the ITPA.

Step 10: Narrate to the participants the following example –

Asha tells Beena to send her daughter Seema, age 15 years, to Delhi to work in a house and earn money. Asha promises a monthly salary, food, clothes and education for Seema. Beena sends Seema with Asha to Delhi. After few months, Seema is rescued by an NGO from a house where she was working as a domestic helper. When the police questions Asha, she says – “both Beena and Seema ‘consented’ to her offer and Seema willingly went with her to Delhi”.

Step 11: Ask the participants – what role does **CONSENT** play in determining the crime of trafficking?

Step 12: Sum up the elements of trafficking by drawing attention of the participants to the table on the slide above.

Notes for Trainer

The Trainer should inform the participants about the legal definition of TIP, which was included in the IPC in 2013, as Sections 370 and 370A. The 3 key elements of the offence should be pointed out – **The Means, The Method, and The Motive**. Recount the definition under Section 5 of ITPA, 1956. At this stage of the Module, introducing the definition, its elements and the meaning of TIP, would be adequate; as the detailed legal framework with the offences and penalties would be covered in Module 3.

Activity 7: Case Study and Open Discussion

Objective of the Session	To assist participants in comprehending the various stages of human trafficking.
Estimated Time	20 Minutes
Methodology	Open discussion
Material Required	Case study
Expected Outcome	This session will enable the participants to understand the entire process of trafficking, from recruitment to exploitation.

Process for the Trainer

Step 1: Distribute the case studies hand out.

Step 2: Ask the following questions to the participants –

- Is this a case of trafficking?
- What are the different stages of trafficking – which is the Source – Transit – and Destination areas in this case?
- Can the trafficker/ offender be charged at all stages of trafficking?

Notes for Trainer

The trainer should inform the participants about the three stages of TIP, the different processes through which the victim is taken for the different purposes of exploitation, and the involvement of different offenders playing distinct roles in the entire process. The trainer should highlight, that legally, each of the three different stages are stand-alone offences by themselves, and that an offender can be charged for committing crimes for any activity related to trafficking; detailed aspects of which would be discussed in Module 3.

Case Study on Trafficking for Domestic Work

Dhanya is a 12 years old girl who lives in Narsingapur village of Mahabubabad District with her parents. She is the eldest of all brothers and sisters and her parents are farm labourers. The family manages to eat one meal a day, and when there is no work on the farm, the family sleeps hungry.

One day, a neighbour's relative Bhagyalakshmi who lives in New Delhi comes to visit Dhanya's mother. Bhagyalakshmi offers to take Dhanya to New Delhi so that she could work there in a house as a domestic help. Bhagyalakshmi promises education and few hours of work in a household, thus assuring the parents that Dhanya will be well taken care of. That way she can earn and send more money home so that her younger brothers and sisters can get educated and there will be enough food in the house. Bhagyalakshmi also said that if the employers are good, they will send Dhanya to study in a school.

Bhagyalakshmi and Dhanya board a bus from her village, reach Visakhapatnam, stay the night in a hotel, and the next day take a train to go to New Delhi. From New Delhi railway station, they both go to Guru Gram where Dhanya is taken to a building and she starts working there on the 12th floor.

Dhanya works long hours caring for the entire house. She never received any salary in hand and was informed that her entire salary for the month was being sent to her parents directly in the village after deducting amounts paid for her food and other essentials. Dhanya worked 14 hours a day with very little rest and break in between. She was never enrolled or sent to any school. She was often beaten for mistakes made during household work. One day the lady of the house burnt her with a hot pan. Dhanya was found outside the building complex by a security guard, with severe burn marks, who then decided to take her to the hospital. The hospital authorities reported the matter to the police.

Case Study on Sex Trafficking

A 20 year-old young woman Mehrunnisa, lives in a Karimnagar and looks after her home and siblings. Her mother has died and her father is a construction worker who can barely earn enough money for food and other provisions. He drinks often and comes home and beats Mehrunnisa and her 3 other sisters over trivial issues. Mehrunnisa was made to drop out of school in class V, when her mother died.

A young man, Raja who has come to stay as Mehrunnisa's neighbour, tells her that he is in love with her, and intends to marry her. To Mehrunnisa, this is a dream come true, because her family is very poor and cannot provide very much for her. Mehrunnisa also sees her marriage as a way of escaping her father's torture and abusive behaviour. Raja proposes to take Mehrunnisa to Hyderabad to get married and settle down. Mehrunnisa is at first reluctant because she has never been out of her town. Raja promises to take care of her.

A few days later, without informing her father or her siblings, Mehrunnisa elopes with Raja. Once they arrive in Hyderabad, Raja takes her to a house. They live together for a few days and Raja slowly starts pressurizing Mehrunnisa to work in a beauty parlour. Mehrunnisa also decides that it would be prudent to extend financial help to Raja. Within a few days of her joining a beauty parlour for learning the profession, she is initiated into providing massage to male customers. A few days down the line she is clearly explained that she would have to provide sexual services also. Raja and the massage parlour owner now continuously threaten her, that if she refuses, her sister would also be similarly brought to the city and her family would be told that she has been "prostituting" herself voluntarily.

Activity 8: Open Discussion on Myths versus Realities of Human Trafficking

Objective of the Session	To assist participants in comprehending the various myths and misconceptions about human trafficking.
Estimated Time	20 Minutes
Methodology	Open discussion
Material Required	Flip chart, marker
Expected Outcome	This session will enable the participants to understand the myths versus the realities of several aspects of human trafficking.

Process for the Trainer

Step 1: Distribute the table as a Handout to the participants from Reading Material 1.4 -Myths & Misconceptions vis-à-vis Realities of Human Trafficking.

Step 2: Mention the myths one by one, and ask for the participant's views/ opinions on the misconceptions vis-à-vis real situation of human trafficking.

Step 3: Discuss how the misconceptions about trafficking and its related issues can be challenging to the roles and responsibilities of judicial officers and prosecutors.

1.1 The Background

1.1.1 The Global Scenario of Trafficking in Persons

The United Nations Office on Drugs Crime Global Report on Trafficking in Persons of 2016, has highlighted the following with respect to global trends –

1. *No country is immune from trafficking in persons* - Victims are trafficked along a multitude of trafficking flows; within countries, between neighbouring countries or even across different continents. More than 500 different trafficking flows were detected between 2012 and 2014. Number of different citizenships among victims detected was 137 during the same period.
2. *Profile of victims* - Over the last 10 years, the profile of detected trafficking victims has changed. Although most detected victims are still women, children and men now make up larger shares of the total number of victims than they did a decade ago. In parallel with the significant increases in trafficking in men, the share of victims for forced labour has also increased. The share of detected trafficking cases that are domestic – that is, carried out within a country's borders – has also increased significantly in recent years. These shifts indicate that the common understanding of the trafficking crime has evolved. Today, criminal justice practitioners are more aware of the diversity among offenders, victims, forms of exploitation and flows of trafficking in persons.
3. *Victims and traffickers often have common background* - Traffickers and their victims often come from the same place, speak the same language or have the same ethnic background. Such commonalities help traffickers generate trust to carry out the trafficking crime. Traffickers rarely travel abroad in order to recruit victims, but they do travel to destination countries to exploit them. As a general pattern, traffickers in origin countries are usually citizens of these countries. Traffickers in destination countries are either citizens of these countries or have the same citizenship as the victim(s) they trafficked. Being of the same gender can also enhance trust and available data indicates that women are commonly involved in the trafficking of women and girls, in particular. Most of the detected victims of trafficking in persons are females, either women or underage girls. While traffickers are overwhelmingly male, women comprise a relatively large share of convicted offenders; women are often used to recruit other women. Family ties can also be abused to carry out trafficking crimes.
4. *Trafficking is done for many exploitative purposes* - Trafficking for sexual exploitation and for forced labour are the most prominently detected forms, but trafficking victims can also be exploited in many other ways. Victims are trafficked for use as beggars, for forced or sham marriages, child marriages, production of pornography or for organ removal, as child soldiers, to mention some of the forms countries have reported.
5. *Conflict increases trafficking* - People escaping from war and persecution are particularly vulnerable to becoming victims of trafficking. The urgency of their situation might lead them to make dangerous migration decisions. Armed groups engage in trafficking in the territories in which they operate, and they have recruited thousands of children for the purpose of using them as combatants in various past and current conflicts. While women and girls tend to be trafficked for marriage and sexual slavery, men and boys are typically exploited in forced labour in the mining sector, as porters, soldiers and slaves.
6. *Children remain the most vulnerable to trafficking* - More than a quarter of the detected trafficking victims in 2014 were children. There seems to be a relation between a country's level

of development and the age of detected trafficking victims. In the least developed countries, children often comprise large shares of the detected victims.

Some examples of the predominant types of trafficking in persons found in countries around the world are – the Thailand fishing and sex industry; in the USA, as a diverse cultural center and popular destination for immigrants with multiple international borders, California is one of the largest sites of human trafficking in the United States¹ for sex and labour trafficking; the construction industry in Singapore and Malaysia; prostitution in Nigeria; the use of cultural superstitions and occult rituals and witchcraft to control victims for prostitution in many African countries; etc. It is important to understand that every global situation of trafficking has a local impact too.

1.1.2 The National Scenario of Trafficking in Persons

India is a source, destination, and transit country for men, women, and children subjected to forced labour and sex trafficking², constituting the two predominant forms of human trafficking. Estimates suggest that millions of women and children are victims of sex trafficking in India. Traffickers use false promises of employment or ‘boyfriend’ relationship, or arrange sham marriages and lure women and girls into sex trafficking. In addition to traditional red light districts, women and children are increasingly being pushed into forced prostitution in small hotels, vehicles, massage parlours, beauty parlours, and primarily in private residences. Traffickers are increasingly using websites, social media, mobile phones, mobile applications, and online money transfers to facilitate commercial sex. Many women and girls, mainly from Nepal and Bangladesh, and from Europe, Central Asia, Africa, and Asia, are subjected to sex trafficking in India.

Forced labour takes the form of men, women, and children in debt bondage, sometimes inherited from previous generations, who are forced to work in brick kilns, rice mills, agriculture, and embroidery factories. Forced labour also exists 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 into forced labour, including domestic servitude.

In addition to bonded labour, some children are subjected to forced labour as factory and agricultural workers, carpet weavers, domestic servants, and beggars. Begging ringleaders sometimes maim children to earn more money. The “Provident Funds” or “Sumangali” scheme in Tamil Nadu, in which employers pay young women a lump sum, used for education or a dowry, at the end of multi-year labour contracts may amount to conditions of forced labour.

Some Indian migrants who willingly seek employment in construction, domestic service, and other low-skilled sectors in the Middle East and, to a lesser extent, other regions, face forced labour, often following recruitment fraud and exorbitant recruitment fees charged by agents and brokers.

A glance at the annual statistics from the Crime in India Report of 2016 (and of previous years) will

1 <https://oag.ca.gov/human-trafficking/what-is> Accessed on: 27 Dec 2017

2 Adapted from the US TIP Report, 2017; and the India Country Assessment Report: Current Status of Victim Service Providers and Criminal Justice Actors on Anti Human Trafficking, UNODC, Regional Office for South Asia, 2013.

highlight that all States³ have reported cases of human trafficking. Other reports from NGOs have shown that some States are only source or destination areas for victims; whilst some are source-transit-destination for trafficking in persons. Total cases of human trafficking reported in 2016⁴ were 8,132. Total number of victims trafficked in this year were 15,379; out of which, 10,150 were female victims, and 5,229 were male victims. Total number of victims below the age of 18 years was 9,034. The total number of rescued victims was 23,117 (rescued persons may include persons trafficked in previous year also since victims rescued are more than victim trafficked during the year). However, all reports and personal accounts of NGOs who work on anti-trafficking, suggest that the reported cases are a gross underestimate of the actual number of crimes, because in a large number of instances, the victims never report the crimes.

1.1.3 The State Specific Scenario of Trafficking in Persons in Andhra Pradesh and Telangana

Andhra Pradesh

Andhra Pradesh (AP) is situated on the southeastern coast of India; and is the 8th largest state in the country, covering an area of 162,970 km. The state is bordered by Telangana in the northwest, Odisha in the northeast, Karnataka in the west, Tamil Nadu in the south, and the Bay of Bengal in the east. AP is composed of three major regions: Coastal Andhra, Uttarandhra and Rayalaseema, and together they comprise 23 districts. As per the 2011 Census, the state is 10th largest by population, with 8.46 crores inhabitants; its sex-ratio is 993; and child sex-ratio is 939⁵.



3 With the exception of Jammu and Kashmir, Tripura and Nagaland

4 Chapter 14, Human Trafficking; Crime in India 2016, National Crime Records Bureau

5 <https://www.census2011.co.in/census/state/andhra+pradesh.html>

Accessed on: 27 Dec 2017

Out of total population of Andhra Pradesh, around 33 % people live in urban regions; and around 66 % live in the villages or rural areas. According to Census 2011, the literacy rate in the state is about 67%, and is below the national average of about 74%.

On 02 June 2014, the northwestern portion of Andhra Pradesh was separated to form a new state of Telangana.

Economy of the State - The state has well-developed social, physical and industrial infrastructure and virtual connectivity. It also has good power, airport, IT and port infrastructure. At current prices, AP's gross state domestic product (GSDP) was estimated at US\$ 108.5 billion over 2016-17⁶. The State's per capita income in 2014-15, was Rs. 90,517. Agriculture has been the chief source of income and main occupation for the state with 60% of population engaged in agriculture and related activities. The state has however, seen high rate of suicides of farmers in recent years⁷, due to multiple reasons, which in turn increases the vulnerabilities of the population dependent on agriculture, and the left behind families.

Telangana

Telangana, the 29th state of India, was formed in June 2014, after splitting from the erstwhile Andhra Pradesh state. The state is land locked by (new) Andhra Pradesh to the south and east, Maharashtra and Karnataka to the west, and Odisha and Chhattisgarh to the north. Telangana is divided into 31 districts, and is the 12th largest state⁸ and the 12th most populated state in India in India with a geographical area of 112,077 km² and 3.5 crore population as per 2011 census. According to the 2011 census, Telangana's literacy rate is 66 %



6 <https://www.ibef.org/states/andhra-pradesh.aspx> Accessed on 05 March 2018

7 <https://timesofindia.indiatimes.com/city/vijayawada/322-per-cent-rise-in-farmer-suicide-cases-in-andhra-pradesh/articleshow/56347420.cms> Accessed on 05 March 2018

8 <https://en.wikipedia.org/wiki/Telangana> Accessed on 25 Dec 2017.

Economy of the State - The economy of Telangana is mainly driven by agriculture but with a reflecting Gross State Domestic Product (GSDP) of US \$120 billion and a high growth rate of 14.6% in 2016-17, the state has emerged as a major focus for robust IT software, Industry and Services sector. However, drought-led migration in both AP and Telangana creates vulnerabilities among girls falling prey to traffickers.

Situation of Trafficking in Persons in the State of Andhra Pradesh and Telangana⁹

The problem of trafficking of women and children has grown in recent years in Andhra Pradesh and Telangana. Both states are witnessing higher number of recorded cases of trafficking as is evident from the National Crime Record Bureau data. Trafficking is prevalent at various levels - local, inter-district, inter-state and cross-border. Commercial sexual exploitation of women and children takes place in various forms including brothel based prostitution, sex tourism, entertainment industry and pornography in print and electronic media. Most of the victims from the two states have been trafficked with promises of work, better career prospects and marriage. Some are inducted forcibly through abduction.

Forms of Trafficking

Trafficking for forced prostitution - Human trafficking in these two states is mostly related to forced prostitution, with girls and women being brought from different parts of the country, mostly to Hyderabad. Also, girls and women from the 2 states can be found in forced prostitution in at least 12 states. The new emerging forms of prostitution have brought to light the online, cyber facilitated process of trafficking, both for recruitment and for exploitation. Foreign nationals (especially from Uzbekistan, Thailand, etc.) are also found routinely in Hyderabad, having been trafficked from their countries either to work directly in prostitution or in massage parlours.

Trafficking for devadasi - Apart from trafficking, certain traditional forms of prostitution are prevalent, e.g. *Jogins, Marthammas, Dommaras* and *Basavis*.

Trafficking for marriage - For decades, Hyderabad is known for 'contract marriages' involving old Arab sheikhs "marrying" local teenage Muslim girls, and divorcing them after a few days/ weeks, when they are returning back to their country. Agents, qazis, middlemen/ brokers are all part of this trafficking racket.

Trafficking for forced labour - Trafficking across international borders also takes place from the 2 states. Men and women are sent to different Middle East countries with false promises of jobs as domestic maids and marriages, or for other jobs, but they land up in situations of slavery.

'Source Areas' and Trafficking Routes- Trafficking of women and children has been reported from across all districts in Andhra Pradesh. However, areas of coastal Andhra Pradesh like East Godavari, Krishna, Visakhapatnam, Prakasam, Kurnool, Anantpur, Chittoor, Chilikaluripet, Ongole, Guntur, Mangalagiri, Eluru, Guduwada, Nalajerla, Tadepalligudem, Rajamundry, Kavali, Nellore, Sullurupeta and Naidupeta etc., are the hotspots for trafficking. Vijayawada, Guntur, Tirupati and Visakhapatnam are the major transit centres in the state. Victims are mostly taken from Andhra Pradesh to Mumbai and Delhi. Many of these victims are supplied to the red light areas in Delhi, Pune, Surat, Mumbai, and Kolkata.

⁹ Sourced from India Country Assessment Report: Current Status of Victim Service Providers and Criminal Justice Actors on Anti Human Trafficking, UNODC, 2013; US Trafficking in Persons Report, 2016 and 2017; multiple (I)NGO reports; scholarly articles on TIP in the 3 states; and newspaper reports.

Trafficking across international borders also takes place from AP. The organized crime syndicates are bringing victims from the Northeast and West Bengal to AP.

Delhi's GB Road (red light area) has seen large scale trafficking of minors as well as adult young women from Telengana and AP and many other States. Girls from AP and from Jharkhand are taken to Haryana, for forced marriage.

The Modus Operandi - Apart from the traditional methods of recruiting victims into trafficking, cyber-crime and cyber assisted crime of human trafficking is on the rise in AP and Telangana. Both, the dark web and surface web are being used by criminals to trap women and young girls into prostitution. With exposure to the social and digital media, more and more girls are falling prey to conmen and eventually ending up in forced prostitution. Pictures, selfies and other pictures on social media website like Facebook and Instagram are being 'studied' by cyber criminals who are well-versed in analysing the personality and the psychology of the person on the basis of their posted pictures. The pictures feed the culprit with information to target the girl with fake account and pretend to be a girl as it is an easy way to trap. Besides, the entire transaction, including money transaction, between the pimp and the customer, and the pimp and the girl is online or through SMSs, making it even more difficult to identify the face of the trafficker by the victim.

Young school going girls are accosted while on their way to schools and sold dreams of working in Telugu movies, wearing branded clothes, and earning good salaries – eventually to push them into the flesh trade or as domestic workers in big cities¹⁰.

Vulnerability factors - Several studies have revealed that women in the 18-24 age group, who were from the Backward Castes, the Scheduled Castes (SC) and the Scheduled Tribes (ST) were at high-risk for trafficking, but children below 18 years are also acutely vulnerable to being trafficked. Although poverty is one of the important factors, studies also reveal how gender-based mistreatment including denial or curtailment of formal educational opportunities, many girl children in the family, child marriage, and desertion/abandonment by husband served as proximal events related to trafficking. Rural Telangana (especially Khammam and Adilabad districts) and Rayalseema in AP, with large SC ST populations also are most vulnerable.

There exists a wide range of cultural groups who practice illegal sex trade. The men from these groups usually live off their daughters/sisters income and even arrange customers for their own daughters and sisters. The Lambada community of AP is one such group referred to as Sugalis in Rayalseema region. The Matama community in Rayalseema, the Joginis in Telangana, and the Basavi in AP practice prostitution as a way of life.

1.2 What is Trafficking in Persons?

The definition of Trafficking in Persons is provided in the Indian Penal Code (IPC) (amendment of 2013), and is reproduced as hereunder: -

Section 370 -Trafficking of Person – (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by –

¹⁰ Information provided by police officials and NGO representative

First -- using threats, or

Secondly -- using force, or any other form of coercion, or

Thirdly -- by abduction, or

Fourthly -- by practising fraud, or deception, or

Fifthly -- by abuse of power, or

Sixthly -- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1 - The expression "exploitation" shall include, prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2 - The consent of the victim is immaterial in a determination of the offence of trafficking.

Sec. 370 (2) - (7) provide for offences and penalties for committing crimes of TIP.

Some examples of meaning of legal terms used in Sec. 370 are as follows (these are only indicative and not exhaustive) -

Threats - a trafficker tells a girl/ woman that he will kill her or her parents, if she does not sell herself every night to the customers that he brings; OR - a trafficker tells a girl/ woman that he will kidnap her younger sister and sell her to a brothel if she does not indulge in prostitution and earn money for him/ her.

Force - a trafficker tortures the girl/ woman by inserting chilli powder into her vagina; or keeps her hungry for several days; or beats her up so that she consents to forced prostitution.

Coercion - a trafficker uses emotional blackmail by telling the girl that he intends to marry her after she earns enough money through prostitution for them to build a house; OR - the trafficker says that he is the boyfriend of the girl and presently cannot earn money, which the girl only can earn through getting pornographic images clicked and then selling them. Coercion can be both - physical as well as psychological.

Abduction - (will have the same meaning as Sec. 362 of IPC -when a trafficker uses force or any other deceitful means to compel a person to go from one place to another) - a trafficker tells a girl that he will make her a big singing star on a reality show in Mumbai and takes her without informing her parents and without their consent; but then sells her to a placement agency for domestic servitude.

Fraud - a trafficker promises a man a job in Dubai and takes a heavy amount as fees for processing paper work, and later sends him to his agent in Dubai promising job as an accountant, but when the man reaches Dubai, the agent puts him to work at a construction site, takes away his passport and pays him one-third of the salary that was promised.

In a particular case in Jharkhand, traffickers sent 80,000 SMSs to people in a particular geographical area, offering jobs in Delhi and other cities. Reportedly, about 1800 people were recruited through these fraudulent messages for trafficking¹¹.

Deception - a trafficker tells parents that he will take their 14 years old son and get him to study in the big city if he also works only for 3-4 hours as a 'play mate' in a rich man's house in Delhi; but he gets him to work in domestic servitude for 16 hours a day, with no schooling, and keeps the entire salary to himself, without sending anything to the parents.

Abuse of power - a university professor compels her female students for prostitution and tells them

¹¹ As informed by an NGO representative

that she will give them very good marks in their internal papers; but if they do not do what she says, she will fail them.

Section 370A–Employing of a trafficked person – (1) Whoever, despite knowing, or having reason to believe that a child has been trafficked, employs such child in any form of labour, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and with fine.

(2) Whoever, despite knowing or having reason to believe that an adult has been trafficked, employs such adult for labour, shall be punished with rigorous imprisonment for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

The issue of consent

Consent cannot be used as a defence to absolve a person from criminal responsibility in view of the Explanation to Sec. 370, IPC.

The definition of what constitutes trafficking for prostitution is provided in the ITPA, 1956 as –

Section 5 - Procuring, inducing or taking person for the sake of prostitution - (1) Any person who -
(a) procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or
(b) induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
(c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; or
(d) causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section, -

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.

[2] (2) [**** **]

(3) An offence under this section shall be triable, -

(a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or taken such persons made; or

(b) in the place to which she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.

The definition of ITPA, 1956 thus, penalizes the following activities –

- procuring or attempts to procure
- inducing
- taking or attempts to take a person

- causing or inducing a person to carry on prostitution.

Penalties are graded according to the age of the person against whom these offences are committed, the lesser the age of the person, the more severe the punishment.

1.3 Process of Trafficking

There are three broad stages involved throughout the trafficking process - RECRUITMENT of people from a village or city (Source); TRANSPORTATION to designated location/ transit point (Transit); and EXPLOITATION (Destination). Sometimes the trafficked persons are shifted several times before they arrive at their final destination, where the exploitation (in the form of prostitution, labour, child marriage, illegal adoptions, transplanting of human organs, etc.), takes place.

However, transportation is not mandatory to prove the crime of trafficking. If there has been a transit point, that would be relevant as a 'scene of crime' for purposes of investigation in the entire continuum of the trafficking offence.

1.4 Myths & Misconceptions vis-à-vis Realities of Human Trafficking¹²

Myths	Realities
Prostitution is always a result of trafficking in persons.	Prostitution (for adults) is <i>per se</i> not an offence in Indian laws and as per the judgment of Supreme Court ¹³ . This is applicable to adult women who claim to be voluntarily in prostitution. However, when a third person profits from the act of prostitution, it can attract several provisions from the ITPA, 1956.
Sex trafficking means the same thing as prostitution.	Sex trafficking and prostitution are not always synonymous. Children in prostitution are always victims of trafficking; however, adults in prostitution are to be considered trafficking victims when elements of Sec. 370 of IPC and relevant sections of ITPA, 1956 are applicable. Besides, trafficking is the <i>process</i> through which exploitation is done for several reasons, such as, prostitution or forced labour and others. Whereas, prostitution or forced labour is the <i>end result</i> of trafficking in persons.

12 Adapted from - <https://humantraffickinghotline.org/what-human-trafficking/myths-misconceptions>; <https://www.acf.hhs.gov/otip/about/myths-facts-human-trafficking>; Accessed on 27 March 2018 and Training Manual for Prosecutors On Confronting Human Trafficking, UNODC, Regional Office for South Asia, 2008

13 Bai Shanta v/s State of Gujarat: AIR 1967 Gujarat 211

Only women and children are trafficked.	Anyone can experience human trafficking, including men. Traffickers prey on the vulnerable, often with promises of a better life.
Human trafficking only occurs in illegal underground industries.	Trafficking can occur in legal and legitimate business settings as well as underground markets. Human trafficking has been reported in business markets such as restaurants, hotels, and manufacturing plants, as well as underground markets such as commercial sex in residential brothels and street based commercial sex.
There must be elements of physical restraint, physical force, or physical bondage when identifying a human trafficking situation.	Trafficking does not require physical restraint, bodily harm, or physical force. Psychological means of control, such as threats, fraud, or abuse of the legal process, are sufficient elements of the crime.
Victims of human trafficking will immediately ask for help or assistance and will self-identify as a victim of a crime.	Victims of human trafficking often do not immediately seek help or self-identify as victims of a crime due to a variety of factors, including lack of trust, self-blame, or specific instructions by the traffickers regarding how to behave when talking to police or NGOs; or a genuine lack of understanding that they are indeed 'victims' of trafficking.
Human trafficking victims always come from situations of poverty or from small rural villages.	Although poverty can be a factor in human trafficking because it is often an indicator of vulnerability, poverty alone is not a single causal factor or universal indicator of a human trafficking victim. Trafficking victims can come from a range of income levels, and many may come from families with higher socio-economic status.
If the trafficked person 'consented' to be in their initial situation or was informed about what type of work they would be doing or that commercial sex would be involved, then it cannot be human trafficking or against their will because they "already knew."	Initial consent to commercial sex or a labour setting, prior to acts of force, fraud, or coercion (or if the victim is a minor in a sex trafficking situation) is not relevant to the crime, nor is payment.
An adult woman should be free to make her own choice even if the choice is to be in prostitution.	It is well known that a woman victim of forced prostitution submits to the limited options available to her. She is often a person without alternate choices and options due to socio-economic situations based on gender, race,

	<p>ethnicity and poverty. 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’.</p>
<p>Poor women can earn a lot of money through prostitution.</p>	<p>In reality, the women’s time in prostitution is spent in debt bondage. A whole network of traffickers distributes the earnings among themselves, ensuring that the woman gets a very small part of her earnings. In fact, the women are left with sick bodies, children and no financial savings.</p>
<p>Human trafficking is essentially a crime that must involve some form of travel, transportation, or movement across state or national borders.</p>	<p>Trafficking does not require transportation. Although transportation may be involved either as a control mechanism to keep victims in unfamiliar places, or to move them from one city to another, it is not a required element of the trafficking definition.</p>
<p>Human trafficking is another term for human smuggling.</p>	<p>Smuggling is a crime against a country’s borders; human trafficking is a crime against a person. While smuggling requires illegal border crossing, human trafficking involves commercial sex acts or labour or services that are induced through force, fraud, or coercion, regardless of whether or not transportation occurs.</p>
<p>Trafficked persons can only be foreign nationals or are only immigrants from other countries.</p>	<p>Anyone can become a trafficked person, a citizen or a foreign national.</p>
<p>Foreign national trafficking victims are always undocumented immigrants or are here in the country illegally.</p>	<p>Not all foreign national victims are undocumented. Foreign national trafficked persons can be in India through either legal or illegal means. Although some foreign national victims may be undocumented, a significant percentage may have identification documents (which may also be forged).</p>

MODULE

2

CONCEPTUAL
CLARITY
ON
TRAFFICKING
OF PERSONS

MODULE 2 – CONCEPTUAL CLARITY ON TRAFFICKING OF PERSONS

Module Goal

To strengthen the ability of judicial officers and prosecutors to build clarity on several fundamental issues related to human trafficking.

Time: 2 Hours 30 Minutes

Session Plan:

Sr. No.	Topic	Objectives of Module 2	Resource Material	Time
2.1	Identifying victims of human trafficking 2.1.1 Who are the victims of human trafficking? 2.1.2 Differences in human trafficking, safe migration, and illegal migration 2.1.3 How to recognize victims of human trafficking/ Indicators of human trafficking 2.1.3.1 General indicators of trafficking 2.1.3.2 Indicators of labour trafficking 2.1.3.3 Indicators of sex trafficking 2.1.4 Missing children	Understand the significance of speedy and accurate identification of victims of human trafficking.	Refer 2.1, 2.1.1, 2.1.2, 2.1.3 and 2.1.4 Handout of Case Study MHA Advisory – ‘Preventing and Combating Human Trafficking in India - Dealing with Foreign Nationals’	60 min
2.2	Identifying traffickers in TIP crimes 2.2.1 Who are the traffickers/ offenders in sex trafficking crimes? 2.2.2 Who are the traffickers/ offenders in labour trafficking 2.2.3 Who are the traffickers/ offenders in trafficking for forced/ child marriages?	Know the indicators and parameters based on which traffickers can be correctly identified to set the law enforcement procedure in motion.	Refer 2.2, 2.2.1, 2.2.2, and 2.2.3 Handout of Case Study	50 min

2.3	Trafficking in Persons – An Organized Crime	Understand the difference between other crimes and trafficking, as an organized crime involving multiple offenders.	Refer 2.3 Handout of MHA Advisory – ‘Human Trafficking as Organized Crime’	10 min
2.4	Understanding the victim – Impact on the victim and a ‘Victim-Centred’ approach 2.4.1 Forms of Impact 2.4.2 Behaviour of the victim	Build understanding on the impact of violence and abuse on the victim, their coping mechanisms and consequences for prosecution and trial.	Refer 2.4, 2.4.1 and 2.4.2 Movie CD – “Anamika, the Nameless”	30 min

Training Methodology

Activity 1: Case Study on difference between Trafficking in Persons, Safe Migration, and Illegal Migration

Objective of the Session	To make the participants distinguish between Human Trafficking, Safe Migration, and Illegal Migration
Estimated Time	60 Minutes
Methodology	Group work
Material Required	Charts and markers
Expected Outcome	This session will enable the participants to understand the different elements of trafficking, and safe vis-à-vis illegal migration – for purposes of correctly identifying crimes of trafficking, its victims and the offenders.

Process for the Trainer

Step 1: Divide the participants into 3 groups. Each group should be given one topic to conduct group work and discuss their allotted topic – namely, Human Trafficking, Illegal Migration, and Safe Migration.

Step 2: Ask each group to identify –

- i. *elements* of the phenomenon of trafficking, safe migration, and illegal migration of their respective case study;
- ii. who are the *victims* (under which provision of law);
- iii. who are the *offenders*;
- iv. list the *offences* committed by them (where ever applicable).

Step 3: Once the groups complete their discussions, each team will be asked to make a presentation by choosing a presenter.

Step 4: After presentation of group 1, ask the other groups if they want to add more points. Repeat for groups 2 and 3.

Step 5: Briefly encapsulate the 3 presentations. Point out the main areas of difference between human trafficking, safe and illegal migration.

For Group 1 - Case study on Trafficking in Persons

Govind is a 28 years old unemployed man. He is a graduate degree holder but is unable to find work where he lives in Khammam District. There is lot of pressure on him to find work as his parents are unable to support him any longer on their earnings. He does odd jobs but is looking for better work opportunities. One day, a friends' friend, Ahmed approaches him and offers him work in Kuwait as an accountant for a foreign company.

Govind is not sure about migrating to Kuwait, but he is convinced of a good salary on a fixed three years contract by Ahmed. He is promised one-month holiday each year with fixed working hours with the company in Kuwait. Govind finally decides to migrate to Kuwait and hands over all his paper work to Ahmed who charges him a fee for getting all his paper work done.

Govind reaches Kuwait in March 2017. As soon as he reaches the airport, a company representative takes his passport for 'safe keeping' and for 'administrative reasons'. When he is taken for work the next day, he realizes that is one of the blue-collar work-force who has to work at a construction site as a labourer and not as an accountant. He protests but is forced to work there daily for 16 hours. He is given minimal salary per month, which is barely sufficient for his food and living expenses. He has never sent any money home. In the absence of his passport he cannot leave the job and travel. His supervisor in Kuwait tells him that it is futile to complain to the police, as his employer is a very influential person. After a year, Govind finally musters the courage and complains to the police. Following all legal procedures, Govind is repatriated to India.

For Group 2 - Case study on Illegal Migration

Naresh is a 20 years old young man who is a matriculate and lives with his family in Kurnool. He does odd jobs as an electrician, and has heard that people who go to 'foreign' countries make very good money. He wants to try his luck of going to Canada and contacts a placement agency. After two efforts also, his visa is not sanctioned, due to incomplete documents.

The placement agency gets him in touch with Angad Singh, who promises to send him to Canada through a different route. Angad Singh asks him for Rs. 5,00,000 as his fees. Naresh forces his father to sell their ancestral agricultural land and pays the amount to Angad Singh to make arrangements to send him to Canada.

Angad Singh sends Naresh on a valid passport and visa to Turkey, from where he is handled by another person who sends him to Greece in a truck transporting food. At the border, during inspection, the border control police find Naresh along with 5 other men in the truck. Due to lack of proper paper work and being without valid visa in Greece, Naresh is arrested and is now in jail.

For Group 3 – Case study on Safe Migration, creating vulnerabilities for trafficking

Meenakshi was 9 years old when her entire village was devastated due to massive drought in the Rayalseema region. Her entire family had to leave the village, and forced to go to Anantapur, as they had nothing left to eat and no work was available in the village. Meenakshi's parents and her 3 brothers and sisters migrated to Anantapur, where they live on the street. Meenakshi's parents started selling balloons and flowers on the street and Meenakshi was sent to beg from the moving vehicles.

A woman often talks to Meenakshi's mother asking her to send Meenakshi to work for a rich woman in her house. Meenakshi's mother often discusses with her husband about sending her to work in a house for her safety, rather than living on the road.

Activity 2: Case Study and Open Discussion

Objective of the Session	To assist participants in understanding on how police officials identify the victims and traffickers of human trafficking.
Estimated Time	50 Minutes
Methodology	Group work
Material Required	Case studies
Expected Outcome	This session will enable the participants to understand how police officials use different indicators and parameters to identify victims, and traffickers, to set the law enforcement procedure in motion.

Process for the Trainer

Step 1: Distribute the 2 case studies among the participants by dividing them into 2 Groups.

Case Study 1 - Trafficking for Domestic Work

Bhagya is a 12 years old girl who lives in Yellupet village of Medak District with her parents. She is the eldest of all brothers and sisters and her parents are farm labourers. The family manages to eat one meal a day, and when there is no work on the farm, the family sleeps hungry.

One day, a neighbour's relative Kamla who lives in New Delhi comes to visit Bhagya's mother. Kamla offers to take Bhagya to New Delhi so that she could work there in a house as a domestic help. Kamla promised education and few hours of work in a household, thus assuring the parents that Bhagya will be well taken care of. That way she can earn and send more money home so that her younger brothers and sisters can get educated and there will be enough food in the house. Kamla also said that if the employers are good they will send Bhagya to study in a school.

Bhagya and Kamla board a bus from her village, reach Hyderabad, stay the night in a hotel, and the next day take a train to go to New Delhi. From New Delhi railway station, they both go to Guru Gram where Bhagya is taken to a building and starts working there on the 12th floor.

Bhagya works long hours caring for the entire house. She never received any salary in hand and was informed that her entire salary for the month was being sent to her parents directly in the village after deducting amounts paid for her food and other essentials. She worked 14-16 hours a day with very little rest and break in between. She was never enrolled or sent to any school. She was often beaten for mistakes made during household work. One day the lady of the house burnt her with a hot pan. Bhagya was found outside the building complex by a security guard, with severe burn marks, then decided to take her to the hospital. The hospital authorities reported the matter to the police.

Notes for the Trainer

The above case study has been used from Module 1 earlier. The objective of solving the same case study here is to identify indicators of trafficking.

Case Study 2 – Trafficking for Prostitution

Vimla is a 19 years old girl, who lives and studies in Tirupati. Her parents are both government servants, and she has a 15 years old brother. Vimla is a bright student and studying in B.Com course with the ultimate aim of doing an MBA and joining a multi-national company. She regularly goes for English speaking classes also, where she becomes friends with Shankara, who is an engineering student. They both take an instant liking for each other, and soon start meeting regularly in hotels and parks, after their classes. Shankara convinces Vimla towards an intimate physical relationship, saying that eventually they would be married in the next few years. Unknown to Vimla, Shankara has recorded their intimate moments. After being together couple of times, Shankara one day shows the videos to Vimla and tells her that he wants to take her to Hyderabad to spend some similar time with a senior government official. Vimla is horrified at seeing the videos and at the suggestion made by Shankara.

Shankara tells Vimla that he will never use the videos against her, and that he feels that this would be a more “easy” way of making money, which will be used in setting up their lives together. He also promises her that this is the only one time that she will have to go to Hyderabad because his friend Ramesh, who lives in Hyderabad, has offered him very good money for the few hours of ‘work’. Vimla feels helpless, especially in the face of the videos in Shankara’s possession, and also because she really loves him and wants to marry him. Upon more coaxing by Shankara, Vimla agrees to go to Hyderabad only this one time. She and Shankara go together to Hyderabad and meet Ramesh, after which she is sent for the night into a big hotel.

A month after this incident, Shankara tells Vimla again that they have to go to Hyderabad and that she has to spend time with a big businessman. After a round of coaxing and cajoling, Vimla agrees again to do what Shankara says, and they are met with Rani. This starts getting repeated every week slowly, and now when Vimla disagrees, Shankara threatens her of revealing the videos to her parents and in her college. Vimla feels trapped and helpless, and does not know where and who to turn for help. She still loves Shankara and feels that he is actually doing it to collect money for their future life, because she never gets any of that money. She is conflicted and confused in her mind, torn between her love for Shankara and her aversion to this work.

Step 2: Ask the following questions to the participants –

- What are the specific indicators that the victim has been trafficked for labour in Case Study 1?
- What are the specific indicators that the victim has been trafficked for sexual exploitation in Case Study 2?

Step 3: Note down the answers provided by participants for ‘Indicators of Labour and Sex Trafficking’.

Step 4: Summarize the discussion by pointing out the commonalities and differences in indicators of two predominant forms of trafficking – labour and sex trafficking.

Step 5: Emphasize that although it is the primary responsibility of the police or the labour department to recognize/ identify victims of human trafficking and rescue them from exploitative situations and arrest the offenders; it is equally important for the judicial officers and prosecutors to know who the victims of trafficking are – as they will be prosecuting and adjudicating on cases of human trafficking involving them as victims after rescue.

Activity 3 - Screening of the documentary - “Anamika, the Nameless...”

Objective of the Session	To make the participants understand plight of victims in exploitation and its consequences and impact.
Estimated Time	30 minutes
Methodology	Audio-Visual, Group Discussion
Material Required	Projector, Laptop Speakers, Extension box, Movie CD “Anamika, the Nameless”, Chart and Marker
Expected Outcome	This session will enable the participants to understand various elements of the plight of victims in exploitation, the violence and torture faced by a trafficked victim as a result of exploitation, and its consequences for justice delivery.

Process for the Trainer

Step 1: Screening ‘Anamika, the Nameless’ for participants to show all the aspects of exploitation of a victim of human trafficking.

Step 2: The Trainer will request participants to reflect on the movie, more specifically, their understanding of the victim’s journey through the exploitation and violence.

Step 3: The Trainer will divide participants in two groups A and B. Group A will deliberate and make a brief presentation on - “What would be the mindset of a victim as a result of the exploitation?”; and Group B will present their discussions on - “What all types of impact would a victim have due to exploitation in sex trafficking?”.

2.1 Identifying victims of human trafficking

Identifying victims is the first step to combat trafficking, to stop the exploitation, and to restore their rights. Yet, the most challenging aspect of addressing human trafficking is identifying the victims, which is difficult for several reasons. Victims may not see themselves as trafficked; they may fear revenge by the traffickers; believe that they are in fact indulging in criminal activities; do not have information on where to seek help; and face many cultural, social, and language barriers. In addition, police also find it difficult to identify victims due to the hidden nature of the crime.

Identifying victims of human trafficking is thus, the first step towards their rescue and removal from exploitative circumstances and setting the criminal justice system in motion. All stakeholders of the criminal justice system, that is - police, prosecutors and judicial officers, ought to recognize the importance of the identification process and its significance in ensuring justice for both traffickers and their victims.

2.1.1 Who are the victims of human trafficking?

Victims of human trafficking can be young children, teenagers, men and women.

“Victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir (Sec. 2(wa) of Criminal Procedure Code, 1973).

The following may be considered ‘victims’ of trafficking –

- Persons above the age of 18 who through threats, or force, or coercion, or fraud, or deception, or by abuse of power, or inducement, including the giving or receiving of payments or benefits are required to perform sexual acts without their consent, by any person(s).
- ‘Child’ who is under 16 years and ‘minor’ who is between the age of 16-18 years who are found in places of commercial sexual exploitation [Sec. 2 (aa) and (cb) Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as the ITPA, 1956)].
- Any child likely to be trafficked is a “child in need of care and protection” [Sec. 2 (14)(ix) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act, 2015)], is a potential victim.
- Anybody who has been recruited, transported, harboured, transferred or received for prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs (Sec. 370, IPC).
- Any person who has been detained in a brothel, with or without consent [Sec. 6 (1) (a), ITPA, 1956].
- Any person who has been detained in any premises with the intent of commercial sexual exploitation [Sec. 6 (1) (b), ITPA, 1956].
- Any person found in a brothel, or any place of commercial sexual exploitation, whose jewelry, wearing apparel, money, property, etc. has been withheld [Sec. 6 (3) (a), ITPA, 1956].
- Any person who has been seduced for prostitution by any person having custody/ charge/ care of/ or a position of authority over that person [Sec. 9, ITPA, 1956].
- Any person whose trafficking has been attempted by someone [Sec. 5, ITPA, 1956].

- Children who have not completed the age of 18 years and are engaged in hazardous processes or occupations and/ or for less than minimum wages which are mandatory under The Minimum Wages Act, 1948.
- Any person, regardless of age, who has been trafficked in consideration of an advance (money or benefit) and/ or is now working for less than minimum wages.
- Any child who is held in bondage for the purpose of employment or for withholding earnings (Sec. 79 of JJ Act, 2015).
- Any child who has been trafficked for sexually explicit online or electronic content (Sec. 67 B of Information Technology Act, 2000).
- Any child trafficked for marriage (under various provisions of Prohibition of Child Marriage Act, 2006).

NOTE: The list above is illustrative and not exhaustive. There may be other similar situations wherein a person becomes a victim of trafficking.

Remember – Victims may themselves not identify themselves as ‘victims of trafficking’. There may be lack of understanding of their victimhood, lack of faith in the law enforcement agencies, fear or psychological bondage of the trafficker or other vulnerabilities due to which, a victim may never state that she is being exploited.

2.1.2 Differences in human trafficking, safe migration, and illegal migration

All stakeholders of the criminal justice system need to understand the crucial differences between human trafficking and migration (which may be safe, unsafe or illegal) with the objective of identifying victims of trafficking correctly.

Migration is, simply put, movement from one place to another. It can be assisted or independent movement. It can be within a country or may involve travel to another country. It can be motivated by a dream of a better life, and it can be something someone is made to do against his or her will. Migration can be for survival and for pleasure.

Trafficking starts out as recruitment or movement, and ends with exploitation. Trafficking may also involve both internal and international movement.

Smuggled person – someone who travels voluntarily, but illegally to another country with the assistance of a third party, whom he or she pays.

While there are distinctive elements to each term, sometimes it is hard to separate them in practice. For instance, a person could be in an illegal migrant situation one day and the next find herself in a trafficking situation. For instance, a 24 year old woman gets a forged passport made, showing her as 35 years old, and travels to Dubai by obtaining visa as a tourist, whereas in reality she is going to work there as a domestic helper. She is assisted in this process by travel agents and placement agencies. After reaching Dubai, the local placement agent, sends her to work in a bar for serving liquor, where she is also forced into prostitution. The initial situation of illegal migration has now turned into trafficking.

In another instance, a young woman from Uzbekistan comes to Delhi on a tourist visa, whereas her actual purpose was prostitution. There are several traffickers and offenders involved in this activity. If

upon investigation, it is found that the young woman was not indulging in prostitution out of her own free will, she should be treated as a victim of human trafficking, should not be charged, and should be deported as per MHA Advisory on – ‘Preventing and Combating Human Trafficking in India - Dealing with Foreign Nationals’¹⁴.

Exploring links between Trafficking and Migration

	Involvement of other persons	Movement to another country	Without legal status	Exploitation at the end	Is the person a victim	Is the facilitator an offender
Human Trafficking	Yes	Possible	Possible	Yes	Yes	Yes
Safe Migration	Possible	Possible	Possible	Possible	Yes	Yes
Illegal Migration	Possible	Possible	Yes	Possible	Yes	Yes

2.1.3 How to recognize victims of human trafficking/ Indicators of human trafficking

A situation should not be allowed to develop whereby identification of victims of human trafficking only takes place *if* individuals claim to be victims. Victims may not even know that they are being exploited or have been or are being trafficked, during their first encounter with the police. In cases of bonded labour, child labour, etc., victims may not even know that they are being abused and exploited for their labour (due to cultural beliefs) and that they may also have been trafficked.

Thus, police, prosecutors and judicial officers have a duty to look at all the circumstances and make a balanced judgment based on all of the known factors to correctly identify human trafficking victims (at various stages of the justice delivery process), which by itself may not be a simple process.

The indicators outlined hereunder are some of the factors that may make it more likely that a person is a victim of trafficking. It must be emphasized that they are general in nature and may not all apply in every case of trafficking.

2.1.3.1 General indicators of trafficking

Age - Younger persons (men, women and children) are more likely to be trafficked. This is particularly so in trafficking for sexual exploitation, because there will be little ‘client demand’ for older women. Similar for labour exploitation, where older persons will be less productive. Children are particularly vulnerable to trafficking as they are considered compliant and can be exploited in a variety of ways: in the sex industry, illegal labour markets, including begging, and as domestic workers.

Gender - Sex trafficking predominantly affects females. Trafficking for forced labour exploitation affects both males and females. Largely, young women and girls are trafficked for domestic work.

¹⁴ No. 14051/14/2011-F.VI of 01 May 2012

Signs of abuse - Any signs of physical injury to the victim can be an indicator of violence and trafficking; victims are often subjected to beatings, violence, cigarette burns, etc. by their traffickers and clients.

Behaviour - Police should look for signs of the person being indirect/ ambiguous in answering questions or otherwise behaving in a suspicious manner, looking frightened, angry, suspicious or depressed, and answering in a pre-prepared or rehearsed manner. These may be indicators of women and children in traditional brothel based prostitution.

However, in other instances of prostitution in massage parlours or in private residential apartments, the girls may appear very confident with no trace of fear and may claim, that they are doing this of their own 'free will'. Later, a deeper in-depth interview can show that the person was in fact a victim of trafficking, because she was performing the activities under coercion/ force / abuse of power/ some vulnerability, etc.

2.1.3.2 Indicators of labour trafficking

The police (along with labour department officials, if required) should find information on the following aspects to determine if the person has been trafficked for labour –

- Age of the person
- Who brought the rescued person to the place of exploitation
- Who is accompanying the potential victim (if the person is found during transit)
- Is the person aware of the nature of work/ purpose of travel
- Hours of work per day
- Is the person being forced/ coerced/ threatened/ illegally confined to do the work
- Any advance sum of money that was paid to the parents
- Is the promised salary being paid
- Who gets the salary – individual or placement agency
- Earnings per day vis-à-vis the prescribed minimum wages
- Can the person leave work by own choice (to determine if the person has freedom of choice of employment)?

2.1.3.3 Indicators of sex trafficking

Once in the place of exploitation, while it is easier to identify victims of labour trafficking, identifying persons trafficked for commercial sexual exploitation is more challenging, especially when they have already spent more time in exploitation with the traffickers. The old myths of victims being prevented from going out alone, or being locked up in rooms, with no freedom of movement are a bit over exaggerated in today's day and age, with psychological manipulation, being the most common method used by traffickers to manipulate victims for exploitation. Victims usually develop a "Stockholm Syndrome", which is a condition that causes them to develop a psychological alliance with their perpetrators/ the traffickers, as a survival strategy during exploitation. Subsequently, this leads to a "normalization of exploitation".

Normalization is a process whereby the activity, howsoever out of the ordinary (such as selling ones' body to 20-30 men per day) is 'routine' in the mind of the actor (the victim). The activity is so normalized, that it does not prompt the person to raise a voice, and thereby, take it for granted. Normalization is a goal that traffickers work on. The more the victim normalizes the activity, the more compliant and pliable

she becomes towards prostitution. This would ultimately make the victim totally uncooperative with the police for correctly being identified as a 'victim' of sex trafficking. The concept of normalization is one of the factors that gives the traffickers complete leverage to recruit, and exploit victims continuously, and using the same 'victims' for fresh recruitment, thereby completing the cycle from 'victim' to 'trafficker'.

It is the above aspects of normalization, a psychological dependence on the trafficker, and other associated factors, that will make identification of victims (especially the ones who have spent considerable longer periods in sexual exploitation) more challenging for the police.

Some of the indicators of sex trafficking/ victims or potential victims of sex trafficking would be -

- Age of the person
- Who brought the rescued person to the place of exploitation
- Who is accompanying the potential victim (if the person is found during transit)
- Who connected/ introduced the rescued person/ potential victim to the trafficker/ the one who promised the work/ the one who brought the person to the place of exploitation
- Is the person aware of the nature of work/ purpose of travel
- Was the person aware of the nature of work before being brought to the place of exploitation/ during the time of recruitment / during transit
- Who informed the person of the nature of the work
- In what context was the nature of the work and its exact activities referred
- Any advance sum of money that was paid to the parents
- What was the family situation of the person during the phase of exploitation
- Is the person being forced/ coerced/ threatened/ illegally confined/ blackmailed to do the work
- Who keeps the money from the earnings
- Can the person leave work by own choice
- Person found in brothels/ sites where advertisements offering sexual services/ massage in newspapers, and internet placed
- Foreign woman found during rescue and raid operation from hotel, apartment, massage parlour, etc.

Remember – In the new forms of cyber crimes, the trafficker (the handlers) take a back seat, whilst the girl is made to open an email account, have a Whatsapp number, and the girl is made to solicit, 'chat' with the customer, all by herself. If such a person is caught in a rescue and raid operation, the girl remains the front face of prostitution, whilst the traffickers have no trace of the crime leading to them. Besides, in such cases, it is very easy for the girl and for the traffickers to claim that she was doing it of her own 'free will' and 'consent'. It is even more imperative in such cases, to do a very thorough investigation and interview of the girl, to find out the exact *modus operandi* by traffickers and to destroy the façade of 'consent', which is pinned on the girl by the traffickers.

2.1.4 Missing Children

A large number of children go missing each year in the country. Most of the missing children are trafficked for labour, for sexual exploitation, abducted, or kidnapped, or are missing due to crimes committed against them. They could be runaways from home, or simply be lost. It is not only important to get the information related to these missing children, but it is equally imperative that the information is exchanged speedily to locate the children. It is important to recognize the vital link between missing and trafficked children.

A missing child is defined as a person below 18 years of age whose whereabouts are not known to the parents, legal guardians or any other person who may be legally entrusted with the custody of knowing the whereabouts/well being of the child whatever may be the circumstances/causes of disappearance. The child will be considered missing and in need of care and protection, until located and/or his/her safety/well being is established¹⁵.

A Delhi High Court judgment¹⁶ highlighted that of the 44,000 children that are reported missing annually, only 11,000 get traced. In 2013, the Supreme Court directed¹⁷ the following –

- In case of every missing child reported, there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise. Accordingly, whenever any complaint is filed before the police regarding a missing child, the same must be entertained under Sec. 154 Cr. PC.
- In case a missing child is not recovered within **four months** from the date of filing of the First Information Report, the matter may be forwarded to the Anti-Human Trafficking Unit in each State in order to enable the said Unit to take up more intensive investigation regarding the missing child.
- The Anti-Human Trafficking Unit shall file periodical status reports after every three months to keep the District Legal Services Authorities informed.
- Once a child is recovered, the police authorities shall carry out further investigation to see whether there is an involvement of any trafficking in the procedure by which the child went missing and if, on investigation, such links are found, the police shall take appropriate action thereupon.

Two official web portals have been set up by the government to register missing children. The '*Khoya Paya*' (Lost and Found) Portal is a citizen based website to exchange information on missing and found children, and the 'Track Child' Portal is an integrated virtual space for all stakeholders & institutions under the Juvenile Justice Act, 2015 and Integrated Child Protection Scheme bodies including the police. There is also 'Child Line', a 24-hour toll free helpline, which registers calls on missing children. When missing children reports are received, the police should use all the 3 mechanisms to track and trace the child.

2.2 Identifying traffickers in crimes of trafficking in persons

As much as it is essential to quickly identify victims of human trafficking, it is of equal significance to identify the traffickers/ offenders, so as to bring them to justice. It is also important to identify them early on in sex trafficking cases, to prevent them from claiming to be 'victims' and entering into shelter homes with genuine victims for the purpose of threatening and silencing them. It is equally relevant to remember that women also form a majority of the traffickers (especially for sex trafficking and for marriages). However, the investigation process will reveal to the Investigating Officer (IO), the extent of the role of each trafficker for purposes of being charged under the relevant legal provision.

2.2.1 Who are the traffickers/ offenders in sex trafficking crimes?

Traffickers/ offenders in trafficking for prostitution and other forms of sexual exploitation (for

15 Ministry of Home Affairs, Office Memorandum no. F.NO.15011/60/2011 of 31 Jan, 2012

16 Bachpan Bachao Andolan v/s Union of India, Writ Petition (C) No. 51 of 2006, decided on 18.04.2011

17 Bachpan Bachao Andolan v/s Union of India, Writ Petition (Civil) no. 75 of 2012, decided on 10.05.2013

pornography) will be –

- Recruiter and agents of recruiter (relative, stranger, boy friend, etc.)
- Seller of trafficked person (parents, guardians who knowingly sell/ traffic their child/ ward, etc.)
- Buyer of trafficked person (main financier, brothel manager, massage parlour owner, beauty parlour, person running brothel from private apartment, person running business of filming pornography, etc.)
- Transporter (taxi owner, bus driver, bus conductor, etc.)
- Accomplices (brothel madam, pimp, anyone who detains the victim/ child of victim/ jewelry of victim in the brothel, who seduces the victim for prostitution when he is in care/ custody of the victim, other workers helping run establishments used for prostitution or for filming pornography, the one who uploads pornography, the hotel staff where the trafficker and victim stay during transit, etc.)
- Customer/ client (the buyer of sex, the one who downloads child pornography on payment, etc.).

Remember – Victims of sex trafficking normalize their exploitation to such an extent, that later they often become traffickers, recruiters, brothel madams - that is, criminals - bringing more girls and women into the flesh trade. When confronted with such cases, where women claim to be ‘victims’, the police should do a thorough investigation and treat them as traffickers – even though they had initially started off as genuine victims of sex trafficking.

Sometimes, during rescue operations, older women claim to be the ‘victims’ only to infiltrate the genuine victims and enter safe homes to manipulate/ threaten the other victims. Police should guard against such attempts, and not allow them to be sent to safe homes.

2.2.2 Who are the traffickers/ offenders in labour trafficking crimes?

Traffickers/ offenders in labour trafficking crimes will be -

- Recruiter and agents of recruiter (relative, stranger, placement agency/ agent, travel/ immigration agent, boy friend, etc.)
- Seller of trafficked person (parents, guardians who knowingly sell/ traffic their child/ ward, etc.)
- Buyer of trafficked person (placement agency, factory owner, farm owner, middleman, householder employing person for domestic work, contractors, brick kiln owners, factory owners, etc.)
- Transporter (taxi owner, bus driver, bus conductor, etc.)
- Accomplices (staff of the placement agency, contractors, middle men, supervisors and administrators of factories and other work establishments, government officials from passport offices, immigration, border security agencies, the hotel staff where the trafficker and victim stay during transit, etc.).

2.2.3 Who are the traffickers/ offenders in trafficking for forced/ child marriages?

Traffickers/ offenders in human trafficking for forced/ child marriages will be -

- Recruiter and agents of recruiter (relative, stranger, etc.)
- Seller of trafficked person (parents, guardians who knowingly sell/ traffic their child/ ward, or ‘husband’ who further sells his ‘wife’ to another buyer, etc.)
- Buyer of trafficked person (‘husband’ or another middleman, etc.)
- Transporter (taxi owner, bus driver, bus conductor, etc.)
- Accomplices [priest (of any religion) who solemnizes marriage, middleman, the hotel staff where

the trafficker and victim stay during transit, etc.].

2.3 Trafficking in Persons – An Organized Crime

Although, there is no central law or definition of organized crime, the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), applicable to the state of Maharashtra and Delhi defines “organized crime” to mean - any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person or promoting insurgency [Sec. 2 (e)].

The exploitation of human beings is a highly lucrative business for organized criminal syndicates. It is sometimes assumed that trafficking in persons is associated with highly organised, criminal gangs. In reality, the modus operandi and individuals involved in trafficking crimes are diverse. This crime can and has been perpetrated by relatively unsophisticated offenders, including individuals acting alone or with one other person, even a spouse. Law enforcement officials, border and immigration officials may also sometimes be complicit with traffickers.

The above segment on identifying traffickers has shown that there is normally a chain of people with specific roles assigned in the chain of events of trafficking, from the source to the destination of trafficking. It is the concerted efforts of this group of people, at different stages, and in different phases of the crime, from source-transit-destination, which makes this crime an organized criminal activity, with several offenders. Even if all of the people described above are not involved in every instance of trafficking, there is always more than one person who is required to carry out this crime with a common intent.

Where foreign national victims are involved, their trafficking is even more dependent on organized criminal gangs from both countries (and maybe even from the transit countries), as it may involve making forged documents (passports, visas, work permits, etc.), getting immigration done from the sending country, getting clear passage from transit countries, and getting entry into the destination countries, where more offenders will get added at the stage of eventual exploitation.

With current trends of online recruitment, online soliciting, online financial transactions for sexual services – the activity assumes a more sinister organized shape and form, with the addition of more people to the chain of offenders.

It is essential for the criminal justice responders to understand the organized nature of the crime and its activities, so as to investigate the entire ‘network’ and chain of criminals, and not just the front face of the crime – such as, the brothel madam and the pimp, or the person who runs the massage parlour, or the employer of trafficked labour, and similar other offenders. The initial recruiters, the seller and the entire chain of intermediaries should be investigated and charged, along with the financial trail of the money exchanges at different stages of the crime.

An organized crime perspective of human trafficking for the police, prosecutors and judicial officers would mean –

- Defeating the organized gangs through connecting all the links in trafficking.

- Parallel financial investigation into money laundering (as it would be virtually impossible to establish and manage an organized network without creating audit trails such as advertising, rentals, transportation, communication, mapping of exploiter profits and financial transactions).
- Confiscation of proceeds.
- Collection and sharing of criminal intelligence.
- Transfer of evidence from another country.

The MHA 'Advisory on Human Trafficking as Organized Crime' of 30 April 2012 is at Annexure of Module 2.

2.4 Understanding the victim – Impact on the Victim and a 'Victim-Centred' Approach

All stakeholders of the criminal justice system need to remember the 'victim-centric approach' while dealing with human trafficking victims. This approach means first and foremost, a systematic focus on the *needs and concerns* of a victim, to ensure a *sensitive* dealing with them in a *non-judgmental* manner. This approach seeks to *minimize further trauma* associated with the criminal justice process.

Prosecutors and judicial officers need to recognize the impact of multiple rapes, violence, torture, abuse and exploitation on the victims' physical, mental, emotional, financial and spiritual health.

2.4.1 Forms of Impact

Physical Impact - Women and child victims of sex trafficking are severally tortured initially to 'break' them and initiate them into the flesh trade. They are beaten, burnt with cigarettes, forced to drink alcohol, drugged, locked up, not given to eat, raped, blackmailed, and are put through various kinks and demands of the customers. Many victims die from pregnancy related causes, and unsafe abortions.

In labour trafficking cases, even if the initiation process is not as harsh as sex trafficking, victims are put through back-breaking work for up to 14-16 hours, not given enough food, beaten at the slightest mistake, not allowed to go out or meet anyone, are locked inside the home, etc. Victims end up with several diseases due to harsh labour, harmful exposure at work/ factory, lack of food and rest, etc.

The impact of physical abuse manifests through fatigue and weight loss, gastrointestinal problems, weak immune system and others. Victims of sexual exploitation are at a greater risk of HIV/AIDS, tuberculosis, breathing problems and drug and alcohol addiction.

Psychological Impact – Victims are constantly threatened, coerced, isolated, and blackmailed into submission. They often witness violence on other victims. Consequently, victims suffer from depression, anxiety, hostility, irritation, temper outbursts, aggression, mental illness, disorientation, nightmares, panic attacks, concentration difficulties, continuous fear of abuse and exploitation. Victims of sexual exploitation often exhibit related acts of aggression, such as punching walls, throwing items and hitting others. Victims suffer from shame and guilt and feel somehow responsible for their own misery, and blame themselves for falling into the trap of fraud, borrowing money from friends and family, not keeping up with the promise of sending back money for parents and causing shame to their community. Their shame and guilt causes them to remain silent and not seek help, even when they get the opportunity to run away (whether from a brothel, or home, or factory, or marriage).

Financial Impact - Trafficked victims are often trapped through debt, are vulnerable to brokers because they require money for paying earlier debts and helping their poor families. They are almost never paid anything or paid a very minimal amount, whereas the perpetrator of sex or labour trafficking makes all the money at their expense. Victims are told that their parents are being sent their salaries, but in reality the placement agencies or the brothel managers, keep all the money and do not send anything (or send very small amounts) to the victim's families.

2.4.2 Behaviour of the victim

Most victims (especially of sex trafficking) during and after rescue exhibit the following behaviour -

- Hostility towards the police and/ or lack of trust – because they have been continuously told by the traffickers that they are in fact the real criminals for having indulged in criminal activities (especially of prostitution, or having made false documents for migration, etc.)
- Failure to cooperate – due to the above points, unwillingness to stay in shelter homes, fear of loss of income which was being sent home to support family, children, etc.
- Memory loss, lapses, discrepancies in statements, resulting in:
 - o Changing statements continuously
 - o Genuine inability to recall all details
- Aggression that appears to be irrational
- Disorientation after leaving the situation of ongoing trauma and control
- Continuing anxiety despite apparently being “safe” - for fear of threat and blackmail by trafficker
- Withdrawal symptoms when alcohol, drugs are not given.

A proper understanding of the psychological state of the victim will help the police in dealing with them more effectively at different stages of rescue and post-rescue processes.

ANNEXURES

MOST IMMEDIATE

No. 14051/14/2011-F.VI
Government of India
Ministry of Home Affairs
(Foreigners Division)

Dated 1st May, 2012

OFFICE MEMORANDUM

Sub: Advisory on preventing and combating human trafficking in India - dealing with foreign nationals.

The undersigned is directed to refer to this Ministry's Office Memorandum No. 15011/6/2009-ATC (Advisory) dated 09.09.2009 on the above mentioned subject (copy enclosed). It has come to the notice of this Ministry that foreign nationals are associated in some instances of human trafficking among women and children.

2. Further to the detailed procedure outlined in the above mentioned Office Memorandum, it has been decided with the approval of the competent authority that in cases of foreign nationals who are apprehended in connection with human trafficking, the State Governments / UT Administrations may follow the following procedure : -

- (i) Immediately after a foreign national is apprehended on charges of human trafficking, a detailed interrogation/investigation should be carried out to ascertain whether the person concerned is a victim or a trafficker.
- (ii) The victims and the persons actually involved in human trafficking should be treated differently by the police authorities. This is in line with the SAARC Convention which advocates a victim-centric approach.
- (iii) Missions/Posts in India may be informed of the arrest/detention of the foreign national by the concerned state or other authorities through CPV division in the Ministry of External Affairs(MEA) or the concerned territorial Division in MEA.

Contd...2...

- (iv) It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. *If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the chargesheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned.* Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels.
- (v) During the interim period, pending repatriation, the victim may be taken care of in an appropriate children's home, or "Ujjawala" home or appropriate shelter home either of the State Government concerned or of any NGO aided by the Government of India / State Government.
- (vi) If the investigation reveals that the person is actually a trafficker, he/she may be charge-sheeted under the Immoral Trafficking Prevention Act and the Foreigners Act and due process of law should be followed in such cases.
- (vii) In order to ensure better conviction rates of perpetrators of the crime of trafficking, prosecution should be based on documentary, forensic and material evidence. State Governments are advised to encourage the law enforcement agencies to investigate the cases in a manner that they are able to build fool proof cases against the traffickers, so that convictions can be guaranteed. Use of fast-track courts and video conferencing to the extent possible also need to be ensured. Please refer to para 7 of the enclosed Advisory dated 9.9.2009.

Contd...3..

: 3 :

3. All other instructions contained in this Ministry's Advisory dated 09.09.2009 including reporting to the Anti Human Trafficking Nodal Cell in MHA will be applicable in the case of foreign nationals associated with human trafficking, whether they are women or children(children means both boys and girls upto 18 years of age).

4. You are requested to issue suitable directions to all concerned under intimation to this Ministry.

5. The receipt of this Office Memorandum may kindly be acknowledged.

(G.V.V. Sarma)
Joint Secretary to the Govt. of India

To

The Chief Secretaries/Principal Secretaries/ Secretary (Home) of all State Governments and Union Territory Administrations.

Copy for information and necessary action to:-

- (i) The DGs / IGs (In-charge of Prisons) /- All State Governments/ UTs
- (ii) Sri Sandeep Goel, Joint Commissioner(Crime), 3rd Floor, Police Station Kamla Market, Delhi.
- (iii) Ministry of Women and Child Development(Smt. Aditi Ray, Senior Economic Advisor), Shastri Bhavan, New Delhi.
- (iv) Secretary, Ministry of Labour, Shram Shakti Bhavan, New Delhi
- (v) Secretary, Ministry of Social Justice & Empowerment, Shastri Bhavan, New Delhi.
- (vi) Secretary, Ministry of Overseas Indian Affairs, Akbar Bhavan, New Delhi.
- (vii) Ministry of External Affairs:
 - (a) Addl. Secretary(PV)
 - (b) JS(Consular)
 - (c) JS(BSM)
- (viii) Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi.
- (ix) Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi.
- (x) Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- (xi) Director General, NCRB, R.K.Puram, New Delhi.
- (xii) Director General, BPR&D, New Delhi.
- (xiii) Director General, Border Security Force, New Delhi.
- (xiv) Director, CBI, New Delhi..
- (xv) AS(CS) / JS(CS) / JS(UT) / JS(NE) / JS(K), MHA, North Block, New Delhi.

(G.V.V. Sarma)
Joint Secretary to the Govt. of India

F.NO.15011/27/2011-ATC
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
NORTH BLOCK, NEW DELHI
CS DIVISION

New Delhi, the 30 April, 2012

OFFICE MEMORANDUM

Subject: Advisory on Human Trafficking as organized crime.

Human Trafficking (HT) is a serious crime and a gross violation of human rights. It is very often linked with organised crime and is considered as one of the most profitable criminal activities worldwide. Combating and preventing HT requires special skills and effort to prevent, investigate and prosecute offenders. Generally a group of offenders in HT crimes ranges from the spotter, recruiter, agents of recruiters, transporter, harbourer, brothel manager, brothel keeper, exploiters, etc at the lower rung and organized crime syndicates above which need to be investigated at source, transit and destination.

2. In May 2011, Government of India ratified the United Nations Convention against Transnational Organized Crime (UNTOC) and one of its three protocols includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children. The UNTOC is the first comprehensive and global legally binding instrument to fight transnational organized crime and as such has provided for a universally accepted definition of “organized criminal group” and also lists the offences which are transnational in nature. Though there is currently no central legislation in India with regard to organized crime, Maharashtra has enacted the MCOCA 2000 and some States have adopted the same and other states can also do likewise. Legal action against trafficking in India is being taken under the IPC and the Immoral Traffic Prevention Act (ITPA), 1986 and MCOCA against those involved in HT.

3. Organised Crime involves any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other persons or promoting insurgency.

4. The present advisory is intended to provide guidelines to law enforcement agencies on the manner and modalities regarding the crime which should be implemented in conjunction with a MHA Advisory dated 09.09.2009. F.No.15011/6/2009-ATC-(Advisory).

5. Central Bureau of Investigation (CBI), Government of India, is the national Nodal Authority to receive and respond to all requests for all inter-state and cross border

assistance as a single point of contact and to act as liaison between the Ministry of External Affairs and other State parties on matters relating to the Convention as well as the Protocols. One unit in Special Crime Division of CBI has been designated as AHTU to provide specialized assistance in the area of HT of children and women for the purpose of begging, prostitution, pornography, forced labour in industries & other forms of exploitation. Criminal Intelligence Cell (CIC), CBI which receives data on gangs involved in kidnapping from all States/UTs in India has been subsumed into this Unit. To ensure that all links in a HT chain are identified and prosecuted as per law, the State/UT police agencies can also take assistance of AHTU, CBI for capacity building as well as for investigation of cases having international ramifications. The agency has also activated a helpline number (011-24368638), where any person, having inputs about gangs and syndicates involved in HT can give information.

6. The following **key action points** need to be addressed by States/UTs for effectively dealing with the organized crime aspect of human trafficking.

- a) **Anti Human Trafficking Units (AHTUs):** All states are urged to utilize the AHTUs as a key machinery to deal with the crimes of HT in a holistic manner. Police officers in the AHTU should collect/disseminate/utilize intelligence on offenders; maintain database of offenders as well as their hierarchical structure, place of operation, segments of supply chain and allied places of exploitation; partner with NGOs and local communities to unearth information relating to HT and above all carry out a professional investigation.
- b) **Sensitisation of Law Enforcement Agencies:** Police / Border Guards / Railway Police / Immigration officers, Prosecutors and Judiciary may be sensitized through training / seminars and workshops for the effective implementation of the ITPA, the IPC (Sections 3A, 107-117,120A, 120B, 551), the Prevention of Corruption Act, 1988, (Sections 7-11, 13, 17, 20) and other relevant state legislations. This should be with the specific purpose of dealing with the organized aspect of trafficking.
- c) **Special Police Officers (SPO):** U/s 13 of the ITPA, the State Government may appoint SPOs and 'Non-official advisory bodies' to advise the SPOs for dealing with offences under the ITPA.
- d) **Local Intelligence Units (LIU):** State Governments may consider setting up LIUs in all districts against organized crime to gather intelligence and ensure that it is disseminated. Priority should be given to the database on traffickers and their networks. Their profiling and surveillance can be an effective tool for intelligence collection and for prevention of trafficking.

- e) **Helplines:** State police agencies may set up helplines and special desks in the police stations and control rooms to address this issue on a real time basis.
- f) **SOPs:** The protocol on Inter-State rescue and Post-Rescue activities and Standard Operating Procedures for Investigation etc. developed jointly by the MHA and UNODC for conducting joint investigations and operations which also facilitate exchange of information about traffickers and their mode of operation, routes etc should be implemented. These resource materials should be translated and re-printed by the states into local languages for wider use and dissemination.

7. INVESTIGATION OF ORGANISED HUMAN TRAFFICKING CASES

Only relentless law enforcement pressure can diminish the possibility of unattached criminal elements forging alliances with big crime figures, constitute criminal networks and thereby spawn the phenomenon of organised crime. Organised crime can only be combated by a deft mix of good intelligence, proper and exhaustive investigation and national and state level coordination.

8. SUMMARY OF GUIDELINES FOR INVESTIGATION.

An organised criminal group is structured in a hierarchical manner so that the kingpins are insulated from law enforcement. Conviction of kingpins is difficult because of rules of evidence: witnesses are not willing to depose for fear of their lives and informers fail assist law enforcement agencies as documentary evidence is not available. For counter these difficulties which hinder proper investigation and prosecution of cases, the following measures are beneficial – inter-agency coordination, use of undercover agents, early completion of investigation and speedy trials, access to common databases for enforcement, witness protection, confiscation of crime proceeds, training of investigation officers and use of Mutual Legal Assistance Treaty (MLAT) for assistance in investigation from other countries.

9.1 **Ingredient of Offence:** Each ingredient of an offence made out in a case must be clearly identified and must be matched against the relevant pieces of available evidence as well as the legal admissibility of each piece of evidence along with linking it with one or more ingredients.

9.2 **Investigation at source, transit and destination:**

- a) Evidence collection at the source to ascertain the true identity of a victim, identify and whereabouts of the local gang members and their contacts (links), the modus operandi used for recruitment/engagement of a victim, complicity of the family and others (if any).
- b) Evidence collection through transit is required to establish transfer of a victim, routes and modes of transportation used, identify accomplices and the methods used to control a victim through the transfer.

- c) Evidence collection at the destination to establish the nature of exploitation, methods employed by exploiters to control a victim, impact of exploitation on a victim, places used for exploitation, identification of gang members operating the business, property and assets of a gang and individual members, complicity of officials (if any).

9.3 Corroborative evidence: Medical reports should be used to establish the nature of exploitation and its impact on victims. Age estimation of a child victim is necessary to book offenders under more stringent provisions; DNA/finger prints and such other test reports may be obtained to establish the identity of a person (victim/accused); call record analysis of gang members to establish contact between relevant persons (victim/accused/others), travel documents/tickets used by traffickers to establish movement of victims/accused and forensic reports of items seized from a scene of crime (SOC) such as blood stains, instruments, weapons, registers, property papers etc. are other forms of evidence which should be used to establish relevant facts for a case.

9.4 Independent reports from other agencies: An Inquiry report submitted under Section-10A (b(i) or 17(2) or 19(3) ITPA, would be highly relevant and useful in cases involving adult female victims of trafficking for commercial and sexual exploitation. Similarly, inquiry report submitted u/s 33 JJ Act in case of child victim or Income Tax department assessment or any other official agency in relation to the activities/assets of an accused or the gang or a Counsellor's report about the condition of a victim would be of utility.

9.5 Sequence of events: The sequence of events from 'source to destination' should be reconstructed with all available information to identify the missing links of information and their legal admissibility. Each SOC should also be individually reconstructed to identify the missing links of information/evidence. The role of predators/accomplices such as Procurers/Spotters, Recruiters, Transporters of the victims, Financiers and other exploiters such as clientele, pimps, brothel owner and managers should be investigated from a conspiracy angle.

9.6 Defeating Organised Gangs:

- a) A clear plan of action should be chalked out to collect relevant evidence to prove existence of a gang, the identities and activities of its gang members, nexus with other gangs and public officials, if any and identify the trail of illegal and ill-gotten money (proceeds of crime).
- b) Deciphering the communication linkages through link analysis.
- c) Specific and general 'intelligence' about a gang should be developed to make a prima facie assessment about the lines of investigation with respect to the activities of a gang.
- d) Relevant 'surveillance' methods may be employed to develop specific information including the identity, the activities and the level of complicity of gang members in the case and otherwise.

- e) The case history of every crime committed by every gang member should be collected from the concerned districts to prepare a dossier of the gang to be used to book a gang under relevant laws such as the UP Gangster Act.

9.7 Parallel Financial Investigation into Money Laundering

It would be virtually impossible to establish and manage an organized HT network without creating audit trails such as advertising, rentals, transportation, communication, mapping of exploiter profits and financial transactions. Any of the following four aspects relating to money laundering need to be established during the course of investigation. Assistance of financial experts should be taken:

- a) Conversion or transfer of crime proceeds for the purpose of concealing their illicit origin;
- b) Concealment or disguise of crime proceeds;
- c) Acquisition, possession or use of crime proceeds;
- d) Contributing indirectly to the commission of the offences outlined above, including participation in and conspiring or attempting to commit the offences in question.

9.8 Efforts should be made to identify each and every moveable and immoveable asset of a gang and each of its members including benami properties by verifying documents and analyzing the source of funds. Each business or establishment run by gang members should be scrutinized to assess the investment made into the business/establishment, its source of funding, profits made and utilization/re-investment of profits, possible tax evasion, violation of financial rules and regulations including the ones relating to foreign exchange.

9.9 Confiscation of Proceeds:

It will be essential to deprive the criminal gangs of their ill gotten wealth. The laws relating to confiscation of proceeds of crime are available in several statutes. As per the facts of the case being investigated the relevant law is to be invoked.

- a) Sections 102, 105 and 452 of Cr.P.C
- b) Sections 111 to 121 of the Customs Act, 1962 ;
- c) Chapter V A of the Narcotic Drugs and Psychotropic Substances Act, 1985;
- d) The Criminal Law [Amendment] Ordinance, 1944 (Ordinance XXXVIII of 1994)
- e) Foreign Exchange Regulation Act, 1973 (Section 63) ; and
- f) Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.
- g) Unlawful Activities (Prevention) Act, 1967
- h) Invoke provisions of ITPA alongwith IPC, ITPA with MCOCA (wherever in force), ITPA with Goa Children's Act, 2003 (applicable in Goa) etc.

- i) Action be initiated under the provisions of the Prevention of Money Laundering Act, 2002 for offences committed u/s. 5, 6, 8 and 9 of ITPA; The Enforcement Directorate is to be informed during the investigation of the predicate offences.

9.10 Collection and sharing of criminal intelligence

As with any other form of organized crime, successful investigation of trafficking in persons requires the need to identify and gather evidence from other jurisdictions in the course of investigations, be it inter-state or cross-border trafficking. Hence, joint proactive operations/serious investigations in the region or transit or destinations sites can exploit evidential opportunities to gather collaborative evidence at recruitment and transportation phases of the crime. It is necessary that while investigating the crime of human trafficking, the following needs to be considered at all stages of human trafficking:

- a) Sharing criminal intelligence with other police agencies (different police stations, districts, states, CBI etc.) on traffickers and all other accomplices.
- b) Sharing crime data with other police agencies and CBI regarding vulnerable places and vulnerable people.

9.11 Transfer of evidence from another country:

For transfer of evidence from another country Letter of Request (LR) u/s 166A Cr.P.C. or invoking MLAT must be resorted to by contacting the IPCC Division of the CBI.

10. The aforementioned measures are only indicative and the States/UTs may consider any additional measures for dealing with the organized crime of human trafficking. This Ministry may also be kept apprised of any special measures/mechanisms introduced in their respective jurisdictions so that the same could be circulated to other State Governments and UT Administrations for consideration / adoption. States/UTs may consider translating this Advisory into regional languages for dissemination.

The receipt of the Advisory may be acknowledged.

Sd/-

(S.Suresh Kumar)

Joint Secretary to Govt. of India,
Ministry of Home Affairs,
North Block, New Delhi – 110001
Tel. No. 23093410

To
The Chief Secretaries &
The Principal Secretary/Secretary (Home)
All State Governments and Union Territories

Copy also for information and necessary action to:

- i. The DGs of all State Governments/UTs.
- ii. National Commission for Protection of Child Rights
- iii. Director General BPR&D
- iv. Director NCRB
- v. Director CBI
- vi. Director, IB
- vii. Director General BSF
- viii. Director General ITBP
- ix. Director General SSB
- x. Ministry of Women and Child Development
- xi. Ministry of Labour
- xii. Ministry of Social Justice and Empowerment
- xiii. Nodal officers Human Trafficking

Sd/-

(S. Suresh Kumar)
Joint Secretary to Govt. of India

MODULE 3

THE LEGAL FRAMEWORK OF TRAFFICKING OF PERSONS

MODULE 3 – THE LEGAL FRAMEWORK OF TRAFFICKING OF PERSONS

Module Goal

To strengthen legal understanding of judicial officers and prosecutors of the legal framework of Trafficking in Persons in India.

Time: 5 hours

Session Plan:

Sr. No.	Topic	Objectives of Module 3	Resource Material	Time
3.1	Indian Penal Code (IPC), 1860	Understand the correct application of the comprehensive legal framework available to deal with all kinds of trafficking and its associated activities.	Refer 3.1 Handout of Case Study	45 min
3.2	Immoral Traffic (Prevention) Act (ITPA), 1956	Know the framework on the law related to sex trafficking.	Refer 3.2 MHA Advisory – ‘Preventing and Combating Human Trafficking in India’	45 min
3.3	Protection of Children from Sexual Offences Act (POCSO), 2012	Know the framework on the law related child sexual abuse and exploitation as related to sex trafficking.	Refer 3.3	45 min
3.4	The Prohibition of Child Marriage Act, 2006	Comprehend the framework of the law related to trafficking for child/ forced marriage.	Refer 3.4	20 min
3.5	Bonded Labour System (Abolition) Act, 1976	Comprehend the framework of the law related to bonded/ forced labour.	Refer 3.5	20 min
3.6	Child and Adolescent Labour (Prohibition and Regulation) Act, 1986	Comprehend the framework of the law related to child bonded/ forced labour.	Refer 3.6	20 min
3.7	Minimum Wages Act, 1948	Comprehend the law with bearing on trafficking for forced labour.	Refer to 3.7	10 min

3.8	The Juvenile Justice (Care and Protection of Children) Act, 2015	Understand the comprehensive framework of law related to 'children in need of care and protection', and its specific provisions related to offences against children.	Refer 3.8	30 min
3.9	The Information Technology Act, 2000	Know the application of the law related to trafficking for pornography and child sexual abuse images.	Refer 3.9	10 min
3.10	The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989	Understand the use of the law as a powerful tool to be used along with the laws on trafficking.	Refer 3.10	05 min
3.11	The Transplantation of Human Organs Act, 1994	Know the law related to trafficking of human organs.	Refer 3.11	05 min
3.12	The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Know the law related to trafficking and exploitation of inter-state migrant men and women labourers.	Refer 3.12	05 min
3.13	The Foreigners Act, 1946	Know the application of the law related to illegal activities committed by traffickers who are foreign nationals.	Refer 3.13	05 min
3.14	The Passports Act, 1967	Know the application of the law w.r.t. trafficking related crimes of falsifying/ forging passports and travel documents.	Refer 3.14	05 min
3.15	Indian Passport (Entry into India) Act, 1920	Know the application of the law related to illegal entry by traffickers who are foreign nationals.	Refer 3.15	05 min
3.16	Emigration Act, 1983	Know the application of the law related to emigrants going out of India for employment.	Refer 3.16	05 min
3.17	The Andhra Pradesh Devadasees (Prohibition of Dedication) Act, 1988	Build knowledge on the application of the law related to devadasee dedication in the States of Andhra Pradesh and Telangana.	Refer 3.17	05 min

3.18	Institutions and agencies under various laws on rights of victims	Know the several agencies and institutions set-up under different laws with specific role on child rights and child victims.	Refer 3.18	15 min
------	---	--	------------	--------

Training Methodology

Activity 1: Case Study

Objective of the Session	To make the participants understand the application of different laws to a case of trafficking.
Estimated Time	60 Minutes
Methodology	Group work
Material Required	Charts and markers
Expected Outcome	This session will enable the participants to understand how to understand the facts of a trafficking case and to correctly identify different elements of trafficking, and apply the appropriate laws and legal provisions.

Process for the Trainer

Step 1: This entire Module will be covered with brief discussion on all the laws that can be applied to a case of trafficking, along with practically discussing the application of laws with the assistance of case study method. Keep the 2 Case Studies ready for distribution.

Step 2: Divide the participants into 2 groups. Give Case Study 1 on sex trafficking to Group 1, and Case Study 2 on labour trafficking to Group 2.

Step 3: Ask each group to identify –

- i. *All the elements* of trafficking, in their respective case study;
- ii. Who are the *victims* (under which provision of law);
- iii. Who are the *offenders*;
- iv. List the *offences* committed by offenders;
- v. List all the *laws* that are applicable in the case with their specific provisions.

Step 4: Once the Groups complete their discussions, each team will be asked to make a presentation by choosing a presenter.

Step 5: After presentation of Group 1, ask the other Group if they want to add more points. Repeat for group 2.

Step 6: Sum up the entire discussion by encapsulating the points made by both the groups.

For Group 1 - Case study on Trafficking for Prostitution

Bhavani, a 17 years old girl lived with her family and was a good student till class 6th, at the St. Mary's High School. Her mother was an ayah at the same school, while her father ran a coconut shop. They lived in Guntur. All was fine and she and her two sisters lived a fairly decent life, with a house of their own and a small farm land. Tragedy soon surrounded this family when the mother was terribly injured in a stove blast. Her father soon hit the bottle and had to sell off property and soon he became a debtor. As the fights in the family increased, it led to poor performance of Bhavani in school. But due to the intervention of the school principal, the three sisters continued in school without paying fees.

"It was very embarrassing. Everyday in the evening the men would come home and demand their money from my father, who would be drunk and would create a scene," says Bhavani. "The neighbours soon began to treat us badly. There was no food in the house and so mom had to go and work as a maid, but because of the injuries she suffered during the blast, she could not work for long and so I would help her in these houses, along with working in weddings, farms etc.," says Bhavani.

By now the principal of the school also decided not to fund the three girls and so Bhavani was working full time to look after her family. Meanwhile her mother needed injections for the healing of the burn wounds and each injection cost a lot and so her mother borrowed from her nephew living in Hyderabad. "We went to Hyderabad for our summer holidays to my mother's relatives' house, where the nephew suggested that Bhavani should be sent into prostitution, saying that there would be a lot of money in it". "He was much younger than my mother but he would talk to her like an equal. I did not like it but then my mother had borrowed Rs. 10,000 from him." Her mother knew another lady called Anusha who lived in Mehdipatnam and so during the same vacation Bhavani shifted from her home to Mehdipatnam in 2013.

Leaving her in Mehdipatnam, her mother told Bhavani to do whatever Anusha told her to do. Anusha was a married woman and her husband was a supervisor at BSNL. They lived on the ground floor while the owners lived on the first floor. Anusha was a mother but her daughter was being brought up by her grand parents in another town. Bhavani would see strangers coming and going into the house and also hear Anusha talk over phone saying - "Are you coming? I will show you a girl".

Bhavani was recognised as a 'virgin' and lots of people came and saw her. She would wear frocks and short skirts and her name was changed to Siri. Initially all she had to do was say 'hi' and go back to her room. "All the men who came to see me were uncles," says Bhavani. In fact many men would see her and go back saying she was too young. Meanwhile Anusha was busy training her. She would show pornographic books to Bhavani and ask her to learn and do the same. She also told Bhavani that condoms were compulsory. "This is the first time I had heard such stuff," says Bhavani.

Meanwhile the husband of Anusha would misbehave with Bhavani and would touch her inappropriately, in her absence, but Bhavani would avoid him and move away. One fine day, Anusha asked her to get ready, and one 'uncle' took her to a hotel for one week, "but I created problems for two days," says Bhavani, and then he called Anusha and she cursed Bhavani and explained that if she did not do what uncle wanted then she would send another uncle. Then entered another uncle. "But I continued harassing them," says Bhavani.

Finally, Anusha fixed another guy in Hyderabad and took Bhavani there. "I cried a lot but they forced some wine into me and told me to lie down near a customer. At 4 am Anusha and her friend Madhu

held my legs apart and watched while the man had sex with me. I cried a lot then.” On another night Bhavani was sent to a home with 5 men, who raped her continuously having eaten Viagra. In the middle of the night, the other 4 men also raped her one by one. This continued each night with new clients. On another occasion Anusha took her on a contract for five days to Naidupeta where she had to entertain 13 men each day. Here they stayed at another auntie’s house.” She saw Anusha collect lakhs of rupees by claiming that Bhavani was a virgin, but gave Bhavani occasionally, 2000-3000 only.

Meanwhile, though Bhavani was speaking to her mother quite regularly, she would not tell her anything because Anusha had told her that only if she continued to do this would her family members at Guntur eat any food. Bhavani finally tells her mother, but realizes that the family is surviving on the little money that Anusha is sending to them.

Bhavani’s mother spoke to her nephew who sends Bhavani to another Lakshmi aunty, who lived at LB Nagar. “She immediately took me on a five day contract to Kukatpally with 10 customers each day.” Lakshmi aunty’s son’s friend Ashok said he loved Bhavani and made her buy a bike, a gold chain and a ring on the promise of marriage. Bhavani started taking more contracts for his sake. Till she realised that Ashok and aunty were conspiring to do this together.

Meanwhile Bhavani also managed to send some money to her mother and bought a mobile phone. Now customers could call her directly. “Lakshmi aunty called me her daughter and we were now living like a family. I travelled with aunty to different towns and cities.” Another ‘uncle’ meanwhile entered Bhavani’s life, and Lakshmi aunty took Rs. 2 lakh from him but gave Bhavani only Rs. 3,000.

“We had debts at home and my only goal was to repay all the debtors, even though I knew that Ashok was cheating me”. At home her father and sisters did not know what she was doing and was told that she was getting a salary of Rs. 7,000 to work in a beauty parlour. “By now I was in this business for six to seven months,” she says.

Lakshmi auntie and Anusha had now started a business with her in a house, with a room and beds and Ashok would drop her wherever needed. One day during a 4 days contract, she was rescued by the police.

Bhavani had spent ten months in prostitution and by the end of the day, she had become an expert in evaluating brokers and had reached a stage where she could demand Rs. 50,000 per night. But still her one constant thought was her mother and she justifies her mother’s action by saying “we were in a tough situation and there was no way out. I am not angry with her,” Bhavani says.

For Group 2 - Case study on Trafficking for Labour/ Domestic Work

Rano is a 14 years old young girl, who lives in a village near Chittagong, Bangladesh, with her parents and 3 other siblings. She is the eldest of all brothers and sisters and her parents are poor farm labourers. One day, a neighbour’s relative Sajjad who comes to visit them, tells her parents, that Rano should go to Kolkata and work as a domestic help. That way she can earn and send more money home so that her younger brothers and sisters can get educated and there will be enough food in the house. Rano’s parents have no identity documents to give to Sajjad to make her passport or any travel documents. Sajjad tells them that he does not need any documents, and that he will just walk with Rano and cross the border. He asks Rano’s parents to give him 25,000 Bangladeshi taka for taking Rano across the border. Her parents don’t have the money and therefore, refuse to send Rano with him. He comes back again after

a month, and says that he is now ready to take Rano with him to Kolkata. In lieu, he offers her parents 10,000 Bangladeshi taka, and says that after Rano finds work, she will be able to send them about 3000 Bangladeshi taka each month from her salary.

Rano accompanied with Sajjad boards a bus from her village and after 2 days reaches a village bordering Siliguri in the State of West Bengal, India. She has neither a passport nor other travel documents with her, nor is she aware of the requirement of valid travel documents. At the border, Rano sees Sajjad talk to some men in uniform. In the middle of the night, along with few other people, Rano and Sajjad cross the border and reach Kolkata the next day. The next day Sajjad takes her to a house, which also has an office attached to it. Rano can neither read nor write so she does not know what is written on the banner outside the office. She sees Sajjad taking money from the house owner who is called Ahmed. Rano asks Sajjad what is the name of the place, and Sajjad tells her that they are in Kolkata. Rano tells Sajjad that she does not want to stay in Kolkata, and wants to go back home. Sajjad convinces her that Ahmed will send her to a good house for work, where she will be looked after very well. Besides, he reminds her that he has already paid money to the parents and that she should work to pay that off. Ahmed actually runs a placement agency and provides domestic workers in the city of Kolkata.

Rano meets another girl who looks like she is as old as Rano. The girls look at each other, but cannot talk, because they do not speak any common language. One older boy, sees them sitting quietly with each other for a whole day, and starts talking to them. This boy is 15 years old and he is called Munna. He can speak Bangla and Hindi, and starts translating for Seema and Rano. Seema, who is also 14 years of age, tells Rano that her uncle has brought her from her village Haripada from Sambalpur district, in Odisha. Seema tells her that they lost their house in the village due to destruction caused by a cyclone, and her father also lost his work from the mines. Her parents then decided to take up the offer of Mohan, who was her father's friend and who was already working in Kolkata. Seema did not want to go so far away from home, but her mother explained to her that she will be brought home soon, when her father got a stable job.

After 7-8 days of staying in Ahmed's house, both the girls are told that they are being sent to work in different houses, but in the same building, in Kolkata. The girls are very scared, but they have to do what Ahmed tells them to do. He tells them that Munna will also be sent to the same Housing Society to work in a 3rd house.

Rano is in a Bangla speaking house, and she does not know in which house or building Seema and Munna are working. Within a few days, she realizes that she has to do all the house hold work, plus look after a 4 year old boy, and do the cooking also. The madam of the house stays at home and her husband goes to office every day in the morning. Madam is pregnant and does not work in the house. She is very strict with Rano, and gives her measured food twice a day. Rano wakes up at 5 am, and starts the work in the house. She is not allowed to rest in the afternoon, when madam sleeps, because she has to play with the 4 year old boy. Her work finishes at 11-12 everyday, because Sir likes to eat his dinner late. Madam sleeps early with her young son. Rano keeps waiting in the kitchen, for Sir to call her for dinner, so that she can also sleep. One day, as she is waiting for Sir in the kitchen, he enters, closes the door and closes her mouth, while laying on top of her. Rano is completely confused and does not understand what had happened. She cries with pain, but does not know who she can speak to. She never goes out of the house, and does not speak to anyone. Sir now comes into the kitchen off and on at night, after madam goes to sleep.

Rano keeps becoming weak and pale, till she starts vomiting continuously one day. Madam takes her to the hospital with her as she is also going to see the doctor. Rano hears the doctor tell madam that she is pregnant. Despite madam continuously telling the doctor not to tell anyone, Rano hears the doctor make a phone call to the police.

All the laws that are applicable to different forms of trafficking are mentioned hereunder. The legal provisions highlighted here pertain to offences committed under these respective Acts. Other procedural provisions (for instance, closure of brothels, are given in their respective Modules).

3.1 Indian Penal Code (IPC), 1860

The IPC is the principal penal code of India, and contains several offences, which directly and indirectly have a bearing on crimes of trafficking. The IPC was amended in 2013, adding the definition of Trafficking in Persons. Several other provisions can be utilized for different acts pertaining to trafficking, at various stages of the crime. The following offences and punishments provided in the IPC can be used to charge trafficking crimes-

Sec. 366-A - Procurement of minor girl under 18 years -

- Whoever, by any means whatsoever,
- induces any minor girl under the age of eighteen years to ...
- forced or seduced to illicit intercourse with another person.
- Minimum imprisonment - Maximum – 10 years / Fine.

Sec. 366-B - Importation of girl under 21 years from foreign country or from Jammu and Kashmir -

- Whoever imports into India from any country outside India or from the State of Jammu and Kashmir
- any girl under the age of twenty-one years with intent that ...
- forced or seduced to illicit intercourse with another person.
- Minimum imprisonment - Maximum – 10 years / Fine.

Sec. 367 - Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.:

- Whoever kidnaps or abducts any person
- subjects person to grievous hurt, or slavery, or to the unnatural lust.
- Minimum imprisonment - Maximum – 10 years / Fine.

Sec. 370(1) – Trafficking of person -

- Whoever recruits, transports, harbours, transfers, or receives, a person or persons
- Using threats or; using force, or any other form of coercion, or; by abduction, or; by practising fraud, or deception, or; by abuse of power, or; by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received – for
- prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Some examples of elements that the police may consider for proving trafficking under Sec. 370 are as follows (these are only indicative and not exhaustive) –

Recruits – traffickers send about 80,000 SMS in a certain geographic region of the state offering jobs in big cities, and are able to traffic about 1800 of those who responded to the job advertisements¹⁸; a trafficker asks parents of a girl to send their daughter to big city for domestic work, but takes her instead

¹⁸ Information received from NGO representative.

to a brothel and sells her there; a young college student tells his girlfriend that she has to do only sex-chats, so that they can earn lots of money to spend on fancy gadgets, but later slowly coaxes her into full scale prostitution.

Transports – trafficker takes boy from village for forced labour all the way to bigger city (Delhi, etc.), taking several modes of transport, like train, bus, taxi, etc.; trafficker takes girl from one place to another within same city.

Harbours - trafficker takes boy from village for forced labour and stays first at a small lodge, then at a relative's house and finally reaches the city; trafficker brings girl for prostitution and keeps her at her own sister's house before sending her to massage parlour.

Transfers – trafficker promises girl's parents that she will be sent to a good house for domestic work in Delhi, and after bringing her to Delhi transfers her to a placement agency for finding her work as domestic helper.

Receives a person – the placement agency, which receives a girl for sending her to domestic work; or employer receiving several boys for working in brick kilns; or brothel madam receiving a girl brought by the recruiter/ trafficker.

Threats – a trafficker tells a girl/ woman that he will kill her parents, if she does not sell herself every night to the customers that he brings; OR – a trafficker tells a girl/ woman that he will kidnap her younger sister and sell her to a brothel if she does not indulge in prostitution and earn money for him/ her.

Force – a trafficker tortures the girl/ woman by inserting chilli powder into her vagina; or keeps her hungry for several days; or beats her up so that she consents to forced prostitution.

Coercion – a trafficker uses emotional blackmail by telling the girl that he intends to marry her after she earns enough money through prostitution for them to build a house; OR – the trafficker says that he is the boyfriend of the girl and presently cannot earn money, which the girl only can earn through getting pornographic images clicked and then selling them. Coercion can be both – physical as well as psychological.

Abduction – (will have the same meaning as Sec. 362 of IPC - when a trafficker uses force or any other deceitful means to compel a person to go from one place to another) – a trafficker tells a girl that he will make her a big singing star on a reality show in Mumbai and takes her without informing her parents and without their consent; but then sells her to a placement agency for domestic servitude.

Fraud – a trafficker promises a man of a job in Dubai and takes a heavy amount as fees for processing paper work, and later sends him to his agent in Dubai promising job as an accountant, but when the man reaches Dubai, the agent puts him to work at a construction site, takes away his passport and pays him one-third of the salary that was promised.

Deception – a trafficker tells parents that he will take their 14 years old son and get him to study in the big city if he also works only for 3-4 hours as a 'play mate' in a rich man's house in Delhi; but he gets him to work as in domestic servitude for 16 hours a day, with no schooling, and keeps the entire salary to himself, without sending anything to the parents.

Abuse of power – a university professor compels her female students for prostitution and tells them that she will give them very good marks in their internal papers; but if they do not do what she says, she will fail them.

Sec. 370(2) – Punishment for trafficking of person –

- Minimum imprisonment - 7 years / Maximum – 10 years / Fine

Sec. 370(3) – Punishment for trafficking of more than one person –

- Minimum imprisonment - 10 years / Maximum – Life imprisonment / Fine

Sec. 370(4) – Punishment for trafficking of minor -

- Minimum imprisonment - 10 years / Maximum – Life imprisonment / Fine

Sec. 370(5) – Punishment for trafficking of more than one minor -

- Minimum imprisonment - 14 years / Maximum – Life imprisonment / Fine

Sec. 370(6) – Punishment for repeat trafficker of minors -

- Minimum imprisonment - Life imprisonment (for remainder of person’s natural life)/ Fine

Sec. 370(7) – Punishment for public servant or police officer involved in trafficking of any person -

- Minimum imprisonment - Life imprisonment (for remainder of person’s natural life)/ Fine

Sec. 370A (1) - Employing of a trafficked person -

- Whoever, engages a trafficked minor for sexual exploitation in any manner
- Minimum imprisonment - 5 years / Maximum – 7 years / Fine

Sec. 370A (2) - Employing of a trafficked person -

- Whoever, employs a trafficked adult person for labour
- Minimum imprisonment - 3 years / Maximum – 5 years / Fine

Sec. 371- Habitual dealing in slaves -

- Whoever habitually imports, exports, removes, buys, sells traffics or deals in slaves
- Maximum – Life imprisonment or imprisonment up to 10 years / Fine

Sec. 372 - Selling minor girl for purposes of prostitution -

- Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years
- to be employed or used for the purpose of prostitution or illicit intercourse
- Maximum – 10 years / Fine

Sec. 373 - Buying minor girl for purposes of prostitution -

- Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years
- to be employed or used for the purpose of prostitution or illicit intercourse
- Maximum – 10 years / Fine

Sec. 374 - Unlawful compulsory labour -

- Whoever unlawfully compels any person to labour against the will of that person,
- Maximum – 1 year / Fine

Sec. 375 – Rape -

- Penetrates penis, into the vagina, mouth, urethra or anus of another person
- Insertion of any object or a part of the body, not being penis, into the vagina, mouth, urethra or anus
- Manipulates any part of the body to cause penetration
- Applies his mouth to the penis, vagina, anus, urethra of another person
- Touches the vagina, penis, anus or breast of the person
- Against the other person’s will
- Without the other person’s consent
- With the other person’s consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or of hurt

- When the person assaulted is a female, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married
- With the consent of the other person when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by that person personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that action to which such other person gives consent
- With or without the other person's consent, when such other person is under eighteen years of age
- When the person is unable to communicate consent

Sec. 376 (1) – Punishment for rape –

- Minimum imprisonment - 7 years / Maximum – Life imprisonment / Fine

Sec. 376 (1) – Punishment for rape by government official, etc. –

- Minimum imprisonment - 10 years / Maximum – Life imprisonment / Fine

Sec. 376A - Punishment for causing death or resulting in persistent vegetative state of the victim -

- Whoever, commits an offence punishable under Sec. 376 and inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state
- Minimum imprisonment - 20 years / Maximum – Life imprisonment / Fine

Sec. 376C - Sexual intercourse by a person in authority -

- A person in position of authority or in a fiduciary relationship, public servant, superintendent or manager of a jail, remand home or other place of custody or a women's or children's institution, staff of hospital
- Abuses such position of authority and has sexual intercourse not amounting to sexual assault
- Minimum imprisonment - 5 years / Maximum – 10 years / Fine

In addition, offences in trafficking cases would include – kidnapping (Sec. 359, 360, 361); abduction (Sec. 362); kidnapping, abducting or inducing woman to compel her marriage (Sec. 366); cheating (Sec. 415); cheating by personation (Sec. 416); hurt (Sec. 319); grievous hurt (Sec. 320); and others.

3.2 Immoral Traffic (Prevention) Act (ITPA), 1956

The Immoral Traffic (Prevention) Act, 1956 is a law for the prevention of immoral traffic, to combat trafficking and sexual exploitation for commercial purposes. The Act was known as the Suppression of Immoral Traffic in Women and Girls (SITA) Act in 1956, and was further amended in 1986, when it was called the ITPA. The ITPA only deals with trafficking in relation to prostitution and not in relation to other purposes of trafficking, such as domestic work, labour, marriage, organ trade, etc.

Offences and punishments under the Act are listed as hereunder -

Sec. 2 (a) - “brothel” includes any house, room, conveyance or place, or any portion of any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes;

Sec. 2 (aa) - “child” means a person who has not completed the age of sixteen years;

Sec. 2 (ca) - “major” means a person who has completed the age of eighteen years;

Sec. 2 (cb) - “minor” means a person who has completed the age of sixteen years but has not completed the age of eighteen years;

Sec. 2 (f) - “prostitution” means the sexual exploitation or abuse of persons for commercial purposes, and the expression “prostitute” shall be construed accordingly.

Sec. 3 - 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
- Punishable on 1st conviction - Minimum imprisonment - 1 year / Maximum – 3 years / Fine
- Punishable on 2nd conviction - Minimum imprisonment - 2 years / Maximum – 5 years / Fine

Sec. 3 (2) - Any person who is -

- tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel
- owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel
- Punishable on 1st conviction - Maximum – 2 years / Fine
- Punishable on 2nd conviction - Maximum – 5 years / Fine

Sec. 4 - Punishment for living on the earnings of prostitution -

- Any person over the age of eighteen years (living with, or is habitually in the company of a ‘prostitute’; or exercises control, direction or influence aiding abetting or compelling her prostitution; or acting as a tout or pimp)
- who knowingly lives, on the earnings of the prostitution of any other person
- Maximum – 2 years / Fine - (earnings of adult)
- Minimum imprisonment – 7 years / Maximum – 10 years / Fine (earnings of child or a minor).

Sec. 5 - Procuring, inducing or taking person for the sake of prostitution -

- Any person who procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or
- Induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
- Takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; or
- Causes or induces a person to carry on prostitution
- Minimum imprisonment – 3 years / Maximum – 7 years / Fine
- Minimum imprisonment – 3 years / Maximum – 14 years / Fine (against will of the person)
- Minimum imprisonment – 7 years / Maximum – Life imprisonment (against a child)
- Minimum imprisonment – 7 years / Maximum – 14 years (against a minor).

Sec. 5 (3) - An offence under this section shall be triable -

- in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or taken such persons made; or
- in the place to which she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.

Sec. 6 (1) - Detaining a person in premises where prostitution is carried on -

- Any person who detains any other person, whether with or without his consent –
 - o in any brothel, or
 - o in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person,
- Minimum imprisonment – 7 years / Maximum – Life imprisonment / Fine

Sec. 6 (2) - Where any person is found with a child in a brothel -

- it shall be presumed, unless the contrary is proved, that he has committed an offence under subsection (1).

Sec. 6 (2-A) - Where a child or minor found in a brothel –

- is, on medical examination, detected to have been sexually abused,
- it shall be presumed unless the contrary is proved,
- that the child or minor has been detained for purposes of prostitution or,
- has been sexually exploited for commercial purposes.

Sec. 6 (3) - A person shall be presumed to detain a person in a brothel - if such person, with intent to compel or induce her to remain there -

- withholds from her any jewelry, wearing apparel, money or other property belonging to her, or
- threatens her with legal proceedings if she takes away with her any jewelry, wearing apparel, money or other property.

Sec. 7 - Prostitution in or in the vicinity of public place -

- Any person who carries on prostitution and the person with whom such prostitution is carried on, in any premises
- Which are within a distance of two hundred meters of any place of public religious worship, educational institution, hotel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed
- Minimum imprisonment – 3 months
- Where an offence is committed on child or minor, the person committing the offence shall be punishable with –
- Minimum imprisonment – 7 years/ Maximum – Life imprisonment/ Fine.

Sec. 7 (2) - Any person who is -

- Keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or
- Tenant, lessee, occupier or person in charge of any premises knowingly permits the same or any part thereof to be used for prostitution; or
- Owner, lessor or landlord, or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is willfully a party to such use
- Punishable on 1st conviction - Maximum – 3 months / Fine
- Punishable on 2nd conviction - Maximum – 6 months / Fine
- Suspension of licence of hotel for three months, but extend to one year
- If offence against child or minor in a hotel - licence liable to be cancelled.

Sec. 8 - Seducing or soliciting for purpose of prostitution -

Note – It is generally noticed that Sections 8 and 20 of ITPA, which focuses on the victims, are more often invoked as a result of which the victim is re-victimized and the exploiters are not punished. It is, therefore, advised that Sections 3, 6 and 7 which pertains to pimps, brothel owners, clients who are actual perpetrators of the crimes need to be invoked rather than Sections 8 and 20. Law enforcement agencies need to adopt a victim centric approach in the investigations¹⁹.

Sec. 9 - Seduction of a person in custody -

- Any person who having the custody, charge or care of or in a position of authority over any person causes or aids or abets the seduction for prostitution
- Minimum imprisonment – 7 years / Maximum – 10 years or Life imprisonment/ Fine.

3.3 Protection of Children from Sexual Offences Act (POCSO), 2012

The POCSO Act, 2012 is a special legislation to protect children from offences of sexual assault, sexual harassment and pornography, and provide for establishment of Special Courts for speedy trial of such offences. It recognizes penetrative, contact and non-contact based sexual offences. The Act also provides that as far as possible, the Special Court shall complete the trial, within a period of one year from the date of taking cognizance of the offence. Following offences and punishments are provided by the Act -

Sec. 2 (d) - “child” - any person below the age of eighteen years

Sec. 3 - Penetrative sexual assault -

- Insertion, penetration, manipulation with the penis, any body part, or any object into the vagina, mouth, urethra or anus of a child;
- Makes the child do the above to oneself or any other person;
- Manipulates any part of the body of the child;
- Applies his mouth to the penis, vagina, anus, urethra of the child.

Sec. 4 - Punishment for penetrative sexual assault -

- Minimum imprisonment - 7 years / Maximum - life imprisonment / Fine

Sec. 5 - Aggravated Penetrative Sexual Assault -

- Police officer commits penetrative sexual assault on a child –
 - o within the limits of the police station
 - o in the course of his duties or otherwise
 - o where he is known as, or identified as, a police officer
- Member of the armed forces or security forces commits penetrative sexual assault on a child –
 - o within the limits of the area to which the person is deployed
 - o in any areas under the command of the forces or armed forces
 - o in the course of his duties or otherwise
 - o where the said person is known or identified as a member of the security or armed forces
- Public servant commits penetrative sexual assault on a child
- Any person on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection commits penetrative sexual assault on a child in that home

¹⁹ MHA Advisory on Preventing and Combating Human Trafficking in India (F.NO.15011/6/2009-ATC (Advisory), dtd. 09.09.2009)

- Any person on the management or staff of a hospital commits penetrative sexual assault on a child in that hospital
- Any person on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution
- Whoever commits gang penetrative sexual assault (when a child is subjected to sexual assault by one or more persons of a group)
- Whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance
- Whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child
- Whoever commits penetrative sexual assault on a child, which,
 - o physically incapacitates the child or
 - o causes the child to become mentally ill or
 - o causes impairment of any kind so as render the child unable to perform regular tasks, temporarily or permanently
 - o in the case of female child, makes the child pregnant as a consequence of sexual assault
 - o inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection
- Whoever, taking advantage of a child's mental or physical disability, commit penetrative sexual assault on the child
- Whoever commits penetrative sexual assault on the child more than once or repeatedly
- Whoever commits penetrative sexual assault on a child below twelve years
- Whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child
- Whoever commits penetrative sexual assault on a child and attempts to murder the child; or
- Whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence
- Whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force
- Whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public.

Sec. 6 – Punishment for aggravated penetrative sexual assault –

- Minimum imprisonment -10 years / Maximum - life imprisonment / Fine

Sec. 7- Sexual Assault -

- Touching with sexual intent the vagina, penis, anus or breast of the child or making the child touch the vagina, penis, anus or breast of such person or any other person, or doing any other act with sexual intent which involves physical contact without penetration

Sec. 8 - Punishment for sexual assault –

- Minimum imprisonment -3 years / Maximum - 5 years / Fine

Sec. 9 - Aggravated Sexual Assault -

- 'Persons in authority' (similar to Sec. 5) and/or if additional harm and injury is committed.

Sec. 10 - Punishment for aggravated sexual assault -

- Minimum imprisonment - 5 years / Maximum - 7 years / Fine

Sec. 11 - Sexual Harassment -

- Word, sound, gesture, exhibiting any body part, showing pornography with sexual intent
- Making a child exhibit any body part, stalking the child, threatening the use of pornographic media
- Showing any object to a child in any form or media for pornographic purposes
- Repeatedly or constantly following or watching or contacting a child either directly or through electronic, digital or any other means.

Sec. 12 – Punishment for sexual harassment –

- Maximum - 3 years / Fine

Sec. 13 - Use of a child for pornographic purposes -

- Using a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form), for the purposes of sexual gratification, including -
 - o representation of the sexual organs of a child;
 - o usage of a child engaged in real or simulated sexual acts (with or without penetration);
 - o the indecent or obscene representation of a child.

Sec. 14 (1) – Punishment for use of a child for pornographic purposes -

- 1st conviction - Maximum - 5 years / Fine
- 2nd conviction - Maximum - 7 years / Fine

Sec. 14 (2) – Punishment for use of a child for pornography and committing penetrative sexual assault –

- Minimum imprisonment - 10 years / Maximum – Life imprisonment / Fine

Sec. 14 (3) – Punishment for use of a child for pornography and committing aggravated penetrative sexual assault –

- Maximum – Life imprisonment / Fine

Sec. 14 (4) – Punishment for use of a child for pornography and committing sexual assault -

- Minimum imprisonment - 6 years / Maximum – 8 years / Fine

Sec. 14 (5) – Punishment for use a child for pornography and committing aggravated sexual assault –

- Minimum imprisonment - 8 years / Maximum – 10 years / Fine

Sec. 15 - Punishment for storage of pornographic material involving a child for commercial purposes -

- Maximum – 3 years / Fine

Sec. 16 and 17 - Abetment of offence -

- Punishment same as the offence

Sec. 18 - Attempt to commit an offence -

- Punishment same as the offence, for a term, which may extend to one-half of the imprisonment for

life or, one-half of the longest term of imprisonment provided for that offence.

Sec. 19 - Mandatory Reporting -

- Any person who has knowledge of sexual offence committed or likely to be committed on a child;
- Provide such information to - the Special Juvenile Police Unit (SJPU); or the local police;
- The SJPU or local police shall, within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or Court of Session, including need of the child for care and protection and steps taken in this regard.

Sec. 20 - Obligation of media, studio and photographic facilities to report cases -

- Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities,
- Upon coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children)
- Provide such information to the SJPU or to the local police, as the case may be.

Sec. 21 (1) - Punishment for failure to report the commission of a sexual offence -

- Maximum - 6 months / Fine

Sec. 21 (1) - Punishment for failure to record the commission of a sexual offence -

- Maximum - 6 months / Fine

Sec. 21 (2) - Punishment for failure of a person-in-charge of any company or an institution who fail to report the commission of an offence by a subordinate under his control -

- Maximum - 1 year / Fine

Sec. 23 - Procedure for media -

- No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy
- No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars, which may lead to disclosure of identity of the child.

Sec. 23 (1)(4)- Punishment for making of report or comments on any child from any form of media without complete and authentic information which may have the effect of lowering reputation or infringing the privacy of the child -

- Minimum imprisonment - 6 months / Maximum - 1 year / Fine

Sec. 23 (2)(4) - Punishment for disclosure of identity of a child without permission of the Special Court -

- Minimum imprisonment - 6 months / Maximum - 1 year / Fine.

3.4 The Prohibition of Child Marriage Act, 2006

This Act restrains the solemnization of child marriages. A child under this Act is defined as a male below twenty-one and a woman below eighteen years of age. A minor is defined as a person of either sex who is under eighteen years of age. If either the bride or groom is a child, it would amount to a child marriage. The Act provides for punishment for a variety of crimes associated with child marriages. It also has a

direct provision dealing with trafficking holding such marriages null and void.

The District Magistrate shall be deemed to be the Child Marriage Prohibition Officer for the purposes of preventing the solemnization of child marriages. All offences under this Act are cognizable and non-bailable. No woman under this Act can be punished with imprisonment. The State Government notifies the Child Marriage Prohibition Officers and they have the duty to prevent child marriages as well as collection of evidence for prosecution.

Sec. 9 - A male adult above eighteen years of age, who contracts a child marriage –

- Rigorous imprisonment which may extend to 2 years / fine up to 1 lakh rupees.

Sec. 10 - Whoever performs, conducts, directs or abets any child marriage –

- Rigorous imprisonment up to 2 years and fine up to Rs. 1 lakh.
- Unless he proves that he had reasons to believe that the marriage was not a child marriage.

Sec. 11 - Where a child contracts a child marriage, any person having charge of the child,

- whether as parent or guardian or any other person or in any other capacity,
- promotes, permits or solemnizes or negligently fails to prevent the marriage,
- Punishment - Rigorous imprisonment up to 2 years/ fine up to 1 lakh rupees.
- No woman shall be punishable with imprisonment.

Sec. 12 - Marriage of a minor child to be void in certain circumstances -

- is taken or enticed out of the keeping of the lawful guardian; or
- by force compelled, or by any deceitful means induced to go from any place; or
- is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes such marriage shall be null and void.

Sec. 13 - Power of court to issue injunction prohibiting child marriages –

- On an application of the Child Marriage Prohibition Officer, or
- On complaint from any person,
- Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage has been arranged / to be solemnised,
- Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.

3.5 Bonded Labour System (Abolition) Act, 1976

This law was passed to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people. The bonded labour system refers to an exploitative labour system where persons take loans from employers in return for working off the loan over a period of time. A person who has to work in order to pay off this loan is called a bonded labourer. This may be a child or relative of the person who has taken the loan, or even the person himself. Wages are not paid and adjustments are supposed to be made with the amount due.

The Act in Sections 13 and 14 requires that a Vigilance Committee be appointed by the State Government in order to perform functions that are laid down under this Act. The Committee plays an active role in reporting and rehabilitating the victims of bonded labour. Every offence under this Act shall be cognizable

and bailable.

Sec. 2(g) - “bonded labour system” means the system of forced, or partly forced labour –

- debtor has an agreement with the creditor (for a specified or an unspecified period, either without wages or for nominal wages),
- in consideration of an advance obtained by him or his ancestors, or
- for any customary or social obligation, or
- any obligation devolving on him by succession, or
- for any economic consideration received by him, or
- by reason of his birth in any particular caste or community;
- forfeits freedom of employment/ right to move freely/ right to appropriate or sell at market value any of his property/ product of labour.

Sec. 4 - Abolition of bonded labour system -

- on the commencement of the Act,
- every bonded labourer stands freed and discharged from any obligation to render any bonded labour
- after commencement of the Act, no person shall -
 - o make any advance for the bonded labour system, or
 - o compel any person to render any bonded/ forced labour.

Sec. 16 - Punishment for enforcement of bonded labour -

- Imprisonment up to 3 years and fine up to Rs. 2000.

Sec. 17 - Punishment for advancement of bonded debt –

- Imprisonment up to 3 years and fine up to Rs. 2000.

Sec. 18 - Punishment for extracting bonded labour under the bonded labour system –

- Imprisonment up to 3 years and fine up to Rs. 2000.

Sec. 19 - Punishment for omission or failure to restore possession of property to bonded labourers –

- Imprisonment up to 1 year and fine up to Rs. 1000.

Case law - While considering a PIL for the emancipation of Bonded Labour in *People’s Union for Democratic Rights v/s Union of India*²⁰ the Supreme Court defined the meaning of Forced Labour vis a vis Article 23 of the Constitution of India. “...Any factor, which deprives a person of choice of alternatives and compels him to adopt one particular course of action may properly be regarded as ‘force’ and any labour or service which is compelled as a result of such ‘force’, it would be ‘forced labour’...”.

“...Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word ‘forced labour’... as described in Article 23 of the Indian Constitution”.

In *Bandhua Mukti Morcha v/s Union of India*²¹, the SC held - “...Whenever it is shown that a labour is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic considerations received by him and is, therefore, a bonded labourer...”.

²⁰ (1982) 3 SCC 235

²¹ 1982 (2) SCC 253

3.6 Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

The Child Labour Act, prohibits certain forms of child labour and makes them punishable. Other areas are regulated so that working children receive some protection. Since there are a significant number of children who are trafficked into forced labour, this law is important in dealing with the crime of child trafficking. The Act defines who a child is and specifies a list of employments under which child labour is prohibited. The Act also provides for penalties to offenders under the Act. Any person, police officer, or (Labour) Inspector may file a complaint of the commission of an offence under this Act in a court not lower than Metropolitan Magistrate or a Magistrate of the First Class. The trafficked children are to be treated as victims and not as offenders, and should be treated as 'children in need of care and protection' under the Juvenile Justice Act, 2015. This law was amended in 2016, which created a new category of 'adolescents' in the Act.

Sec. 2 (i) - "Adolescent" is a person who has completed his fourteenth year of age but has not completed his eighteenth year (14-18 years of age).

Sec. 2 (ii) - "Child" means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009²², whichever is more.

Sec 3 - No child shall be employed or permitted to work in any occupation or process. The child can however, work to –

- help family or family enterprise, which is non-hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;
- works as an artist in an audio-visual entertainment industry; subject to conditions and safety measures;
- "family" in relation to a child, means his mother, father, brother, sister and father's sister and brother and mother's sister and brother;
- "family enterprise" means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons.

Sec. 3A - No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule, except where it so permitted by notification, issued by the government.

Sec. 10 - Disputes as to age - If any question arises between an (Labour) Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

Sec. 14 – Penalties –

- Contravention of Sec. 3 and 3A – Imprisonment for 6 months-2 years/ fine – Rs. 20,000 - 50,000.
- Repeat contravention of Sec. 3 and 3A - Imprisonment for 1-3 years.

3.7 Minimum Wages Act, 1948

This Act provides for fixing of minimum wages for workers, and State governments have to notify their own minimum wages based on the considerations and guidelines provided under the Act.

²² Sec. 2 (c) – "child" means a male or female child of the age of six to fourteen years.

Sec. 2 (h) – Definition - “wages means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment”.

Sec. 22 - Penalties for certain offences -

- Any employer who pays to any employee less than the minimum rates of wages fixed
- for that employee’s class of work
- or less than the amount due to him under the provisions of this Act
- Imprisonment - 6 months, fine – Rs. 500.

3.8 The Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) is the primary legal framework for juvenile justice in India. This law, brought in compliance of the 1989 UN Convention on the Rights of the Child, repealed the earlier Juvenile Justice laws of 1986 and 2000. This Act consolidates and amends the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established.

The new law allows minors in the age group of 16-18 years to be tried in the Children’s Courts for certain offences with certain procedural safeguards. There are detailed provisions in the law with respect to children in need of care and protection (which include - trafficked children, child labour, sexually abused child, and child at risk of marriage). Numerous authorities are set up under this law to implement its provisions – Child Protection Society at the State level; and within each district – a District Child Protection Unit, Child Welfare Committee, Child Welfare Officer, Child Welfare Police Officer, and Special Juvenile Police Unit.

Sec. 2 (12) - “child” means a person who has not completed eighteen years of age.

Sec. 2 (13) - “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

Sec. 2 (14) - “child in need of care and protection” means a child –

- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person—
 - (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
 - (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
 - (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
- (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
- (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
- (x) who is being or is likely to be abused for unconscionable gains; or
- (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
- (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage.

Sec 2 (35) - “juvenile” means a child below the age of eighteen years.

Sec 2 (18) - “Child Welfare Police Officer” means an officer designated as such under sub-section (1) of section 107.

Sec 2 (19) - “Children’s Home” means a Children’s Home, established or maintained, in every district or group of districts, by the State Government, either by itself, or through a voluntary or non-governmental organisation, and is registered as such for the purposes specified in section 50.

Sec 2 (20) - “Children’s Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.

Sec 2 (21) - “child care institution” means Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services.

Sec 2 (55) - “special juvenile police unit” means a unit of the police force of a district or city or, as the case may be, any other police unit like railway police, dealing with children and designated as such for handling children under section 107.

Sec. 74 – Prohibition on disclosure of identity of children –

- in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication
- regarding any inquiry or investigation or judicial procedure
- which may lead to the identification of a child in conflict with law or a child in need of care and protection
- Contravention of provision - Imprisonment up to 6 months/ fine up to Rs. 2 lakh.

Sec. 75 – Punishment for cruelty to child –

- Imprisonment up to 3 months/ fine up to Rs. 1 lakh
- By any person employed by child care institution - Rigorous Imprisonment up to 5 years, and fine up to Rs. 5 lakhs.
- If the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb - Rigorous Imprisonment 3 – 10 years, and fine up to Rs. 5 lakhs.

Sec. 76 – Employment of child for begging –

- Imprisonment up to 5 years, and fine up to Rs. 1 lakh.
- If child is amputated or maimed - Rigorous Imprisonment 7 – 10 years, and fine up to Rs. 5 lakhs.

Sec. 77 - Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child –

- Rigorous Imprisonment up to 7 years, and fine up to Rs. 1 lakh.

Sec. 78 - Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance –

- Rigorous Imprisonment up to 7 years, and fine up to Rs. 1 lakh.

Sec. 79 – Exploitation of a child employee –

- Rigorous Imprisonment up to 5 years, and fine up to Rs. 1 lakh.

Sec. 81 - Sale and procurement of children for any purpose –

- Rigorous Imprisonment up to 5 years, and fine up to Rs. 1 lakh.
- Offence committed by a person having actual charge of the child, including employees of a hospital or nursing home or maternity home - Rigorous Imprisonment 3-7 years.

Sec. 83 - Use of child by militant groups or other adults -

- Rigorous Imprisonment up to 7 years, and fine up to Rs. 5 lakhs.

3.9 The Information Technology Act, 2000

Couple of provisions from the IT Act, are relevant to crimes of trafficking, especially the use of children to create child sex abuse images, or upload/ download child pornography.

Sec. 67 - Publishing of information, which is obscene in electronic form -

- Whoever publishes or transmits or causes to be published in the electronic form,
- Any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt, shall be punished –
- First conviction - Imprisonment up to 3 years, and fine up to Rs. 5 lakhs.
- Second or subsequent conviction - Imprisonment up to 5 years, and fine up to Rs. 10 lakhs.

Sec. 67A - Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material, which contains sexually explicit act or conduct –

- First conviction – Imprisonment up to 5 years, and fine up to Rs. 10 lakhs.
- Second or subsequent conviction - Imprisonment up to 7 years, and fine up to Rs. 10 lakhs.

Sec. 67B – Whoever -

(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or

(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or

(d) facilitates abusing children online, or

(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with

children

- First conviction – Imprisonment up to 5 years, and fine up to Rs. 10 lakhs
- Second or subsequent conviction - Imprisonment up to 7 years, and fine up to Rs. 10 lakhs.

3.10 The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

Many victims of trafficking belong to marginalized groups. Traffickers target such areas, as they are vulnerable socially and economically. This legislation provides an additional tool to safeguard women and young girls belonging to Scheduled Castes (SC) and Scheduled Tribes (ST) and also to create a greater burden on the trafficker/ offender to prove his lack of complicity in the matter. This Act can be effectively used to counter the offence of trafficking if the offender has the knowledge about the victim's status as belonging to the SC ST communities. Sec. 3 primarily deals with atrocities committed against people belonging to the SC ST communities. It specifically covers certain forms of trafficking such as forced or bonded labour (clause vi) and sexual exploitation of women (clause xi, xii). A minimum punishment of six months is provided which could extend up to five years in any offence covered under Sec. 3.

Sec. 3 - Punishments for offences of atrocities –

- Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -
- compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour;
- assaults or uses force to any woman belonging to a SC or a ST with intent to dishonour or outrage her modesty;
- being in a position to dominate the will of a woman belonging to a SC or a ST and uses that position to exploit her sexually to which she would not have otherwise agreed
- Imprisonment – 6 months - 5 years and fine.

3.11 The Transplantation of Human Organs Act, 1994

Provisions from the Transplantation of Human Organs Act, 1994, are relevant to crimes of trafficking of human organs.

The objective of the Act to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs.

Sec 2 – Definitions -

Sec. 2 (h) - "human organ" means any part of a human body consisting of a structured arrangement of tissues which, if wholly, removed, cannot be replicated by the body.

Sec. 2 (o) - "therapeutic purpose" means systematic treatment of any disease or the measures to improve health according to any particular method or modality.

Sec. 2 (p) - "transplantation" means the grafting of any human organ from any living person or deceased person to some other living person for therapeutic purposes.

Sec 18 - Punishment for removal of human organ without authority –

- Rendering services to or at any hospital and who, for purposes of transplantation, conducts, associates or helps in the removal of any human organ without authority
- Imprisonment - 5 years – fine Rs. 10,000
- Name of registered medical practitioner to be reported to the respective State Medical Council for

taking necessary action including the removal of his name from the register of the Council for a period of 2 years for the first offence and permanently for the subsequent offence.

Sec. 19 - Punishment for commercial dealings in human organs -

- Whoever - makes or receives any payment for the supply of, or for an offer to supply, any human organ;
- seeks to find a person willing to supply for payment any human organ;
- offers to supply any human organ for payment;
- initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;
- publishes or distributes any advertisement -
 - o inviting persons to supply for payment of any human organ;
 - o offering to supply any human organ for payment; or
 - o indicating that the advertiser is willing to initiate or negotiate any arrangement
- Imprisonment - 2 - 7 years /Fine Rs. 10,000 – 20,000.

3.12 The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

The objective of this Act is to regulate the employment of inter-State migrant workmen and to provide for their conditions of service and for connected matters. In addition to other laws, the provisions of this Act can be used to fasten liability on the principal employer and to protect the rights of the workers who may have been recruited in one State for employment in an establishment of another State, when there is an element of trafficking involved in either the recruitment process or there is exploitation during employment.

This Act applies – (a) to every establishment in which five or more Inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months; and

(b) to every contractor who employs or who employed five or more Inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.

Sec. 2 (e) - “inter-State” migrant workman means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.

Sec. 6 - Prohibition against employment of inter-State migrant workmen without registration -

- No principal employer of an establishment to which this Act applies shall employ inter state migrant workmen in the establishment unless a certificate of registration in respect of such establishment issued under this Act is in force.

Sec. 14 - Displacement allowance shall be paid by the contractor to every inter-State migrant workman at the time of recruitment, equal to fifty per cent of the monthly wages payable to him or seventy five rupees, whichever is higher.

- The amount shall not be refundable and shall be in addition to the wages/ other amounts payable.

Sec. 15 - Journey allowance of a sum not less than the fare from the place of residence of the inter-State

migrant workman in his State to the place of work in the other state shall be payable by the contractor to the workman both on the outward and return journeys and such workman shall be entitled to payment of wages during the period of such journeys as if he were on duty.

3.13 The Foreigners Act, 1946

Trafficking is not restricted to borders or boundaries of a nation and a great deal of trafficking may in fact be inter-country. The status of the person trafficked does not change and he/she remains a victim. The Foreigners Act and the Passports Act, can be invoked in matters related to inter-country trafficking.

The Foreigners Act mainly regulate the entry and stay of foreigners in India and offences that are committed when people are trafficked across borders. This Act empowers the Central Government to make provisions relating to any foreigner, or all foreigners, or any group. Such provisions may relate to regulating entry, exit or behaviour in India. They may prescribe that foreigners shall not enter India, or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed. These provisions can be used to counter cross border trafficking by irregular entry and trafficking of people into India.

Sec. 13 - Attempts, etc., to contravene the provisions of this Act -

- Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

Sec. 14 - Penalty for contravention of provisions of the Act -

- Whoever remains in any area in India for a period exceeding the period for which the visa issued to him;
- does any act in violation of the conditions of the valid visa issued to him for his entry and stay in India or any part thereunder;
- contravenes the provisions of this Act or of any order made there under or any direction given in pursuance of this Act;
- Imprisonment up to 5 years and fine.

3.14 The Passports Act, 1967

This law can be used against traffickers who forge passport/ travel documents of the victims, when taking them out of India. The relevant provisions are –

Sec. 3 - Passport or travel document for departure from India –

- No person shall depart from, or attempt to depart from, India unless he holds in this behalf a valid passport or travel document.

Sec. 12 - Offences and penalties - Whoever -

- contravenes the provisions of section 3; or
- knowingly furnishes any false information or suppresses any material information with a view to

- obtaining a passport or travel document under this Act, or
- without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or
- fails to produce for inspection his passport or travel document when called upon to do so by the prescribed authority; or
- knowingly uses a passport or travel document issued to another person; or
- knowingly allows another person to use a passport or travel document issued to him;
- Imprisonment – up to 2 years / Fine up to Rs. 5000.

3.15 Indian Passport (Entry into India) Act, 1920

The Central Government, under this Act, requires that persons entering India shall be in possession of passports. It may prohibit the entry into India or any part thereof of any person who does not have in his possession a passport issued to him.

This law can be used to counter inter-country trafficking. A trafficker who enters India without such documents as prescribed or those who do not follow the rules laid down under this Act can be punished. The offender is punishable with imprisonment for a term that may extend to three months, or with fine, or with both. Any police officer, not below the rank of a sub-inspector, and any officer of the Customs Department empowered by a general or special order of the Central Government in this behalf may arrest, without warrant (Sec. 4), any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under Sec. 3. The arresting officer should, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police station (Sec. 4).

While making use of this law, care must be taken to avoid re-victimisation of victims of trafficking who may be in India without appropriate documents. Action must be taken for their protection. Care must also be taken to ensure that families are not separated and that human rights of all persons, particularly women and children, are protected.

3.16 The Emigration Act, 1983

This law can be used to deal with Recruiting Agents, who indulge in trafficking for labour in the garb of providing them / facilitating their employment outside India.

Sec. 2 - Definitions –

Sec. 2 (f)- “emigrate” and “emigration” mean the departure out of India of any person with a view to taking up any employment (whether or not under an agreement or other arrangements to take up such employment and whether with or without the assistance of a recruiting agent or employer) in any country or place outside India.

Sec. 2 (l) - “recruiting agent” means a person engaged in India in the business of recruitment for an employer and representing such employer with respect to any matter in relation to such recruitment including dealings with persons so recruited or desiring to be so recruited.

Sec. 2 (m) - “recruitment” includes the issuing of any advertisement for the purpose of recruitment, the offering by advertisement to secure or assist in securing any employment in any country or place outside India and the entering into any correspondence, negotiation, agreement or arrangement with

any individual for or in relation to the employment of such individual in any country or place outside India.

Sec. 24 - Offences and penalties - Whoever -

- collects from an emigrant any charges in excess of the limits prescribed under this Act; or
- cheats any emigrant,
- Imprisonment – up to 2 years / Fine up to Rs. 2000.

The Emigration Act provides special rules (Rules 7-10 of the Emigration Rules of 1983) for registration of Recruiting Agents. These rules provide for details of application for registration as RA, amount of security to be deposited, validity of certificate issued to RA, renewal of the certificate and terms and conditions of the certificate. The Protector General of Emigrants (PGE), appointed under this Act, facilitates the registration process.

3.17 The Andhra Pradesh Devadasees (Prohibition of Dedication) Act, 1988

This law can be used to deal with offences of trafficking that occur due to cultural practice of *devdasi* system. The objective of the Act is to prohibit the dedication of women as *devadasi*. It recognizes that the practice of dedicating women as *devadasis* to Hindu deities, idols, objects of worship, temples and other religious institutions or places of worship exists in certain parts of Andhra Pradesh; and that such practice, however ancient and pure in its origin, leads many of the women so dedicated to degradation and to evils like prostitution; thereby making it necessary to put an end to the practice. Every offence under this Act shall be cognizable and non-bailable.

Sec. 2 (a) - “Dedication” has been defined as the performance of any act or ceremony by whatever name called, by which a woman is dedicated to the service of a Hindu deity, idol, object of worship, temple or other religious institution or place of worship and includes tying ‘*thali* with *jakini*’ to a woman or tying a woman by a garland to a *Garuda Khambab*, *Dhaarana* and *Deeksha*.

Sec. 2 (b) - “*Devdasi*” means any woman so dedicated by whatever name called and includes *Basavi*, *Jogini*, *Parvathi*, *Mathamma* and *Thyamma*.

Sec. 2 (e) - “Woman” has been defined as a female of any age.

Sec. 3 - Dedication as Devadasi to be unlawful -

- The dedication of a woman as *devadasi*, whether before or after the commencement of this Act and whether she has consented to such dedication or not, is unlawful and void.
- Any custom or usage, prevailing in any Hindu community such as the Begum, Kalavanthula, Sani, Nagavasulu, Devadasi, Kurmapulu, Basavi, Jogini and Parvathi;
 - o a woman of that community who gives or takes part in any *melam* (*nautch*), dancing or music performance in the course of any procession or otherwise is thereby regarded as having adopted a life of prostitution, and
 - o whether the woman concerned has consented to such performance or not, are hereby declared unlawful and void.

Sec. 5 - Penalties -

- The woman who is dedicated in such ceremony or act or in respect of whom such ceremony or act is

performed shall not be punishable.

- Any person who performs, promotes, takes part in or abets the performance of any ceremony or act for dedicating a woman as devadasi or any ceremony or act connected therewith,
- Imprisonment – 2-3 years/ Fine Rs. 2000-3000.
- If a parent or guardian or relative of a woman so dedicated, is held culpable –
- Imprisonment - 2-5 years /Fine Rs. 3000-5000.

Sec. 6 - Punishment for propagation -

- Imprisonment – 1-3 years/ Fine Rs. 2000-5000.

3.18 Institutions and Agencies under Various Laws on Rights of Victims

Name of Legislation/ Scheme	Institutions and Agencies
Immoral Traffic (Prevention) Act, 1956	Protective home Corrective institution Special Courts State Advisory Boards
The Juvenile Justice (Care and Protection of Children) Act, 2015	District Magistrate (has the responsibility and authority to conduct a quarterly review of the functioning of the Child Welfare Committee) Child Welfare Committee Juvenile Justice Board District Child Protection Unit Child Welfare Officer Child Welfare Police Officer Special Juvenile Police Unit Childline services
Protection of Children from Sexual Offences Act (POCSO), 2012	Special Courts
Child and Adolescent Labour (Prohibition and Regulation) Act, 1986	District Collector District National Child Labour Project Society District Child Labour Task Force Child Labour Technical Advisory Committee Central Advisory Board on Child Labour Central Monitoring Committee
The Prohibition of Child Marriage Act, 2006	Child Marriage Prohibition Officers District Level Officer

Legal Services Authorities Act, 1987	National Legal Services Authority State Legal Services Authority District Legal Services Authority (especially for Victim Compensation Fund under Sec. 357A of Criminal Procedure Code) Taluk Legal Services Committee
Integrated Child Protection Scheme	Central Project Support Unit State Child Protection Society State Project Support Unit District Child Protection Unit All authorities outlined above under the JJ Act, 2015 District Level Officer <i>Sub-District Level</i> – Block Level Child Protection Committee Village Level Child Protection Committee
Commission for Protection of Child Rights, 2005	National Commission for Protection of Child Rights State Commissions for Protection of Child Rights Children's Courts
National Commission for Women Act, 1990	National Commission for Women
Human Rights Act, 1993	National Human Rights Commission (especially for bonded labour issues)

ANNEXURES

F.NO.15011/6/2009-ATC (Advisory)
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
NORTH BLOCK NEW DELHI /CS DIVISION

New Delhi, the 09.09.2009

OFFICE MEMORANDUM

Subject: Advisory on Preventing and Combating Human Trafficking in India

Introduction:

The Trafficking in Human Beings (THB) is a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits. Such exploitation may take many forms, for example commercial sexual exploitation, child labour, forced labour, bonded labour or illegal organ removal etc. The country is witnessing cross-border as well as internal (intra-country) trafficking.

Human Trafficking and Indian Laws:

Trafficking in Human Beings (THB) is prohibited under the Constitution of India under Article 23 (1). Following specific legislations deal with Trafficking in Human Beings (THB)

- Laws relating to trafficking in women and children being administered by the MWCD (wcd.nic.in)
 - i. Immoral Traffic (Prevention) Act, 1956,
 - ii. Prohibition of Child Marriage Act (PCMA), 2006.
- The “Bonded Labour System (Abolition) Act, 1976”, being administered by Ministry of Labour and Employment (labour.nic.in), provides for abolition of the system of bonded labour and the rehabilitation of released labourers. Child Labour (Prohibition and Regulation) Act, 1986 is also being administered by Ministry of Labour.
- Further, commercial dealing in human organs is a punishable offence under the Transplantation of Human Organs act, 1994, being administered by Ministry of Health and family Welfare (mohfw.nic.in). The appropriate authorities appointed under the Act are responsible and empowered to check the illegal activities of human organs traffickers.
- Specific Sections in the IPC, e.g., Sections 372 and 373 dealing with selling and buying of girls for the purposes of prostitution.

‘Public Order’ and ‘Police’ as per the 7th Schedule of the Constitution of India, are State subjects and, as such, detection, registration, investigation and prevention of crime is primarily the responsibility of the State Governments. However, Central Government supplements the efforts of the State Governments by providing policy guidelines, financial assistance for modernization of the State Police Forces in terms of weaponry, communication, equipment, mobility, training and other infrastructure under the Scheme of Modernization of State Police Forces.

A working Group comprising of Directors General of Police of some of the affected States was constituted in 2004 by MHA to study the issues relating to cross border trafficking. The recommendations of this group were sent to the State Governments and they were advised to

evolve a comprehensive strategy for effectively dealing with the problem of trafficking. Also an **“Integrated National Plan of Action to Prevent and Combat Trafficking in Human Beings Specially Women and Children”** (nhrc.nic.in/planofaction.doc), which has been worked out through a consultation process of all related Ministries and other stakeholders, has been adopted by Government of India in the Ministry of Women and Child Development. This plan deals with all aspects of prevention, rescue, registration of cases, investigations, prosecution, conviction, cross border trafficking issues, rehabilitation, repatriation and reintegration of victims etc. Based on these the recommendations of DGPs and the integrated action plan stated above the State Governments may evolve a holistic approach towards combating Trafficking in Human Beings (THB), encompassing all aspects of prevention, rescue and rehabilitation. Convergence should be adopted between various state departments and stakeholders for effective of handling of crime of Trafficking in Human Beings (THB).

Following key points of advice have been worked out in collaboration with the related Ministries of Women and Child Development, Labour and Employment, and Health and family Welfare where the assistance/ action by the State Government/ Police would be required for the effective implementation/ enforcement of laws relating to Trafficking in Human Beings (THB):

1. Constitution of the State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation.

According to the Supreme Court order dated 2/05/09 (Vishal Jeet Vs Union of India), every State Government should set-up a State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation. Ministry of Women & Child Development (MWCD) has already issued an advisory in this regard to all the State Governments. .

2. Implementation of Immoral Traffic (Prevention) Act (ITPA), 1956.

- 2.1. Since ITPA is the main Act that can be used to book trafficking for commercial sexual exploitation, its implementation is essential for counter-trafficking. Under Section 23, the State Government may, by notification in the Official Gazette, **make rules for carrying out the purposes of the Act.** Such rules may be formulated, notified and intimated to MWCD with a copy to MHA.
- 2.2. Under Section 13, the State Government may **appoint ‘Special Police Officers (SPOs)’** and the ‘Non-official advisory bodies’ to advise the SPOs for dealing with offences under the Act.
- 2.3. Under Section 21, the State Governments may set-up ‘Protective homes’ and ‘Corrective institutions’ for ensuring proper implementation of the provisions of the Act. **The information regarding these homes may be circulated to all Police Stations and officers dealing with the trafficking cases.**
- 2.4. Under Section 22-A, the State Government may, by notification in the Official Gazette, and **after consultation with the High Court, establish one or more Courts** for providing speedy trial of the offences under the Act.
- 2.5. It is generally noticed that sections 8 and 20 of ITPA, which focuses on the victims, are more often invoked as a result of which the victim is re-victimized and the exploiters are not punished. It is, therefore, advised that sections 3, 6 and 7 which pertains to pimps, brothel owners, clients who are actual perpetrators of the crimes need to be invoked rather than sections 8 and 20. **Law enforcement agencies need to adopt a victim centric approach in the investigations.**

3. **Implementation of Juvenile Justice Act (JJ Act), 2000:** Juvenile Justice Act provides comprehensive mechanism for care and protection of children including rehabilitation and social integration of children. Therefore, its implementation is essential to address trafficking of children. Following provisions of the Act are concerned with the Home Department/ Police and require action by the State Governments:
 - 3.1. Under Section 62-A, the State Government shall constitute 'Child Protection Units' for the State and districts to fulfill its responsibilities as stipulated under the Act.
 - 3.2. Under Section 63, in each police station, at least one police officer may be designated as the 'Juvenile or Child Welfare Officer' to handle a juvenile or child in coordination with the police.
 - 3.3. Under Section 68, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
4. **Implementation of Prohibition of Child Marriage Act (PCMA), 2006:** Prohibition of Child Marriage Act (PCMA) was enacted in 2006 repealing Child Marriage Restraint Act, 1929. It is reported that traffickers in some pockets in the country are exploiting evil custom of child marriage to target innocent girls for trafficking. Therefore, it is essential to implement the Act to address this modus operandi of traffickers.
 - 4.1. As per PCMA, State Governments under Section 19 (1), may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
 - 4.2. Under Section 16, the State Government may appoint 'Child Marriage Prohibition Officers' to fulfill the mandate as stipulated in the Act. State Governments may intimate the MWCD about the status of appointment of Prohibition Officers and Rules.
 - 4.3. The State Governments are to maintain MIS and send quarterly information on number of cases registered under PCMA and convictions.
 - 4.4. On receiving a complaint about child marriage, police are required to follow the procedure laid down in the Code of Criminal Procedure, 1973, which include registering an FIR and carrying out investigation.
 - 4.5. The offences under PCMA are cognizable and non-bailable, hence, immediate arrest of offenders is necessary.
 - 4.6. Extra vigilance should be maintained during festivals such as 'Akshya Tritha' to ensure that no child marriage takes place.
5. **Capacity building of the State machinery:** Implementation of the legal provisions in relation to applicable Acts- CLPRA, BLSA, IPTA, JJA and IPC involves not only police but many other officials dealing with the Criminal Justice System - notably the executive magistrates, the labour officials, CWC members and in-charges of Homes. Therefore, the State government may initiate a time bound action plan to build the required capacity of the state investigation and prosecution machinery in this regard. Some of the key areas identified for capacity building are listed below.
 - 5.1. Identification of victims of trafficking for the purpose of commercial sexual exploitation, child/bonded/forced labour and for illegal organ removal.
 - 5.2. Recognition of all applicable legal provisions of the law to a case of trafficking (not just one Act or two) by law enforcement machinery.

- 5.3. Understanding of legal and administrative provisions for inter-state and cross border investigation.
- 5.4. Understanding of legal provisions for closure of places of exploitation.
- 5.5. Understanding of legal provisions for confiscation of proceeds of crime.
- 5.6. Understanding of the mechanism in place for victim support and assistance.
- 5.7. Integrated actions on prosecution, prevention and protection by building linkages with other Government departments and agencies, including NGOs.
- 5.8. For capacity building the Bureau of Police Research and Development (BPR&D) (www.bprd.gov.in), at the behest of MHA, has prepared a **training manual on Human Trafficking Handbook for Investigators** and this has been circulated to the States for use in the police Training Institutes. All the training materials have also been uploaded on BPR&D website. BPR&D has already translated the training material in Hindi, Telugu and Marathi languages. 12 Resource Books on ‘Training and Investigation on Anti-Human Trafficking’ prepared as a result of pilot project between MHA and UNODC (www.unodc.org/india/ind_s16.html) have also been uploaded on BPR&D website. These resource materials should be used by State Governments for the capacity building of all agencies involved in prevention of human trafficking.
- 5.9. Also MWCD, in collaboration with National institute of Public Co-operation and Child Development (NIPCCD) and UNICEF, has developed manuals for training of stakeholders such as ‘Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation’, ‘Manual for Medical Officers for dealing with Child Victims of Trafficking and Commercial Sexual Exploitation’, counseling services for Child survivors of trafficking’, Counseling services for Child survivors of trafficking’, Social workers.
- 5.10. States may organize training/workshops/awareness campaign to sensitize their SHOs/Dy. SP/ACP and other law enforcement agencies towards the crime, safety and security of women and children.
- 5.11. The **Compendium of Best Practices in handling cases of human trafficking** (www.unodc.org/india/ind_s16.html) **has already been circulated** to all the State Governments and UT Administrations for information and appropriate use.

6. Prevention of Trafficking:

- 6.1. It has been noticed that people, especially women and children are vulnerable to trafficking during ‘distress migration’ and from ‘disaster prone areas’- such as during floods, earthquakes, crop failures, riots, terrorist activities etc. Therefore, it is important to establish extra vigilance in this regard around transit points and at borders- inter-district/inter-state and international.
- 6.2. Police should work closely with immigration authorities, Border Security Force (BSF), Railways and other transport authorities, provincial/ territorial and municipal agencies, with Social Services, child welfare authorities and with any NGOs involved in service delivery for spotting and rescuing the victims.
- 6.3. Effective patrolling and vigil at locations prone to trafficking such as highways, dhabas, railway stations and bus stations for suspicious movement of traffickers and victims and monitoring, through involvement of village community, the suspicious/ unnecessary movements of strangers in the villages.

- 6.4. Pro-active policing through information exchange with representatives from the local Government, community, NGOs with a view to raise awareness and garner active support of the community.
- 6.5. Periodical checks on transporters to prevent physical transportation of the trafficked persons.
- 6.6. Prevention at the demand area by understanding/ addressing new forms of demand. For example, placement agencies providing domestic child labourers.
- 6.7. Facilitating inter-State collaboration by sharing data on missing children/ kidnappings and suspected offenders. Development of victim and offender profiles on an inter-agency basis.
- 6.8. Sensitization programmes/workshops for police officers/railway police force and prosecutors on various legislations mentioned above in relation to trafficking. State nodal officers may hold periodical meetings to review and monitor the efforts taken to prevent and combat the crime of trafficking.
- 6.9. In case of child trafficking, following provisions also need to be kept in view:-
 - 6.9.1. Identification of children at risk, (e.g. following raids on off-street sites, responding to referrals from other agencies, NGO or members of the public, following up reports of missing children).
 - 6.9.2. Report instances of children in need of protection to relevant child protection agencies. For this purpose the Police Stations could be sensitized.
 - 6.9.3. The development of victim profiling with other agencies.
 - 6.9.4. Undertaking joint interviews with social workers of children identified as victims or potential victims to assess risk and assist in the development of protection plans.
 - 6.9.5. Carry out checks on sponsors and people who claim to be the relatives of children identified as being at risk of trafficking.
 - 6.9.6. Participating in local child protection networks with related organizations (immigration, social services, NGOs, health, education) to develop joint approaches to the issue at local level and contribute to wider forums as appropriate.
 - 6.9.7. If children disappear, initiate missing person's procedures, investigate circumstances and circulate information/ undertake investigations, linking with other agencies as required.
 - 6.9.8. Ministry of Labour & Employment has developed a detailed protocol for prevention, rescue, repatriation, rehabilitation and reintegration of migrant and trafficked child labour. The protocol has been issued to all State Governments for implementation.

7. Investigation & Prosecution:

- 7.1. Standard operating procedures for Investigation have been developed under the pilot project between MHA and UNODC as mention in para 5.8 above, which can be used for effective investigation in trafficking related crimes.
- 7.2. One of the effective means of securing better conviction rates of perpetrators of crime

of trafficking is to base the case on documentary, forensic and material evidence. At present, most of the time, the victim is being used as a witness and more often than not, he/she can easily be intimidated. State Governments are advised to encourage the law enforcement agencies to build full proof investigation against the traffickers, so that, convictions can be guaranteed.

7.3. Use of fast track courts and video conferencing to the extent possible.

8. Rescue and Rehabilitation

8.1. Police should work with other agencies and stakeholders to ensure that those who are rescued or who choose to return are not re-trafficked; this should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children).

8.2. Identifying support services and referring victims/ potential victims to specialist NGO's and safe accommodation, where these are available. The Ministry of Women and Child Development runs short stay homes Swadhar shelter homes for women in difficult circumstances (wcd.nic.in/Comscheme.doc). These cater to trafficked women/girls rescued or runaway from brothels or victims of sexual crimes who are disowned by family or who do not want to go back to respective family for various reasons. The schemes provide for shelter, food, clothing for women and children below the age of 18 years, counseling, clinical, medical, legal and other support, training and economic rehabilitation and helpline facilities.

8.3. A new scheme - UJJAWALA (wcd.nic.in/Comscheme.doc) – a comprehensive scheme for prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of the victims of commercial sexual exploitation has been launched on 04.12.2007 by the Ministry of women and Child Development which should be effectively used by the State Governments.

9. MHA has already established an Anti Trafficking Cell (ATC) under the Director (SR) which deals with the following major subject matters:

9.1. All matters pertaining to the criminal aspect of trafficking in human beings especially of women and children, which is the fastest growing organised crime and an area of concern.

9.2. To act as the Nodal cell for dealing with the criminal aspect of Human Trafficking in India, hold regular meetings of all States and UTs, communicating various decisions and follow up on action taken by the State Governments.

9.3. To interface with other Ministries like MWCD, MSJE, MEA, MOIA, MOLE, MOL, MOT and NCRB regarding the criminal aspect of human trafficking.

9.4. All matters relating to the UNODC, UNIFEM, their meetings, conferences, conventions, reports etc. in the context of the criminal aspect of Human Trafficking.

10. The Anti Trafficking Nodal Cell of MHA has developed an MIS proforma for the monitoring of the action taken by various State Governments regarding the criminal aspect of human trafficking as well as crime against women. The State Governments are requested to send quarterly information on 1st January, 1st April, 1st July and 1st October of the year in the prescribed proforma.

11. You are requested to issue suitable directions to all concerned under intimation to this Ministry. It is further requested that action taken in this regard may be regularly / periodically

reviewed by the State Governments and UT administrations and a report indicating the present status sent to this Ministry within a month.

12. This advisory is being issued in consultation with the Ministry of Women and Child Development and Ministry of Labour and Employment.

The receipt of this letter may kindly be acknowledged immediately.

Yours faithfully,

-Sd-

(Nirmaljeet Singh Kalsi)
Joint Secretary to the Government of India
Ministry of Home Affairs, North Block
New Delhi - 110001
Tel. No. 23092630

To,

The Chief Secretaries &

The Principal Secretary / Secretary (Home)

All State Governments and Union Territory Administrations – for information and necessary action.

Copy for information and necessary action to:

- i. The DGs / IGs (In-charge of Prisons)/ - All State Governments / UTs for information and necessary action.
- ii. Ministry of Women and Child Development (Mrs. Manjula Krishnan, Advisor & Joint Secretary, MWCD, Ms. P. Bolena, Joint Secretary) Shastri Bhawan, New Delhi.
- iii. Ministry of Labour (Shri S.K. Dev Verman, Jt. Secy.), Shram Shakti Bhavan, New Delhi.
- iv. Ministry of Social Justice and Empowerment (Sh. D.V.S. Ranga, Joint Secretary), Shastri Bhawan, New Delhi.
- v. Ministry of Overseas Indian Affairs (Shri G. Gurucharan, Jt. Secy.), New Delhi.
- vi. Ministry of External Affairs, (Joint Secretary SAARC and Joint Secretary UNES) South Block, New Delhi.
- vii. Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi-110 002.
- viii. Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi-110 001.
- ix. Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- x. Director General, NCRB, RK Puram, New Delhi.
- xi. Director General, BPR&D, New Delhi.
- xii. Director General Border Security Force, New Delhi
- xiii. Director, CBI, New Delhi.
- xiv. JS (UT)/ JS (NE) /JS (K), MHA, North Block, New Delhi.
- xv. Under Secretary (Parliament), MHA, North Block, New Delhi.

-Sd-

(Nirmaljeet Singh Kalsi)
Joint Secretary to the Govt. of India

MODULE 4

PROSECUTION OF TRAFFICKING OF PERSONS CASES - PRE-TRIAL PROCEDURES

MODULE 4 – PROSECUTION OF TRAFFICKING OF PERSONS CASES - PRE-TRIAL PROCEDURES**Module Goal**

To strengthen the ability of judicial officers and prosecutors to comprehend all the pre-trial procedures in a trafficking in persons case with a victim-centred approach.

Time: 3 Hours

Session Plan:

Sr. No.	Topic	Objectives of Module 4	Resource Material	Time
4.1	Rescue and raid operation vis-à-vis role of Magistrate	Understand the significance of speedy and accurate identification of victims by the police, and role of Magistrates in this process.	Refer 4.1	20 min
4.2	Procedures with respect to the victim 4.2.1 Producing rescued victim before Magistrate or Child Welfare Committee 4.2.2 Medical Examination 4.2.3 Age verification 4.2.4 Intermediate custody and Home Investigation Report 4.2.5 Recording Sec. 164, Cr. PC statement	Know the procedures that are set in motion after rescue of victims from exploitative situations.	Refer 4.2, 4.2.1, 4.2.2, 4.2.3, 4.2.4 and 4.2.5 Handout of Case Study Handout of MHA Advisory – ‘Preventing and Combating Human Trafficking in India’; and ‘Preventing and Combating Human Trafficking in India - Dealing with Foreign Nationals’	40 min
4.3	Procedures with respect to prosecution 4.3.1 Bail in trafficking in persons cases 4.3.2 Filing of Charge Sheet	Understand the nuances between other crimes and trafficking, w.r.t to bail of offenders and filing of charge sheets.	Refer 4.3.1 and 4.3.2	60 min
4.4	Role of Prosecutor and Court in Victim-Witness Protection	Build understanding on the significance of victim-centred	Refer 4.4, 4.4.1, 4.4.2, 4.4.3, and, 4.4.4	60 min

<p>4.4.1 Physical safety of the victim-witness</p> <p>4.4.2 Non-disclosure/ protection of identity of the victim-witness</p> <p>4.4.3 Victim-friendly Test Identification Parade (TIP)</p> <p>4.4.4 Preparing the victim-witness for trial / witness management</p>	<p>approaches in legal procedures involving victims of human trafficking.</p>		
---	---	--	--

Training Methodology

Activity 1: Power Point Presentation

Objective of the Session	To make the participants know the legal provisions w.r.t to rescue operations.
Estimated Time	20 Minutes
Methodology	Power Point Presentation
Material Required	Slides
Expected Outcome	This session will enable the participants to understand the powers and role of police and judicial officers in rescue and raid operations under ITPA, 1956 and other laws.

Process for the Trainer

Step 1: Show the power point presentation (as below) based on 4.1, indicating powers of police and Magistrates under ITPA, 1956 in rescue and raid operations, and for labour trafficking under the labour laws.

<p>Legal Framework on Rescue and Arrest Operation</p> <p>-</p> <p>Powers of Police and Magistrates under ITPA, 1956</p> <p style="text-align: right;">1</p>	<p>Rescue and Arrest Operation after registering FIR</p> <p>FIR in Sex Trafficking Cases –</p> <ul style="list-style-type: none"> • FIR under Sec. 154 (Information in cognizable cases) of Cr. PC upon information received from any source. • All offences under the ITPA, 1956 are cognizable offences under Sec. 14 of the Act. • Offence under Sec. 370 of IPC is a cognizable offence. <p style="text-align: right;">2</p>
---	---

- All offences under Protection of Children from Sexual Offences Act (POCSO), 2012, are cognizable offences (with the exception of Sec. 21 and 22).
- Therefore, for offences under ITPA, POCSO and Sec. 370 IPC the FIR will have to be mandatorily registered under Sec. 154 of Cr. PC.

3

FIR in Labour Trafficking Cases –

- FIR under Sec. 154 of Cr. PC.
- Offence under Sec. 370A of IPC is a cognizable offence.
- All offences under the Bonded Labour System (Abolition) Act, 1976 are cognizable offences under Sec. 22 of the Act.
- Offences under Sec. 3 and 3A of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 are cognizable offences.

4

- Offences under Sec. 79 and 81 of the Juvenile Justice Act, 2015 are cognizable offences.
- Therefore, for offences under Bonded labour Act, Child Labour Act, JJ Act, and Sec. 370A IPC the FIR will have to be mandatorily registered under Sec. 154 of Cr. PC.

5

Rescue and Arrest Operation without registering FIR

- FIR is not a pre-condition for rescuing trafficked victims
- Rescue without FIR is possible as follows for all trafficking cases -
- Sec. 149 of Cr. PC - Police to prevent commission of any cognizable offence.
- Sec. 151 of Cr. PC - Arrest to prevent the commission of cognizable offences (without orders from a Magistrate and without a warrant).
- Sec. 370 and 370A of IPC.
- Sec. 15 and Sec. 16 of ITPA, 1956 – in sex trafficking cases

6

Procedure under Sec. 15, ITPA, 1956

- Sec. 15 (1) - If the Special Police Officer (SPO) or the Trafficking Police Officer (TPO) -
- has reasonable grounds to believe
- that an offence under the Act has committed
- in respect of a person living in any premises, and
- search of the premises with warrant cannot be made without undue delay
- such officer after recording the grounds of his belief
- enter and search such premises without a warrant.
- Sec. 15 (4) - The SPO or the TPO, after entering any premises, shall be entitled to remove all the persons found there.

7

Procedure under Sec. 16, ITPA, 1956

- Sec. 16 (1) - If a Magistrate –
- has reason to believe from information received from the police or anyone else
- that any person is living/ carrying/ is being made to carry on - prostitution in a brothel
- he may direct a police officer of or above Sub-Inspector rank
- to enter such brothel, and to remove that person and produce her before him.
- Sec. 16 (2) - The police officer, after removing the person shall, produce her before the Magistrate issuing the order.

8

Step 2: Explain the provisions under which, police can carry out search, rescue and raid operations with warrant, without warrant, on the order of the Magistrate, and others. Stress upon the technicalities and procedural formalities in preparation of the rescue operation.

Activity 2: Power Point Presentation and Open Discussion

Objective of the Session	To make the participants comprehend the legal provisions and procedures w.r.t. producing rescued victim before Magistrate or Child Welfare Committee (CWC).
Estimated Time	15 Minutes
Methodology	Power Point Presentation and open discussion
Material Required	Slides, flip chart and marker
Expected Outcome	This session will enable the participants to understand the powers and role of judicial officers and CWCs when rescued victims are produced before them under ITPA, 1956 and JJ Act, 2015 respectively.

Process for the Trainer

Step 1: Show the power point presentation (as below) based on 4.2.1 outlining the legal provisions under which victims are produced before the Magistrate under the ITPA, 1956. Similarly, outline the legal provisions under which victims are produced before the CWCs under the JJ Act, 2015.

Producing Rescued Victims before Magistrate or Child Welfare Committee

Producing rescued victim before Magistrate

Procedure under ITPA, 1956 - Sec. 15 (5) –

- when the special police officer or the trafficking police officer, has entered and searched any premises without a warrant,
- believing it to be place where prostitution is being carried out, and rescued a person from there,
- the rescued victim (above 18 years) shall be immediately produced before the appropriate Magistrate (Metropolitan Magistrate, Judicial Magistrate of the First Class, District Magistrate or Sub-Divisional Magistrate).

2

- If at the time of first remand, the Prosecutor notices that no victims are being produced, then a question must be raised before the court, as to what procedure has been undertaken for the production of adult victims before the Magistrate and child victims before the CWC.

3

- Sec. 19 of ITPA, 1956 - a victim who is carrying on/ or being made to carry on prostitution,
- may herself make an application to the Magistrate (Metropolitan Magistrate, Judicial Magistrate of the First Class, District Magistrate, or Sub-Divisional Magistrate),
- to place her in a shelter/ protective Home or be provided care and protection by the court.
- Pending inquiry, the Magistrate may order granting interim custody of the victim to a protective Home for a specified period.

4

Producing child victim before Child Welfare Committee

Procedure under JJ Act, 2015 -

- Child victims of sex trafficking / children of adult victims of sex trafficking rescued under Sec. 15 of ITPA, 1956 shall be produced before CWC.
- Child victims rescued from trafficking for labour/ domestic work, shall be produced by the Inspector appointed under any labour law.

5

Who all can produce child victims before CWC?

- Any police officer
- Special Juvenile Police Unit
- Child Welfare Police Officer, or Probation Officer
- any officer of District Child Protection Unit
- Child Line, any NGO
- Social worker
- By child himself/ herself
- Public spirited citizen
- Any nurse, doctor or management of a nursing home, hospital or maternity home.

6

- Child to be produced before CWC - 24 hours excluding the time necessary for the journey (Sec. 31 (1) of JJ Act, 2015).
- Child can be produced before single member of the CWC for being placed in a Children's Home or fit person when the Committee is not in session (Sec. 28 (3) of JJ Act, 2015).
- Police official producing child before CWC - report in Form 17 containing particulars of child and circumstances in which the child was received or found (Rule 18 (2), JJ Rules, 2016).

7

Step 2: Discuss the 2 MHA Advisories on – ‘Preventing and Combating Human Trafficking in India’; and ‘Preventing and Combating Human Trafficking in India - Dealing with Foreign Nationals’ – with specific reference to charging of victims and charging of foreign nationals.

Activity 3: Case Study

Objective of the Session	To make the participants understand the legal procedures post rescue in a trafficking case.
Estimated Time	30 Minutes
Methodology	Group work
Material Required	Handout of case study, flip charts and markers
Expected Outcome	This session will enable the participants to build understanding on the different procedures that will be set in motion after rescuing victims from exploitative situations, with a victim-centred and child-centred approach.

Process for the Trainer

Step 1: Divide the participants into 2 groups. Groups 1 and 2 will be given two separate cases based on which, both the groups will discuss in detail the legal provisions and the actual processes w.r.t. adult victims and child victims under the ITPA, 1956 and the JJ Act, 2015, respectively -

- Producing before Magistrate or Child Welfare Committee
- Medical Examination
- Age verification
- Intermediate custody, and Home Investigation Report/ Social Investigation Report
- Recording Sec. 164, Cr. PC statement
- Special procedures w.r.t. foreign victims

Step 2: Request the representatives from both the groups to make their presentations one by one. When one group is making their presentation, the other group can give their inputs and vice versa.

Step 3: Sum up the entire discussions from both the groups, and emphasize on the victim-centred focus that needs to be considered during every single action.

Case Study 1 for Group 1

Distribute the Case study on Trafficking for Prostitution from Activity 1 of Module 3.

Case Study 2 for Group 2

Distribute the Case study on Trafficking for Labour/ Domestic Work from Activity 1 of Module 3.

Notes for the Trainer –

The case studies from Module 3 are very detailed and contain lots of facts. Participants have already worked on it in the legal framework Module. Taking this further, participants can now work on it to cover all issues pertaining to post-rescue procedures, with a victim-centred perspective.

Activity 4: Case Study and Role Play

Objective of the Session	To make the participants understand the finer nuances of bail applications in trafficking cases.
Estimated Time	30 Minutes
Methodology	Group work and Role Play
Material Required	Handout of case study, flip charts and markers
Expected Outcome	This session will enable the participants to build understanding on what prosecutors and courts should consider in bail applications filed by the accused; and actions w.r.t. extradition of offenders.

Process for the Trainer

Step 1: Divide the participants into 2 groups. Groups 1 and 2 will be given the same Case Study as provided below. Group 1 will play the role of Prosecutor and Group 2 will play the role of Defence Lawyer. All the participants of Groups 1 and 2 will collectively take part in this activity.

Step 2: The Prosecutors group should be asked to oppose the bail application and the Defence Lawyer group should be asked to request for grant of bail to the offender(s), quoting legal provisions and with appropriate reasons – as if they were arguing the matter in the Court.

Step 3: The Trainer should act as the Moderator in this role play ensuring a balanced discussion, noting down the points made by each Group on a chart. At the end of the discussion, the Trainer should conclude the discussion summing up all points.

Step 4: The Trainer should briefly discuss from the content provided in 4.3.1, on legal provisions and procedures w.r.t. extradition of offenders and mutual legal assistance.

Case Study

In a rescue and raid operation conducted by the police in a private apartment on the 5th floor of a 10 storey building in Hyderabad, they find 2 girls from Kolkata and 2 girls from Guntur. 1 of the 4 girls apparently looks like a minor. There are 3 men in the rooms.

During the Sec. 161 Cr. PC statement, the 2 girls from Kolkata inform the police that they are over 18 years of age and are doing this work ‘willingly’. They inform that they come from Kolkata to Hyderabad once a week. Their ‘agent’ contacts them only through an SMS asking them to reach Hyderabad on a certain date and gives them the address where they are supposed to go, only one day before. They believe that this ‘agent’ may be a middle-aged woman, whom they have never seen, but talked occasionally over the phone. They said that they had been put in touch with this person through their common friend in Kolkata itself.

One of the girls from Guntur said that a friend that she met on Facebook (FB) brought her into this work. She states that about 8 months back, she accepted a friend request from a handsome looking man and starting chatting with him. He slowly started convincing her that there was a lot of money to be made by ‘modeling’ and sometimes, spending some ‘fun time’ with some rich businessmen. She was then made to open an FB account in the name of ‘Rosy’ and put in touch with few men, who slowly became her customers. She was occasionally sent messages on FB by her ‘friend’, to reach a particular hotel or an apartment, and mostly she did the deals herself. She does not want to continue this work, but feels that her FB friend now knows so much about her, that he might tell her family. She tells the police that she has never met this FB friend in person.

Activity 5: Case Study

Objective of the Session	To make the participants skilled in drafting charge sheets in human trafficking cases.
Estimated Time	30 Minutes

Methodology	Group work
Material Required	Case Study, Charts and markers
Expected Outcome	This session will enable the participants to understand the collaborative role between the Investigating Officer and the Prosecutor in drafting strong charge sheets in human trafficking cases.

Process for the Trainer

Step 1: Divide the participants into 2 groups and distribute Case Study 1 (Case study on Trafficking for Prostitution) from Module 3 to Group 1; and Case Study 2 from Module 3 (Case study on Trafficking for Labour/ Domestic Work) to Group 2. Since the participants have already worked in detail on these case studies in the previous Module, they would be familiar with the facts of the case, and would be better equipped to draft a charge sheet.

Step 2: Explain to the participants that although the IO will file the charge sheet, in important cases, the police do seek the advice of the public prosecutor in drafting the charge sheet. Ask representatives from both groups to come and present their charge sheets one by one, and provide them feedback on the missing elements/ gaps (if any) in the drafting of the charge sheet.

Step 3: Refer to the various charges that can be filed under different laws for sex trafficking as well as labour trafficking from the explanations provided in segment 4.3.2 of the Module.

Activity 6: Power Point Presentation and Open Discussion

Objective of the Session	To make the participants understand the role of Courts and Prosecutors in victim-witness protection.
Estimated Time	20 Minutes
Methodology	Power Point Presentation and Open discussion
Material Required	Slides, charts and markers
Expected Outcome	This session will enable the participants to understand the very significant role played by the judicial officers and prosecutors in victim-witness protection, even prior to the actual trial.

Process for the Trainer

Step 1: Make slides (as below) on all types of protection for the victim-witness details of which are provided in 4.4 of the Module and make a presentation to the participants.

Protection Measures for the Victim-Witness

1

Physical safety of the Victim-Witness

- Physical safety of the victim is of paramount importance immediately after rescue and throughout all processes of the criminal justice system.
- Grave threat from traffickers to victim and family at all stages after rescue.
- Police, prosecutors and judicial officers should work synergistically with the government/ NGO shelter home for ensuring physical safety of the victim by taking proper measures and passing appropriate orders.

2

Non-disclosure/ protection of identity of the Victim-Witness

- Ensure identity of adult victims of sex trafficking/ or adult victim of trafficking for labour, where charges are made under Sec. 376, IPC, is protected during investigation and trial from the media and press (Sec. 228A, IPC).
- Ensure identity of child victims is protected during investigation and trial from the media and press (Sec. 74, JJ Act, 2015; and Sec. 23 (1) (2) and Sec. 24 (5), POCSO Act, 2012).

3

Preparing the victim-witness for trial

Preparing the victim for testimony in court

The IO/ Prosecutor along with the supporting NGO can -

- Explain to the victim their rights in the criminal justice system.
- Inform the child and parent/ guardian about –
 - ✓ Availability of support person, counseling services, compensation, public and private emergency and crisis services and assist in contacting them [Rule 4(2)(e), POCSO Rules, 2012].
 - ✓ Right to legal advice and counsel and right to be represented [Sec. 40, POCSO Act, 2012; and Rule 4(2)(f), POCSO Rules, 2012].

4

- ✓ Information about the case - status of investigation, arrest of the suspected offender, filing of charge-sheet, court schedule, bail, release or detention status, final verdict and sentence imposed, etc. [Rule 4(12), POCSO Rules, 2012].
- Explain entire trial process in detail vis-à-vis everyone's roles.
- Arrange pre-trial courtroom familiarization with courtroom setting, etc.
- Inform adult victim - *in camera* trial procedures - Sec. 327 (2), Cr. PC.
- Inform child victim - *in camera* trial procedures, in the presence of parents/ any other person (Sec. 37, POCSO Act, 2012).

5

- Conduct mock trial for victim, to familiarize with actual method of questioning by defence lawyer and answering questions, including explaining inconsistencies in statements.
- Providing interpreter when victim does not speak language of the court.
- Providing special educator if victim is hearing or speech impaired, or has any other mental disability.
- Regular provision of information concerning the pace and different stages of the trial.

6

- The victim-witness should be escorted to and from court buildings, using separate entrances to the court building, having separate waiting areas for the accused and the victim, so that no interface or confrontation is possible outside the courtroom.
- **Victim-witness testimony through video-conferencing** - If victim has been repatriated back to the family, or her country, and is unwilling/ unable to come to trial court for her testimony, evidence may be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence [Sec. 275 (1) (Proviso), Cr. PC].

7

Step 2: Discuss with the participants with the aid of the following questions the role of prosecutors and judicial officers w.r.t. different types of protection measures required by victim-witnesses in human trafficking cases –

- What are the safety concerns of the victim-witnesses?
- What are the safety concerns of the government/ NGO run Protective/ shelter home housing the victim-witnesses?
- What are the special concerns w.r.t. child victims?
- What collective steps could be taken by the police, prosecutors and courts in ensuring the physical safety of the victim-witnesses?
- Does any prosecutor/ judicial officer have any experience to share of the proactive steps taken by them w.r.t. the physical safety of the victim-witness in a case before them?
- What are the rights of the victims under the IPC, the POCSO Act, 2012 and the JJ Act, 2015 w.r.t. protection of identity of the victim-witnesses?
- What are the penalties for breach of victim’s right to protection of identity under the above laws?
- What additional measures could be put in place to ensure non-disclosure of the identity of the victim?
- Does any prosecutor/ judicial officer have any experience to share of the proactive steps taken by them w.r.t. the protection of identity of victim-witness in a case before them?
- What are the special measures that can be undertaken for victims during the Test Identification Parade of offenders in human trafficking?
- What are the special measures that can be undertaken for child victims during the Test Identification Parade of offenders in human trafficking?
- What is the significance of getting special procedures done during Test Identification Parade in a victim-centred approach?
- Does any prosecutor/ judicial officer have any experience to share of the proactive steps taken by them w.r.t. any innovative measures taken by them during Test Identification Parade in a trafficking case before them?

Activity 7: Role Play and Power Point Presentation

Objective of the Session	To make the participants understand the most appropriate way of communicating with the victims for purposes of preparing them for trial.
Estimated Time	20 Minutes
Methodology	Role Play, Power Point and discussion
Material Required	Charts and markers, slides
Expected Outcome	This session will enable the participants to build their skills on victim-friendly, child-friendly communication with victims to convey all information to them and preparing them for trial.

Process for the Trainer

Step 1: Select 4 participants to conduct the Role Play demonstration on communicating with victims of human trafficking. Inform the 4 participants, prior to the start of the session, the brief facts of the case, and their expected roles. Nominate one participant as the ‘child victim’, the second participant as the ‘prosecutor’, third participant as the ‘judicial officer’ and the fourth participant as an ‘NGO support person’.

Step 2: Discuss with the 4 participants prior to the start of the session, key pointers for communicating with victims as is provided in segment 4.4.4 of the Module.

Step 3: After the 4 role players have completed the demonstration for the other participants, conduct a brief discussion on the 'good' versus the 'bad' practice of communicating with victims, and note the points on a flip chart with 2 separate columns.

Step 4: Emphasize the requirement of a victim-centred, child-friendly approach in communicating with all victims of human trafficking, especially victims of sex trafficking and child victims.

Step 5: Cover information from 4.4.4 (communicating with victims, and special considerations in communicating with child victim-witnesses) with the aid of power point presentation (provided below).

Case Study for Role Play

The police rescued four victims from a brothel, upon tip off from an informant. The four girls claim that they were above 20 years of age. Some of them look small, like adolescents. The brothel keeper or the victims have no documentary proof of their age. The victims however, have in their possession a signed affidavit in which they claim that they are over 20 years of age and are in this profession of their own free will. The victims have been produced before the Magistrate in the first instance.

The Role Play should be performed demonstrating the interview of one of the victims.

<p style="text-align: center;">Communicating with Victims of Trafficking in Persons</p> <p style="text-align: right;">1</p>	<ul style="list-style-type: none">• Be sensitive to the communication needs of the witness and of the impact of the interview on the victim.• Determine the language spoken by the victim, and if she/ he needs assistance of an interpreter.• Explain in simple clear language to the victim-witness the reasons for the types of questions being asked, to ensure better cooperation from the victim.• Be careful in the use of language and attitudes, especially when engaging with the victims of sex trafficking. <p style="text-align: right;">2</p>
<ul style="list-style-type: none">• Establish if the victim is feeling comfortable and secure and is well enough to begin the interview process.• Ask questions/ talk at a slow pace – and ensure that the questions are –<ul style="list-style-type: none">– short and simple with not too many sub-questions;– do not contain police and legal jargon;– are not too directive or suggestive.• Allow victim time to understand the nature of the information that she is providing. <p style="text-align: right;">3</p>	<ul style="list-style-type: none">• Do not pressurize victim for quick answers.• Be patient if the victim is slow to respond, especially if interpreter/ special educator/ counselor is assisting the victim.• Avoid constantly interrupting the victim.• Give frequent breaks to victim, if required. <p style="text-align: right;">4</p>

Special Considerations in Communicating with Child Victim-Witnesses

Protection of Children from Sexual Offences Act (POCSO Act), 2012 mandates –

- Record statement of child in the presence of the child’s parent, guardian, near relatives (if available), local social worker, or person whom the child trusts. (Sec. 24(1), POCSO Act and proviso to Sec. 157(1)(b), Cr. PC).
- As far as practical, a woman Sub-Inspector should record the statement for offences under the POCSO Act [(Sec. 24(1)).

5

- A woman police officer or woman officer should record the statement of a girl against whom sexual offences under the IPC have been committed or attempted (Section 161, second proviso, Cr. P.C).

- The police officer should be in plain clothes and not in uniform during recording of the statement [Sec. 24(2)].
- The child should not come in contact with the accused during investigation or while examining the child [Sec. 24(3)].
- The child should not be detained in the police station during night time for any reason [Sec. 24(4)].

6

- The identity of the child should be protected and no identifying information should be given to the media [Sec. 23(1)(2)].
- The child’s statement should be recorded as spoken by the child [Sec. 26(1)].
- The statement should be recorded through audio-visual means as far as possible [Sec. 26(4)].
- Assistance of a qualified interpreter, translator, special educator, or person familiar with the manner of communication of the child, or experts, can be taken if necessary [Sec. 26(3)].

7

Other considerations whilst interviewing child victims

- Depending on the age of the child, explain the purpose of 161 statement in a child appropriate language.
- Use child sensitive language appropriate to the child’s age.
- Allow very young children - to play and express themselves.
- Be gender sensitive when dealing with girls and boys, as both respond differently to questions related to sexual assault/ rape, etc.

8

Activity 8: Open Discussion

Objective of the Session	To make the participants know the most important pre-trial steps in preparing victim-witness for the trial.
Estimated Time	15 Minutes
Methodology	Open discussion
Material Required	Charts and markers
Expected Outcome	This session will enable the participants to build their skills on victim-friendly, child-friendly approaches towards providing all requisite information to the victims in preparing them for the trial ahead.

Process for the Trainer

Step 1: Discuss with the participants with the aid of the following questions (from Resource Material 4.4.4 of the Module) role of prosecutors and/ or judicial officers w.r.t. preparing/ assisting a victim-witness for trial in human trafficking cases –

- What should be done if the victim does not speak the language of the court?

- What should be done if the victim is physically impaired in speech and hearing?
- What should be done if the victim has any kind of mental disability?
- What actions should be taken if the victim is a small child?
- What all information should be conveyed to the victim/ child victim/ family/ guardian w.r.t. pending status of the case?
- Why could be done to familiarize the victim with the court setting?
- What all information should be conveyed to the victim regarding the role of police, prosecutor, judge, defence lawyer, other witnesses, NGO support person, or any other person during the trial?
- What are the significant reasons for preparing victim-witnesses for trial?
- How to make a difference between preparing a victim for trial vis-à-vis tutoring the victim-witness?
- What is the role of the prosecutor in providing legal counseling to the victims?
- What are the special steps that could be additionally taken for child victims?
- What are the special steps that could be additionally taken for foreign victims?

Preface - The Trainer should inform the participants that the aspects of reporting of victims/ cases of human trafficking; identification of victims; registration of FIR; the rescue and raid processes; securing crime scene at source, transit and destination; collecting evidence from the crime scene(s); recording of 161 Cr. PC statement; medical examination; etc., would all have been covered in the Training Modules relevant to the Police.

4.1 Rescue and Raid Operation vis-à-vis Role of Magistrate

An FIR is not a pre-condition for rescuing trafficked victims. In situations where it is not possible/ feasible to first register an FIR, rescue without FIR is possible under the following legal provisions –

For all trafficking cases -

- Sec. 149 of Cr. PC - Police to prevent commission of any cognizable offence.
- Sec. 151 of Cr. PC - Arrest to prevent the commission of cognizable offences (without orders from a Magistrate and without a warrant).
- Sec. 370 and 370A of IPC.

Specifically for sex-trafficking cases -

- Sec. 15 and Sec. 16 of ITPA, 1956 – in sex trafficking cases.

Procedure under Sec. 15, ITPA, 1956 - Search without warrant -

15 (1) - If the Special Police Officer (SPO)²³ or the Trafficking Police Officer (TPO)²⁴ -

- has reasonable grounds to believe
- that an offence under the Act has been or is being committed
- in respect of a person living in any premises, and
- search of the premises with warrant cannot be made without undue delay
- such officer after recording the grounds of his belief
- enter and search such premises without a warrant.

15 (4) - The SPO or the TPO, after entering any premises, shall be entitled to remove all the persons found there (would mean removal/ rescue of victims and arrest of suspects).

Procedure under Sec. 16, ITPA, 1956 - Rescue of person

16 (1) - If a Magistrate –

- has reason to believe from information received from the police or anyone else
- that any person is living/ carrying/ is being made to carry on - prostitution in a brothel
- he may direct a police officer of or above Sub-Inspector rank
- to enter such brothel, and to remove that person and produce her before him.

23 Sec. 2 of ITPA, 1956 - (i) “special police officer” means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act.

24 Sec. 2 of ITPA, 1956 - (j) “trafficking police officer” means a police officer appointed by the Central Government under sub-section (4) of Section 13.

16 (2) - The police officer, after removing the person shall, produce her before the Magistrate issuing the order.

In all such cases, where rescue had to be carried out prior to registering FIR, immediately after the rescue operations, the FIR should be recorded.

Sec. 16 (1) of the ITPA, 1956 should be read along with Sec. 166 of Cr. PC, when an officer in charge of police station may require another to issue search warrant.

Sex trafficking - Sections 13, 14, 15 and 16 of ITPA, 1956, deal with powers and authorities of police officers who can undertake rescue (including composition of rescue team), which are as follows: -

- Special Police Officer - Sec. 13 (1) and (2)
- Subordinate Police Officer - Sec. 13 (3) (a)
- Trafficking Police Officer - Sec. 13 (4)
- Special Police Officer - Sec. 14 (i)
- Subordinate Officer – Sec. 14 (ii)
- Police officer - Sec. 14 (iii)
- Any police officer of the rank of Sub-Inspector and above, specially authorized by a Magistrate (Metropolitan Magistrate or Judicial Magistrate First Class or District Magistrate or Sub-Divisional Magistrate) – Sec. 16.

Labour Trafficking - Composition of rescue team in a case of labour trafficking should be as per usual policing norms. In addition rescue team should, where ever possible, be accompanied by a Sub-Divisional Magistrate (SDM), who is the implementing authority under the Bonded Labour Act, 1976 and officers of the labour department, so that the Child Labour Act, 1986 may also be utilized wherever applicable. The rescue team should, wherever possible, obtain a search warrant from the jurisdictional Magistrate under Sec. 166 Cr. PC if the SDM is not accompanying the team.

Legal instruments to be taken by the police prior to rescue operation -

- Search warrants – Sec. 93, 94, 97, 98 and 100 of Cr. PC.
- NBWs - Non-bailable warrants – especially, if the police are unable to find the person to serve him with summons or it is considered that the person could harm some one if not placed in custody immediately²⁵. Police officer leading the rescue operations, should file an application before the jurisdictional Magistrate for the NBW.

4.2 Procedures with respect to the victim

4.2.1 Producing rescued victim before Magistrate or Child Welfare Committee

Procedure under Immoral Traffic (Prevention) Act (ITPA), 1956 - Sec. 15 (5) mandates that when the special police officer or the trafficking police officer, has entered and searched any premises without a warrant, believing it to be place where prostitution is being carried out, and rescued a person from there, the rescued victim (above 18 years) shall be immediately produced before the appropriate Magistrate (Metropolitan Magistrate, Judicial Magistrate of the First Class, District Magistrate or Sub-Divisional Magistrate).

²⁵ Inder Mohan Goswami and another v/s State of Uttaranchal and Others; 2007(12) SCC (1)

If at the time of first remand, the Prosecutor notices that no victims are being produced, then a question must be raised before the court, as to what procedure has been undertaken for the production of adult victims before the Magistrate and child victims before the CWC.

Under Sec. 19 of ITPA, 1956, a victim who is carrying on/ or being made to carry on prostitution, may herself make an application to the Magistrate (Metropolitan Magistrate, Judicial Magistrate of the First Class, District Magistrate, or Sub-Divisional Magistrate) – to place her in a shelter/ protective home or be provided care and protection by the court. Pending inquiry, the Magistrate may order granting interim custody of the victim to a protective home for a specified period.

Procedure under Juvenile Justice (Care and Protection of Children) Act (JJ Act), 2015

The following categories of child victims (persons under 18 years of age) shall be produced before the Child Welfare Committee (CWC) constituted under the JJ Act, 2015²⁶, as a ‘child in need of care and protection’²⁷ -

1. Child victims of sex trafficking rescued under Sec. 15 of ITPA, 1956 shall be produced by the police officer.
2. Children of adult victims of sex trafficking rescued under Sec. 15 of ITPA, 1956 shall be produced by the police officer.
3. Child victims rescued from trafficking for labour/ domestic work, shall be produced by the Inspector appointed under any labour law.
4. Child victims rescued from any other type of trafficking, including the above 3 types, can also be produced before the CWC by –
 - any police officer, or
 - Special Juvenile Police Unit (SJPU), or
 - Child Welfare Police Officer (CWPO), or probation officer, or
 - any officer of District Child Protection Unit (DCPU), or
 - Child Line, any NGO, or
 - social worker, or
 - by child himself/ herself, or
 - public spirited citizen, or
 - any nurse, doctor or management of a nursing home, hospital or maternity home.

The child shall be produced before the CWC without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey (Sec. 31 (1) of JJ Act, 2015). If the child victim cannot be produced before CWC promptly after rescue, the child should be kept in a children’s home for overnight protective stay and thereafter, be produced before CWC. A child victim may be produced before an individual member of the CWC for being placed in a Children’s Home or fit person when the Committee is not in session (Sec. 28 (3) of JJ Act, 2015). The child shall be produced before the Committee during the working hours at its place of sitting and beyond working hours before the member as per the duty roster (Rule 18 (1), JJ Rules, 2016). The police official producing the child before the Committee shall make a report in Form 17 containing the particulars of the child as well as the circumstances in which the child was received or found (Rule 18 (2), JJ Rules, 2016).

²⁶ Sec. 31(1) of JJ Act, 2015

²⁷ Sec. 2 (14) of JJ Act, 2015

The CWC will take all actions w.r.t. to the child as per Chapter V, Rule 18-20 of the JJ Rules, 2016.

When there is ambiguity regarding the age of the rescued person, or if the victim/ trafficker proclaims that the rescued victim is above 18 years, and therefore, carrying on prostitution with 'full consent' / or that the child is allowed to work under the labour laws - but the Investigating Officer (IO) feels that the victim is a child below 18 years of age, the Magistrate should be requested to determine the person's age. For procedures related to determination of age, refer 4.1.3 below.

Charging of victims – The Ministry of Home Affairs (MHA) Advisory, 2009²⁸, states –

“It is generally noticed that Sections 8 and 20 of ITPA, which focuses on the victims, are more often invoked as a result of which the victim is re-victimized and the exploiters are not punished. It is, therefore, advised that Sections 3, 6 and 7, which pertains to pimps, brothel owners, clients who are actual perpetrators of the crimes need to be invoked rather than Sections 8 and 20. Law enforcement agencies need to adopt a victim centric approach in the investigations”.

Charging of foreign nationals – The MHA Advisory, 2012²⁹, states –

“Immediately after a foreign national is apprehended on charges of human trafficking, a detailed interrogation/ investigation should be carried out to ascertain whether the person concerned is a victim or a trafficker. Missions/ Posts in India may be informed of the arrest/ detention of the foreign national by the concerned state or other authorities through CPV division in the Ministry of External Affairs (MEA) or the concerned territorial Division in MEA.

It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the charge sheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned.

Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels.

If the investigation reveals that the person is actually a trafficker, he/ she may be charge-sheeted under the Immoral Trafficking Prevention Act and the Foreigners Act and due process of law should be followed in such cases”.

4.2.2 Medical Examination

Medical examination is mandatory for any person rescued from any exploitative situation for providing immediate medical care; for age determination; and to gauge the extent of physical injuries for purposes

28 Advisory on Preventing and Combating Human Trafficking in India; Ministry of Home Affairs, Government of India, F.NO.15011/6/2009-ATC, 09 September 2009

29 Advisory on Preventing and Combating Human Trafficking in India - Dealing with Foreign Nationals; Ministry of Home Affairs, Government of India, No. 14051/14/2011-F.VI, 01 May 2012

of charging the offenders, and to link this piece of evidence to the crime.

For rescue from sex trafficking cases - Sec. 15 (5-A) of ITPA, 1956 mandates that the person produced before a Magistrate shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.

The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 provides the following with respect to HIV tests -

- No HIV test shall be undertaken or performed upon any person except with the informed consent of such person or his representative.
- The informed consent for HIV test shall include pre-test and post-test counseling to the person being tested or such person's representative (Sec. 5).
- However, the informed consent for conducting an HIV test shall not be required where a court determines, by an order that the carrying out of the HIV test of any person either as part of a medical examination or otherwise, is necessary for the determination of issues in the matter before it (Sec. 6).

For rescue of children from sex trafficking – The police has to facilitate -

- Medical care in the nearest hospital or medical care facility in cases requiring urgent medical care (Rule 5(1), POCSO Rules, 2012).
- Medical examination of the victim within 24 hours of the report (Sec. 27, POCSO Act & Sec. 164A, Cr. PC).
- Collected samples are sent to the State Forensic Science Laboratory at the earliest (Rule 4(2)(d), POCSO Rules, 2012).
- First-aid free of cost at any public or private hospital (Sec. 357C, Cr. PC).

For rescue from any other type of trafficking – The police has to facilitate -

- Medical examination of (adult) victim, if rape or sexual assault is alleged (Sec. 164A, Cr. PC).
- Medical examination of (adult) victim (male or female) for determination of any physical injuries as a result of the exploitation (for ex. blisters on hands, injuries on body, will be useful to prove intense physical labour indicative of bonded/ forced labour).

For rescued victims from any kind of trafficking, it may be essential to refer the victim to a psychiatrist for comprehensive treatment or to a psychologist for trauma counseling. At the individual level, the victim may require this treatment and on the other hand, the medical documents will be helpful for the police and the prosecutor for *mapping the harm* done to the victim during exploitation.

Medical examination is a very intrinsic part of the post-rescue procedure, and normally at this stage the sex trafficking victim faces a lot of bias, discrimination and prejudice in the hospital at the hands of the hospital staff. It is of utmost importance at this stage to respect and preserve the dignity of the victim. In a victim-centred approach during medical examination, it would be advisable that the police should -

- Inform the victim about the requirement for the medical examination and the rights of the victim.
- Inform the Superintendent of the Hospital and tie-up the timings of the medical examination, so that the victims do not have to spend long waiting hours at the hospital.
- Depute 2 lady constables to accompany the victim to the hospital. A lady doctor should do the medical examination, where the victim is a female. If a lady doctor is not available, and a male doctor has to conduct the medical examination, it should be done in the presence of one of the lady constables/ or

the NGO support person/ or female attendant of the hospital.

- The doctor should be specifically asked to mention all physical injuries in the report by their type, size, location, cause, age of the wounds; typical injuries sustained during violent/ kinky rapes – cuts, bites, cigarette butt marks, etc.; typical injuries sustained due to intense physical labour - blisters on hands and feet, other injuries; etc.
- The two-finger test should not be used and nor should any stigmatizing language or remarks about the victim being “habituated to sexual intercourse” or prior sexual experience be made³⁰. These offend the guarantee of dignity, privacy, physical and mental integrity available under Article 21, Constitution of India and have no bearing on a case of sexual violence³¹.
- Male police officers should not be present/ allowed in the room during medical examination or noting of victim’s history³².

Medical examination will also help the police/ prosecutor draw a presumption as mentioned under Sec. 6 (2-A) of ITPA, 1956. The section provides that - where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be **presumed** unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, has been sexually exploited for commercial purposes.

4.2.3 Age verification

When rescue of trafficked victims takes place from any situation whatsoever, there will always be issues regarding the correct age of the victim. Where the rescued person clearly looks much below 18 years, the procedures under JJ Act, 2015 will be applicable. However, where the trafficker or the rescued person himself/ herself claims to be –

- over 18 years and in prostitution with ‘consent’, or
- over 18 years and performing labour/ work with ‘consent’, or
- between 14-18 years and performing work as an ‘adolescent’ as allowed under the amended Child Labour Act, 1986, or
- above 18 years and is legally permitted to marry –
- the Investigating Officer/ Prosecutor/ Court should understand that the rescued person is making the claim because of previous ‘brain washing’, duress, coercion, compulsions (emotional or otherwise), fear that they may be treated as ‘accused’, and other reasons. The traffickers have a lot to benefit from such declarations, especially in sex trafficking cases, as the rescued persons can be got released by an order of the Magistrate and immediately taken back to the brothel.

The Investigating Officer/ Prosecutor/ Court – as the case may be, should do an immediate assessment of the age of the child, based on his/ her judgment, if the person clearly looks much below 18 years of age. In other cases, where there is ambiguity w.r.t age, or where it is important to know the correct age of the child for application of POCSO Act, 2012 (to apply the offences of aggravated sexual assault, etc.), or the provisions relating to offences against child/ minor under the ITPA, 1956 - it is advisable to treat the person as a child, rather than as an adult, so that the more beneficial provisions of JJ Act and the more

30 *Lillu v/s State of Haryana*, AIR 2013 SC 1784; Guidelines & Protocols, Medico-Legal Care for Survivors/Victims of Sexual Violence, Ministry of Health and Family Welfare [2014]; Available at <https://mohfw.gov.in/sites/default/files/953522324.pdf>

31 *Ibid*

32 Guidelines & Protocols, Medico-Legal Care for Survivors/Victims of Sexual Violence, Ministry of Health and Family Welfare [2014].

stringent provisions of the POCSO, ITPA, and other labour laws can be applied against the offenders.

The Investigating Officer should, therefore, produce the rescued person before a Magistrate under Sec. 15 (5-A) of the ITPA, 1956 (where the initial search and rescue was conducted without a warrant), and the Magistrate should order, for the person to be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.

In other instances, the rescued person can be presumed to be a child and be produced for age assessment before the - Child Welfare Committee (Sec. 94 of JJ Act, 2015); or the Special Court under the POCSO Act, 2012 [Sec. 34(2)].

The procedure under Sec. 94(2), JJ Act, 2015 is as follows -

- Where it is obvious to the CWC that person is a child (under 18 years), the CWC shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Sec. 36, without waiting for further confirmation of the age.
- Where the CWC is doubtful as to the age of the person, it shall undertake the process of age determination, by seeking evidence by obtaining —
 1. the date of birth certificate from the school, or matriculation or equivalent certificate from the concerned examination Board, if available;
 2. if no documentary proof is available, the birth certificate given by a corporation or a municipal authority or a panchayat; and
 3. only in the absence of (1) and (2), age shall be determined by a bone ossification test or any other latest medical age determination test.

The above process can be followed by any court before which the age of the rescued person is in question.

Remember -

- Do not immediately believe the documentary evidence produced by traffickers or victims – such as, Aadhar card, school leaving certificate, birth certificate, etc. These identification documents could be fake/ forged, and should be treated suspiciously in the first instance.
- If no documentary proof is available, or is suspicious - inform the Magistrate, CWC or the Special Court so that they can order an ossification test or latest medical age determination test. Do not ask doctors to conduct these tests, without orders under Sec. 94 of the JJ Act, 2015.
- Correct age determination is extremely crucial to apply the correct charges under all relevant laws, for enhanced penalties for offences committed against children -
 - o If victim is a child/ minor, the question of ‘consent’ of victim becomes irrelevant;
 - o The ITPA provides for more stringent penalties if offences are committed against child/ minor.
 - o All actions w.r.t children under 18 years will be taken under the JJ Act, 2015.

Relevant case w.r.t age verification -

The Supreme Court held in *Jarnail Singh v/s State of Haryana*³³, that Rule 12 of the erstwhile Juvenile Justice (Care and Protection of Children) Rules, 2007, which detailed the age determination process for

³³ AIR 2013 SC 3467

children in conflict with the law should be applied to determine the age of a child victim. It stated: “Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime”.

Note: By extension, courts should apply Section 94, JJ Act, 2015 while determining the age of child victims.

In the case of *State of Madhya Pradesh v/s Anoop Singh*³⁴, the High Court had set aside the respondent's conviction under Sec. 363, 366, and 376, IPC on the ground that the prosecution had to establish the victim's age as being below 16 years. There was a discrepancy of two days between the birth certificate and the middle school certificate produced by the prosecution and the victim was more than 15 years and less than 18 years based on the ossification test. The SC stated that the discrepancy was immaterial and applied Rule 12 (3)(b) of the JJ Model Rules, 2007; and held that the HC should have relied on the documents as only in their absence can a medical opinion be sought, based on which the acquittal was set aside.

In *Jaya Mala v/s Home Secretary, Government of Jammu & Kashmir and others*³⁵, the Supreme Court held that with regard to the opinion of doctor as to age of a person based on a radiological test, margin of error in age ascertained by radiological examination is two years on either side.

4.2.4 Intermediate Custody and Home Investigation Report

After rescue of the trafficked person under the provisions of ITPA, 1956, the special police officer shall forthwith produce the rescued person(s) before the nearest Magistrate, who shall pass orders for their safe custody, till such time, the person is produced before the appropriate Magistrate. The Magistrate shall not restore or place the rescued person(s) in the custody of anyone who may exercise any harmful influence over the victims (Sec. 17 (1), ITPA, 1956).

Sec. 17 (2) of the ITPA, 1956 mandates that when the rescued person is produced before the appropriate Magistrate, then the Magistrate shall get an inquiry [Home Investigation Report (HIR)] done through the Probation Officer appointed under the Probation of Offenders Act, 1958, to –

- Establish the correctness of the information w.r.t. age, character and antecedents of the rescued person;
- Suitability of her parents, guardian or husband for taking charge of her;
- Nature of the influence which the conditions in her home are likely to have on her if she is sent home;
- Inquire into the above circumstances and into the personality of the person and the prospects of her rehabilitation.

The Probation Officer may either do the home investigation as above, himself/ herself or associate an NGO (normally, where the victim is sent for safe custody) for assistance.

For ordering an enquiry as above, the Magistrate may summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of

34 2015 (7) SCALE 445

35 AIR 1982 SC 1297

experienced social welfare/ NGO workers, particularly women social welfare workers, working on anti-trafficking.

During the pendency of inquiry for the HIR, the Magistrate can pass orders for the safe custody of the rescued victim, either at a government or an NGO run shelter/ safe home (Sec. 17 (3), ITPA, 1956). The law provides that the rescued person shall not be kept in custody for this purpose for more than three weeks from the date of the order, and they shall not be kept in the custody of anyone likely to have a harmful influence. However, practically HIRs are not completed within the mandated three weeks due to multiple reasons, such as – wrong address given by the victims, or parents may have moved out from the address provided by the victim, or other reasons. In cases of foreign victims, it is an even more long drawn process to get the HIR done. The NGO shelter/ safe home where the victim is temporarily living, normally use their own NGO networks in Bangladesh and Nepal for information on the victims from these countries.

After receiving the HIR, if the Magistrate is satisfied that the information received is correct, and that the victim is in need of care and protection, the Magistrate may order for the victim to be in the shelter home for any period between one to three years. The Magistrate may also require the shelter home to sign a bond which may, where necessary and feasible contain an undertaking for the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a court appointed person (Sec. 17 (4), ITPA, 1956).

Case Law – NGO Prerana filed a PIL³⁶ in High Court of Bombay, to protect children and minor girls rescued from the flesh trade against the pimps and brothel keepers keen on re-acquiring possession of the girls. In a raid conducted by the Mumbai police at a brothel, 4 persons alleged to be brothel keepers/ pimps were arrested, and 24 females were rescued. The rescued victims were sent to the Government Special Rehabilitation Centre for Girls, for temporary stay as the Magistrate had passed orders for age verification and home investigation report. The accused were let off on bail and the girls were also subsequently released. Upon petition filed by the NGO, the High Court passed the following directions *inter alia* -

- No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a 'juvenile in conflict with law' or a 'child in need of care and protection', as defined in the Juvenile Justice Act (erstwhile law of 2000). At the first possible instance, the Magistrate must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a 'juvenile in conflict with law', or to the CWC if such a person is a 'child in need of care and protection'.
- No advocate can appear before the CWC on behalf of a juvenile produced before the CWC after being rescued under the ITPA or found soliciting in a public place.
- An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the ITPA.

Foreign victims - The same procedure will be followed for all foreign victims also. In cases of victims from the SAARC countries, specifically from Bangladesh and Nepal, the supporting NGO in India, is able to get some inquiry done with the assistance of NGOs in their respective countries, about the home situation report of the victims. In cases of victims from non-SAARC countries, the police have to liaise

³⁶ Prerana v/s State of Maharashtra and Ors.: Cri. W.P. No. 788 of 2002

with the concerned Embassy and get the victims repatriated back at the earliest.

Child victims before the CWC - When child victims of trafficking are produced before the CWC under the JJ Act, 2015, it calls for a Social Investigation Report (SIR) based on which, it can conduct inquiry and pass rehabilitation order. For the said purpose, the CWC can direct an NGO, Probation Officers, District Child Protection Unit or Child Welfare Officers to conduct the SIR and submit a report [Sec. 30(iii)]. The social investigation shall be completed within fifteen days so as to enable the CWC to pass final order within four months of first production of the child [Sec. 36 (2)].

CWC should not send hand over custody of child victims to the 'parents, guardians, etc.', without informing the police who had produced the child before the CWC. The police official presenting the child before the CWC can make an application before the CWC, asking for prior notification, if there are claimants of the custody of the child.

Magistrates, prosecutors, and CWCs need to consider that pending the home investigation report, no victim should be handed over to the persons who claim custody – for they may be traffickers/ offenders in the garb of 'father, mother, sister, brother, husband, boyfriend, aunty, uncle, other relative, etc.'. Immediately handing over custody to so called 'guardians' of the victims, will take them immediately back to the brothels/ other places of exploitation.

4.2.5 Recording Sec. 164, Cr. PC statement

When the victim has achieved some level of physical and mental stability in the shelter home/ protective home where she/he is under safe custody, whether under the provisions of ITPA, 1956 or the JJ Act, 2015, the Magistrate should record the Sec. 164, Cr. PC statement of the victim.

In sex trafficking cases, or in labour trafficking cases (where the victim alleges rape), and the FIR mentions Sec. 376 IPC and similar sections, the statement is mandatorily to be recorded by Magistrate under Sec. 164 (5A), Cr. PC (2013 amendment).

The Magistrate may record the statement also by audio-video electronic means [Sec. 164(1)(Proviso), Cr. PC]. In cases of victims who are temporarily or permanently mentally or physically disabled – the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement, which shall also be video graphed [Sec. 164 (5A)(Proviso), Cr. PC].

When to record the 164 statement is a crucial decision so as to get the best possible information from the victim. Experience shows that the victim in a sex trafficking case is comfortable and stable after about three weeks of counseling during her stay in the Shelter Home, after which normally the 164 is recorded. During this interim period, the IO should ensure that the victim is not threatened, approached, coerced by the traffickers/ parents/ guardians.

Child victims - Where children are rescued from any type of exploitation, and where charges are also made under the POCSO Act, 2012 - the following legal requirements will have to be met as mandated under that law –

- If the statement of the child is being recorded under Sec. 164 of the Cr. PC, the Magistrate recording such statement shall, record the statement as spoken by the child (Sec. 25(1), POCSO Act, 2012).

- The Magistrate (or the police officer, as the case may be), shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence (Sec. 26(1), POCSO Act, 2012).
- Wherever necessary, the Magistrate, may take the assistance of a translator or an interpreter, while recording the statement of the child (Sec. 26(2), POCSO Act, 2012).
- The Magistrate may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field (Sec. 26(3), POCSO Act, 2012).
- The statement should be recorded through audio-visual means as far as possible. (Sec. 26(4), POCSO Act, 2012).

4.3 Procedures with respect to prosecution

4.3.1 Bail in trafficking in persons' cases

Chapter XXXIII of Cr. PC – Sections 436 - 450 pertains to bail and bail procedures. Sec. 436 deals with bail to those accused of bailable offences for which bail can be claimed as a matter of right. Sec. 437 pertains to bail for those accused of non-bailable offences, for which a court has discretion on whether or not to grant bail to the accused. Sec. 438 deals with bail for those apprehending arrest, also known as anticipatory bail. Sec. 439 pertains to the special powers of the High Court and the Court of Sessions regarding bail matters.

Sec. 50, Cr. PC pertains to arrest of persons and of the right to bail. Where a police officer arrests without warrant any person accused of a bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

Offences under IPC, as are relevant to trafficking in persons are non-bailable (Sec. 366-A, 366-B, 370(4), 370(5), 370(6), 370-A (1), 371, 372, and 373). All offences under ITPA, 1956 are cognizable under Sec. 14, and where imprisonment is 3 years or more, they will be non-bailable also. All ITPA offences involving minors and children are non-bailable. The remaining ITPA offences are classified as bailable or non-bailable, depending on the numbers of year with which the offence is punishable.

Prosecutors may bear in mind the following points whilst opposing bail for the traffickers/ other accused; and judicial officers should also consider the same, whilst deciding on the bail application of the accused person(s) –

1. Traffickers out on bail are one of the greatest risk to victims (whether of sex trafficking or labour trafficking). Traffickers will make all attempts to silence them, so that they do not get named in the statements before Magistrates, or later during victim testimony at the trial. The silence can be obtained through multiple ways of threat of physical harm to victim and/ or family members, or emotional blackmail appealing to the previous relationship between them, or coercion by telling the victims that their photographs/ videos will be shown to family, relatives, community, etc. In grave cases, attempts can be made to physically eliminate victims also.
2. Traffickers also have access to the parents and families of the victims, and often threaten them, to obtain the victim's silence. Traffickers may also use financial remuneration to 'compromise' the case with the victim's family.
3. Traffickers will make all attempts to tamper with evidence and other witnesses (who also may be

victims).

4. Bail will ensure that traffickers go back to continue their illegal activities in the form of recruiting – luring – harbouring – transporting – exploiting other and new victims.
5. There is a very strong possibility of the traffickers absconding after obtaining bail, thus, derailing the trial process.
6. During the initial stages of the victim's stay in safe homes after their rescue - whether referred by Magistrates or by the CWCs, victims are always concerned to know the whereabouts of the traffickers. Information about where the traffickers are, and counseling by the staff of the safe homes/ or the police counselor – convinces the victims that they are indeed safe from immediate threat or harm of any kind. Knowing that traffickers are in jail is an important step towards their slow recovery from fear and trauma.
7. In considering bail applications, judicial officers and prosecutors should verify and ensure that the police reports are properly prepared after due application of mind by the police against all the traffickers and abettors.
8. The SC the has held in some landmark cases that 'failure to give heightened sensitivity to cases involving sexual abuse against women and children risks a danger to the collective interests of society'³⁷; and 'if perpetrators are released on bail or acquitted on minor technicalities it reinforces the unwarranted stigma on the victim and allows criminals to walk free within the community'³⁸.
9. If the Magistrate eventually decides to grant bail, provisions of Sec. 437(3) Cr. PC shall be invoked against the accused and suitable conditions should be placed whilst granting the bail application. When an accused is released on bail it becomes very important to ensure that the victim's safety is not compromised, and that the accused don't gain access to the very victims they have allegedly exploited. The imposition of conditions in the Court's order granting bail will ensure that the victim cannot be approached and evidence shall not be tampered with. Where bail conditions are violated by the accused, the Prosecutor should invoke provisions of this Section to revoke the grant of bail.
10. The prosecutor and Magistrate should ensure that those who stand as surety/ sureties for the traffickers furnish a declaration, to the court, regarding the number of persons for whom he/ they have earlier stood surety, including traffickers as per Sec. 441 A.
11. If a complaint is made to the Investigating Officer or the prosecutor either by the victim-witness or the staff of the safe home that the accused trafficker has violated conditions of bail or threatened a victim/ witness or their families, an FIR should be filed under Sec. 195-A IPC for further investigation, which will act as a deterrent against traffickers and provide relief to the victim.
12. Prosecutors should also file applications to the Court of Sessions or petition the High Court for cancellation of bail under Sec. 439(2) Cr. PC. The court, which granted bail in the first instance, may also be approached for cancellation of bail.

Relevant cases w.r.t bail to accused in sex trafficking cases -

State of Maharashtra and Another v/s Mohd. Sajid Husain, Mohd. S. Husain, etc.³⁹

The petition was filed against Judgment and Order of the High Court of Bombay, Aurangabad Bench at Aurangabad granting anticipatory bail to the respondents for commission of an offence punishable under Sec. 376, 342 read with Sec. 34 IPC and under Sec. 5 ITPA. The Respondents in this petition comprised of police officers, politicians and a businessman.

37 State of Punjab v/s Ramdev Singh, 2004 AIR (SC) 1290

38 State of Punjab v/s Gurmit Singh, 1996 AIR (SC) 1393

39 AIR 2008 SC 155

The minor victim had lodged an FIR outlining how her employer in whose house she was working as a domestic help, forced her into prostitution. All the accused names in the victim's complaint absconded and filed an application for anticipatory bail before the Sessions Judge, Aurangabad. Upon dismissal of that application, they approached HC, which granted them anticipatory bail, primarily holding that the prosecutrix being major and having willingly consented for sex for consideration, no offence was made out.

State of Maharashtra, filed an appeal to the SC, and the court held that it was not in dispute that victim was minor based on medical evidence; and therefore, the defence of 'consent' being raised by the accused would "pale into insignificance". The SC stated that out of the eight respondents, five are police officers, two are politicians and one is owner of a hotel. After having come to learn that their names had been taken by the prosecutrix in her supplementary statement, they had been absconding for a long time.

The Court noted that the factors relevant for grant of anticipatory bail were: (1) the nature, gravity and seriousness of the accusation; (2) the antecedents of the applicant including whether the applicant has undergone imprisonment for any cognizable offence; (3) the likely object of the accusation to humiliate or malign the reputation of the applicant; and (4) the possibility of the applicant, if granted bail, of fleeing from justice. The Court also observed that it is a settled principle of law that the court granting anticipatory bail must record reasons for the same. Parameters for grant of anticipatory bail in such a serious offence [Sec. 376 and 376 (2) (g), IPC] must be satisfied.

The SC further stated that immoral trafficking is now widespread. Victims, who are lured, coerced or threatened for the purpose of bringing them to the trade, should be given all protection. The HC with regard to Sec. 438 Cr. PC proceeded on the basis that the prosecutrix was a girl of 'easy virtue'. This may be so but the same by itself may not be a relevant consideration.

The SC commented upon the immoral conduct on the part of police officers and stated that the court failed to understand as to how the police officers could go underground. They had been changing their residence very frequently. Although most of them were police officers, their whereabouts were not known. In the peculiar facts and circumstances of the case, the SC stated that the HC ought not to have granted anticipatory bail to the respondents.

The SC dismissed the appeal of the State for two reasons, namely; that the accused had been granted bail long time back and that in some cases trials had also been concluded. However, the Court laid down that the question as regards grant of bail should be considered having regard to the gravity of the offence and that in a case of this nature the HC should have dealt with the matter cautiously rather than in a cursory manner.

Guria, Swayam Sevi Sansthan v/s State of U.P. and Others⁴⁰

The police along with NGO Guria, had rescued more than 30 young girls and children from the 'red light area' in Varanasi. The police completed the investigation and charges were framed under Sec. 5, 6 and 9 of ITPA, 1956 with several other sections of IPC against 36 persons. The accused filed applications for grant of bail before the Sessions Judge, who rejected their bail applications inter alia, stating - "... It is prima facie evident from the investigation carried out that these people bring the customers to get indulged in forceful immoral traffic with the minor girls and recover the charges in lieu thereof and have

40 2009 (2) ALD (Cri) 555; 2010 Cri LJ 1433

made it their main business and brought the minor girls at the said place on having purchased them. In this reference only on having conducted the raid by the police and other social service institutions on the stated date 31 minor girls have been recovered. ... In case the applicants are released, these people would again indulge in these acts because they have no other business. After considering all the facts and circumstances of the case in my opinion no proper ground is found to release the accused persons on bail. Therefore, all the bail applications are rejected”.

The HC on appeal allowed the bail applications to the accused furnishing personal bonds with two sureties each. The NGO filed an appeal in the SC, and the court order among other things stated - “It is unfortunate that the Investigating Officers and the Courts ordinarily fail to bear in mind a distinction between the rescued children including girls, on the one hand, and the persons who have been organizing such immoral traffic in a systematic manner and have otherwise been aiding and abetting the commission of offences there under. Bails are granted to accused who are arrested from the brothels without bearing any distinction in mind as to whether they work from behind or may be held to be guilty of offences of higher magnitude. The question as regards grant of bail, therefore, should be considered having regard to the gravity of the offence wherewith the accused had been charged. The HC, therefore, in our opinion, was not correct in dealing with the matter in such a cursory manner. The HC has also gone wrong in recording that the statements of the girls have not been recorded under Sec. 164 of the Code of Criminal Procedure, as the same was not necessary. We would place on record that in a case of this nature, the High Court should have dealt the matter cautiously”.

Absconded accused

If the accused has absconded, and there is no immediate prospect of arresting him/ her, there are provisions in the Cr. PC for the court to record evidence in the absence of the accused under Sec. 299 (1). Prosecutors should utilize this provision when trials get delayed due to the continued absence of the accused, thus frustrating the victim’s quest for justice. Prosecutors and judges should also bear in mind that victims will have to spend very long and extended periods in safe homes pending their depositions. This is especially true of foreign victims, whose repatriation will be very delayed.

The prosecutor should also effectively utilize other relevant provisions of the Cr. PC in cases where the accused has absconded, such as, Sec. 82 (Proclamation of person absconding); Sec. 83 (Attachment of property of person absconding); Sec. 85 (Release, sale and restoration of attached property); Sec. 205 (Magistrate may dispense with personal attendance of accused); Sec. 299 (Record of evidence in absence of accused); and Sec. 317 (Provision for inquiries and trial being held in the absence of accused in certain cases).

The case of State of Maharashtra and Another v/s Mohd. Sajid Husain, Mohd. S. Husain, etc.⁴¹ – referred above, is especially with respect to absconded accused in a sex-trafficking case.

Extradition of Offenders⁴²

Extradition is the process by which one State upon the request of another, surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside

41 AIR 2008 SC 155

42 <http://cbi.nic.in/interpol/extradition.php>

the territory of the requested State.

What action, if any, can be taken by police, prosecutors and courts, on receipt of an information regarding a fugitive criminal wanted in a foreign country. In this connection the following provisions of law are relevant: -

- Action can be taken under Sec. 34 (b) of Indian Extradition Act, 1962. This Act provides procedure for the arrest and extradition of fugitive criminals under certain conditions which includes receipt of the request through diplomatic channels ONLY and under the warrant issued by a Magistrate having a competent jurisdiction.

- Action can also be taken under the provisions of Sec. 41(1)(g) of the Cr. PC 1973, which authorizes the police to arrest a fugitive criminal without a warrant, however, they must immediately refer the matter to Interpol Wing for onward transmission to the Government of India for taking a decision on extradition or otherwise.

In case the fugitive criminal is an Indian national, action can also be taken under Sec. 188 Cr. PC, 1973 as if the offence has been committed at any place in India at which he may be found. The trial of such a fugitive criminal can only take place with the previous sanction of the Central Government.

Extradition request for an accused/ fugitive can be initiated after chargesheet has been filed before an appropriate Court and said court having taken cognizance of the case has issued orders/directions justifying accused/fugitive's committal for trial on the basis of evidence made available in the charge sheet and has sought presence of the accused/fugitive to face trial in the case. All extradition requests should be supported by documents and information as provided in Annexure (Investigation Abroad and Letters Rogatory) of this Module.

Mutual Legal Assistance ⁴³

Judicial officers and prosecutors should be cognizant of the Mutual Legal Assistance (MLA) procedures, which are set in motion during investigation of some cases. Information on Letters Rogatory, a legal procedure undertaken by courts is also mentioned underneath.

During the course of investigation of trafficking cases by local police, sometimes it becomes absolutely essential to conduct a part of the investigation ex. interrogation of a witness/suspect/accused, verification of some facts, etc. in a foreign country. In such cases, a note incorporating the relevant facts of the case along with the points on which investigation is required to be conducted in a foreign country should be sent to the NCB, Interpol Wing. If any person is required to be interrogated, a questionnaire should also be sent. The following points should be borne in mind while sending a request to the NCB, Interpol Wing for causing investigation abroad:

- The note/questionnaire/points for investigation should be sent in triplicate.
- If the investigation is to be conducted in more than one foreign country, there should be a separate set of questionnaire/points for investigation for each country.
- A separate questionnaire should be prepared for each witness unless all the witnesses are required to be examined on the same points.

⁴³ <http://cbi.nic.in/interpol/assist.php>

- The note/questionnaire/points for investigation should be quite clear and specific.
- The question should be brief and should be narrowed down as far as possible.
- The material should be carefully examined and scrutinized by the Superintendents of Police concerned to ensure that only relevant material is incorporated in the note and to ensure correctness of the facts and figures.

India has entered into Mutual Legal Assistance Agreements/Treaties in criminal matters with several countries⁴⁴. The relevant provision of Cr. PC is Sec. 166A (Letter of request to competent authority for investigation in a country or place outside India). A 'Letters Rogatory' is a formal communication in writing sent by the Court in which action is pending to a foreign court or Judge requesting the testimony of a witness residing within the jurisdiction of that foreign court may be formally taken thereon under its direction and transmitted to the issuing court making such request for use in a pending legal contest or action.

The Ministry of Home Affairs (MHA), Government of India Circular No. 25016/14/2007-Legal Cell of 31 Dec. 2007/ 02 Jan 2008 is placed at Annexure (Investigation Abroad and Letters Rogatory) of this Module for reference.

India is a signatory to the South Asia Association for Regional Cooperation (SAARC) Convention for SAARC Convention on Mutual Assistance in Criminal Matters, 2008. In accordance with the provisions of the Convention, all SAARC countries are to provide to each other the widest possible measures of mutual legal assistance in criminal matters, namely investigations, prosecution and resulting proceedings. Any assistance in investigation required from any of the SAARC countries, should be processed under this Convention through the regular channels.

Sec. 105 Cr. PC provides for reciprocal arrangements to be made by Central Government with the foreign governments with regard to the service of summons/ warrants/ judicial processes. MHA guidelines⁴⁵ regarding service of summons/notices/ judicial process on the persons residing abroad is placed at Annexure of this Module for reference.

Interpol Red Corner Notice⁴⁶ – The Investigating Officer can through the National Central Bureau (NCB) get a Red Corner Notice issued, when the suspect has gone missing after bail or has evaded an arrest warrant, or is wanted for trial, or has to undergo sentence as per court's order. The Red Corner Notice will be helpful towards arresting and extradition of the accused.

Interpol Liaison Officers are nominated by State/UT Governments⁴⁷, which can further liaise with NCB at New Delhi for all actions involving INTERPOL.

44 UK, Canada, France, Russia, Kyrgyzstan, Kazakhstan, Egypt, China, Romania, Bulgaria and Oman. Mutual Legal Assistance Treaties have been negotiated with United Arab Emirates but is yet to be ratified. Negotiations are continuing for signing treaties on Mutual Legal Assistance in Criminal Matters with countries such as Australia, Norway, Mongolia, Turkmenistan, Bulgaria, Hong Kong, Ukraine, Uzbekistan and Azerbaijan. Source: *Ibid*.

45 No. 25016/17/2007-Legal Cell, dated 11 Feb. 2009

46 <http://www.cbi.gov.in/interpol/notices.php>

47 <http://www.cbi.gov.in/interpol/ilo.php>

4.3.2 Filing of Charge Sheet

A correct and complete charge sheet is the foundation for an effective and successful prosecution. In human trafficking cases, wherever required, assistance and inputs of the prosecutor should be taken by the IO for framing the charge sheet to ensure that all angles of the crime are covered and that there is prosecutable evidence for each element of the different legal provisions under which the traffickers are sought to be charged. Investigation should be completed as soon as possible, and charge sheets should not be delayed for want of FSL reports or other digital reports for offences charged under the IT Act, 2000 if applicable.

Where charges are filed under ITPA, 1956, and IPC along with POCSO Act, 2012 – the prosecutor should note the following -

- The investigation where provisions of POCSO are used may be completed within three months from the date on which information was recorded by the officer-in-charge of the police station (Sec. 173(1-A), Cr. PC).
- Charge sheet should be filed before the Special Court as it can take direct cognizance under Sec. 33(1) of POCSO Act, 2012.

Where charges are filed under ITPA, IPC along with the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – the prosecutor should note the following -

- Charge sheet is to be filed within 60 days, and the reasons for the delay (if any), in investigation or filing of charge sheet should be explained in writing by the IO⁴⁸.

Prosecutors should wherever it is possible, be involved in the drafting of the charge sheet by the IO, and should vet it before it is filed in the court. Along with the charge sheet, the prosecutor should get the IO to get a good 'Crime Scene Drafting' done so as to create visual image for the court.

Adding or amending charges – although FIR is a preliminary assessment of the crime, charges may be added or altered based on further investigation, new facts coming to light, additional evidence, or deposition of the accused or witnesses, any time before judgment. The prosecutor may file an application before the court to add/ alter charges, which can take place as many times as the court deems fit, *at any time before judgment is pronounced*, with proper procedures as under Sec. 216 of Cr. PC. Where there is addition/ amendment of charges and the defence summons the victim to be re-examined, the prosecutor needs to ensure that questions that have been asked earlier and answered by the victim should not be repeated, as the process can cause trauma to the victims. In addition, the prosecutor should also explain to the victim, the process to calm her apprehensions about re-examination.

A common defence raised in courts in all criminal cases is that the FIR does not lay out in absolute terms the full details of the crime. However, courts have held in numerous cases,

- “Only the essential or the broad picture needs to be stated in the FIR and all minute details need not be stated therein. An FIR is not a verbatim summary of the prosecution case”.
- “The FIR is a report that sets the law in motion and at the stage of the investigation further details can be gathered and filled up”.

Judicial officers and prosecutors need to remember the specific context of crimes of trafficking and

48 Rule 4, SC and ST (Prevention of Atrocities) Amendment Rules, 2016

the impact of the rape, violence and exploitation on the victims, due to which, all the details may not be fully available from the victim at the time of writing the FIR. More details will always emerge later, after the victim has been adequately counseled and feels safe and comforted. The organized crime investigation aspect will also bring out further details about more accused and more evidence. Taking into consideration these aspects of TIP crimes, adding or amending charges to the original charge sheet, should always be considered.

An FIR/ charge sheet in a case of sex trafficking, could have the following provisions of law –

- Relevant sections from **ITPA, 1956** should be used along with sections from **IPC**, such as –
- **IPC** provisions –

366 A	Procuration of minor girl
366 B	Importation of girl from foreign country
370	Trafficking in persons
370A	Employing of a trafficked person
372	Selling minor for purposes of prostitution
373	Buying minor for purposes of prostitution
375	Rape
376	Punishment for Rape
377	Unnatural offences
34	Acts done in furtherance of common intention
120 A	Criminal conspiracy
120 B	Punishment of criminal conspiracy
416	Cheating by personation
417	Punishment for cheating
339	Wrongful restraint
341	Punishment for wrongful restraint
340	Wrongful confinement
342	Punishment for wrongful confinement
359-368	Kidnapping and abduction
349-356	Criminal force/ assault
503-509	Criminal intimidation
319-338	Hurt
312-318	Causing miscarriage
511	Attempt to commit offences

- If the victim is a child, relevant provisions from **POCSO, 2012** can also be used.
- If internet/ any electronic form has been used for trafficking, provisions from the **IT Act, 2000**, could be applied –

67	Punishment for publishing or transmitting obscene material in electronic form
67A	Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form
67B	Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form

- If the victim is member of the Scheduled Castes and the Scheduled Tribes, use Sec. 3 of **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**.
- Relevant provisions of the **Juvenile Justice Act, 2015** –

75	Punishment for cruelty to child
77	Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child
81	Sale and procurement of children for any purpose

An FIR/ charge sheet in a case of trafficking for labour, could have the following provisions of law –

- **IPC** - 370, 370A, 34, 120 A, 120 B, 416, 417, 339, 340, 341, 342, 359-368, 349-356, 503-509, 319-338, and 511 (refer table above).
- **Bonded Labour System (Abolition) Act, 1976** –

16	Punishment for enforcement of bonded labour
17	Punishment for advancement of bonded debt
18	Punishment for extracting bonded labour under the bonded labour system
19	Punishment for omission or failure to restore possession of property to bonded labourers
20	Abetment to be an offence

- If the victim is a child - **Child and Adolescent Labour (Prohibition and Regulation) Act, 1986** – Sec. 14 (Employing a child or adolescent in contravention of Sec. 3)
- If the victim is a child - **The JJ Act, 2015** - Sec. 79 (Exploitation of a child employee), 81 (Sale and procurement of children for any purpose).
- If the victim is member of the Scheduled Castes and the Scheduled Tribes, use Sec. 3 of **The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**.

4.4 Role of Court and Prosecutor in Victim-Witness Protection

4.4.1 Physical safety of the victim-witness

Traffickers out on bail are one of the greatest risks to victims (whether of sex or labour trafficking). Traffickers will make all attempts to silence them, so that they do not get named in the statements before Magistrates, or later during victim testimony at the trial. Their silence can be obtained through multiple ways of threat or physical harm to victim and/ or family members, or emotional blackmail appealing to

the previous relationship between them, or coercion by telling the victims that their photographs/ videos will be shown to family, relatives, community, etc. In grave cases, attempts can be made to physically eliminate victims also.

Traffickers also have access to the parents and families of the victims, and often threaten them, or use financial remuneration to 'compromise' the case with them to obtain the victim's silence.

Therefore, physical safety of the victim is of paramount importance and priority immediately after rescue and throughout all processes and procedures of the criminal justice system. Police, prosecutors and courts have to work synergistically along with the government/ NGO shelter home staff towards ensuring the physical safety of the victim by taking proper measures and passing appropriate orders, to ensure that no harm comes to the victim.

In cases where POCSO Act is invoked, all functionaries of the criminal justice system should ensure that the child victim does not come in contact with the accused during investigation or while examining the child (Sec. 24(3), POCSO Act, 2012).

4.4.2 Non-disclosure/ protection of identity of the victim-witness

Police, prosecutors and courts collectively should ensure during investigation and trial that –

- Identity of adult victims of sex trafficking/ or adult victims of labour trafficking where charges are made under Sec. 376, IPC, is protected during investigation and trial, from the media and press (Sec. 228A, IPC).
- Identity of child victims is protected during investigation and trial from the media and press (Sec. 74, JJ Act, 2015; and Sec. 23 (1) (2) and Sec. 24 (5), POCSO Act, 2012).

Sec. 74, JJ Act, 2015 states that no report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in need of care and protection or a child victim or witness of a crime, involved in such matter, nor shall the picture of any such child be published. Any person contravening these provisions shall be punishable with imprisonment for a term, which may extend to six months or fine, which may extend to two lakh rupees or both.

Sec. 23, POCSO Act, 2012 states that no person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his/ her reputation or infringing upon his/ her privacy. No reports in any media shall disclose, the identity of a child including his/ her name, address, photograph, family details, school, neighbourhood or any other particulars, which may lead to disclosure of identity of the child. Any person who contravenes these provisions shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

All instances of breach of the above provisions should be brought to the notice of the court for suitable legal action under these laws.

Press Council of India Guidelines⁴⁹ also cautions against identification – ‘While reporting crime involving rape, abduction or kidnap of women/ females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars leading to their identity shall not be published’.

Prosecutor may invoke these Guidelines as an alternate strategy also to make a formal complaint against news agencies (both print and digital) that fail to adhere to the law as well as these guidelines, as disclosure of identity will lead to stigmatization of victims.

- The victim-witness should be escorted to and from court buildings, using separate entrances to the court building, having separate waiting areas for the accused and the victim, so that no interface or confrontation is possible outside the courtroom.

4.4.3 Victim-friendly Test Identification Parade

The purpose of an identification parade is to test the veracity/ trustworthiness of the evidence of the victim-witness. Normally, they are merely tests to determine the memory of the witnesses based on the first impression of the accused involved in the crime, to truly testify that the accused was the one who is actually involved in the commission of the crime. It is not relevant at the trial as to whether the victim-witness has correctly identified the accused or not for the reason that actual evidence regarding identification by the witness in the Court alone is relevant under Sec. 9 of the Indian Evidence Act, 1872. Courts have held in numerous cases that the necessity to hold a Test Identification Parade arises only when the accused person are not previously known to the victim-witness. In traditional brothel based trafficking cases, or labour trafficking, the victim-witness almost always knows the offender very well. In such cases, there may not be a real necessity to hold a Test Identification Parade in every case.

However, in the new modus operandi of online sex trafficking, where soliciting, negotiations, demands, deals are stuck online, and where money is paid online, the victim-witness may have never had a personal interface with the person running the prostitution racket or the pimp or the other offenders. Normally, the pimp calls up the victim and asks her to reach a particular hotel/ room no., and the victim may have never ever previously seen the pimp or others behind the entire racket. Thus, online sex trafficking cases have become almost faceless crimes, where the offenders remain hidden behind social media platforms, apps, mobile numbers and operate using aliases, where their true identity is rarely known to the victim in forced prostitution. In such cases, Test Identification Parade may be required.

The Investigating Officer will have to use proper discretion to figure out if Test Identification Parade is absolutely essential in every case of trafficking. Decisions will also have to be taken w.r.t. face-to-face confrontation of the victim-witness with the offenders.

The Supreme Court and High Courts have decided on several aspects of this process as follows, which are important pointers in investigation of trafficking offences, considering the power dynamics between the offenders and the victim-witness –

- Test Identification Parade must ideally be conducted as soon as possible to avoid any mistake on the part of the witnesses. There is no statutorily prescribed time limit within which it must be conducted. Prudence demands that the parade must be conducted as soon as possible.

⁴⁹ Norms of Journalistic Conduct, 2010 at <http://www.caluniv.ac.in/global-mdia-journal/Doc-Nov-2017/DOCUMENT-PCI-GUIDELINES.pdf> Accessed on 02 April 2018

- Where the prosecution-witness is well-acquainted with the suspect, holding of such a parade is a complete waste of public time and money.
- Incorrect identification of the accused by a witness in the court of law has no bearing if the case of the prosecution stands proved by virtue of other evidences⁵⁰.
- If the accused is caught red-handed from the scene of crime then no question of Test Identification Parade arises⁵¹.
- **Identification by voice**⁵², was permissible and the evidence tendered by the witness, identifying the accused by his voice was reliable.
- **Identification through a photograph**⁵³ of the accused can take the place of a formal parade.
- **Identification by video-conferencing**, is permissible in certain cases.

In cases of child victim-witness, the POCSO Act, 2012 does not prescribe any specific provision w.r.t. this identification parade. Sec. 36 of the Act provides that the child not to see the accused at the time of testifying, and the Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence. Some police officers have tried to protect the child victim by covering the child's face with only the eyes being kept open during identification parade, so that the accused does not see the face of the child victim.

The Delhi High Court has given guidelines,⁵⁴ for Test Identification Parade to be conducted for child victim-witness under 12 years of age, which can prove useful in trafficking cases involving children -

- The child should not be exposed to the accused at any stage of the investigation. Where identification is necessary, the photograph of the accused can be shown to the victim.
- Installation of semi reflective screen or any other screen or mechanism in a room where the identification proceedings will be conducted so that the child witness is not confronted face to face with the criminals participating in the identification proceedings.
- A person accused of the offence and the others who may be participating in the identification will be explained the procedure and the manner of identification proceedings to be held in a case of child witness.
- So far as possible only female officer should be deployed wherever witness happens to be a girl child for the purposes of identifying the accused person.
- No police official shall be seen in a uniform right from the stage when the child enters the room and till he/she leaves the premises after the completion of identification proceedings. The child witness shall be entitled to accompany his parents/guardians or any of his close relatives so as to make the child comfortable before participating for identifying the accused in the Test Identification Parade.
- Child should not enter the main Jail Complex to reach the Test Identification Parade room, if identification is to be held in the jail where the accused is held.

4.4.4 Preparing the victim-witness for trial / victim-witness management

Prosecutors have a very important role in preparing the victim-witness for trial to ensure an effective and

⁵⁰ Simon v/s State of Karnataka: AIR 2004 SC 2775

⁵¹ Kishore Prabhakar Sawant v/s State of Maharashtra: (1999) 2 SCC 45

⁵² Mohan Singh v/s State of Bihar: (2011) 9 SCC 272

⁵³ Lakshmi Raj Shetty v/s State of TN: AIR 1988 SC 1274

⁵⁴ Rakesh Kumar v. State: CrI. A. 513/1998, decided on - 30.05.2014. Accessed at: <https://www.casemine.com/judgement/in/58117f8e2713e179479317ce>

fair prosecution and for getting a comprehensive testimony from the victims towards proving the crimes which, are charged against the offenders. It needs to be reiterated right at the outset, that 'preparing' a victim-witness, is not the same as 'tutoring', which has the potential of influencing the court improperly or would implicate the accused.

As per current practice undertaken by many prosecutors in trafficking trials, or NGOs that are sheltering the victim, or those who have previous experience in trafficking trials or in cases involving sexual abuse and violence against women and children, are involved as 'facilitators' towards counseling victims on their legal rights and legal procedures during investigation and trial.

An indispensable component of preparing the victim-witness for trial is correct and appropriate communication with both, adult and child victims.

A. Communicating with victims

Some key pointers for communicating with victims are -

- Be sensitive to the communication needs and of the impact of the interview on the victim.
- Determine the language spoken by the victim, and if she/ he needs assistance of an interpreter.
- Explain in simple clear language to the victim-witness the reasons for the types of questions being asked, to ensure better cooperation from the victim.
- Be conscious of the fact that asking victims to provide information frankly and in detail on matters (in sex trafficking cases) involving rape, sex, number of clients, etc., or asking a victim in a domestic servitude case if she was also molested and raped – is not easy for the victims to discuss, due to shame and stigma. Explain that the answers to the questions will help in charging the offenders with all crimes, committed against the victim.
- Be careful in the use of language and attitudes, especially when engaging with the victims of sex trafficking.
- Establish if the victim is feeling comfortable and secure and is well enough to begin the interview process. If victim is feeling unwell and suffering any pain or discomfort, postpone recording of the statement, till victim is provided medical assistance, if required.
- Ask questions/ talk at a slow pace – and ensure that the questions are –
 - short and simple with not too many sub-questions;
 - do not contain police and legal jargon;
 - are not too directive or suggestive.
- Allow victim time to understand what has just been said.
- Do not pressurize victim for quick answers.
- Be patient if the victim is slow to respond, especially if interpreter/ special educator/ counselor is assisting the victim.
- Avoid constantly interrupting the victim.
- Give frequent breaks to the victim, if required.

Special Considerations in Communicating with Child Victim-Witnesses

- Depending on the age of the child, explain the purpose of 164 Cr. PC statement in a child appropriate language.
- Realize that child victims/ witnesses tend to regress emotionally during times of stress. They may act younger than their actual age.

- Use child sensitive language appropriate to the child's age. Avoid 'childish talk'. Use appropriate language for referring to 'sexually related body parts'.
- Allow very young children to play. Encourage them to explain what happened in a playful way, for example with the help of a doll or stuffed animal or through drawing or painting. Take the assistance of a counselor at this time.
- Be gender sensitive when dealing with girls and boys, as both respond differently to questions related to sexual assault/ rape, etc.

The National Commission for Protection of Child Rights (NCPCR) has also issued Guidelines in respect of Child Friendly Police Stations⁵⁵, which provide suggestions *inter alia*, of the procedure to be followed in respect of children in need of care and protection and the protocols to be observed -

Behaviour and Conduct

- ✓ The police officers interacting with the child should take care of their body language, gestures, eye movements, expressions and tone of speaking should be aimed at making the child feel comfortable and secure and not intimidate the child in any way.
- ✓ The police officer interacting with the child should behave at all times as a well wisher of the child and keep the best interest of the child uppermost as the basis of all their actions.
- ✓ In no circumstances should bad, abusive or negative language be used with the child.
- ✓ The police officer interacting with the child should not violate the personal space of the child and should not have physical contact with the child, as far as possible.
- ✓ The police officer should not cause any physical or mental suffering to the child.
- ✓ The police officer interacting with the child should not consume any form of tobacco or any other addictive substance while interacting with the child.
- ✓ The police officer should not talk on the mobile phone or check it for other communication during interaction with the child.
- ✓ It should be ensured that the child is not hungry or thirsty and adequate provisions of food and water should be made if they are.
- ✓ The police officer should not act in an aggressive manner in the presence of the child.
- ✓ The police officer interacting with the child should have requisite knowledge of child related legislations.
- ✓ The child should not be made to sign any statement.
- ✓ Girl child rescued from prostitution or immoral activities should be treated as child in need of care and protection and be produced before the CWC.

The above Guidelines can also be effectively followed by prosecutors also.

B. Important pre-trial steps in preparing victim-witness

Immediately after rescue, the police with the assistance of the supporting NGO gets some legal counseling conducted for the victims including preparing them for the 164 statement, etc. At a later stage, the prosecutor along with the supporting NGO could take these steps that are required for preparing victims towards their main testimony in court –

- Explain to the victim his/ her rights in the criminal justice system in the language that the

⁵⁵ Guidelines for Establishment of Child Friendly Police Stations: Laws Prescribing 'Child Friendly' Procedures, Processes, Conduct and Establishments, National Commission for the Protection of Child Rights, available at <http://ncpcr.gov.in/showfile.php?lang=1&level=1&&sublinkid=1307&lid=1526> Accessed on 12 Feb 2018

victim speaks.

- Use services of interpreter if victim is a foreign national.
 - Use services of special educator if the victim is hearing or speech impaired, or has any other mental disability.
- Communicate to the victim about the support services that are available in the time leading up to the trial, at the trial or after the trial. For instance, with respect to child victims, provide information to the child and/ or parent, guardian, or any person whom the child trusts about -
 - Availability of support person, counseling services, compensation, public and private emergency and crisis services, and assist in contacting them [Rule 4(2)(e), POCSO Rules, 2012].
 - Right to legal advice and counsel and right to be represented [Sec. 40, POCSO Act, 2012; and Rule 4(2)(f), POCSO Rules, 2012].
 - Information about the case, such as, status of investigation, arrest of the suspected offender, filing of charge sheet, court schedule, bail, release or detention status, final verdict and sentence imposed [Rule 4(12), POCSO Rules, 2012].
 - Inform about the legal aid and legal support services that are available through National Legal Services Authority, State Legal Service Authorities, and District Legal Service Authorities, under the Legal Services Authority Act, 1987.
 - Explain the entire trial process in detail to the victim, which would include - the key people who are part of the trial; their respective roles at the trial; the objectives of conducting trial; the manner in which the evidence will be taken; who all will ask questions and in what order; how long the trial should normally take, and who will decide the issue of guilt or innocence of the accused.
 - Familiarize the victim with the oath taking procedure; the purpose for the oath and why it is important. It is important to reiterate to the victim that his or her only role at the trial is simply to answer all questions truthfully. The victim should be informed on how the oath or affirmation is practically administered during trial.
 - Explain the nature of questions that would be posed by the prosecutors and the defence lawyer.
 - Arrange for pre-trial court room visit to familiarize the victim with court room setting, the allotted places to sit/ stand for victim, accused, counsels, judge, police, etc. Simply becoming familiar with the physical set up of the court room can do much to calm a victim's fears.
 - Indicate to the victim where he or she will wait (the waiting room) in the court building before being called to testify and describe the process of how he or she will be called into the court room to testify.
 - Inform adult victim of the *in camera* trial procedures mandated under Sec. 327 (2), Cr. PC, where charges pertain to Sec. 376 IPC; and that a woman Judge or Magistrate shall conduct the *in camera* trial as far as practicable [(Sec. 327 (2) (Proviso))].
 - Inform child victim of the *in camera* trial procedures, in the presence of parents of the child or any other person in whom the child has trust or confidence (Sec. 37, POCSO Act, 2012).
 - Conduct mock trial for the victim, to familiarize her with the actual method of questioning by the defence lawyer and answering the questions, including explaining inconsistencies in her statements (if any).
 - Regular provision of information concerning the different stages of trial.
 - Explain that the victim-witness would be escorted to and from court buildings, using separate entrances to the court building, having separate waiting areas for the accused and the victim, so that no interface or confrontation is possible outside the court room.

The police, the prosecutor and the supporting NGO play a very crucial role in preparing the victim-witness for trial. Although the NGO plays a major part in counseling (psycho social and legal counseling) the victim for proper 164 statements and future testimony during trial, especially in those cases where the trafficker is a known person/ family/ relative of the victim, the prosecutor can play a major role in re-assuring the victim of her safety and those of her loved ones. How to motivate such a victim for testifying against her own people is a constant challenge? Similarly, it is even more difficult to get children to cooperate with investigation and trial against their own families (when they were handed over by the parents to the traffickers for any kind of work, or where the mother is the trafficker, or where the father/ brother is the pimp). Victims carry tremendous guilt when they implicate the people known to them, and would rather let them go scot-free, even though they themselves were very highly violated and exploited. Good and effective counseling done in collaboration by the Prosecutor and the NGO can overcome these challenges, and it is always possible to get a good 164 statement and testimony during trial out of the victims.

Vulnerable Witness Deposition Complex

A good practice example is the setting up of the Vulnerable Witness Deposition Complex in the District Courts at Karkardooma and Saket in Delhi. These premises are created to provide an intimidation free and friendly atmosphere to minor victims of sexual offences to depose. The Complex is designed to provide protection, privacy, confidentiality and comfort to vulnerable witnesses in an in-camera atmosphere in cases of sexual offences.

A vulnerable witness is considered as less than 18 years of age. The witness examination facilities are such that the witnesses are kept away from the direct purview of the accused. However, the accused are given full opportunities to defend themselves. The facility consists of a video link between the witness room and the court, so that the witness shall depose in the court room, while the accused is in the adjacent room with a one-way glass so that he can view and hear the proceedings. An audio link is provided so he can give instructions to his lawyer.

ANNEXURES

F.NO.15011/6/2009-ATC (Advisory)
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
NORTH BLOCK NEW DELHI /CS DIVISION

New Delhi, the 09.09.2009

OFFICE MEMORANDUM

Subject: Advisory on Preventing and Combating Human Trafficking in India

Introduction:

The Trafficking in Human Beings (THB) is a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits. Such exploitation may take many forms, for example commercial sexual exploitation, child labour, forced labour, bonded labour or illegal organ removal etc. The country is witnessing cross-border as well as internal (intra-country) trafficking.

Human Trafficking and Indian Laws:

Trafficking in Human Beings (THB) is prohibited under the Constitution of India under Article 23 (1). Following specific legislations deal with Trafficking in Human Beings (THB)

- Laws relating to trafficking in women and children being administered by the MWCD (wcd.nic.in)
 - i. Immoral Traffic (Prevention) Act, 1956,
 - ii. Prohibition of Child Marriage Act (PCMA), 2006.
- The “Bonded Labour System (Abolition) Act, 1976”, being administered by Ministry of Labour and Employment (labour.nic.in), provides for abolition of the system of bonded labour and the rehabilitation of released labourers. Child Labour (Prohibition and Regulation) Act, 1986 is also being administered by Ministry of Labour.
- Further, commercial dealing in human organs is a punishable offence under the Transplantation of Human Organs act, 1994, being administered by Ministry of Health and family Welfare (mohfw.nic.in). The appropriate authorities appointed under the Act are responsible and empowered to check the illegal activities of human organs traffickers.
- Specific Sections in the IPC, e.g., Sections 372 and 373 dealing with selling and buying of girls for the purposes of prostitution.

‘Public Order’ and ‘Police’ as per the 7th Schedule of the Constitution of India, are State subjects and, as such, detection, registration, investigation and prevention of crime is primarily the responsibility of the State Governments. However, Central Government supplements the efforts of the State Governments by providing policy guidelines, financial assistance for modernization of the State Police Forces in terms of weaponry, communication, equipment, mobility, training and other infrastructure under the Scheme of Modernization of State Police Forces.

A working Group comprising of Directors General of Police of some of the affected States was constituted in 2004 by MHA to study the issues relating to cross border trafficking. The recommendations of this group were sent to the State Governments and they were advised to

evolve a comprehensive strategy for effectively dealing with the problem of trafficking. Also an **“Integrated National Plan of Action to Prevent and Combat Trafficking in Human Beings Specially Women and Children”** (nhrc.nic.in/planofaction.doc), which has been worked out through a consultation process of all related Ministries and other stakeholders, has been adopted by Government of India in the Ministry of Women and Child Development. This plan deals with all aspects of prevention, rescue, registration of cases, investigations, prosecution, conviction, cross border trafficking issues, rehabilitation, repatriation and reintegration of victims etc. Based on these the recommendations of DGPs and the integrated action plan stated above the State Governments may evolve a holistic approach towards combating Trafficking in Human Beings (THB), encompassing all aspects of prevention, rescue and rehabilitation. Convergence should be adopted between various state departments and stakeholders for effective of handling of crime of Trafficking in Human Beings (THB).

Following key points of advice have been worked out in collaboration with the related Ministries of Women and Child Development, Labour and Employment, and Health and family Welfare where the assistance/ action by the State Government/ Police would be required for the effective implementation/ enforcement of laws relating to Trafficking in Human Beings (THB):

1. Constitution of the State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation.

According to the Supreme Court order dated 2/05/09 (Vishal Jeet Vs Union of India), every State Government should set-up a State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation. Ministry of Women & Child Development (MWCD) has already issued an advisory in this regard to all the State Governments. .

2. Implementation of Immoral Traffic (Prevention) Act (ITPA), 1956.

- 2.1. Since ITPA is the main Act that can be used to book trafficking for commercial sexual exploitation, its implementation is essential for counter-trafficking. Under Section 23, the State Government may, by notification in the Official Gazette, **make rules for carrying out the purposes of the Act.** Such rules may be formulated, notified and intimated to MWCD with a copy to MHA.
- 2.2. Under Section 13, the State Government may **appoint ‘Special Police Officers (SPOs)’** and the ‘Non-official advisory bodies’ to advise the SPOs for dealing with offences under the Act.
- 2.3. Under Section 21, the State Governments may set-up ‘Protective homes’ and ‘Corrective institutions’ for ensuring proper implementation of the provisions of the Act. **The information regarding these homes may be circulated to all Police Stations and officers dealing with the trafficking cases.**
- 2.4. Under Section 22-A, the State Government may, by notification in the Official Gazette, and **after consultation with the High Court, establish one or more Courts** for providing speedy trial of the offences under the Act.
- 2.5. It is generally noticed that sections 8 and 20 of ITPA, which focuses on the victims, are more often invoked as a result of which the victim is re-victimized and the exploiters are not punished. It is, therefore, advised that sections 3, 6 and 7 which pertains to pimps, brothel owners, clients who are actual perpetrators of the crimes need to be invoked rather than sections 8 and 20. **Law enforcement agencies need to adopt a victim centric approach in the investigations.**

3. **Implementation of Juvenile Justice Act (JJ Act), 2000:** Juvenile Justice Act provides comprehensive mechanism for care and protection of children including rehabilitation and social integration of children. Therefore, its implementation is essential to address trafficking of children. Following provisions of the Act are concerned with the Home Department/ Police and require action by the State Governments:
 - 3.1. Under Section 62-A, the State Government shall constitute 'Child Protection Units' for the State and districts to fulfill its responsibilities as stipulated under the Act.
 - 3.2. Under Section 63, in each police station, at least one police officer may be designated as the 'Juvenile or Child Welfare Officer' to handle a juvenile or child in coordination with the police.
 - 3.3. Under Section 68, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

4. **Implementation of Prohibition of Child Marriage Act (PCMA), 2006:** Prohibition of Child Marriage Act (PCMA) was enacted in 2006 repealing Child Marriage Restraint Act, 1929. It is reported that traffickers in some pockets in the country are exploiting evil custom of child marriage to target innocent girls for trafficking. Therefore, it is essential to implement the Act to address this modus operandi of traffickers.
 - 4.1. As per PCMA, State Governments under Section 19 (1), may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
 - 4.2. Under Section 16, the State Government may appoint 'Child Marriage Prohibition Officers' to fulfill the mandate as stipulated in the Act. State Governments may intimate the MWCD about the status of appointment of Prohibition Officers and Rules.
 - 4.3. The State Governments are to maintain MIS and send quarterly information on number of cases registered under PCMA and convictions.
 - 4.4. On receiving a complaint about child marriage, police are required to follow the procedure laid down in the Code of Criminal Procedure, 1973, which include registering an FIR and carrying out investigation.
 - 4.5. The offences under PCMA are cognizable and non-bailable, hence, immediate arrest of offenders is necessary.
 - 4.6. Extra vigilance should be maintained during festivals such as 'Akshya Tritha' to ensure that no child marriage takes place.

5. **Capacity building of the State machinery:** Implementation of the legal provisions in relation to applicable Acts- CLPRA, BLSA, IPTA, JJA and IPC involves not only police but many other officials dealing with the Criminal Justice System - notably the executive magistrates, the labour officials, CWC members and in-charges of Homes. Therefore, the State government may initiate a time bound action plan to build the required capacity of the state investigation and prosecution machinery in this regard. Some of the key areas identified for capacity building are listed below.
 - 5.1. Identification of victims of trafficking for the purpose of commercial sexual exploitation, child/bonded/forced labour and for illegal organ removal.
 - 5.2. Recognition of all applicable legal provisions of the law to a case of trafficking (not just one Act or two) by law enforcement machinery.

- 5.3. Understanding of legal and administrative provisions for inter-state and cross border investigation.
- 5.4. Understanding of legal provisions for closure of places of exploitation.
- 5.5. Understanding of legal provisions for confiscation of proceeds of crime.
- 5.6. Understanding of the mechanism in place for victim support and assistance.
- 5.7. Integrated actions on prosecution, prevention and protection by building linkages with other Government departments and agencies, including NGOs.
- 5.8. For capacity building the Bureau of Police Research and Development (BPR&D) (www.bprd.gov.in), at the behest of MHA, has prepared a **training manual on Human Trafficking Handbook for Investigators** and this has been circulated to the States for use in the police Training Institutes. All the training materials have also been uploaded on BPR&D website. BPR&D has already translated the training material in Hindi, Telugu and Marathi languages. 12 Resource Books on ‘Training and Investigation on Anti-Human Trafficking’ prepared as a result of pilot project between MHA and UNODC (www.unodc.org/india/ind_s16.html) have also been uploaded on BPR&D website. These resource materials should be used by State Governments for the capacity building of all agencies involved in prevention of human trafficking.
- 5.9. Also MWCD, in collaboration with National institute of Public Co-operation and Child Development (NIPCCD) and UNICEF, has developed manuals for training of stakeholders such as ‘Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation’, ‘Manual for Medical Officers for dealing with Child Victims of Trafficking and Commercial Sexual Exploitation’, counseling services for Child survivors of trafficking’, Counseling services for Child survivors of trafficking’, Social workers.
- 5.10. States may organize training/workshops/awareness campaign to sensitize their SHOs/Dy. SP/ACP and other law enforcement agencies towards the crime, safety and security of women and children.
- 5.11. The **Compendium of Best Practices in handling cases of human trafficking** (www.unodc.org/india/ind_s16.html) has already been circulated to all the State Governments and UT Administrations for information and appropriate use.

6. Prevention of Trafficking:

- 6.1. It has been noticed that people, especially women and children are vulnerable to trafficking during ‘distress migration’ and from ‘disaster prone areas’- such as during floods, earthquakes, crop failures, riots, terrorist activities etc. Therefore, it is important to establish extra vigilance in this regard around transit points and at borders- inter-district/inter-state and international.
- 6.2. Police should work closely with immigration authorities, Border Security Force (BSF), Railways and other transport authorities, provincial/ territorial and municipal agencies, with Social Services, child welfare authorities and with any NGOs involved in service delivery for spotting and rescuing the victims.
- 6.3. Effective patrolling and vigil at locations prone to trafficking such as highways, dhabas, railway stations and bus stations for suspicious movement of traffickers and victims and monitoring, through involvement of village community, the suspicious/ unnecessary movements of strangers in the villages.

- 6.4. Pro-active policing through information exchange with representatives from the local Government, community, NGOs with a view to raise awareness and garner active support of the community.
- 6.5. Periodical checks on transporters to prevent physical transportation of the trafficked persons.
- 6.6. Prevention at the demand area by understanding/ addressing new forms of demand. For example, placement agencies providing domestic child labourers.
- 6.7. Facilitating inter-State collaboration by sharing data on missing children/ kidnappings and suspected offenders. Development of victim and offender profiles on an inter-agency basis.
- 6.8. Sensitization programmes/workshops for police officers/railway police force and prosecutors on various legislations mentioned above in relation to trafficking. State nodal officers may hold periodical meetings to review and monitor the efforts taken to prevent and combat the crime of trafficking.
- 6.9. In case of child trafficking, following provisions also need to be kept in view:-
 - 6.9.1. Identification of children at risk, (e.g. following raids on off-street sites, responding to referrals from other agencies, NGO or members of the public, following up reports of missing children).
 - 6.9.2. Report instances of children in need of protection to relevant child protection agencies. For this purpose the Police Stations could be sensitized.
 - 6.9.3. The development of victim profiling with other agencies.
 - 6.9.4. Undertaking joint interviews with social workers of children identified as victims or potential victims to assess risk and assist in the development of protection plans.
 - 6.9.5. Carry out checks on sponsors and people who claim to be the relatives of children identified as being at risk of trafficking.
 - 6.9.6. Participating in local child protection networks with related organizations (immigration, social services, NGOs, health, education) to develop joint approaches to the issue at local level and contribute to wider forums as appropriate.
 - 6.9.7. If children disappear, initiate missing person's procedures, investigate circumstances and circulate information/ undertake investigations, linking with other agencies as required.
 - 6.9.8. Ministry of Labour & Employment has developed a detailed protocol for prevention, rescue, repatriation, rehabilitation and reintegration of migrant and trafficked child labour. The protocol has been issued to all State Governments for implementation.

7. Investigation & Prosecution:

- 7.1. Standard operating procedures for Investigation have been developed under the pilot project between MHA and UNODC as mention in para 5.8 above, which can be used for effective investigation in trafficking related crimes.
- 7.2. One of the effective means of securing better conviction rates of perpetrators of crime

of trafficking is to base the case on documentary, forensic and material evidence. At present, most of the time, the victim is being used as a witness and more often than not, he/she can easily be intimidated. State Governments are advised to encourage the law enforcement agencies to build full proof investigation against the traffickers, so that, convictions can be guaranteed.

7.3. Use of fast track courts and video conferencing to the extent possible.

8. Rescue and Rehabilitation

8.1. Police should work with other agencies and stakeholders to ensure that those who are rescued or who choose to return are not re-trafficked; this should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children).

8.2. Identifying support services and referring victims/ potential victims to specialist NGO's and safe accommodation, where these are available. The Ministry of Women and Child Development runs short stay homes Swadhar shelter homes for women in difficult circumstances (*wcd.nic.in/Comscheme.doc*). These cater to trafficked women/girls rescued or runaway from brothels or victims of sexual crimes who are disowned by family or who do not want to go back to respective family for various reasons. The schemes provide for shelter, food, clothing for women and children below the age of 18 years, counseling, clinical, medical, legal and other support, training and economic rehabilitation and helpline facilities.

8.3. A new scheme - UJJAWALA (*wcd.nic.in/Comscheme.doc*) – a comprehensive scheme for prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of the victims of commercial sexual exploitation has been launched on 04.12.2007 by the Ministry of women and Child Development which should be effectively used by the State Governments.

9. MHA has already established an Anti Trafficking Cell (ATC) under the Director (SR) which deals with the following major subject matters:

9.1. All matters pertaining to the criminal aspect of trafficking in human beings especially of women and children, which is the fastest growing organised crime and an area of concern.

9.2. To act as the Nodal cell for dealing with the criminal aspect of Human Trafficking in India, hold regular meetings of all States and UTs, communicating various decisions and follow up on action taken by the State Governments.

9.3. To interface with other Ministries like MWCD, MSJE, MEA, MOIA, MOLE, MOL, MOT and NCRB regarding the criminal aspect of human trafficking.

9.4. All matters relating to the UNODC, UNIFEM, their meetings, conferences, conventions, reports etc. in the context of the criminal aspect of Human Trafficking.

10. The Anti Trafficking Nodal Cell of MHA has developed an MIS proforma for the monitoring of the action taken by various State Governments regarding the criminal aspect of human trafficking as well as crime against women. The State Governments are requested to send quarterly information on 1st January, 1st April, 1st July and 1st October of the year in the prescribed proforma.

11. You are requested to issue suitable directions to all concerned under intimation to this Ministry. It is further requested that action taken in this regard may be regularly / periodically

reviewed by the State Governments and UT administrations and a report indicating the present status sent to this Ministry within a month.

12. This advisory is being issued in consultation with the Ministry of Women and Child Development and Ministry of Labour and Employment.

The receipt of this letter may kindly be acknowledged immediately.

Yours faithfully,

-Sd-

(Nirmaljeet Singh Kalsi)

Joint Secretary to the Government of India
Ministry of Home Affairs, North Block
New Delhi - 110001
Tel. No. 23092630

To,

The Chief Secretaries &

The Principal Secretary / Secretary (Home)

All State Governments and Union Territory Administrations – for information and necessary action.

Copy for information and necessary action to:

- i. The DGs / IGs (In-charge of Prisons)/ - All State Governments / UTs for information and necessary action.
- ii. Ministry of Women and Child Development (Mrs. Manjula Krishnan, Advisor & Joint Secretary, MWCD, Ms. P. Bolena, Joint Secretary) Shastri Bhawan, New Delhi.
- iii. Ministry of Labour (Shri S.K. Dev Verman, Jt. Secy.), Shram Shakti Bhavan, New Delhi.
- iv. Ministry of Social Justice and Empowerment (Sh. D.V.S. Ranga, Joint Secretary), Shastri Bhawan, New Delhi.
- v. Ministry of Overseas Indian Affairs (Shri G. Gurucharan, Jt. Secy.), New Delhi.
- vi. Ministry of External Affairs, (Joint Secretary SAARC and Joint Secretary UNES) South Block, New Delhi.
- vii. Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi-110 002.
- viii. Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi-110 001.
- ix. Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- x. Director General, NCRB, RK Puram, New Delhi.
- xi. Director General, BPR&D, New Delhi.
- xii. Director General Border Security Force, New Delhi
- xiii. Director, CBI, New Delhi.
- xiv. JS (UT)/ JS (NE) /JS (K), MHA, North Block, New Delhi.
- xv. Under Secretary (Parliament), MHA, North Block, New Delhi.

-Sd-

(Nirmaljeet Singh Kalsi)

Joint Secretary to the Govt. of India

MOST IMMEDIATE

No. 14051/14/2011-F.VI
Government of India
Ministry of Home Affairs
(Foreigners Division)

Dated 1st May, 2012

OFFICE MEMORANDUM

Sub: Advisory on preventing and combating human trafficking in India - dealing with foreign nationals.

The undersigned is directed to refer to this Ministry's Office Memorandum No. 15011/6/2009-ATC (Advisory) dated 09.09.2009 on the above mentioned subject (copy enclosed). It has come to the notice of this Ministry that foreign nationals are associated in some instances of human trafficking among women and children.

2. Further to the detailed procedure outlined in the above mentioned Office Memorandum, it has been decided with the approval of the competent authority that in cases of foreign nationals who are apprehended in connection with human trafficking, the State Governments / UT Administrations may follow the following procedure : -

- (i) Immediately after a foreign national is apprehended on charges of human trafficking, a detailed interrogation/investigation should be carried out to ascertain whether the person concerned is a victim or a trafficker.
- (ii) The victims and the persons actually involved in human trafficking should be treated differently by the police authorities. This is in line with the SAARC Convention which advocates a victim-centric approach.
- (iii) Missions/Posts in India may be informed of the arrest/detention of the foreign national by the concerned state or other authorities through CPV division in the Ministry of External Affairs(MEA) or the concerned territorial Division in MEA.

Contd...2...

: 2 :

- (iv) It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. *If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the chargesheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned.* Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels.
- (v) During the interim period, pending repatriation, the victim may be taken care of in an appropriate children's home, or "Ujjawala" home or appropriate shelter home either of the State Government concerned or of any NGO aided by the Government of India / State Government.
- (vi) If the investigation reveals that the person is actually a trafficker, he/she may be charge-sheeted under the Immoral Trafficking Prevention Act and the Foreigners Act and due process of law should be followed in such cases.
- (vii) In order to ensure better conviction rates of perpetrators of the crime of trafficking, prosecution should be based on documentary, forensic and material evidence. State Governments are advised to encourage the law enforcement agencies to investigate the cases in a manner that they are able to build fool proof cases against the traffickers, so that convictions can be guaranteed. Use of fast-track courts and video conferencing to the extent possible also need to be ensured. Please refer to para 7 of the enclosed Advisory dated 9.9.2009.

Contd...3..

: 3 :

3. All other instructions contained in this Ministry's Advisory dated 09.09.2009 including reporting to the Anti Human Trafficking Nodal Cell in MHA will be applicable in the case of foreign nationals associated with human trafficking, whether they are women or children(children means both boys and girls upto 18 years of age).

4. You are requested to issue suitable directions to all concerned under intimation to this Ministry.

5. The receipt of this Office Memorandum may kindly be acknowledged.

(G.V.V. Sarma)
Joint Secretary to the Govt. of India

To

The Chief Secretaries/Principal Secretaries/ Secretary (Home) of all State Governments and Union Territory Administrations.

Copy for information and necessary action to:-

- (i) The DGs / IGs (In-charge of Prisons) /- All State Governments/ UTs
- (ii) Sri Sandeep Goel, Joint Commissioner(Crime), 3rd Floor, Police Station Kamla Market, Delhi.
- (iii) Ministry of Women and Child Development(Smt. Aditi Ray, Senior Economic Advisor), Shastri Bhavan, New Delhi.
- (iv) Secretary, Ministry of Labour, Shram Shakti Bhavan, New Delhi
- (v) Secretary, Ministry of Social Justice & Empowerment, Shastri Bhavan, New Delhi.
- (vi) Secretary, Ministry of Overseas Indian Affairs, Akbar Bhavan, New Delhi.
- (vii) Ministry of External Affairs:
 - (a) Addl. Secretary(PV)
 - (b) JS(Consular)
 - (c) JS(BSM)
- (viii) Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi.
- (ix) Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi.
- (x) Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- (xi) Director General, NCRB, R.K.Puram, New Delhi.
- (xii) Director General, BPR&D, New Delhi.
- (xiii) Director General, Border Security Force, New Delhi.
- (xiv) Director, CBI, New Delhi..
- (xv) AS(CS) / JS(CS) / JS(UT) / JS(NE) / JS(K), MHA, North Block, New Delhi.

(G.V.V. Sarma)
Joint Secretary to the Govt. of India



Investigation Abroad and Letters Rogatory

[Go Back](#)

[What is Interpol ?](#) | [National Central Bureau \(Interpol\) New Delhi](#) | [How to Provide/Seek Assistance ?](#) | [Investigation Abroad and Letters Rogatory](#) | [MLATs](#) | [Extradition](#) | [Extradition Treaties](#) | [Interpol Liaison Officers \(ILOs\) of State/UTs](#) | [Interpol Notices](#)

Investigation Abroad and Letters Rogatory

- [Provisions of Law](#)
- [MHA Circular -- Invetigation Abroad](#)
- [MHA Circular -- Service of Process Abroad](#)
- [Mutual Legal Assistance Treaties](#)

Provisions of Law

166-A Cr.P.C. Letter of request to competent authority for investigation in a country or place outside India

Notwithstanding anything contained in this Code if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter.

Letters Rogatory ♦ **Meaning of** ♦ *Letters rogatory is a formal communication in writing sent by the Court in which action is pending to a foreign court or Judge requesting the testimony of a witness residing within the jurisdiction of that foreign court may be formally taken thereon under its direction and transmitted to the issuing court making such request for use in a pending legal contest or action. This request entirely depends upon the comity of courts towards each other and usages of the court of another nation. In the Bofors case a letter of rogatory was issued with request to authorities in Switzerland for freezing certain bank accounts and the accused did not claim that any amount connected with Bofors case was deposited in Swiss Bank to his credit ♦ held that it cannot be said that the accused was deprived of his property and that he is not entitled to any prior notice and opportunity of being heard.*

Union of India v Chadha (WN) 1993 Cri LJ 859 (SC)

166-B- Cr.P.C. Letter of request from a country or place outside India to a Court or an authority for investigation in India

Upon receipt of a letter of request from a Court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit,

- forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced ; or
- send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.

(2) All the evidence taken or collected under sub-section (1), or authenticated copies thereof or the thing so collected shall be, forwarded by the Magistrate or police officer, as the case may be, to the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit.

MHA Circular -- Invetigation Abroad

[Top](#)

No. 25016/14/2007-Legal Cell
Government of India
Ministry of Home Affairs
Internal Security Division

Dated 31st December, 2007
2 Jan, 2008

To

The Home Secretaries of all States/UTs

DGPs & IGP's of all States/UTs Sir, **Subject:** Comprehensive guidelines for investigation abroad & issue of Letters Rogatory (LR)

1. The guidelines relating to issue of Letters Rogatory (LR) for causing investigation abroad were issued by this Ministry in 1996. However, many investigation agencies are either not aware of these guidelines or do not seem to be following these which results in avoidable delay at different levels at the State level or in MHA.
2. With a view to streamlining and making them more precise and focussed, MHA has examined the matter afresh in consultation with Central Bureau of Investigation (CBI) and comprehensive guidelines are enclosed for dealing with the issues of investigation abroad and initiation and execution of Letters Rogatory as also the procedure for extradition requests and contact with foreign police/ legal attachés.
3. You are requested to kindly have these guidelines circulated amongst the concerned officers for strict compliance.

Yours faithfully,
Sd/-
(L. C. Goyal)
Joint Secretary to the Govt. Of India

No. 25016/14/2007-Legal Cell
Government of India
Ministry of Home Affairs
Internal Security Division

COMPREHENSIVE GUIDELINES REFERRED TO IN LETTER NO. 25016/14/2007- LEGAL CELL DATED 31ST DEC., 2007 OF INTERNAL SECURITY DIVISION, MINISTRY OF HOME AFFAIRS REGARDING INVESTIGATION ABROAD AND ISSUE OF LETTERS ROGATORY AND ALSO THE PROCEDURE FOR EXTRADITION REQUESTS AND CONTACT WITH FOREIGN POLICE/LEGAL ATTACHÉS.

A. INVESTIGATION ABROAD

1. It may be necessary to gather information or conduct formal investigation abroad, in cases, where accused person(s) has escaped from the country after committing the crime or part of the crime has been committed outside the country or the witnesses and other material evidence are available in another country.
2. However, it may not be necessary to gather formal evidence in all such cases and in many cases/ enquiry; the investigation agency may only need information or lead in the first instance. The Investigation Agency may get informal information/material/leads collected through Interpol or diplomatic channels. [Intelligence sharing, however, is required to be done by designated intelligence agencies]. The International Police Cooperation Cell (hereinafter referred as IPCC) of CBI, New Delhi is the designated agency for routing requests for informal enquiries to be made with National Central Bureau of other countries, Interpol Headquarters as well as our Missions abroad.
3. For getting informal investigation conducted through the Interpol channels or our Missions abroad, a self contained request, along with necessary details, may be addressed to Assistant Director, IPCC, Block # 4, CGO Complex, Central Bureau of Investigation, New Delhi. In case, information is to be collected/ enquiries are to be conducted in more than one country, separate self contained requests may be sent for each country. The request may be routed through the head of Crime Investigation Department (CID) of the State Police.
4. The request must incorporate the following details:
 - i. The FIR number along with names of the accused and sections of law under which case has been registered.
 - ii. The gist of the allegations in the FIR/ Preliminary Enquiry or any other Investigation Process.
 - iii. The detail of information required. In order to facilitate requested country/ its NCB providing information the specific relevant details must be furnished.
5. It is necessary that material being furnished should be carefully examined and scrutinised at an appropriate level especially as regards accuracy of facts and figures. It must be noted the information so collected cannot be treated as formal evidence.

B. VISIT OF POLICE OFFICERS ABROAD FOR INVESTIGATION

1. Sometimes, it may become necessary to send Police Officer(s) from India to foreign country for the purpose of execution of LR or for collecting information or leads during the course of investigation of a case keeping in view the importance of the case and the complicated nature of offences under investigation.
2. As any police officer including that of the CBI would enjoy no Police powers in a foreign country and any such visit by a police officer without the express consent of any country may be considered interference in the sovereignty of that country unless some required formalities are observed.
3. When it is considered necessary to send a team of Officers abroad, the State Government will send a proposal to IPCC, CBI, India which in turn will obtain the approval of MHA for the proposed visit, whenever necessary.
4. The following information needs to be sent to the IPCC, CBI India for taking up the matter with the country to which such team is proposed to be sent:
 - i. A brief note detailing the reasons for sending the team, nature of enquiries required to be made in the requested country. This is to enable the authorities to assess whether the request is justified.
 - ii. All available particulars about identity or particulars of the person to be contacted or documents to be scrutinised etc. This would help the requested country to make all necessary preparations.
 - iii. Information about penal offence to which mission relates.
 - iv. Whether Article 3 of the ICPO (Interpol) Constitution or some other legal provision restricting international cooperation is attracted.
 - v. Exact date and duration of the mission and information about the police officers such as their names and ranks.
 - vi. Any other relevant information which may be relevant in processing such a request.
5. The visit will not commence before the required permission is received. The officers must get in touch with Indian Mission on their arrival. In case, the country does not have a mission, the accredited mission for India may be kept informed as regards visit of the officers.

C. GUIDELINES FOR ISSUANCE OF LETTERS ROGATORY FOR INVESTIGATION ABROAD UNDER SECTION 166-A CrPC, 1973

1. In order to conduct formal investigation and to collect evidence and gather material objects/documents Section 166-A of the Criminal Procedure Code 1973 lays down the procedure of sending Letter of Request (Letters Rogatory) through a competent Court. Letters Rogatory is forwarded within the ambit of Mutual Legal Assistance Treaty (MLAT), Memorandum of Understanding (MoU)/ Arrangement etc. existing between India and requested country or on basis of reciprocity in case no such treaty and MoU exists. In certain cases, it may also be possible to use the provisions of an International Convention, providing for such mutual cooperation, to which both India and the requested country are signatory for sending such Letters Rogatory.
2. No request for issue of Letters Rogatory (Letter of Request) shall be brought before any Court by an Investigation

Agency without prior concurrence of the Central Authority i.e. the Ministry of Home Affairs (MHA).

3. In case, it is considered necessary to get a Letters Rogatory (Letter of Request) issued, a self contained proposal may be sent to Under Secretary (Legal), Internal Security Division, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi-110 003 to be routed through the Home Department of the State in case of State Police, and directly to MHA in case of DSPE (CBI) for obtaining concurrence of the Government before filing an application in the Competent Court.
4. Before making a proposal to the MHA, the Investigating Agency concerned may examine the matter in detail whether it is absolutely necessary to get investigation conducted abroad for taking the case to a logical conclusion. The provisions of the MLAT, MoU, Arrangement or International Convention as well as requirement of the law of requested country such as principle of dual criminality, assurance of reciprocity etc., may be studied with view to determine that such a request would fall within the parameters of legal requirements of the requested country. It is important as it would have to be specifically mentioned as to under what provisions of Treaty, MoU, Arrangement or International Convention the request was being made. Where no such bilateral or multilateral arrangements exist Letters Rogatory may be made on the basis of assurance of reciprocity.
5. Certain countries do insist that a Letters Rogatory be sent in particular language or format. If so, the requirements thereof of making such a request may be studied to comply with them. Assistance of IPCC, CBI, New Delhi may be taken for the purpose, if required.
6. For obtaining the concurrence of MHA, the Investigating Agency concerned would send the following in triplicate:
 - i. A self-contained note containing brief facts of the case incorporating the allegations, names of the accused and particulars of the offences committed with details of Sections of Law and a copy of First Information Report (FIR). The FIR may be neatly word processed and must accompany with an English translation if written in vernacular.
 - ii. The need to conduct investigation abroad along with the legal opinion of Director of Prosecution or the senior most Law Officer commenting on the need for such Letters Rogatory (Letter of Request), that it would fall within the ambit of MLAT, MoU, Arrangement, International Convention and laws of the requested Country on the principles of dual criminality etc. Relevance of statement of witnesses to be examined and collection of documents/ material being requested to be seized to the investigation of the case may also be commented upon.
 - iii. The relevant provisions of the MLAT or MoU or Agreement or Arrangement or an International Convention under which the Letters Rogatory (Letter of Request) is to be made may be enclosed. In case it is to be sent on assurance of reciprocity the same may be mentioned.
 - iv. The draft application proposed to be filed in the Competent court for issues of Letters Rogatory may be enclosed. The application should contain the following:
 - a. Background Note with brief facts of the case, the allegations and name of the accused and particulars of the offences committed with extract of Sections of Law and a neatly word processed copy of First Information Report (FIR) as enclosure .
 - b. The details of investigation to be carried in the requested country. Care must be taken that request made is specific as no country would allow fishing enquiries/ investigation.
 - c. Particulars of the witnesses to be examined, their identity and addresses if available along with detailed questionnaire for examination of each witness.
 - d. Description of the documents/articles to be collected and procedure for the same.
 - e. Extract of the corresponding Sections of laws of the requested country which would constitute an offence/s on similar allegations under investigation in India. It may be stated in particular if under the laws of the requested country principle of dual criminality or any other requirement is essential requirement for execution of Letters Rogatory.
 - f. Extract of relevant provisions of the MLAT, MoU, Arrangement or International Convention etc. providing for such assistance by the requested country.
 - g. Declaration that the proposed Letters Rogatory would be in compliance of all the requirements of the requested country and that the case under investigation is not of political, military, racial or religious character.
 - h. A draft Assurance of Reciprocity in case the request is being made to a country with whom no MLAT, MoU, Arrangement exists or the request does not fall within the ambit of an International Convention.
 - i. Whether a visit by Investigating or any other officer is proposed to assist the authorities in the requested country to execute the Letters Rogatory.
7. The following precautions may be taken by the Investigating Agency while preparing a Letters Rogatory:
 - i. The documents, photographs and objects, if enclosed with the Letters Rogatory, should be clearly marked and referred to in the body to enable the requested Authority to know clearly what is required to be done with them.
 - ii. All the photocopied papers/ documents enclosed must be legible and translated in the required language, if required.
 - iii. The Letters Rogatory should be neatly bound and page numbered.
 - iv. The authenticated translated copies, duly signed by a translator, be enclosed along with original LR, if required to submitted in a language as prescribed in the MLAT, MoU, Arrangement or otherwise.
 - v. At least, five copies of the Letters Rogatory should be prepared including the original. Three copies along with the translated version, if any, would need to be sent to the MHA along with a copy to the International Police Cooperation Cell of CBI.
8. MHA may consult CBI whenever required and convey its concurrence to the proposal to be filed in the Competent Court for issue of a Letters Rogatory and also mark a copy of its concurrence to IPCC, CBI, New Delhi.
9. After obtaining the concurrence of the MHA, an application may be filed in the Court of competent jurisdiction for issue of Letters Rogatory addressed to the competent authorities of the requested country. The Competent Court may decide to issue a Letters Rogatory addressed to the competent authority in the requested country as prayed for or otherwise.
10. In case, the request is accepted, the Court would issue the Letters Rogatory under its seal and authority. A format and contents of the Letters Rogatory are given in the annexure to the guidelines.

D. PROCEDURE TO BE FOLLOWED AFTER ISSUE OF LR BY THE COMPETENT COURT

1. The Investigating agency will send three copies of the LR to IPCC, CBI, New Delhi and one copy to MHA. IPCC, CBI, New Delhi will forward the same to the competent authority in the requested country through the Indian Missions under intimation to MHA.
2. The Indian Mission will take prompt action to present/ send the LR to the competent authority and communicate the exact date of such presentation/ submission to IPCC, CBI, New Delhi. The Mission and IPCC will follow up the execution of LR with the competent authority in the requested country.
3. In event of requested country seeking clarifications, additional material etc., the Mission will directly communicate the same to the IPCC, CBI, New Delhi, who may take necessary action in the matter under intimation to MHA & MEA.

4. The execution report, along with evidence and supporting material, received from the requested country would be directly sent by our Mission abroad to the IPCC, CBI, New Delhi, who would in return send the same to the Agency concerned under intimation to MHA and MEA.

E. HANDLING OF INCOMING LETTERS ROGATORY (LR)

1. All incoming LR will be received by Under Secretary (Legal), Internal Security Division, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi 110 003 and will be entrusted to an Investigation Agency (State Police/CBI) in consultation with Joint Director (Policy) in CBI.
2. Where LR needs to be executed through the State Police, it will be sent to IPCC, CBI for getting it executed by the State Police concerned.
3. The agency entrusted with the task of execution of LR will do so at the earliest. The letters rogatory would be executed in terms of the provisions of the MLAT, MoU, Arrangement etc., if it exists with the requesting country otherwise the evidence shall be gathered under the provisions of Indian laws, as applicable.
4. The following precautions may be taken while preparing the Execution Report:
 - i. The documents, photographs and objects, if enclosed with the Execution Report, should be clearly marked and referred to in the body.
 - ii. All the photocopied papers/ documents enclosed must be legible and authenticated as per provisions of Indian Evidence Act unless otherwise provided in the MLAT, MoU, Arrangement etc.
 - iii. The Execution Report should be neatly bound and page numbered.
 - iv. At least, four copies of the Execution Report should be prepared including the original. Three copies including the original may be sent to the IPCC, CBI, New Delhi while a copy is retained by the executing agency for future reference.
5. After execution, the investigation agency will forward the execution report to the IPCC, CBI, New Delhi along with the evidence and material collected who will forward the same to the Central Authority of the requesting country through the MEA under intimation to MHA.

F. HANDLING OF EXTRADITION REQUESTS

1. Extradition if either done under Extradition Treaty or other Extradition Arrangement or Assurance of Reciprocity with the requesting country.
2. Extradition request can be normally made only after a charge-sheet has been filed in the court and the court has taken cognisance of the case. If the accused available in the other country is to be arrested and produced in the court in India, the requisite action to bring such accused to India is through Extradition Process and not through LR.
3. Extradition requests are not accepted for political offences. The principle of dual criminality is invariably followed for extradition requests. An accused extradited for a particular offence can be tried only for that offence by the receiving country.
4. The State investigating agency will send extradition requests to the IPCC, CBI, New Delhi through the State Home Department who would in turn send the same to MEA for further necessary action.

G. CONTACT BY AND WITH FOREIGN POLICE/ LEGAL OFFICERS/ATTACHÉS

1. Foreign Police Personnel/ Legal Attachés are not permitted to establish any direct contact with the police personnel at the State Level unless specifically authorised by MHA.
2. Any attempt by such foreign police /legal personnel to establish direct contact with the State Police Authorities should immediately be brought to the notice of MHA.

ANNEXURE

**No. 25016/14/2007-Legal Cell
Government of India
Ministry of Home Affairs
Internal Security Division**

ANNEXURE REFERRED TO IN THE COMPREHENSIVE GUIDELINES ISSUED VIDE LETTER NO. 25016/14/2007- LEGAL CELL DATED 31ST DEC., 2007 OF INTERNAL SECURITY DIVISION, MINISTRY OF HOME AFFAIRS REGARDING INVESTIGATION ABROAD AND ISSUE OF LETTERS ROGATORY AND ALSO THE PROCEDURE FOR EXTRADITION REQUESTS AND CONTACT WITH FOREIGN POLICE/LEGAL ATTACHÉS.

FORMAT AND THE CONTENTS OF THE LETTERS ROGATORY

The Competent Court, after considering the request may decide to issue the Letters Rogatory (Letter of Request) as prayed for or otherwise. In case, the request is accepted the Court would issue the Letters Rogatory under its seal and authority. The Letters Rogatory, addressed to the Competent Authority of the requested country, would contain the declaration showing the competence and jurisdiction of the Court making to issue such request country. It would contain the following details and annexure:

- a. Brief facts of the case, the allegations and name of the accused and particulars of the offences committed with extract of Sections of Law.
- b. The details of investigation to be carried in the requested country.
- c. Particulars of the witnesses to be examined, their identity and addresses, if available, along with detailed questionnaire for examination of each witness.
- d. Description of the documents/articles to be collected and procedure for the same.
- e. It may be mentioned that while conducting investigation in the requested State, the statements of witnesses may be recorded as per the requirement of law and procedure in vogue in the requested State and duly authenticated by the Officer recording the same. The documents may be requested to be collected in original and in case the authorities concerned are unable to part with original documents, duly authenticated true copies in the manner of certification provided in the law of the requested State be supplied. In case, the documents requested are public documents according to the law of requested State, then request may be made either to give original or to authenticate the documents as provided under Section 78(6) of the Indian Evidence Act, 1872 i.e. a copy certified by the legal keeper thereof, with a certificate under the seal of Notary Public, or of an Indian Counsel or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the laws of the requested country.
- f. Request for permitting Officers of the Investigating Agency to present during execution of LR to render assist to the officers executing the request, if considered necessary.
- g. A declaration that evidence made available would be used only in the case in which the request is made, if there is any such requirement.
- h. It may be mentioned that as per Indian Law, it is not necessary to give any notice to the accused either before issuing the LR

or before examining the same.

Annexure to be enclosed

- i. A neatly word processed copy of First Information Report (FIR) as enclosure with English translation if recorded in vernacular.
- ii. Extract of the Sections of Law constituting the offences under investigation along with the Sections of Procedural Laws, if relevant.
- iii. Extract of the corresponding Sections of laws of the requested country which would constitute an offence/s on similar allegations under investigation in India. It may be stated in particular if under the laws of the requested country principle of dual criminality or any other requirement is essential requirement for execution of Letters Rogatory.
- iv. Extract of relevant provisions of the MLAT, MoU, Arrangement or International Convention etc. providing for such assistance by the requested country.
- v. Declaration that the case under investigation was not of political, military, racial or religious character, if required under the MLAT, MoU, Arrangement or International Convention under which the request was being made or otherwise.
- vi. An Assurance of Reciprocity, duly issued by the authorised officer of the MHA under his seal and signatures, in case, the request is being made to a country with whom no MLAT, MoU, Arrangement exists or the request does not fall within the ambit of an International Convention.

Mutual Legal Assistance Treaties

[Top](#)

MLAT signed by India with other foreign countries as per list provided by MHA

Sl. No.	Name of the Country	Year
1	Australia	2011
2	Azerbaijan	2013
3	Baharin	2005
4	Bangladesh	2011
5	Belarus	2006
6	Bosnia&Herzegovina	2010
7	Bulgaria	2008
8	Canada	1998
9	Ezypt	2009
10	France	2005
11	Hongkong	2009
12	Iran	2010
13	Indonesia	2011
14	Kazakhstan	2000
15	Kyrgyz Republic	2014
16	Kuwait	2007
17	Malaysia	2012
18	Maritius	2006
19	Mexico	2009
20	Mangolia	2004
21	Myanmar	2010
22	Russia	2000
23	Singapore	2005
24	South Africa	2005
25	South Korea	2005
26	Spain	2007
27	Sri Lanka	2010
28	Switzerland	1989
29	Tajikistan	2003
30	Thailand	2004
31	Turkey	1993
32	Ukrain	2003
33	United Arab Emirates	2000
34	United Kingdom	1995
35	United States of America	2005
36	Uzbekistan	2001

[Text of Agreement](#)

NOTE: *The request for mutual legal assistance should be prepared as per the requirements of the mutual legal assistance treaty between India and the country concerned.*

[Go Back](#)

No. 25016/17/2007-Legal Cell
Government of India
Ministry of Home Affairs,
IS Division-II:Legal Cell

New Delhi, dated the 11th Feb, 2009

To

The Home Secretaries of all States/UTs,
The DGPs and IGP's of all States/UTs.

Sub : Comprehensive guidelines regarding service of summons/notices/
Judicial process on the persons residing abroad.

Sir,

Section 105 of Criminal Procedure Code (Cr.P.C.) provides for reciprocal arrangements to be made by Central Government with the foreign governments with regard to the service of summons / warrants/ judicial processes. MHA has entered into Mutual Legal Assistance Treaty/ Arrangements with 25 countries. In respect of other countries, the Ministry attempts to serve the judicial papers by giving an assurance of reciprocity. However, despite this Ministry's best efforts the summons and other judicial process get delayed for various reasons.

With a view to streamlining the procedure, MHA has examined the matter and comprehensive guidelines are enclosed covering various aspects of service of the summons/ Notices/ Judicial process on persons residing abroad.

You are requested to kindly have these comprehensive guidelines circulated amongst all courts/ all investigating officers under your jurisdiction for strict compliance.

Yours faithfully,

Sd/-

(Amar Chand)

Under Secy. To the Govt. of India

Encl : As above.

Copy to :

- i) M/o Law and Justice , Deptt. Of Legal Affairs, Shastri Bhawan, New Delhi
- ii) M/o External Affairs, CPV Division, Patiala House Annexe, Tilak Marg, New Delhi.
- iii) JS(PP), MHA, Lok Nayak Bhawan, Khan Market, New Delhi
- iv) JD(Policy), CBI, North Block, New Delhi
- v) Joint Director, IB, New Delhi.

No. 25016/17/2007-Legal Cell
Government of India
Ministry of Home Affairs

Subject: Comprehensive guidelines referred to in Letter No. 25016/17/2007-Legal Cell, dated _____ of Internal security Division, Ministry of Home Affairs regarding service of summons/notices/judicial process on persons residing abroad.

--

Section 105 of Criminal Procedure Code (CrPC) speaks of reciprocal arrangements to be made by Central Government with the Foreign Governments with regard to the service of summons/warrants/judicial processes. The Ministry of Home Affairs has entered into Mutual Legal Assistance Treaty/Agreements with 22 countries which provide for serving of documents. These countries are Switzerland, Turkey, United Kingdom, Canada, Kazakhstan, United Arab Emirates, Russia, Uzbekistan, Tajikistan, Ukraine, Mongolia, Thailand, France, Bahrain, South Korea, United States of America, Singapore, South Africa, Mauritius, Belarus, Spain and Kuwait. In other cases the ministry makes a request on the basis of assurance of reciprocity to the concerned foreign government through the mission / Embassy. The difference between the two categories of the countries is that the country having MLAT has obligation to consider serving the documents whereas the non-MLAT countries does not have any obligation to consider such a request.

Summons/notices/judicial processes issued by the Indian Courts.

2. The summons/warrants/judicial processes received by MHA are forwarded to the concerned Indian Missions/Embassies which in turn, takes up the matter with the designated authority in that country. In case of MLAT countries, the manner of communication is as laid down in MLAT and can be either directly between MHA and the Central Authority or can be through the diplomatic channel. The designated authority after considering the request directs its agency to serve the document on the concerned person and the report of the service, if any is also received through the same chain. This is broadly the system in majority of the countries. However, in some countries private companies/NGOs have also been entrusted with the service of judicial papers.

3. Based on the experience gained, some guidelines are given below which may be followed while making a request to MHA for service of judicial processes. It may, however, be noted that it is the discretion of the requested country to serve the documents and any time frame for a positive response cannot be predicted.

- a) All requests for service of summons/notices/judicial processes on persons residing abroad shall be addressed to the Under Secretary(Legal), IS-II Division, Ministry of Home Affairs, 9th Floor, Lok Nayak Bhawan, New Delhi- 110003. All requests shall be forwarded through post only with a covering letter from the Registrar/Court official giving the following information:
 - a) Material facts of the criminal matter including purpose of the request and the nature of the assistance sought.
 - b) The offences alleged to have been committed, a copy of the applicable laws and maximum penalties for these offence.

- c) Name, designation, telephone and fax number of the person/officer who will be able to give any clarification, if required.
 - d) The complete address of the issuing authority to which the judicial papers/service reports may be returned.
 - e) Approval of the competent authority to bear any expenditure, which they be charged by the foreign government/agency for the service of the documents.
 - f) Degree of confidentiality required and the reasons therefore(in case of confidentiality requirement).
 - g) Any time limit within which the request should be executed. This will be subject to allowance of sufficient margin of time by the requesting agency, as indicated in para 3(iv) of the guidelines
- b) MHA, on receipt of request, will examine it in view of the provisions of treaty, if exists, with the requested country and as per the provision of CrPC in case of non-treaty country.
 - c) India has a MLAT with Singapore and the Govt. of Singapore has prescribed a proforma which shall be completely filled and sent alongwith the request for service of judicial documents. The said proforma is at Annexure – 1 to these guidelines.
 - d) MHA requires at least a period of 12 weeks times for service of such notices in the concerned countries. It is, therefore imperative that a date of hearing/appearance may be decided accordingly.
 - e) In the case of non English speaking countries, the notices should be accompanied with the certified/authenticated translation(in duplicate) in the official language of the country where the notice is proposed to be served.
 - f) Name and address of the individual/organization should be complete in all respect and PO BOX no. and Passport no. will not suffice as address of the individual.
 - g) Ministry of Home Affairs responsibility to service the summons is only in Criminal Matters. Hence, summons in Criminal matters only may be sent to the Ministry for service abroad.
 - h) MHA does not undertake service of the non-bailable warrants of arrest. The service of non-bailable arrest warrents amounts to the extradition of the individual. The request for extradition are based on certain legal procedures contained in applicable treaties negotiated on the basis of the International Principle of Extradition. Such requests are to be forwarded to the Ministry of External Affairs, CPV Division, Patiala House Annexe, Tilak Marg, New Delhi – 110001.

(A) SUMMONS ISSUED BY THE FOREIGN COURTS/AUTHORITIES:-

- 4. The summons issued by the Foreign Courts/Authorities and received in MHA will be served by the State Police through CBI-Interpol. However, Indian Mission/MEA while forwarded such requests to MHA will ensure that:-
 - a) The summon is followed with a translated copy in the Indian language.
 - b) A reasonable time say 10 weeks is allowed after the summons are received in the Ministry of Home Affairs.
 - c) An Assurance of Reciprocity(AOR) is followed from the countries which insist for the same in respect of Indian Summons.

[Form for requests from prescribed foreign countries to Singapore for Assistance]
TO: The Central Authority in the Republic of Singapore
FROM: The Central Authority in India -Ministry of Home Affairs

REQUESTS FOR MUTUAL LEGAL ASSISTANCE
IN A CRIMINAL MATTER

Certificate on behalf of

The Central Authority in India- Ministry of Home Affairs

I, [name, appointment /position of person certifying] on behalf of the Central Authority in India, Ministry of Home Affairs, who is responsible for [state area of responsibility e.g. criminal prosecutions, investigations] in the [requesting party] and who is also authorized to make requests for mutual legal assistance in criminal matters (in the Ministry of Home Affairs – India) certify that the Ministry of Home Affairs- India respectfully requests the assistance of the Government of the Republic of Singapore in a [Criminal matters].

REQUEST

This request is made pursuant to the Agreement between the Govt. of Republic of Singapore and the Govt. of India agreed on 29th June 2005 (hereinafter “ The Agreement”) concerning Mutual Legal Assistance in Criminal matters.

NATURE OF REQUEST

This request relates to the [describe subject of criminal matter e.g. service of summons/Notices/judicial processes issued by the Hon’ble Court _____ In Case number_____ u/s _____). The authority having the conduct of the criminal matter is [describe authority concerned with the criminal matter]

CRIMINAL OFFENCES / APPLICABLE LEGISLATION/PENALTIES

[Set out the offences alleged to have been contravened in relation to the criminal matter as well as maximum penalties for these offences and attached copies of applicable legislative provisions. State identity of suspect/ accused person if known) e.g.

Offence u/s _____ of the Indian Penal Code/ Cr.PC (define the section)

Section _____ “ _____ ”
“Quote”

1State whether it is an investigation, prosecution or an ancilliary criminal matter. Criminal matter is defined in section 2 of Singapore Mutual Assistance in Criminal Matters Act (Cap 1904). An electronic version of this is available at <http://statutes.leg.gov.sg/>

STATEMENT OF FACTS

[DESCRIBE the material facts of the criminal matter including in particular, those necessary to establish circumstances connected to evidence sought in the Requesting Party and the relevance of Singapore evidence to the criminal matter in the Requesting Party. Such other information as is required where the requests relates to particular heads of assistance (e.g. location of persons, enforcement of confiscation order) should also be stated) e.g.

PURPOSE OF REQUEST

By this request it is intended to [state purpose which is intended to be achieved by the assistance sought to secure admissible evidence to be used in the trial of _____] e.g. serve a summon issued by the Hon'ble Court _____ in case no. _____ u/s _____ of the Indian Penal Code/ Cr.PC and to secure the presence of the accused before the said court on _____ (date and time)

MANDATORY ASSURANCE & UNDER TAKINGS

It is confirmed that this request:

- (a) does to the prosecution or punishments of a person for a criminal offence that is , or is by reason of the circumstances in which it alleged to have been committed or was committed, an offence of a political character.
- (b) is not made for the purpose of the prosecuting punishment or otherwise causing prejudice to the person on account of that persons race, religion, nationality or political opinions.
- (c) does not relates to the prosecution of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a competent court or by other authority [Requesting party] i.e. of the Government of India in respect of that offence or of another offence constituted by the same act or omission as that offence.

The Central Authority in [Requesting Party] i.e. India – Ministry of Home Affairs further undertakes that:

- (a) that any of the evidence / thing obtained pursuant to this request will only be used for the purpose of the request in connection with [State particulars of criminal matters]; and e.g. Case No. _____ u/s _____ of the Indian Penal Code /CrPC; and
- (b) that should the Hon'ble Attorney General of the Republic of Singapore required the return of any evidence / thing obtained pursuant to this request, at the conclusion of [state particulars of criminal matters] for e.g. case no. _____ and of all consequential appeals, the evidence/ thing will be returned to the Honorable Attorney General of the Republic of Singapore.

ASSISTANCE REQUESTED

The Government of Republic of Singapore is requested to take such steps as are necessary to give effect to the following:
[describe particular type of assistance required] e.g.

To serve the summons issued by the Hon'ble Court of _____ in Case No. _____ u/s _____ of the Indian Penal Code/ Cr.PC on the accused Mr. _____ r/o _____.

EXECUTION OF REQUEST

Confidentiality

[State confidentiality requirements of the Requesting Party, if any] e.g.

There is no requirement of confidentiality in this matter.

Procedure to be followed

It is requested that the following procedures be observed in the execution of the request

- [State details of manner and form² in which evidence is to be taken and transmitted to the requesting party, if relevant]
- [State any special requirements as to certification/ authentication of documents]
- [State if attendance by representative of the requesting party at examination of witnesses/ execution of request is required and, if so, the title of the post held by the proposed representative.

e.g.

The summon along with the copy of the complaint filed in the court may be served upon _____ and his signature on the duplicate copy of the summon may be taken as token of acknowledgment and forwarded to the Ministry of Home Affairs, Government of India, through diplomatic channel.

Period of Execution

It is requested that the request be executed within [State period giving reasons i.e. specify likely trial or hearing dates or any other dates/ reasons relevant to execution of requests] E.g. at least 10 days before i.e. (date) _____, which is the next date of hearing in the Court of _____

Signed by : _____
Name /Designation : _____
Office : _____
Date : _____

_____ ²please provide proforma or form of words as appropriate

SAMPLE NOTICE TO PERSON SERVED UNDER ARTICLE 14

TO

[State name and address of person to be served] e.g.
 Mr. R Ravindran
 93, Loyang View
 Singapore 507188

The Central Authority in India – Ministry of Home Affairs [Requesting State] has made a request pursuant to the Agreement between the Government of Republic of Singapore (Requested State) and the Government of India (Requesting State) concerning Mutual Legal Assistance in Criminal Matters for the service of the attached process:

[describe process and documents, if any to be served] e.g.

Viz: to serve summons issued by the Ld. Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in CC No.4700982/SS/2007 u/s 500 of the Indian Penal Code.

Please note that by serving the process on behalf of the Central Authority in India – Ministry of Home Affairs [Requesting State], the Government of Republic of Singapore [Requested State] takes no position with respect to the merits of any proceedings in the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in CC No. 4700982/SS/2007 u/s 500 of the Indian Penal Code in the [Requesting State].

Please review the attached process carefully for instruction and deadlines. If you have any questions about them you may wish to consult a lawyer. You may also contact [[the representative of the Requesting State] directly at [Phone number or other contact details] e.g. Mr. Jayant L Phoujdar, Advocate, Mumbai High Court directly at 022-66377902, 79037904.

However, if the process is a process other than a summons to appear as a witness under the law of the India [Requesting State], please note that [to be advised by the Requesting State of other possible consequences, if any under its law if the person refuses or fails to accept service or fails to comply with the terms of service of process]. E.g. warrant of arrest will be issued by the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, if the person refuses or fails to accept service or fails to comply with the terms of service of process.

(_____)

Central Authority of India – Ministry of Home Affairs.

Date:

MODULE

5

PROSECUTION
AND TRIAL
PROCEDURES
OF
TRAFFICKING OF
PERSONS CASES

MODULE 5 – PROSECUTION AND TRIAL PROCEDURES OF TRAFFICKING OF PERSONS CASES

Module Goal

To strengthen the ability of judicial officers and prosecutors to comprehend all the specific procedures and steps during trial, in a trafficking in persons' case with a victim-centred approach.

Time: 3 Hours

Session Plan

Sr. No.	Topic	Objectives of Module 5	Resource Material	Time
5.1	Evidence in trafficking in persons' trials	Understand the specific nuances of the relevant evidence to prove different offences in trafficking trials.	Refer 5.1 Handout of Case Study	60 min
5.2	Rights of victims during trial	Know the rights of victims so as to strengthen victim-witness protection during trial.	Refer 5.2 Handout of Case Study	15 min
5.3	Typical Defences in a Human Trafficking Case 5.3.1 General strategy by the prosecutors	Understand the common defences raised in TIP cases for better preparedness on behalf of the victim during prosecution.	Refer 5.3 and 5.3.1	40 min
5.4	Final Orders in Trafficking Cases 5.4.1 Sentencing 5.4.2 Compensation 5.4.3 Appeal in cases of acquittal/ lower sentences	Build understanding on the significance of higher sentencing and victim's right to compensation from a victim-centred perspective.	Refer 5.4, 5.4.1, 5.4.2, and 5.4.3 Handout of Compensation	10 min
5.5	Closure of places of exploitation 5.5.1 Closure of premises in sex trafficking cases 5.5.2 Closure of premises in labour trafficking cases	Know the special procedures under different laws w.r.t. closure of places of exploitation.	Refer 5.5, 5.5.1, 5.5.2, and 5.5.3	15 min

	5.5.3 Confiscation of assets of traffickers			
5.6	Rehabilitation and repatriation of victims of trafficking	Know the rights of the victims w.r.t their rehabilitation and repatriation.	Refer 5.6	20 min
5.7	Roles and Responsibilities of Stakeholders	Know the roles of different duty bearers and service providers post rescue, during investigation, trial and at the stage of rehabilitation and repatriation.	Refer 5.7	20 min

Training Methodology

Activity 1: Case Study

Objective of the Session	To make the participants comprehend how to establish the elements of TIP offences with the evidence in a trafficking case.
Estimated Time	60 Minutes
Methodology	Group work
Material Required	Handout of case study, flip charts and markers
Expected Outcome	This session will enable the participants to build understanding on how to connect the different types of evidence collected during investigation to different elements of the offence of trafficking under the IPC, ITPA, 1956 and other laws.

Process for the Trainer

Step 1: Divide the participants into 2 groups. Groups 1 and 2 will be given two separate cases based on which, both the groups will discuss in detail the cases and the evidences that will be required to prove the various offences committed by the offenders against the victim under different laws on TIP. The Groups should use a combination of as many laws as possible to cover all the different crimes committed by the accused.

Step 2: Request the representatives from both the groups to make their presentations one by one. When one group is making their presentation, the other group can give their inputs and vice versa.

Step 3: Sum up the entire discussions from both the groups.

Case Study 1 for Group 1

Distribute the Case study on Trafficking for Prostitution from Activity 1 of Module 3.

Case Study 2 for Group 2

Distribute the Case study on Trafficking for Labour/ Domestic Work from Activity 1 of Module 3.

Notes for the Trainer –

The case studies from Module 3 are very detailed and contain lots of facts. Participants have already worked on it in the legal framework Module 3 and Module 4. Taking this further, participants can now work on it to cover all the evidences that will be required to connect the different offences committed by the offenders under different laws related to TIP.

Activity 2: Power Point Presentation

Objective of the Session	To make the participants know the legal provisions w.r.t to rights of victims during trial.
Estimated Time	15 Minutes
Methodology	Power Point Presentation
Material Required	Slides
Expected Outcome	This session will enable the participants to understand the victim-witness protection through implementing the 'rights of victims' under various provisions of laws – both w.r.t. adult and child victims in TIP cases.

Process for the Trainer

Step 1: Prepare few slides based on 5.1 (as below).

<p>Protection for the Victim-Witness</p> <p>1</p>	<p>Physical safety of the Victim-Witness</p> <ul style="list-style-type: none">• Physical safety of the victim is of paramount importance immediately after rescue and throughout all processes of the criminal justice system.• Grave threat from traffickers to victim and family at all stages after rescue.• Police, prosecutors and judicial officers should work synergistically with the government/ NGO shelter home for ensuring physical safety of the victim by taking proper measures and passing appropriate orders. <p>2</p>
--	---

Non-disclosure/ protection of identity of the Victim-Witness

- Ensure identity of adult victims of sex trafficking/ or adult victim of trafficking for labour, where charges are made under Sec. 376, IPC, is protected during investigation and trial from the media and press (Sec. 228A, IPC).
- Ensure identity of child victims is protected during investigation and trial from the media and press (Sec. 74, JJ Act, 2015; and Sec. 23 (1) (2) and Sec. 24 (5), POCSO Act, 2012).

3

Preparing the victim-witness for trial

Preparing the victim for testimony in court

The IO/ Prosecutor along with the supporting NGO can -

- Explain to the victim their rights in the criminal justice system.
- Inform the child and parent/ guardian about –
 - ✓ Availability of support person, counseling services, compensation, public and private emergency and crisis services and assist in contacting them [Rule 4(2)(e), POCSO Rules, 2012].
 - ✓ Right to legal advice and counsel and right to be represented [Sec. 40, POCSO Act, 2012; and Rule 4(2)(f), POCSO Rules, 2012].

4

✓ Information about the case - status of investigation, arrest of the suspected offender, filing of charge-sheet, court schedule, bail, release or detention status, final verdict and sentence imposed, etc. [Rule 4(12), POCSO Rules, 2012].

- Explain entire trial process in detail vis-à-vis everyone's roles.
- Arrange pre-trial courtroom familiarization with courtroom setting, etc.
- Inform adult victim - *in camera* trial procedures - Sec. 327 (2), Cr. PC.
- Inform child victim - *in camera* trial procedures, in the presence of parents/ any other person (Sec. 37, POCSO Act, 2012).

5

- Conduct mock trial for victim, to familiarize with actual method of questioning by defence lawyer and answering questions, including explaining inconsistencies in statements.

- Providing interpreter when victim does not speak language of the court.

- Providing special educator if victim is hearing or speech impaired, or has any other mental disability.

- Regular provision of information concerning the pace and different stages of the trial.

6

- The victim-witness should be escorted to and from court buildings, using separate entrances to the court building, having separate waiting areas for the accused and the victim, so that no interface or confrontation is possible outside the courtroom.

- **Victim-witness testimony through video-conferencing**- If victim has been repatriated back to the family, or her country, and is unwilling/ unable to come to trial court for her testimony, evidence may be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence [Sec. 275 (1) (Proviso), Cr. PC].

7

Step 2: During the power point presentation, involve the participants in discussing the significance of victim-witness protection during trial, how it impacts the victims, and the empowering provisions of the laws that could be used by the prosecutors and the courts in ensuring a safety-net for the victims during trial. Also discuss, the negative impact if these procedures are not implemented vis-à-vis the testimony of the victims.

Activity 3: Case Study

Objective of the Session	To make the participants work on a case study to anticipate defences and preparing adequate responses during prosecution of a TIP case.
Estimated Time	40 Minutes
Methodology	Group work and practical skill building
Material Required	Case study, flip chart and marker
Expected Outcome	This session will enable the participants to build their skills on effective preparation of a TIP trial with a victim-centred approach.

Process for the Trainer

Step 1: The Trainer may divide the participants into two groups and provide both Groups with the same Case Study as given below. One group will collectively play the role of the prosecutor, and the second group will collectively play the role of the defence lawyer.

Step 2: After discussions among the 2 groups, the activity will start with the second group represented by the defence lawyers to provide all possible defences on behalf of all the accused. The first group represented by the prosecutor will present their detailed responses, based on the facts of the case. The entire activity is to be conducted as if the matter is being argued in Court by quoting legal provisions and from the factual evidence in the case. The Trainer can request the participants to imagine and presume the evidences that will be required to prove the case by the prosecution or plead innocence by the accused.

Step 3: The Trainer will sum up the entire arguments at the end of the discussion.

Case Study for Role Play

The police have received several complaints from a residential colony about strange things happening in the apartment on the 10th floor. They have often seen cars come and go throughout the day and especially with more frequent intensity in the night. Some people come and go often to this apartment, but there do not seem to be any permanent residents.

The police conduct surveillance for a few days and then reach the apartment to find 3 girls with 3 men in different rooms. Upon investigation, charges are filed against the 3 men found in the apartment. When the girls are questioned, they all say they are 'adults' and doing this work 'willingly'. They say, that they know the law and their 'right to work', and show the police their Facebook pages also. They also claim to have bank accounts.

The mobile phones of the 3 girls reveal a different story altogether. There are frequent phone calls everyday and Whatsapp chats from one single number to all the girls. When the police call that number, a man answers it. Upon further investigations, the girls say that this man who would call them and arrange their customers, would take a cut as his 'fees'. They say that they have never seen the man in person, but only heard his voice. They also state that another woman introduced them to this man on Whatsapp, whose name is Rani.

Based on further investigations, the police file a charge sheet against this 4th man also. In addition, the police find that the apartment belongs to a woman, who also lives there.

Activity 4: Distribution of Handout and Discussion

Objective of the Session	To make the participants know the legal provisions w.r.t to final orders that can be passed in TIP cases.
Estimated Time	10 Minutes
Methodology	Power Point Presentation
Material Required	Slides
Expected Outcome	This session will enable the participants to understand the nuances of sentencing in TIP cases; and the 'rights of victims' (adult and child victims) to compensation under different laws and government Schemes, for different types of trafficking.

Process for the Trainer

Step 1: Prepare a Handout on Compensation for Trafficking Victims (copy the entire resource material in 5.4.2).

Step 2: Using the Handout and information from 5.4.1 discuss with participants highlighting *inter alia* –

- Legal provisions and grounds of seeking higher sentences for the accused;
- Compensation under Cr. PC, POCSO Act, 2012; Child Labour Act, 1986; Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; and those available under government Schemes on bonded labour, child labour, etc.;
- Discuss with participants, why is compensation such a crucial element for victims of TIP.

Activity 5: Power Point Presentation

Objective of the Session	To make the participants know the legal provisions w.r.t to closure of places of exploitation in trafficking cases.
Estimated Time	15 Minutes
Methodology	Power Point Presentation
Material Required	Slides
Expected Outcome	This session will enable the participants to know the different provisions of law w.r.t. closure of premises in sex trafficking and labour trafficking cases and its impact on trafficking and traffickers.

Process for the Trainer

Step 1: Prepare presentation based on 5.5.1 and 5.5.2 (as below) highlighting *inter alia* –

- Eviction before trial/ conviction; eviction after conviction [Sec. 18 (2)]; no appeal; suspension/

- cancellation of hotel license
- Closure of premises in labour trafficking cases
- Confiscation of assets of traffickers.
- Discuss with participants, why is closure of premises such a crucial element of investigation, prosecution and trial (as appropriate) in dealing with the organized crime aspect of TIP.

Closure of Places of Exploitation

1

Closure of Premises in Sex Trafficking Cases

2

- The ITPA, 1956 in Sec. 18 provides for procedures to evict offenders and closure of brothels – before the trial and conviction and after conviction in a trial.
- Closure of premises without a trial or conviction ensures that the traffickers, who are able to obtain bail immediately after arrest, cannot come back to the same premises and start the use of premises for prostitution all over again.

3

Eviction before trial/ conviction [Sec. 18 (1)] ITPA, 1956

A Magistrate (District Magistrate or Sub-divisional Magistrate) may –

- on receipt of information from the police or otherwise,
- that any place within a distance of 200 metres of any public place [(Sec. 7 (1)),
- is being run or used as a brothel by any person,
- issue notice on the owner, lessor or landlord of such place
- to show cause within 7 days of the receipt of the notice why the same should not be attached for improper use

4

- and if, after hearing the person concerned, the Magistrate is satisfied that the place or is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders –
 - directing eviction of the occupier within 7 days of the passing of the order;
 - directing that before letting it out previous approval of the Magistrate shall be obtained –
 - during the period of one year, or
 - where a child/ minor has been found in the brothel, during the period of three years.

5

Eviction after conviction [Sec. 18 (2)] ITPA, 1956

- A court, which convicts a person of an offence under –
- Sec. 3 (Keeping a brothel or allowing premises to be used as a brothel), and
- Sec. 7 (Prostitution in or in the vicinity of public places) -
- can pass the same orders under Sec. 18 (1), without the issuance of the show cause notice to the convicted person.

6

- **No appeal** – Orders passed by Magistrate or Court under Sec. 18 (1) or (2), shall not be subject to appeal and shall not be stayed or set aside by the order of any court. These orders will cease to have validity after the expiry of one year or three years, as the case may be.
- **Suspension/ cancellation of hotel license** - Licence for running a hotel, where its premises are being used for prostitution, can be suspended for a period of 3 months to 1 year under Sec. 7 (2). If offences under this provision are committed against a 'child' or 'minor', licence of such hotel may also be cancelled.

7

Closure of Premises in Labour Trafficking Cases

8

Order of District Magistrate

- DM on application by Investigating Officer through the proper authority -
- order detailed inspection of the place of labour exploitation
- to record the existing conditions in order to close that place
- under the provisions of the Criminal Law Amendment Ordinance of 1944 (Ordinance No. XXXVIII of 1944) which, deals with preventing the disposal or concealment of property procured by means of certain offences.

9

Order of Magistrate

- Magistrate on application by the Labour Department
- order closure of the illegal factories and cancellation of registration of legal factories/ places of work
- under the Interstate Migrant Workmen (Regulation of Employment & Conditions of Service) Act 1979; The Factories Act, 1948; Shops and Commercial Establishments Act, and various other safety and welfare legislations.

10

Activity 6: Power Point Presentation and Open Discussion

Objective of the Session	To make the participants know the rights of the victims w.r.t their rehabilitation and repatriation.
Estimated Time	20 Minutes
Methodology	Power Point Presentation and Open discussion
Material Required	Slides, charts and markers
Expected Outcome	This session will enable the participants to build understanding on the final journey of the victim to becoming a survivor through effective rehabilitation and repatriation within family/ community/ or back to their country.

Process for the Trainer

Step 1: Prepare slides from Resource Material from 5.6. Cover the rights of victims (adult and child) to rehabilitation and repatriation; and procedures related therewith.

Step 2: Request the participants to narrate their personal experiences and some examples that they can

give on how they have seen victims getting rehabilitated through shelter homes and live independent lives thereafter.

Rehabilitation and Repatriation of Trafficking Victims

1

Rehabilitation of TIP Victims

- Civil rehabilitation – through making of documents such as, Aadhar card, opening bank account, Voters card, etc.
- Psychosocial rehabilitation – through effective and comprehensive counseling and therapy.
- Educational rehabilitation – through enrolment of child victims in schools, bridge courses, open schooling, etc. and adult victims in other educational courses.

2

- Economic rehabilitation – through vocational skill building courses, and job placements; and through Victim Compensation under different legislations and government schemes.
- Independent Home / Out of Shelter Home rehabilitation – through assisting in setting up and managing Group Homes after economic rehabilitation.

3

Rehabilitation of Child Victims - JJ Act, 2015

- Child Welfare Committees are the statutory bodies set up under the JJ Act, to deal with all aspects of care, protection, rehabilitation and restoration of the child.
- CWC determines firstly, if the child is in 'need of care and protection'; followed by interim placement/ custody of the child; order the commencement of the care, protection and treatment of the child; and the final social reintegration and rehabilitation of the child.

4

- Child may be placed –
- in institutional care (Children's Home, Specialized Adoption Agency, with a 'fit person', foster home, open shelter home, 'fit facility', Protective Home, or any home run by any NGO); or
- restore the child with the family, after determination is done of the suitability of the parent/ guardian to take care of the child.
- CWC will monitor - health, nutrition, assistance in obtaining IDs, education, counseling, supervision, mental health interventions, referral services, legal aid, skill development, and any other services.

5

Child victims of labour trafficking

- In addition to JJ Act, 2015 –
- The Child Labour Act, 1986 provides for rehabilitation under Sec. 14C.
- The Act creates a Child and Adolescent Labour Rehabilitation Fund, in each district or for a group of districts.
- All fines collected from offenders under the Act are to be credited to this Fund in addition to Rs. 15,000, which will be given by the government for each rescued child/ adolescent towards rehabilitation.

6

Rehabilitation of adult victims under ITPA, 1956

- After Home Investigation Report, Magistrate can take following actions –
- place the person in safe custody, for a maximum period of three weeks [Sec. 17(3)]
- place in Protective Home or in any other custody for a minimum period of one year and maximum period of three years [Sec. 17(4)]

7

- All rehabilitation and referral services are provided by the government or NGO run Protective/ shelter Home, which include, health, assistance in obtaining IDs, education, counseling, supervision, mental health interventions, referral services, legal aid, skill development, and any other services.
- The Ujjawala Scheme of the Ministry of Women and Child Development, - “A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation”.

8

Repatriation of foreign nationals

- The trial court Magistrate/ Sessions Judge, Public prosecutor, and Child Welfare Committee (if victim is a child) will be involved in the process of repatriation; along with the Ministry of External Affairs, Government of India, and the Embassy of the country from where the victims are, will be important stakeholders.
- The Foreigner Regional Registration Offices (FRRO) is the primary agency to regulate the registration, movement, stay, departure and also for recommending the extension of stay in India.

9

- Procedure for repatriation of SAARC nationals
- Procedure for deportation of non-SAARC nationals

10

Activity 7: Open Discussion on responsibilities of different Stakeholders

Objective of the Session	To make the participants know the role of different duty bearers and service providers for TIP victims.
Estimated Time	20 Minutes
Methodology	Open discussion
Material Required	Charts and markers
Expected Outcome	This session will enable the participants to understand the importance of coordination and cooperation among different stakeholders in justice delivery and service delivery to victims of TIP.

Process for the Trainer

Step 1: Cover segment 5.7 of the Resource Material through a question and answers format and open discussion with participants.

Step 2: Prepare a flip chart with 2 columns as below, and fill in information in the respective columns during the open discussion -

Stakeholders	Roles and Responsibilities

Step 3: Request the participants to start the discussion by naming each stakeholder and their respective responsibilities - pre-trial, during trial and post-trial up to rehabilitation and repatriation of victims (both national and foreign).

Step 4: Emphasize the importance of the multi-disciplinary, multi-stakeholder approach to ensure proper and timely delivery of all services to the victims.

5.1 Evidence in trafficking in persons' trials

Similar to all other criminal cases, TIP cases will have to be prosecuted by linking elements of definition of TIP in IPC and ITPA, 1956, plus other surrounding offences under various other laws, with the available evidence. All crimes of TIP will have an organized crime angle and a financial component, which will also need to be proven before the court to show criminal nexus of several people in such crimes.

Establishing the elements of TIP offences with the evidence

For sex trafficking cases

1. Trafficking in Persons (Sec. 370, IPC) –

- Recruits, transports, harbours, transfers, or receives a person – victim statement, other witness statements, interrogation of suspects, advertisements, SMS messages, travel tickets, hotel receipts, financial transactions, bank receipts, online payment records, establishing involvement of more than one person in a chain of events, etc.
- Threat, force, coercion, abduction, fraud, deception, abuse of power, inducement, giving or receiving of payments or benefits - victim statement, other witness statements, removing from legal guardianship of family/ guardian, financial transactions, bank receipts, online payment records, fake marriages, missing complaints already registered by the victim's family or of threats received, impersonation, emotional blackmail, relationship of power and authority versus subjugation, etc.
- Purpose of prostitution or other forms of sexual exploitation, forced labour, servitude, forced removal of organs - victim statement, other witness statements, interrogation of suspects -
 - o forced prostitution (as explained in ITPA sections below);
 - o forced labour - age of child/ adolescent, physical injuries, sexual abuse, previous debts/ loan amounts taken, no freedom to leave work and go, payment of wages, receipts, bank accounts, rent/ lease/ ownership documents for factory/ workshop/ other premises, business orders, contract papers;
 - o domestic servitude – age of victim, victim living with employers, payment of salary into bank or lack of any salary, placement agency contracts, physical injuries, sexual abuse, no freedom to move out of house, always escorted, locked up when owners not at home, no freedom to leave work and go;
 - o removal of organs – medico legal report on missing organ, name and address of hospital/ clinic, name of doctor, online payments transferred and received, cash payments, admission papers into hospital.
- Consent immaterial to determine the offence - victim statement, other witness statements, agreeing to one kind of work but forced into another kind of work/ exploitation, victim claims to be willingly working but circumstances show otherwise, age of victim, the following defences will not hold any merit –
 - o the victim or victims' family knew what they were getting into is no defence,
 - o the victim was paid for services/ labour
 - o the victim had freedom of movement
 - o there were opportunities to escape but the victim did not run/ go away
 - o trafficker is related to the victim, hence, there is no trafficking.

2. Employing of a trafficked person - knowing, or having reason to believe that a child/ adult has been trafficked, employs them for labour (Sec. 370A, IPC) – age of child, hiring through placement agency/ agent, paying less than minimum wages/ no wages, paying lump sum to placement agency, victim statement on who brought them to employer and how they were brought, victim lives with employer, how many more people were working for the employer, nature of work, employer’s knowledge about where the victim has been brought from/ family background, whether employer would have let the victim exercise the choice of discontinuing work.

3. Establish place is a brothel – which could be any house, room, conveyance or place, or any portion of any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person (Sec. 2 (a), ITPA, 1956).

- There is nothing in the definition of “brothel” under ITPA, 1956 to indicate that it relates only to such premises or conveyance within the “red light area” or any other specific locale. In fact the Act nowhere uses the term “red light area”. The definition of “brothel” refers to any house, room, conveyance or place used for commercial sexual exploitation, and its location is irrelevant.
- The word “premises” is used under Sec. 15, ITPA which, deals with search and rescue. Any premises can be searched without a warrant under this section, and if the police has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, such premises may be treated as a brothel.
- The essential ingredient, therefore, is a place being used for the purpose of sexual exploitation or abuse. The inference of prostitution would be drawn from diverse circumstances established in a case. It is not necessary that there should be repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances may be sufficient to establish that the place is being used as a brothel and the person alleged was so keeping it⁵⁶.
- Applying the above criteria, any massage/ beauty parlour, private apartment, house in a residential area, dance bar, orchestra bar, hotel, etc. can be deemed to be brothels for purposes of the ITPA, 1956.

4. Running a brothel or letting premises for running a brothel (Sec. 3, ITPA, 1956) –

- Establish the ownership of the premise - land/ house deeds; registration papers; rent/ lease agreements; receipts of rent payments; water/ electricity/ landline phone bills; Aadhar card; PAN card; voter/ ration card; bank accounts; TV/ Cable/ internet connection bills, etc.
- Establish that premise is being used as a brothel - statement of victim/ witnesses; newspaper reports; evidence collected from the premise proving prostitution; earlier police records.

5. Living on the earnings of prostitution (Sec. 4, ITPA, 1956) –

- No known sources of income/ profession/ vocation/ job; living with victims in the brothel; habitually found in the company of victim who is made to carry out prostitution; acts as tout, pimp.
- Evidence needed would be - income statements, receipts of payments, vouchers of expenditure, books of accounts, other documents to establish unknown source of income.
- Presumption under this section, on the basis of above, that person is living on earnings of prostitution.

6. Procuring, inducing or taking person for the sake of prostitution (Sec. 5, ITPA, 1956) –

- Age of victim (to establish child, minor, or adult);
- Statement of victim to show how consent was obtained;
- Details of source point from where person procured and moved;

⁵⁶ Gaurav Jain v/s Union of India and Others: AIR 1997 SC 3021

- Details of transit points; travel routes/ halts; statement of hotels, lodges of stay during transit, transporters, travel documents, tickets; etc.;
- Details of final destination of brothel;
- Movement of victim – displacement from family/ community;
- Motive of trafficker – from different activities of procuring, buying, selling, exploiting, keeping money from each client, etc.;
- Relationship of all offenders;
- Medical examination of victim to show rapes, injuries, STDs, etc.;
- Medical report of clients caught red handed during rescue operations;
- Map of the entire trafficking route; brothel address.

7. Detaining a person in premises where prostitution is carried on - (Sec. 6, ITPA, 1956) –

- Presumptions – if a child of the victim is found in a brothel;
 - o or minor victim is medically examined and found with sexually transmitted diseases; or
 - o jewelry, clothes, money, property, of victim is in the custody of the brothel.
- Indicators of the place being a brothel or a place of commercial sexual exploitation;
- The victim is always accompanied by a person/ not allowed to go out of the premises;
- Statement of the victim showing psychological/ emotional bondage, which keeps her detained without any lock, key, chains, etc.;
- Valuables are in whose custody;
- If consent is claimed by victim or trafficker, determine if it was under threat, coercion, fraud, deception, abuse of power, inducement, etc.;
- Medical report to prove sexual exploitation, sexual violence;
- Age determination report for proving age of victim.

8. Prostitution in the vicinity of a public place (Sec. 7, ITPA, 1956) –

- Show that place is accessible to the public in general;
- Place is within a notified area or within two hundred meters from a place of worship/ educational institution/ hostel/ hospital/ nursing home or any such area notified by the Commissioner of Police or the District Magistrate or Sub Divisional Magistrate;
- If a brothel exists within the above area offence under this section will get established.
- If the offence takes place in a hotel, the license is liable to be suspended/ cancelled.
- Liability under provision extends to the keeper of a public place, the tenant, lessee, occupier or manager of the premises and the owner, lesser or landlord or their agents, provided they had the knowledge/ intention, which can be shown by detailed statements of the victims;
- Statements of neighbours, residents of building complexes, administrative/ management staff of residential complex.

For labour trafficking cases

9. Forced/ bonded labour –

- Where a trafficking victim is not getting minimum wages, the presumption shall be that the victim is a bonded labourer, regardless of age, and the onus of disproving this presumption is on the employer/ trafficker (as per People’s Union for Democratic Rights (PUDR) v/s Union of India⁵⁷);
- Any factor, which deprives a person of choice of alternatives and compels him/her to adapt one particular course of action may properly be regarded as ‘force’ and any labour or service which is

57 (1982) 3 SCC 235

compelled as a result of such 'force', it would be 'forced labour' (PUDR v/s Union of India);

- Whenever it is shown that a person is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic considerations received by him and is, therefore, a bonded labour (Bandhua Mukti Morcha v/s Union of India⁵⁸);
- Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor (Sec. 15, Bonded Labour Act);
- Other pieces of evidence - age of child, hiring through placement agency/ agent, paying less than minimum wages/ no wages, paying lump sum to placement agency, victim statement on who brought them to employer and how they were brought, victim lives with employer, how many more people were working for the employer, nature of work, employer's knowledge about where the victim has been brought from/ family background, whether employer would have let the victim exercise the choice of discontinuing work.

5.2 Rights of victims during trial

- Physical safety⁵⁹
- Non-disclosure/ protection of identity of the victim-witness⁶⁰
- In cases involving POCSO Act, 2012 –
 - o Availability of support person, counseling services, compensation, public and private emergency and crisis services and assist in contacting them [Rule 4(2)(e), POCSO Rules, 2012].
 - o The CWC may appoint a support person to aid the child and family during pre-trial and trial processes [Rule 4(7), POCSO Rules, 2012].
 - o The State/District Legal Services Authority can also provide a support person or paralegal volunteer for pre-trial counseling and to accompany the child for recording of the statements.
 - o Special Courts should recognize the support persons appointed by the CWC or the family directly and allow them to be present during the child's evidence. They should also allow them to also convey the child's questions and fears about the evidence recording process. (Rule 4(8), POCSO Rules, 2012).
 - o Right to legal advice and counsel and right to be represented [Sec. 40, POCSO Act, 2012; and Rule 4(2)(f), POCSO Rules, 2012].
 - o Information about the case, such as, status of investigation, arrest of the suspected offender, filing of charge-sheet, court schedule, bail, release or detention status, final verdict and sentence imposed [Rule 4(12), POCSO Rules, 2012].
- Providing interpreter when the victim does not speak the language of the court (for child victims Sec. 38 of POCSO Act, 2012).
- Providing special educator if any victim is hearing or speech impaired, or has any other mental disability (for child victims Sec. 38 of POCSO Act, 2012).
- ***In camera proceedings*** – In trials involving adult female victims *in camera* trial procedures are mandated under Sec. 327 (2), Cr. PC, where charges pertain to Sec. 376 IPC; and that a woman

58 (1982) 2 SCC 253

59 Refer details in segment 4.4 of Module 4

60 *Ibid*

Judge or Magistrate shall conduct the *in camera trial* as far as practicable [(Sec. 327 (2) (Proviso) Cr. PC].

- o In trials involving child victims the Special Court shall try the case *in camera*, in the presence of parents of the child or any other person in whom the child has trust or confidence (Sec. 37, POCSO Act, 2012).
 - o Earlier in the Sakshi⁶¹ judgment, the Supreme Court had upheld in-camera proceedings; video conferencing; providing a screen or some arrangements whereby the victim-witness does not see the accused; questions to be put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, to be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language, which is clear and is not embarrassing; and allowing the victim of child abuse or rape, sufficient breaks as and when required while giving testimony in court. All these directions from the Sakshi judgment have now been incorporated in the POCSO Act, 2012.
- **Victim-witness testimony through video-conferencing** - If victim has been repatriated back to the family, or her country, and is unwilling/ unable to come to trial court for her testimony, evidence may be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence [Sec. 275 (1) (Proviso), Cr. PC]. For trials involving POCSO Act, 2012, the Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate. The Court may record the statement of a child through video conferencing or by utilizing single visibility mirrors or curtains or any other device (Sec. 36).
 - o Recording of evidence by way of video conferencing vis-à-vis Sec. 273 Cr. PC has been earlier held to be permissible in *State of Maharashtra v/s Dr. Praful B Desai*⁶² by the Supreme Court.
 - o In a case before High Court of Delhi, *Court on Its Motion v/s State*⁶³, the applicant, NGO Prajwala sought directions for the trial court to record evidence of some of the witnesses in a case arising out of rescue of girls from a brothel from Delhi. Previously, the trial judge had declined the request of the NGO to record the statement of the witnesses through video conferencing, mainly on the ground that neither the State Government nor his Court had such a facility and therefore, allowing such an application at this juncture would consume a lot of time, with the result that the trial would be delayed.
 - o The NGO petitioner stated that bearing in mind the rehabilitation and reintegration of the victims of trafficking, compelling the victims who were to be examined as prosecution witnesses, to come to Delhi from distant places, where they had been rehabilitated, would not only cause immense inconvenience to them, it would also be detrimental to their personal lives. However, the victims were willing to have their statements recorded by means of video conferencing from the stations they were presently residing/ rehabilitated.
 - o After exploring all possibilities for video conferencing and bearing in mind the fact that it would definitely be inconvenient for the witnesses, placed in peculiar circumstances, to come to Delhi for the purpose of recording of their statements, the High Court of Delhi directed the trial court to fix a date for recording the statements of the witnesses, based in the State of Andhra Pradesh by video conferencing. The High Court in this case referred to the judgment

61 Sakshi v/s UOI: (2004) 5 SCC 518

62 2003 Cr. LJ 2033

63 CrI. M. 1467 / 04 in CrI. W. 532 / 1992

of SC in *State of Maharashtra v/s Dr. Praful B. Desai*, and stated that while recording evidence by video-conferencing, the safeguards enumerated in this decision will be borne in mind by the trial court.

- **Additional help for prosecution/ private pleaders** – Under Cr. PC Sec. 301 (2), victims can apply to the court for being represented by a private counsel. It is within the judge’s discretion to determine whether the victim may employ a private lawyer. The prosecutor in charge of the case shall conduct the prosecution, and the private pleader shall work under the directions of the Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.
 - o For child victims where POCSO Act, 2012 is invoked, family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under the Act (Sec. 40).
- Special procedures for child trafficking trials involving POCSO Act, 2012 (Sec. 33) –
 - o The Special Public Prosecutor, or the defence lawyer shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.
 - o If necessary, frequent breaks for the child shall be permitted during the trial.
 - o The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.
 - o Child shall not be called repeatedly to testify in the court.
 - o The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.
- In addition, the prosecutor may request the court for additional protection measures for victims in trafficking cases, such as -
 - Records of the court proceedings are sealed;
 - Screens for witnesses to keep the victim-witness out of view of the accused and others in the court;
 - Separate waiting rooms for victim-witnesses and suspects and defence witnesses;
 - Create awareness among the court staff of what they should do to help protect victim-witnesses;
 - Secure routes into and out the court.

Case law - The Supreme Court in PIL (56/2004) filed by NGO Prajwala for comprehensive victim protection protocol, delivered the final ruling in Dec. 2015 directing the government to frame a comprehensive legislation on human trafficking and setting up of a Organized Crime Investigation Agency. The government has since then brought out the Human Trafficking Bill, which is currently pending passage with the Parliament.

5.3 Typical Defences in a Human Trafficking Case

Whilst it is not possible to predict all possible reasons that the defence lawyer may raise in favour of the accused person in a trafficking case; the prosecutor can anticipate some common defences that are raised in all trafficking trials. The most common defence strategy would be to deny the provability of the

elements of the crime of trafficking on the basis of available evidence when charges are filed under IPC, ITPA, POCSO Act, labour laws, child marriage law, transplantation of organs law, and others. The other approach by the defence/ accused is question the credibility of the victim as a person who cannot be believed.

Listed below are the common examples of defences often seen in trafficking cases, and the preparation by the prosecutor to deal with these challenges.

1. Consent

The first reason that is usually given by trafficking offenders in trafficking trials is that the victim was neither coerced nor deceived. He/ she agreed to work as per terms and conditions agreed upon earlier. As a result, the 'means' (that is, threat, force, coercion, abduction, practising fraud, or deception, abuse of power, inducement, etc.) is not established and the crime of trafficking is not proved.

To prove that there was/ is 'consent' from the victim, the defence may show -

- The victim did not escape or run away;
- The victim was not physically restrained by the use of chains, locks, or by other means;
- The victim never complained to anyone in the past.

In cases involving trafficked children, the defence normally states that the parents/ guardians of the child had 'willingly' sent the child for 'work' on the basis of pre-agreed conditions.

Responses by the Prosecutor -

Sec. 370 of IPC, which defines 'Trafficking of Person' in Explanation 2 states – 'the consent of the victim is immaterial in a determination of the offence of trafficking'. Thus, consent cannot be used as a defence to absolve a person from criminal responsibility in view of this statutory provision.

Sec. 2 of the ITPA defines - 'child means a person who has not completed the age of sixteen years'; and 'minor means a person who has completed the age of sixteen years but has not completed the age of eighteen years'. POCSO Act, 2012 makes any sexual act against a child defined as under eighteen years of age, a criminal act, and there is no question of 'consent' at all under this law. Thus, children cannot 'consent' to sex trafficking/ prostitution/ other forms of sexual exploitation, such as, pornography, etc. by virtue of these statutory provisions.

Consent w.r.t. Sec. 7 and/ or 8 of ITPA, 1956 – the rescue team will always be confronted with questions of consent especially, under Sec. 7 (prostitution in or in the vicinity of public place) and Sec. 8 (seducing or soliciting for purpose of prostitution). There would also be questions raised of whether such a person is a 'victim' or 'accused'. Legally speaking, every criminal act should have not only *actus reus*, but also *mens rea*. If *mens rea* is absent, the person cannot be held guilty of prostitution under these Sections of ITPA. It is known that the trafficked women/ girls are made to solicit under duress, coercion, lure, deceit or compulsion by the traffickers and other offenders. If there was no "informed consent", the woman should not be prosecuted for soliciting.

Consent vis-à-vis Rescue - Questions are often raised regarding whether all persons found in a brothel at the time of rescue operation are required to be 'rescued' and produced before the Magistrate. Recent

experiences of NGOs has revealed that as per a new modus operandi, women/ girls/ brothel keepers produce an affidavit during a rescue operation stating that they are “voluntarily” and “consensually” in prostitution. Or in cases of prostitution in apartments, or through online social media, the woman/ girl would always claim to be doing the work ‘willingly’. The concept of ‘consent’ vis-à-vis rescue under the ITPA may be elucidated with reference to the relevant provisions as follows: -

- i. Section 15(4), ITPA - The special police officer ... entering any premises ... shall be entitled to remove all the persons found therein.
- ii. Section 15(5), ITPA - The special police officer ... after removing the person ... shall forthwith produce the person before the appropriate Magistrate.

Under these provisions **ALL** persons [such as, the accused, the persons who were being exploited (adults, children and minors) and customers] found in a brothel at the time of a rescue operation are to be removed from such premises, and are to be produced before the Magistrate. The section does not make any distinction that only children/ minors in prostitution and adults desiring to be rescued are to be removed from the brothel.

- iii. Section 15(5A), ITPA - Any person who is produced before a Magistrate shall be examined ... determination of the age of such person ...

It is necessary to determine age of the victim so that those under 18 years are dealt with under the JJ Act, 2015, and those above 18 years are dealt with under ITPA, 1956. It is not always feasible to ascertain whether a victim is a child/ minor or adult by merely looking at the individual. So if ALL victims are not produced before the Magistrate, children and minors would not get rescued (if they are presumed to be adults).

- iv. Sec. 17 and 19 of ITPA provide that all persons in prostitution should be offered an opportunity for rehabilitation.

It would not be feasible to expect an adult woman at the time of rescue to immediately decide whether she wishes to avail of the rehabilitation option or not. The rescued woman may not have the necessary information regarding different government schemes / programmes for rehabilitation; or her children, belongings, jewelry, money, or other property may have been withheld by the brothel keeper. Realistically, counseling for rehabilitation can only be done once the woman is separated from the brothel - keeper and other perpetrators, and is in an environment where she can make independent and informed decisions.

The Child Labour Act, 1986 provides different definitions for ‘child’ and ‘adolescent’, prohibiting certain forms of child labour and making them punishable; and other areas are regulated so that working children receive some protection. During trial, ‘consent’ of child/ parents/ family/ guardians will have to be examined on the touchstone of this law, including the Bonded Labour Act, 1976.

Prosecutors should also showcase that the victims are often promised a good deal during their recruitment, and once trafficked are pushed into extreme forms of exploitation, whether it is sex or labour trafficking. For instance, a young girl/ woman may be promised work as a receptionist in an office, but is slowly pushed into dancing in the beer bars and hotels; or a child’s parents may be promised that the child will have to work only 4-5 hours a day in a factory doing simple odd jobs and will be provided

education and a salary, but the work is in a textile factory handling chemicals where the child works 14-15 hours with minimal salary; a young woman is promised work as a domestic helper, but is pushed into working in a massage parlour, which is a façade for prostitution; or a young woman is 'convinced' by her boyfriend that she should open her own Facebook page and solicit customers for sex, and they both can make quick money and then 'settle' into marriage later; and many more examples like this. In all such instances, even if there is 'consent' in the beginning by the victims themselves or their families, there is a world of difference between what was promised during recruitment and the actual exploitation that the victims undergo – thus, vitiating the initial 'consent'.

Prosecutors should obtain reasons from the victim outlining their continuation in the exploitative work or in prostitution, which could be as a result of several factors – physical safety of self and family; intimidation; blackmail; coercion – physical, psychological or emotional; 'Stockholm syndrome'; manipulation by trafficker to make the victim believe that they were in a 'husband-wife'/ 'lovers' relationship; stigmatization upon revelation of their present situation by the traffickers to their family/ community; withholding of passports and or other travel documents by traffickers; withholding of wages by the traffickers; invalid or irregular documentation (for instance, having been smuggled into the destination country for 'work'); lack of knowledge and information on whom to approach for help in the new city/ country; lack of knowledge of local language and inability to communicate with local people; and several others.

The stereotypical understanding of victims being chained with locks and keys, never being allowed to step out, etc. - should be challenged by the prosecutor – as in the new forms of control, there are hidden unseen chains in the minds of the victim, making them continue in the exploitative situation. Victims themselves don't know/ realize/ see themselves as – 'victims', and hence, continue with the exploitation, never complaining to anyone. This is especially true of children. Also, in majority of cases, victims are far away from homes, do not speak the language where they are, and do not know where to complain and who can help them. The difficulties are compounded and multiplied many times over w.r.t. child victims of any kind of exploitation and with foreign victims.

2. Misunderstanding

Another explanation generally given by the defence lawyer is that there has been some misunderstanding. This is especially so in cases of child labour, and domestic work. The accused is a good person who was just trying to help the victim and the family; that the accused has shown the victim kindness by helping the victim get a job, giving him/ her a place to stay, and paying him/ her for work; that the victim is in a far better condition than in his/ her own poor family; that the child victim/ parents of the child misrepresented to the accused the age of the child, claiming that he/ she was not a minor and therefore, legally eligible to work.

Responses by the Prosecutor –

The prosecutor should refer to the child labour and bonded labour laws for proving if the employer could have legally employed the child at that age; and other laws for other types of trafficking.

Proof should be rendered on **who** brought the child to the employer, **how** the child was brought, and **how many** intermediaries were there in this process - to prove the different elements of trafficking under Sec. 370, IPC.

If the child could have been legally employed, what were the conditions of work, hours of work, breaks, salary, education opportunities, health, etc. to prove exploitative work conditions. If the case pertains to an adult, reference should be drawn under various labour laws to prove the exploitative work conditions along with proving the elements of trafficking under Sec. 370, IPC.

3. Credibility

The third and most forceful defence repeatedly raised by the accused's lawyer is that the victim's credibility is doubtful and as such, s/he should not to be believed due to the following reasons -

- Prior inconsistent statements as reflected in the FIR (if any), 161 and 164 statement;
- Contradictory versions from the victim during testimony, particularly in response to cross examination;
- Evidence not supporting the victim's narration;
- The victim has a reason to lie: to implicate accused due to previous enmity; to get benefits/ compensations given only to trafficking victims;
- The victim has in fact, committed the crimes as alleged by him/ her and should not be believed (especially in cases of sex trafficking);
- The victim crossed the borders illegally himself/ herself and approached the accused for work, and was merely provided work for his/ her sustenance.

Responses by the Prosecutor -

The best response by the prosecutor when the victim's credibility is challenged is sufficient and indisputable evidence to support the victim's story and to show that the accused's story is unsubstantiated and false. The prosecutor should work with investigators to develop additional corroborative evidence to strengthen any weak points in the case. For example, the prosecutor can support the victim's evidence of 'deception' by using the testimony of witnesses (neighbours, etc.) who may have heard the traffickers make false promises to the victim or victim's family during the recruitment process.

The prosecutor must get the victim's clarification for any inconsistency. If the victim failed to tell the police in the first instance during investigation, that the traffickers threatened him/ her with physical harm or causing harm to the family members, the prosecutor should find out from the victim why he or she did not tell the complete truth. The victim's answer may be that he or she was confused, afraid of retaliation, or believed that the police were not going to be helpful and could not be trusted.

After the prosecutor has obtained the victim's explanation regarding the inconsistency of his/ her statements, the prosecutor must evaluate the reliability of that explanation. This may sometimes require additional investigation to verify the victim's justification. If victim says that s/he feared for the safety of their family, evidence should be developed to show that the traffickers did indeed know where the victim's family lived. If victim says that s/he did not run away because the traffickers told them that the police would arrest them and return them to the traffickers who would then beat them, corroborating evidence from another victim or from a cooperating accomplice can be taken to prove this point.

If required, the prosecutor can make an application to the court for further investigation or the Court may itself order for further investigation to bring out more facts under Sec. 173 (8), 242 (3), 311, 319, 216 of Cr. PC and present evidence to existing charges or even alter the charges.

Approach during trial – One advisable approach for dealing with prior inconsistencies in the victim’s statements is for the prosecutor to ask questions to the victim and bring them out in a straightforward manner during the victim’s testimony/ examination, and ensure that the victim is prepared to provide to the court a reasonable explanation. The risk in not raising the issue by the prosecutor and allowing the defence lawyer to bring up the issue during cross-examination of the victim-witness may bring a question mark on the credibility of the victim and his/ her account. It may also appear to the judge that the victim and the prosecutor were trying to hide important issues pertaining to the case. There is a possibility that any explanation offered by the victim for the first time to the defence lawyer only when encountered during cross-examination may not be accepted as credible by the judge.

4. Payment for Work

Defence will definitely refer to payments made to the victim for the ‘work’ performed by him/ her. If the victim has received payments, food, shelter, etc., then how does it become exploitation? As proof for this claim, the defence would argue/ show – especially in cases of labour trafficking -

- Payments received by the victim and signatures on the payment receipts;
- Signature on registers reporting for work trying to show that he/ she was part of the regular workforce.

Responses by the prosecutor -

In labour trafficking cases, there is a big possibility of such receipts, registers, accounts, vouchers, bank accounts, etc. being shown as evidence. However, the touchstone of examining if there was indeed trafficking – will be proving the elements of Sec. 370, IPC – through the processes of how the victims were brought to the place of work. Payment, by itself is no proof that there was no trafficking. Besides, deeper examination will show that these payments/ salaries, etc. were much lesser than those prescribed under the Minimum Wages Act, and other similar laws. The conditions of work prescribed in all the labour welfare laws, would also have been violated.

But the first and foremost question that will remain, even if the defence shows some proof of payments, will be - **who** brought the rescued person to the employer, **how** was the person brought, and **how many** intermediaries were there in this process - to prove the different elements of trafficking under Sec. 370, IPC.

In sex trafficking cases, such receipts will not be there, showing payments received by the victims for the sex transactions made in traditional brothel based exploitation. Victims may have some money on them during rescue, but that does not prove ‘payments’ on a regular basis. In the newer forms of prostitution transactions, where the entire process has moved online, even payments would be made and received online. Traffickers will always try to show that the victim had her own bank account and the money was directly going into her account, so where is the question of exploitation? But statements of victims, showing that they received a very small amount of the actual money paid by ‘customers’, and that they had wanted to be out of this exploitation, will set up the prosecutor’s response to the defence.

5. Panch Witness is a ‘Stock Witness’

The defence lawyer will commonly allege that the *panch* witness is a stock witness; that is a person who is at the beck and call of the police and who obliges the police with his/ her tailored testimony; and has

been used by the police in the rescue operation. Such witnesses are highly disfavoured by the courts.

Responses by the prosecutor –

The *panch* witness should normally be two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situated, and the special police officer or the trafficking police officer may issue an order in writing to them to attend and witness the search under Sec. 15 (2) of the ITPA, 1956. This witness can also be the NGO representative, which accompanies the police team for rescue. It can be any other government official also.

5.3.1 General strategy by the prosecutors

'Mapping of harm' to the victim – A useful approach, especially in sex trafficking cases, as has been revealed by good practices followed in several investigations and prosecutions, is 'mapping the harm' done to the victim as a result of repeated rapes, violence, abuse and illnesses. The harm should be mapped for its physical, psychological, emotional, and financial impact. Trafficking crimes are unlike other crimes that leave the victim shattered, requiring great effort and lot of time to rebuild lives. This needs to be brought out again and again during the entire trial, whilst presenting evidence on all charges.

Use of an expert - With respect to mapping the harm, explaining the behaviour of the victim during their exploitative phase, continuing into prostitution without making efforts to escape or complain, the initial statements that they are 'willingly' into prostitution, etc., the prosecutor can consider using an expert as an effective tactic during trial. An expert can refer to academic studies and research papers discussing how victims of long-term abuse, such as trafficking victims, act in predictable ways. The expert can explain victim psychology and provide a scientific rationale for why victims do not escape. The expert may be able to testify that the conduct of the victim in the case at hand is consistent with the behaviour of other victims under similar circumstances.

This can be very effective testimony. But the prosecutor must ensure that the expert is properly qualified and understands all issues of trafficking in persons comprehensively. The prosecutor should also anticipate how the defence lawyer might cross-examine the expert and prepare the expert accordingly.

Case law - Expressing concern about the treatment of victims of sexual offences in the courts during their cross-examination, in *State of Punjab v/s Gurmit Singh and Others*⁶⁴, the Supreme Court observed: "There has been lately, a lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of the Evidence Act regarding relevancy of facts notwithstanding, some defence counsels adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of crime, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again

⁶⁴ (1998) 2 SCC 384

and again, in unfamiliar surroundings what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as ‘discrepancies and contradictions’ in her evidence”. The victim in this case was a 16-year old girl who was abducted and raped by three men.

The Supreme Court in the case of *Bharwada Bhoginbhai Hirjibhai v/s State of Gujarat*⁶⁵ laid down many important rules which have a bearing on corroboration of evidence in cases of sexual assault. The accused was charged with sexual misconduct with two young girls, between 10-12 years, who used to come to his house to play with his daughter. The Court outlined 7-reasons because of which, a great deal of importance should not be attached to minor discrepancies in the testimony of the victims –

- (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video - tape is replayed on the mental screen.
- (2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence, which so often has an element of surprise. The mental faculties therefore, cannot be expected to be attuned to absorb the details.
- (3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person’s mind, whereas it might go unnoticed on the part of another.
- (4) By and large, people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purpose of the conversation. It is unrealistic to expect a witness to be a human tape – recorder.
- (5) In regard to the exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again it depends on the time – sense of individuals, which varies from person to person.
- (6) Ordinarily a witness cannot be expected to recall accurately the sequence of events, which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.
- (7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him – perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

The court further held, “On principle, the evidence of a victim of a sexual assault stands on par with the evidence of an injured witness”.

5.4 Final Orders in trafficking cases

5.4.1 Sentencing

With regard to trafficking offences, prosecutors should bear in mind some crucial aspects of sentencing, in the event of the court convicting the accused person(s). Since there is judicial discretion in the imposition of a sentence, it would be imperative to bring out all aspects of the crime and its impact on

65 1983 (3) SCC 217

the victims, and ask for the highest punishments laid down by the law.

The prosecutor can raise the following points praying for higher sentences -

- Past criminal record of the accused, can be of relevance for sentencing considerations, particularly when they have been previously convicted and are repeat offenders for trafficking offences or related conduct such as, offences involving coercion or violence -
 - o Any previous conviction of the accused in trafficking case
 - o Any previous charging of the accused in a trafficking case, even if it led to acquittal
 - o Any previous conviction of the accused in case involving sexual violence against woman or child, which may be unrelated to trafficking
- The accused knowingly created a grave risk of death or serious bodily injury to the victim –
 - o In sex trafficking, victims may be exposed to a number of health risks and diseases ranging from sexually transmitted infections, including HIV/AIDS.
 - o Poor living conditions found in all forms of human trafficking may also expose the victim to a host of other diseases.
 - o Manufacturing, construction, agricultural and other industrial processes may expose trafficking victims to risk of injury or illness, particularly where equipment is dangerous or poorly maintained. The exposure to the potential injury or illness is the key point. It is largely irrelevant whether or not any actual injury took place.
- The crime is especially heinous and cruel, thus manifesting exceptional depravity of the accused -
 - o The continuous rape, beatings, repeated abortions, long hours of work, violence, exploitation and violation of a person's autonomy makes human trafficking cases absolutely horrific. Victims of sex and labour trafficking are often subjected to heightened levels of brutality.
- Higher sentences for offences against children and minors as prescribed under the ITPA, 1956.

Case law - There are a plethora of rape and sexual assault cases⁶⁶ where the Supreme Court has held time and again, that courts are expected to deal with such cases against women and children with utmost sensitivity, sternly and severely. Sentences should not be reduced by High Courts on grounds of illiteracy or poverty or dependence of family on the accused, or young age of the accused. Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the court's verdict in the measure of punishment. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed - of the accused or the victim - are irrelevant considerations in sentencing policy. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced.

66 State of A.P. v/s Bodem Sundara Rao: (1995) 6 SCC 230; State of Punjab v/s Gurmit Singh: (1996) 2 SCC 384; State of Karnataka v/s Krishnappa: (2000) 4 SCC 75

5.4.2 Compensation

Compensation, which is reparation, for injury or harm, suffered by a victim of crime, would not necessarily remove the traumatic effects of the process of human trafficking but it will improve the chances of the victim's psychological recovery and eventual reintegration into society. It also offers economic empowerment and protection from being re-trafficked.

Compensation for all victims under Sec. 357 and 357A of Cr. PC

Sec. 357 (1) of the Cr. PC provides for compensation to be ordered by the Court when passing judgment and that imposes a sentence of fine or a sentence of which fine forms a part. This compensation can be applied towards defraying the expenses properly incurred in the prosecution; or to the victim for any loss or injury caused by the offence. Sec. 357 (3) further states that when a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay compensation, to the person who has suffered any loss or injury by the act of the convicted accused. An order may also be made by an Appellate Court/ High Court/ Court of Session, when exercising its powers of revision under Sec. 357 (4).

Sec. 357A⁶⁷ provides for victim compensation scheme under which every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim/ dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority (DLSA) or the State Legal Service Authority (SLSA), shall decide the quantum of compensation to be awarded to the victim [Sec. 357A (2)].

If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Sec. 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation [Sec. 357A (3)].

Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim/ dependents may make an application to the DLSA or SLSA for award of compensation [Sec. 357A (4)].

On receipt of such recommendations or on the application of the victim, the DLSA or SLSA shall, after due enquiry award adequate compensation by completing the enquiry within two months [Sec. 357A (5)].

The DLSA or SLSA, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit [Sec. 357A (6)].

Compensation for child victims of sex trafficking under POCSO Act, 2012

Special Courts established under POCSO Act, 2012, are mandated to direct payment of compensation

67 Inserted by Code of Criminal Procedure Amendment Act, 2008

(interim and final) for physical or mental trauma caused to the child or for the child's immediate rehabilitation. They should determine quantum and direct the State Government to pay the compensation within 30 days (Sec. 33(8), POCSO Act read with Rule 7, POCSO Rules).

Compensation for child victims of labour trafficking under The Child Labour Act, 1986

The child labour law also provides for rehabilitation of rescued child labourers. All children and adolescents rescued from employment in contravention of the provisions of the Act must be rehabilitated under Sec. 14C. The Act also creates a Child and Adolescent Labour Rehabilitation Fund, in each district or for a group of districts. All fines collected from offenders under the Act are to be credited to this Fund in addition to Rs. 15,000, which will be given by the government for each rescued child/ adolescent towards rehabilitation.

Compensation for all victims for bonded labour

For rescued **child/ adult bonded labourers**, the Bonded Labour Act does not contain provisions for compensation. However, the Ministry of Labour and Employment has brought out the *Central Scheme for Rehabilitation of Bonded Labour* (1978, revised in 2016). The Scheme provides for the following financial compensation and other rehabilitation packages upon rescue.

Currently, the Scheme offers the following compensation –

- Adult male bonded labourer - Rs. 1 lakh
- Children including orphans or those rescued from organized and forced begging rings or other forms of forced child labour, and women - Rs. 2 lakhs
- In cases of bonded or forced labour involving extreme cases of deprivation or marginalization such as trans-genders, or women or children rescued from ostensible sexual exploitation such as brothels, massage parlours, placement agencies etc., or trafficking, or in cases of differently abled persons, or in situations where the District Magistrate deems fit - Rs. 3 lakhs.

The scheme provides for creation of District Bonded Labour Rehabilitation Fund with a permanent corpus of at least Rs. 10 lakh at the disposal of the District Magistrate for extending immediate help to the released bonded labourers.

Compensation for all victims under the Central Victim Compensation Fund Scheme⁶⁸

The Central Scheme details the minimum amount of compensation to be paid for particular offences, and thereafter, the States are at liberty to formulate their own victim compensation schemes and determine the quantum of compensation, which can be more than the Central Scheme but not less than the stated amounts. States have formulated their own Schemes for victim compensation⁶⁹.

Compensation amounts from the Central Scheme relevant to TIP victims are as follows –

- Rape – 3 lakhs
- Physical abuse of minor – 2 lakhs
- Rehabilitation of TIP victim – 1 lakh

68 http://mha.nic.in/sites/upload_files/mha/files/CVCFGuidelines_141015.pdf

69 <http://mha1.nic.in/par2013/AnnexLSQNo203For220714.PDF>

Child victims of the above offences below the age of 14 years are eligible to receive 50% additional of the sum of compensation provided above.

Compensation for victims under The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Victims of trafficking can claim the following amounts from the state government as hereunder⁷⁰ -

- *Begar* or other forms of forced or bonded labour – Rs. 1 lakh to the victim.
- Performing, or promoting dedication of a Scheduled Caste or a Scheduled Tribe woman as a devadasi - Rs. 1 lakh to the victim.
- Intentionally touching a Scheduled Caste or a Scheduled Tribe woman without consent, using acts or gestures, as an act of sexual nature; Sec. 354A of IPC - Sexual harassment - Rs. 2 lakhs to the victim.
- Rape - Rs. 5 lakhs to the victim.
- Gang rape - Rs. 8 lakhs and 25,000 to the victim.

The amounts are to be paid by the state within 7 days of the incident being reported, either in full or at various stages of the investigation and trial.

Prosecutors and courts should endeavour to get compensation to all victims, which will provide the first step and the basis for an effective rehabilitation. Prosecutors should guide victims to obtain compensations awarded under various statutory provisions and government schemes, even before the trial.

Interim relief/ compensation – The Supreme Court has stated in a case⁷¹ - “If the court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the court the right to award interim compensation”.

In another case⁷² of gang rape of a Bangladesh national by railway employees, the SC granted her compensation holding that rape is an offence, which is violative of the Fundamental Rights of a person under Article 21 of the Constitution of India; even those who are not citizens of India will be entitled to the protection of their lives in accordance with the Constitutional provisions. The court also applied the doctrine of vicarious liability of the state.

Prosecutors may refer to both the precedents above and file applications for interim relief/ compensation to all trafficking victims, and specifically for foreign victims.

5.4.3 Appeal in cases of acquittal/ lower sentences

If a trafficking case results in conviction with a lesser sentence, the prosecutor should file an appeal to the High Court against the sentence on the ground of its inadequacy (Sec. 377, Cr. PC). Prosecutors should use the reasoning in trafficking cases as provided above, in praying for higher sentences to the accused.

70 Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, as amended on 14th April 2016 at -<http://socialjustice.nic.in/writereaddata/UploadFile/PoA%20Rules,%202016%20.pdf>
Accessed on 25 March 2018

71 Bodhisattwa Guatam v/s Subhra Chakraborty: AIR 1996 SC 922

72 The Chairman Railway Board & Ors. v/s Chandrima Das & Ors: AIR 2000 SC 988

If a trafficking case results in an acquittal, the prosecutor should file an appeal to the High Court against the acquittal (Sec 378, Cr. PC).

The powers of the Appellate Court vis-à-vis an appeal filed before it (Sec. 386, Cr. PC), include – setting aside an order of acquittal or enhancement of sentence.

Conviction and higher sentences gives the victims a sense of ‘closure’, a vindication of their sufferings, and a beginning of a new life after the completion of the trial, knowing that their tormentors are in jail, and that they can move on in life without any fear or threat.

5.5 Closure of places of exploitation

The ITPA, 1956 in Sec. 18 provides for procedures to evict offenders and closure of brothels – before the trial and conviction and after conviction in a trial. These are very powerful provisions, which should be utilized by the police and the courts in every case to shut down the illegal trade. Closure of premises without a trial or conviction ensures that the traffickers, who are able to obtain bail immediately after arrest, cannot come back to the same premises and start the use of premises for prostitution all over again.

5.5.1 Closure of premises in sex trafficking cases

Eviction before trial/ conviction [Sec. 18 (1)] under ITPA, 1956 - A Magistrate (District Magistrate or Sub-divisional Magistrate) may –

- on receipt of information from the police or otherwise,
- that any place within a distance of 200 metres of any public place [(Sec. 7 (1)),
- is being run or used as a brothel by any person,
- issue notice on the owner, lessor or landlord of such place,
- to show cause within 7 days of the receipt of the notice why the same should not be attached for improper use,
- and if, after hearing the person concerned, the Magistrate is satisfied that the place is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders –
 - o directing eviction of the occupier within 7 days of the passing of the order;
 - o directing that before letting it out previous approval of the Magistrate shall be obtained –
 - during the period of one year, or
 - where a child/ minor has been found in the brothel, during the period of three years.

Eviction after conviction [Sec. 18 (2)] - A court, which convicts a person of an offence under Sec. 3 (Keeping a brothel or allowing premises to be used as a brothel) and Sec. 7 (Prostitution in or in the vicinity of public places) can pass the same orders as mentioned in point A above, without the issuance of the show cause notice to the convicted person.

No appeal – Orders passed by the Magistrate or Court under Sec. 18 (1) or (2), shall not be subject to appeal and shall not be stayed or set aside by the order of any court. These orders will cease to have validity after the expiry of one year or three years, as the case may be.

Suspension/ cancellation of hotel license - Licence for running a hotel, where its premises are being used for prostitution, can be suspended for a period of 3 months to 1 year under Sec. 7 (2). If offences

under this provision are committed against a 'child' or 'minor', licence of such hotel may also be cancelled.

5.5.2 Closure of premises in labour trafficking cases

The District Magistrate upon an application by the Investigating Officer through the proper authority, order detailed inspection of the place of labour exploitation to record the existing conditions in order to close that place under the provisions of the Criminal Law Amendment Ordinance of 1944 (Ordinance No. XXXVIII of 1944) which, deals with preventing the disposal or concealment of property procured by means of certain offences.

In tracing the financial trail of the illicit profits made through sex trafficking or labour trafficking, the Investigating Officer should investigate into unlawfully acquired property can be identified (S. 105 D Cr. PC), seized or attached (S. 105 E, Cr. PC); and if not already done, the prosecutor and the trial judge can ask for further investigation in this regard.

Similarly, the Magistrate can upon an application by the Labour Department order closure of the illegal factories and cancellation of registration of legal factories/ places of work under the Interstate Migrant Workmen (Regulation of Employment & Conditions of Service) Act 1979; The Factories Act, 1948; Shops and Commercial Establishments Act, and various other safety and welfare legislations.

5.5.3 Confiscation of assets of traffickers

The Investigating Officer should extend the investigation into the assets, movable and immovable, obtained from the trafficking crimes, by the traffickers and all other offenders in accordance with the procedure in Sec. 105 A-L of Cr. PC. In addition, the Criminal Law Amendment Ordinance 1944; the Prevention of Money Laundering Act, 2002; the Prohibition of Benami Property Transactions Act, 1988; the Prevention of Corruption Act, 1988; etc., may be utilized as and when applicable to the facts and circumstances of each case. If this aspect has not been investigated, then the prosecutor and the trial judge can ask for further investigation and evidence in this regard.

5.6 Rehabilitation and repatriation of victims of trafficking

Rehabilitation of victims of trafficking in persons

Rehabilitation is a continuous and parallel process along with investigation, prosecution and trial. Prosecutors and courts should be mindful of the positive and/ or negative impact of improper rehabilitation on the entire trial process. Physical, psychological and economic rehabilitation of the victim is undertaken by the supporting NGO or the government Shelter Home. Although the police and prosecutor do not have a direct role or intervention in the rehabilitation of the trafficked victims upon rescue, yet, all steps taken by them during rescue, and during investigation, if done with a victim-centred approach, plays a huge role towards effective holistic recovery and repatriation of the victim. However, judicial officers have a significant role to play in ensuring the rehabilitation of the sex trafficking victims as per the mandate of ITPA, 1956; and for other victims under provisions of other labour laws.

All actors of the criminal justice system need to bear in mind the requirement of victim-friendly approach at all stages, to create conducive atmosphere for the victim to cooperate in prosecution of the offenders.

Information on the available rehabilitation schemes, compensations to victims, along with interventions undertaken by government/ NGO protective homes towards becoming empowered survivors – is important to know, so that the prosecutor can also counsel victims, and send them for referral services, if required.

Rehabilitation includes –

- Civil rehabilitation – through making of documents such as, Aadhar card, opening bank account, Voters card, etc.
- Psychosocial rehabilitation – through effective and comprehensive counseling and therapy.
- Educational rehabilitation – through enrolment of child victims in schools, bridge courses, open schooling, etc. and adult victims in other educational courses.
- Economic rehabilitation – through vocational skill building courses, and job placements; and through victim compensation under different legislations and government schemes.
- Independent Home/ Out of Shelter Home rehabilitation – through assisting in setting up and managing Group Homes after economic rehabilitation.

Rehabilitation of trafficked (adult and child) victims is governed under different legal provisions -

Child victims under the JJ Act, 2015 - The authorities and procedures applicable for rehabilitation of **child victims** of trafficking, as a ‘child in need of care and protection’ are governed by the JJ Act, 2015. Even though the ITPA, 1956 and the POCSO Act, 2012 provide for rehabilitation procedures, the JJ Act, 2015 will be the overriding law in respect of all laws, procedures, processes w.r.t. trafficked children (Sec. 1 (4), JJ Act).

Supplementing the laws, the Integrated Child Protection Scheme [ICPS]⁷³ will also be applicable for rehabilitation and restoration of a trafficked child.

Any child who comes under the juvenile justice system has a right to rehabilitation services to foster social integration. Child Welfare Committees are the statutory bodies set up under the JJ Act, to deal with all aspects of care, protection, rehabilitation and restoration of the child.

When the child victim is produced before the CWC (Sec. 31 of JJ Act, 2015), the CWC determines firstly, if the child is in ‘need of care and protection’; followed by interim placement/ custody of the child; order the commencement of the care, protection and treatment of the child; and the final social reintegration and rehabilitation of the child.

The CWC may, depending upon the facts and circumstances of each case, place the child either in institutional care or restore the child with the family, after determination is done of the suitability of the parent/ guardian to take care of the child. For the said purpose the CWC would get a social investigation report conducted through the appropriate officers/ authorities (Sec. 30, 36 of JJ Act, 2015). In the alternative, a child may be temporarily placed in Children’s Home, Specialized Adoption Agency, with a ‘fit person’, foster home, open shelter home, ‘fit facility’, Protective Home, or any home run by any NGO.

The CWC would constantly monitor the long term rehabilitation of the child, where ever the child has been placed for the restorative services of - health, nutrition, assistance in obtaining IDs, education,

⁷³ The Integrated Child Protection Scheme: A Centrally Sponsored Scheme of Government – Civil Society Partnership, available at <http://childlineindia.org.in/CP-CR-Downloads/ICPS.pdf>

counseling, supervision, mental health interventions, referral services, legal aid, skill development, and any other services.

The JJ Act also provides for rehabilitative services after the child leaves the institutional care upon completion of 18 years, w.r.t. aftercare and sponsorships for medical, educational, nutritional and other needs (Sec. 45). Some of the aftercare services, which may be provided to children are⁷⁴ -

- community group housing on a temporary basis for groups of six to eight persons;
- provision of stipend during the course of vocational training or scholarships for higher education and support till the person gets employment;
- arrangements for skill training and placement in commercial establishments through coordination with National Skill Development Programme, Indian Institute for Skill Training and other such Central or State Government programmes and corporates, etc.;
- provision of a counselor to stay in regular contact with such persons to discuss their rehabilitation plans;
- provision of creative outlets for channelizing their energy and to tide over the crisis periods in their lives;
- arrangement of loans and subsidies for persons in after-care, aspiring to set up entrepreneurial activities; and
- encouragement to sustain themselves without State or institutional support.

Children are eligible for aftercare until they reach the age of 21 years or as per the order of the CWC or Children's Court. In certain exceptional cases, a child may be provided with aftercare services until they reach the age of 23 years (Rule 25(2), JJ Model Rules, 2016).

Case law – The Andhra Pradesh High Court in a PIL (13472/2006) filed by NGO Prajwala regarding the non-implementation of JJ Act (erstwhile 2000) gave a final direction for setting a committee headed by a sitting Judge to monitor effective implementation of the JJ law.

Adult victims of sex trafficking under the ITPA, 1956 - For **adult victims** rescued from sex trafficking, the appropriate Magistrate will take all necessary decisions w.r.t. the rehabilitation and repatriation of victims. The Home Investigation Report plays a crucial role in decision making regarding sending the victim back home or retaining her in the protective/ safe home for a specified duration. During the period of inquiry, the Magistrate may place the person in safe custody, for a maximum period of three weeks [Sec. 17(3)]. Post the enquiry, if satisfied that the rescued woman is in need of care and protection, the Magistrate may pass orders requiring her 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 [Sec. 17(4)]. A Protective Home refers to an institution set up by the Government/ recognized by the government under the ITPA, 1956 for the purpose of care and protection of victims of trafficking (Sec. 21).

All rehabilitation and referral services are provided by the government or NGO run Protective/ shelter Home, which include, health, assistance in obtaining IDs, education, counseling, supervision, mental health interventions, referral services, legal aid, skill development, and any other services.

In addition to procedures under ITPA, 1956, the Ujjawala Scheme of the Ministry of Women and Child Development, which is a "A Comprehensive Scheme for Prevention of Trafficking and Rescue,

⁷⁴ Rule 25(7), JJ Model Rules, 2016

Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation”⁷⁵, will be utilized by the government/ NGO protective home.

Assistance role of NGO - Under Sec. 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.

Case laws – The case of *In re: Exploitation of Children in the State of Tamil Nadu*⁷⁶ was about the nefarious activities in the orphanages in Mahabalipuram (Tamil Nadu) with several reported incidences of child sexual abuse within the institutions as well as child sex tourism. The Supreme Court dealt with several aspects of the implementation of the (then) JJ Act, 2000 including the need for provision of rehabilitative care and protection as envisaged in the Act; and reaffirmed the importance of rehabilitation and social re-integration and directed the state governments to ensure the provision of vocational training, skill development, preparation of Individual Care Plans, education, training of personnel, etc.

The High Court of Patna in *Apne Aap Women Worldwide Trust India v/s State of Bihar*⁷⁷ with specific reference to rehabilitation of victims of trafficking, gave the following directions, which could be usefully followed in other States also –

- The Social Welfare Department must establish adequate number of Protective Homes, Corrective Institutions in each district of the State to provide vocational training to victims. At least one Protective Home, Corrective Institution and One Stop Crisis/ Nirbhaya Centre must be established in every district at the earliest.
- Rescue must be followed up with protective care and vocational training to enable the economic independence of the victims for in the absence of training, victims may return to the same profession.
- The Directorate of Social Welfare must ensure the regular training of staff and caregivers at the Institutions housing victims of trafficking.
- Victims of trafficking must be issued identity cards in order to link them with various social security schemes.

Although much older in time, several judgments from PILs before Supreme Court in bonded labour matters on compensation and rehabilitation are still relevant, such as, *Bandhua Mukti Morcha v/s Union of India and Others*⁷⁸ (proper implementation of the bonded labour law and payment of minimum wages); *Neerja Chaudhury v/s State of Madhya Pradesh*⁷⁹ (several directions on the rehabilitation of bonded labourers); *Santhal Pargana Antyodaya Ashram v/s State of Bihar and Others* (Release Certificates to be provided to rescued bonded labourers)⁸⁰; *Public Union for Civil Liberties v/s State of Tamil Nadu &*

75 Ujjawala: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation, Ministry of Women and Child Development, Government of India [2016], available at <http://www.wcd.nic.in/sites/default/files/Ujjawala%20New%20Scheme.pdf>

76 WP 102/2007 [Supreme Court], Decided on 5 May 2017

77 2015 (1) PLJR 268

78 AIR 1984 SC 802

79 AIR 1984 SC 1099

80 1987 (Supplementary) SCC 141

Others⁸¹ (NHRC made the Nodal Agency for monitoring the rehabilitation of bonded labourers).

Repatriation of foreign nationals –

The trial court Magistrate/ Sessions Judge, public prosecutor, and Child Welfare Committee (if victim is a child) will be involved in the process of repatriation; along with the Ministry of External Affairs, Government of India, and the Embassy of the country from where the victims are, will be important stakeholders.

The Foreigner Regional Registration Offices (FRRO) is the primary agency to regulate the registration, movement, stay, departure and also for recommending the extension of stay in India. With respect to repatriation of rescued foreign victims, back to their countries and homes, there are two distinct procedures for SAARC country and non-SAARC country nationals. Under the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, rescued persons are accorded the status of victims, and are to be repatriated back to their source countries. In cases of victims of non-SAARC countries, the procedure to send them back home is called deportation.

The procedure for repatriation or deportation as appropriate is highlighted as follows -

1. Upon rescue of victims from exploitative situations (whether of sex or labour trafficking or any other type of trafficking), the preliminary procedures with respect to medical examination, producing before Magistrate will have to be completed by the police.
2. The Magistrate will give interim custody of the victim to the government/ NGO run Protective Home.
3. The police/ Investigating Officer in the case should inform the concerned Embassy of the country to which the foreign national belongs, along with as much documentation as possible (such as, copy of passport, valid visa, period of visa, etc.).
4. The Embassy is then required to do an investigation to ascertain if the proclaimed person is indeed their citizen or their citizenship validation. Most often, victims do not have proper documents (passport, etc.), and that may make the process of citizenship validation longer. If victims have all proper documents with valid passports and visas, then it is open for them to exit the country with their own documents with due procedure being followed.
5. In cases of SAARC country victims, the Indian NGO where the victim is provided shelter, can also liaise with their counterparts in the victim's source country for a Home Investigation Report and provide that report to the police/ Magistrate and the Embassy, to expedite the whole process.
6. In the absence of any documents held by the victims, and after completion of their investigation for citizenship validation, the Embassy will provide a one-time travel permit, to facilitate the movement of the person from India to the source country.
7. After this the Court where the trafficking trial is pending against the offenders, will call for the victim and record the statement with the involvement of an interpreter, if the victim does not speak the language of the court. The Court will then pass an order to repatriate or deport (as relevant) the victim back to her country.
 - o This is a very important step in the criminal trial, because the victim's statement is to be used as evidence later during the trial, in the absence of the victim.
 - o Only after the order of the court that no case is pending against the victim, the Embassy will provide the one-time travel Permit to the victim.
8. The police will then take this repatriation/ deportation order to the FRRO along with the victim,

81 (Writ Petition Civil No. 3922 of 1985)

for online registration procedures. Normally, a representative of the NGO Protective Home also accompanies the victim.

9. It is the moral obligation of the concerned Embassy to buy travel tickets for their nationals who have been rescued as victims of trafficking, and if they decline to do so, then the responsibility is normally taken up by the NGO.
10. Based on the date of the ticket, the FRRO provides an Exit Permit to leave the country.
11. In cases of repatriation of SAARC nationals, the police and NGO escort takes the victim to the airport for their onward journey. Based on the security concerns regarding the victims, the presence of the police escort is mandatory at all times. The escort handles all the repatriation papers, and the victim is taken to the source country, where the immigration officials will take a decision on sending her to the family or to another Protective Home.
12. In cases of deportation of non-SAARC nationals, the police and NGO escort takes the victim to the airport and hand over all papers to the FRRO at the airport. Further to this, is the responsibility of the FRRO to get the immigration clearances done (which is a lengthy process requiring anywhere between 2-3 hours). At the final port of embarkation before leaving the country, the deportation papers will be handed over to the pilot of the aircraft. At the port of final destination, the pilot will hand over the papers to the immigration authorities along with the victim.
13. The immigration authorities of the victim's source country will then decide on sending the victim either to the family or to a Protective Home initially.

5.7 Roles and Responsibilities of Stakeholders

Stakeholders	Responsibilities
NGO	<ul style="list-style-type: none"> • Assist in preparing victim-witness for Sec. 164 Cr. PC statement • Assist in preparing victim-witness for trial and testimony • Provide shelter, care, medical treatment, and support until completion of Home Investigation Report under ITPA, 1956 and Social Investigation Report under JJ Act, 2015 • Provide shelter, care and support, medical treatment, and vocational skill building, till complete rehabilitation and repatriation of victim • Assist in obtaining compensation and rehabilitation packages under government schemes • Help in settling down in group home post life in shelter homes
Prosecutor	<ul style="list-style-type: none"> ✓ Assist the IO in drafting strong charge sheet ✓ Prosecute the case ✓ Assist in extradition of foreign offender(s) ✓ Referrals along with the police to specialized services ✓ Coordinate with supporting NGO for preparing the victim to towards testimony in court
District Collector/ District Magistrate	For all appropriate actions under the Bonded Labour Act and Child Labour Act.
Department of Women and Child	Ensure delivery of all services to victims through the safe/ protective homes, CWC, etc.

Department of Health	For medical examination, age verification, immediate medical treatment of victims
CWC	For all actions as per the JJ Act, 2015 w.r.t. child victims
Juvenile Justice Board	For all actions as per the JJ Act, 2015 w.r.t. child in conflict with law
District Legal Services Authority	<ul style="list-style-type: none"> • Aid and assistance to the victim for legal aid and legal counseling • Assisting the victim to obtain compensation under the State Victim Compensation Scheme (Sec. 357A, Cr. PC) or any other scheme or to make an application to the Special Court for compensation (Sec. 33(8), POCSO Act and Rule 7, POCSO Rules),
Ministry of External Affairs, Government of India and concerned Embassy	Repatriation of foreign victims