

TRAFFICKING

Women and Children for Sexual Exploitation

*Handbook
for Law Enforcement Agencies
in India*

Dr. P.M. Nair

TRAFFICKING

Women and Children for Sexual Exploitation

Handbook for Law Enforcement Agencies in India [Revised edition 2007]

Dr. P. M. Nair
pm.nair@unodc.org
nairpm@hotmail.com



UNITED NATIONS
Office on Drugs and Crime



First Edition : Published by UNIFEM, New Delhi



UNITED NATIONS
Office on Drugs and Crime

Second Edition : Published by UNODC, New Delhi

Copyright © Dr. P. M. Nair. 2007

This views expressed in this publication are those of the authors, and do not necessarily represent the views of UNIFEM, UNODC and the United Nations or any of its affiliated organizations.

Kiran Bedi, I.P.S.
Director General
Tel. :011-24361849



Bureau of Police Research and Development
Ministry of Home Affairs, Govt. of India
Block No. 11, 4th Floor, C.G.O. Complex,
Lodhi Road, New Delhi-II 0 003
E-Mail: dgbprd@bol.net.in

Foreword

Irrefutable is the fact that trafficking of women and children is a grave violation of Human Rights and one of the most serious organized crimes of the day, transcending cultures, geography and time. The response by the agencies concerned in addressing the issues has been far from satisfactory, which has exacerbated the violations and harm to the trafficked persons. No wonder, the vulnerable sections have become more prone to trafficking. The spate of incidents reported from different parts of the country, where thousands of children remain untraced, is a symptom of the serious dimension of trafficking. In order to address this issue, there is a need for empowering the Law Enforcement agencies, i.e., police, prosecutors, judiciary, correctional administrators, development administrators as well as the social activists and the media so that they are fully empowered with knowledge, skills and appropriate attitude. This hand book, carefully drafted after stupendous efforts by Dr P.M.Nair, is an outstanding contribution in empowering each one in addressing human trafficking from a human rights perspective.

In order to understand the issues from a holistic perspective, it is essential that before embarking on problem-oriented policing and administration, the issues are understood through proper research. Dr.P.M.Nair has the rare experience of having integrated research into policing. As the Nodal Officer of the National Human Rights Commission and as the Principal Researcher-cum-Investigator in the Action Research on Trafficking in Women-and-Children, which was carried out during 2002-2004, he has understood the dimensions of trafficking in all its entirety. During 29 years of policing, including a decade in CBI, he has handled innumerable crimes of trafficking. The understanding, knowledge and expertise on the subject of anti-human trafficking, which he commands are indeed unique. Presently he is involved in carrying out the findings of the research into the action programmes. He brings to bear an evidence-based approach to this comprehensive handbook. The presentation of Dos and Don'ts and the modus operandi of going about preventing and combating trafficking, in a very lucid and user-friendly manner has made this book much in demand. I am delighted to note that Dr Nair has taken forward his efforts to carry out enrichment and value addition to the book and brought out a revised edition. I am sure this empowering hand book will be an asset to all levels of the police machinery and to all other stake-holders engaged in the fight against trafficking.


Kiran Bedi

Chandni Joshi
Regional Programme Director
UNIFEM South Asia Regional Office
New Delhi

New Delhi
November 2005

Foreword (First Edition)

This handbook is the outcome of experience and understanding of an officer, Mr. P.M.Nair, who is perhaps the best judge to know exactly what is required to evolve an understanding and sensitivity that can guide our Law Enforcement Agencies in India. While this is a book to consult when officers need to apply existing laws, it is as much an orientation that takes one through the processes involved in trafficking, available legalities, scope of existing laws and sensitized application of the same. It emerges with a clear administrative mandate in favour of rescuing the survivor holistically and systemically. My deep appreciation remains for Mr. Nair for his effort and devotion to the cause of women.

In preparing this sensitive and understood response of Law Enforcement Agencies to the day-to-day challenges involved in dealing with women and children victims and survivors of human trafficking and the traffickers, the substantive content of this manual reflects the actual felt needs of the law enforcement agencies. This manual clarifies concepts pertaining to this area. It seeks to work around debunking existing common parlance ideas and perceptions that invariably went against trafficked women and children, together with the processes of rehabilitation. Further the objectivity that Mr Nair brings to the subject completely rids the discussion of inbuilt presumptions of indignity that such an experience is bound to bring to the women.

UNIFEM's theoretical framework on the issue of trafficking in women and children is based on the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Equally important to UNIFEM are the national laws and National Plans of Action formulated and enacted for the protection of socially excluded and vulnerable groups of people from trafficking and all other forms of exploitation and abuse resulting from it, and for legal redress against perpetrators. UNIFEM consistently works to promote and develop a human rights approach to the empowerment and development of women. We strive through our efforts to bring about shifts in perspectives, attitudes and ways in which women's problems and vulnerabilities have been perceived. Our commitment in trafficking is focused towards enhancing commitment and institutional capacity of the community and cross border institutions to rescue trafficked girls, to rescue them before they reach their final destination through increased engagement of the community and law enforcement agencies.

This manual is a vital contribution to the literature on Trafficking in India. It is user-friendly and extremely lucid. I believe it shall be of immense usage for the entire development fraternity working on trafficking among women and children in India. I am positive that this manual will help build larger committed constituencies and partnerships for providing protection to women and children from trafficking and resulting abuse and exploitation. I look forward to effective difference to the lives of survivors, a reduction of women's trauma and pain and building a political, social, administrative and legal milieu of dignity for women.



Chandni Joshi



Foreword (Revised Edition)

1st March 2007

I can imagine few crimes more terrible than the sale of women and children for sexual exploitation and forced labour. This year – 2007 – marks the bicentennial of the end of the trans-Atlantic slave trade. Yet, the fact remains that slavery exists in our world today. This should fill us with shame. And with rage.

By the same token, there are few jobs that I consider more noble than fighting human trafficking and modern-day slavery. Trafficking is a global crime and it is organized. It is a multi-billion dollar industry that creates profits for those who are involved. It affects millions of people, particularly in poor countries.

In assisting governments and civil society to curb human trafficking, the United Nations supports the famous Three “P’s” of anti human trafficking – prevent, protect and prosecute. Some of our work includes awareness-raising campaigns at the local-level. Prevention also involves urging governments to do what they can to improve local economic circumstances to prevent the factors which cause risky migration in the first place. And here I would also argue that we need to do more to enlist the help of men and boys in the process. For it is their prejudiced view of the role of women in society that often serves as the basis for much violence, degradation and abuse of women and girls. Countries, cultures and communities must everywhere accept that one important measure of our civilization – and of our humanity – is to respect women and girls and to treat them as equals. On protection, we provide victim support.

And what of law enforcement – or prosecution? This is the third “P”. Yes, it is true that the Protocol to Prevent, Suppress and Punish Trafficking, Especially Women and Children, which entered into force on 25 December 2003, is in place. But the laws to which it gives international sanction must be applied effectively. Generally, in South Asia, I find that in most cases there is already a sufficient legal basis for effective action against traffickers. What is really needed is to empower the existing system.

This handbook represents one such effort. Our intended audience is policemen and policewomen as well as prosecutors and even the judiciary. The handbook offers practical insights which can be applied instantly by those responsible for law enforcement. Its author is one of those who has been committed for years to the fight against trafficking. He has waged his own war from within the Indian police establishment against the evil of human trafficking. His handbook’s insights are born of the practical realities of this struggle. I commend it to you.

I urge you to read it, use it and lend your own shoulder to this immense – and noble – struggle.

Gary Lewis
Representative
UNODC

Regional Office for South Asia

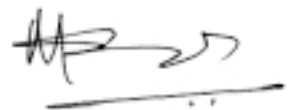
Preface

This is a hand book born out of necessity and demand. While countless women and children trafficked for commercial sexual exploitation (CSE) face the gravest violations of human rights, the response systems are unable to address or redress their grievances and, often, exacerbate the harm and sufferings these women and children endure. This is obvious from the fact that when, on the one side, the traffickers and exploiters are seldom brought to book, on the other side, the victims are frequently criminalized and persecuted. Such violations are mostly due to (a) inadequate knowledge of law, procedure and protocols, (b) inappropriate understanding of the issues and concepts, (c) want of genuine sensitivity to the issues and (d) the mindsets and prejudices which dictate and dominate the decision-making process. This Handbook encapsulates the required knowledge and skills relevant in the field and thus intends to encourage Rights-based attitudes which will empower the law enforcement officials.

As the Nodal Officer of the National Human Rights Commission (NHRC), I had carried out the Action Research on Trafficking in Women and Children in India during 2002-2004. In conjunction with this in-depth sociological research, which has been widely recognized to be a pioneering contribution in this field, I have participated as the chief subject expert in more than 150 training programmes in India, Nepal and Srilanka, for training police officers, judicial officers, correctional service officials, prosecutors and NGOs on addressing trafficking in women and children. Moreover my professional experience in the investigation and detection of crimes since 1978, coupled with the experience in the investigation of international trafficking crimes for the Central Bureau of Investigation (CBI) have exposed me to the various dimensions of preventing and combating trafficking. During the innumerable interactive sessions with police officials and other stakeholders, I recognized the demand to bring out a hand-book on the right procedures and protocols which could be used by law enforcement officials and others in dealing with the issues concerned. This hand book is dedicated to these comrades-in-arms whose demands helped me to undertake its creation.

This edition of the Hand Book is published by UNODC. I am grateful to Mr. Gary Lewis, Representative, UNODC ROSA. The first edition was published by UNIFEM for which I am grateful to Ms. Chandni Joshi, the Regional Programme Director of UNIFEM ROSA. My gratitude to Dr. Kiran Bedi for the unstinted support, guidance and inspiration.

This handbook is oriented in a Human Rights paradigm. I have tried to demystify the concepts, present a workable and doable protocol and SOP. The check lists of dos and dont's are ready reckoners and handy tools. The presentation in this hand book has been kept simple and straightforward, so that it may be easily utilized by all. An effort has been made to answer the frequently asked questions (FAQs) and bring out the frequently overlooked aspects (FOAs). Care has been given to make it user-friendly and self educating.



Dr. P. M. Nair

Table of Contents

1.	Clarifying Concepts	1
1.1	Trafficking vs. prostitution	1
1.2	Defining 'Trafficking'	2
1.3	The organised crime of trafficking	3
1.4	The Trafficked person	3
1.5	Child	3
1.6	Trafficked adult	4
1.7	Traffickers and other exploiters	4
<hr/>		
2.	Criminal Acts and Rights Violations on the Trafficked persons	6
■	The offences under IPC	6
■	The offences under ITPA	7
■	The offences under JJ Act 2000	7
■	The Human Rights Violations on trafficked persons	8
■	Which law to use and when	8
<hr/>		
3.	The strengths of ITPA and how best to use them	9
3.1	The legal regime relevant in the context of trafficking	9
3.2	The inherent strength of ITPA	10
3.2.1	General Provisions	10
3.2.2	The offences under ITPA	10
3.2.3	Whether clientele('customer') is liable	11
3.2.4	Liability of traffickers	11
3.2.5	Jurisdiction of Police and Courts	11
3.2.6	The doctrine of presumption as a good weapon for preventing and combatting trafficking	13
3.2.7	CSE of child/minor	13
3.2.8	Who can order rescue of a trafficked person(victim of trafficking)?	14
3.2.9	Can any civilian(say, an NGO) move the Magistrate and seek orders for rescue of any person?	14
3.2.10	If a notified police officer is not available, is rescue possible?	14
3.2.11	How to prevent/combat misuse of public places?	15
3.2.11.1	What is a public place?	15
3.2.11.2	Can a hotel licence be suspended if prostitution is carried on in the hotel?	15
3.2.11.3	Can the hotel licence be cancelled?	15
3.2.11.4	Who are all liable for misuse of public places?	16
3.2.11.5	Closure and Eviction of Brothels after notice	16

3.2.11.6	Closure and Eviction of Brothels without notice	17
3.2.11.7	No appeal against order of closure/eviction	17
3.2.11.8	Special provisions against CSE of child(under 16) and minor(under18)	17
3.2.12	Surveillance of convicted persons	17
3.2.13	Externment of convicted persons	18
3.2.14	Finality of proceedings and fast-track mechanisms	18
3.2.15	Special police officers of the state government	19
3.2.16	If there is a shortage of police officers in the district, is there any mechanism to overcome the situation in addressing trafficking?	19
3.2.17	Is women police officer essential?	19
3.2.18	Can Government of India notify special police officers under ITPA?	19
3.2.19	How to invoke CBI investigation?	20
3.2.20	Role of NGO's in law enforcement and justice delivery under ITPA	20
	■ Advisory Body	20
	■ Accompanying police during search	21
	■ Interviewing rescued/removed persons	21
	■ Home verification of rescued persons	21
	■ NGO's to advise Magistrate on rehabilitation	21
3.2.21	Can a witness refuse to cooperate with police in search and rescue	22
3.2.22	How to carry out Home Verification of the rescued persons.	22
3.2.23	Protection and safety (estoppels) for police officers and NGO's against litigation	22
<hr/>		
4.	Police Response to trafficking in women and children: Dos and Don'ts.	23
4.1	Rescue : Dos and Don'ts	23
4.2	Post rescue: Dos and Don'ts	26
4.2.1	Can adult persons be sent to protective custody?	27
4.3	Registering the crime at the police station: Dos and Don'ts	27
4.4	Investigation of trafficking crimes: Dos and Don'ts.	28
4.4.1	Salient features	28
4.4.2	Scene of crime investigation: Dos and Don'ts	30
4.4.3	Identification and arrest of offenders: Dos and Don'ts	31
4.4.4	Arrest of accused: The Legal Provisions in ITPA.	33
4.4.5	Mapping the harm done to the victim	34
4.4.6	Mapping the exploiter's profit	35
4.4.7	Interviewing victims: Dos and Don'ts	36
4.4.8	Medical care and attention to the victims: Dos and Don'ts	38
4.4.9	Psychosocial care of victim: Dos and Don'ts	38
4.4.10	Age verification/assessment	38

4.4.11	Investigating the organized crime of trafficking	39
5.	Prosecution of Trafficking crimes: Dos and Don'ts	41
5.1	Expediting trial	41
5.2	Victim and witness care & protection during trial: Dos and Don'ts	42
5.3	Victim/witness protection systems	43
5.4	Role of prosecutor in prevention of trafficking	47
6.	Research and Reference	48
7.	Associating NGOs in law enforcement procedures	49
7.1	How to begin	49
7.2	Post Rescue Role of NGO's	49
7.3	Role of NGO's in the trial of cases in courts	51
8.	Prevention of trafficking: Dos and Don'ts	53
■	Integrated action	53
■	Addressing demand	54
■	Protection and care of victims	54
■	Preventing re-trafficking	54
■	Addressing vulnerable persons/areas	55
■	Networking with other government agencies	56
■	Networking with civil society members	56
■	Issue of missing persons	56
■	Utilizing preventive sections of CrPC	57
■	Helplines	57
■	Strengthening Police Stations	57
■	Involving local self government agencies	57
■	Data-base	58
■	Anti Human Trafficking Unit (AHTU)	58
9.	Intelligence gathering and dissemination	60
10.	Media coverage and media linkage: Dos and Don'ts.	63
	Appendix-I : A checklist of the Elements of the Law and Possible Evidence.	65
	Appendix-II : Some Good Practice Models	70
	Glossary	73
	Select References	74

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

1.1 Trafficking vs. Prostitution:

Trafficking does not mean prostitution. They are not synonymous. In understanding trafficking, one should delink it from prostitution. As per the existing law, Immoral Traffic (Prevention) Act 1956 (ITPA) prostitution becomes an offence when there is commercial exploitation of a person. If a woman or child is sexually exploited and any person gains out of the same, it amounts to commercial sexual exploitation (CSE), which is a legally punishable offence wherein the culpability lies against all exploiters. Trafficking is the process of recruiting, contracting, procuring or hiring a person for CSE. Therefore, trafficking is a process and CSE is the result. The 'demand' in CSE generates, promotes and perpetuates trafficking. This is a vicious cycle. Trafficking could also be a means for other types of violations such as for developing pornographic material, for promoting sex tourism, for sexual exploitation under the facade of bar tending, massage parlours etc, or even for exploitative labour where sexual abuse may or may not coexist.

ITPA envisages only trafficking for CSE. Commercial activity need not be in a brothel, but could also occur in places including a residential dwelling, a vehicle, etc. Therefore a police officer who is acting under ITPA has powers to take steps in all such situations where trafficking leads to or is likely to lead to CSE in any form, including those under the facade of massage parlours, bar tending, 'tourist circuit', 'escort services', 'friendship clubs', etc.

1.2 Defining ‘Trafficking’:

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

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

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

- ❑ **Displacement of a person from one community to another.** The displacement could be from one house to another, one village to another, one district to another, one state to another or from one country to another. Displacement is also possible within the same building. An example will clarify the point. Presume that the brothel keeper controls several young women who are inmates and that one of the women has a teenager daughter staying with her. If the brothel keeper, by duress or bribe, manages to get the mother to agree to allow the teenager to be used for CSE, the teenager has been moved out of the ‘mother’s community’ and into the ‘brothel community’. This displacement is adequate to constitute trafficking.
- ❑ **Exploitation of the trafficked person.** The ITPA and related laws envisage sexual exploitation of the trafficked person. The process of exploitation may be manifest, as in a brothel, or latent, as in certain massage parlours, dance bars, etc, where it takes place under the facade of a legitimate commercial activity.
- ❑ **Commercialization of the exploitation and commodification of the victim.** The trafficked victim is exploited as if she is a commodity (see the

detailed list of violations in the following chapter). The exploiters generate revenue out of the exploitation. They may share a part of the revenue with the victim too. The victim who is getting a share of the money generated is often ‘branded’ as an accomplice and arrested/charge-sheeted and even convicted. The trafficked victim, whose freedom even to think, let alone move out, is dictated by the exploiters, should never be treated as an accomplice. Even if she gets a share of the ‘earnings’, the fact that she has been trafficked to CSE does not alter her status as a victim.

1.3 The organized crime of trafficking:

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

1.4 The trafficked person:

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

1.5 Child:

Child is a person who has not attained the age of 18 years. Any child who is vulnerable to trafficking is considered a “person in need of care and protection” under the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act). Law enforcement agencies are duty bound to rescue such children, produce them before the Child Welfare Committee and extend all care and attention.

1.6 Trafficked adult:

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

1.7 Traffickers and other exploiters:

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

- **The brothel in charge** and other exploiters in the brothel, or the final place of exploitation, which would also include:
 - The brothel “madam” or the person in charge of the ‘dance bar’ or ‘massage parlour’ or such other place where exploitation takes place.
 - The ‘managers’ and all other *dramatis personae* in such places.
 - The hoteliers or persons in charge of hotels, etc where exploitation takes place. This includes keepers of places/vehicles used as a brothel (S.3.1 ITPA), persons who allow premises to be used as a brothel (S.3.2 ITPA), persons who detain victims in brothels and other places of exploitation (S.6 ITPA), and those who allow public places to be used for prostitution (S.7.2 ITPA).
- **The “customer” or “clientele”**, who is the abuser of the trafficked woman, is undoubtedly, an exploiter. He is the one who perpetuates ‘demand’ and CSE and is, therefore liable under ITPA and other laws. (See para 3.2.3 for details).
- **The financiers:** All those who finance the various processes involved in trafficking are part of the nexus. This may include those who finance recruitment, transportation, stay, accommodation, and even those who indulge in money lending and borrowing at the brothels.

- **The abettors:** All those who abet or support the exploitation or any process involved in trafficking are triable under ITPA (sections 3, 4, 5, 6, 7, 9 ITPA, read with Chapter V of IPC dealing with abetment of offences).
- **Those who are living on the earnings of CSE:** Any person who knowingly lives, wholly or partly, on the earnings of prostitution is liable (S.4 ITPA). This includes all those who have a share in the illegal benefits derived from the exploitation. The financiers who lend or collect money from the brothels (or hotels) and do business out of such transaction are also liable under this section. The hotelier who profits from the exploitation of girls is undoubtedly an accused u/s 4 ITPA.
- The spotter, the recruiter, the seller, the purchaser, the contractor, the agent or anybody acting on their behalf.
- The transporters, the harbourers and those who provide shelter are also part of the racket.
- **All conspirators:** In nearly all trafficking situations, several persons conspire at the various stages involved in the process of exploitation, thereby constituting a case of conspiracy. If there is a meeting of minds, followed by an overt act in pursuance thereof, the law of conspiracy (S120 B IPC) is attracted. According to the ITPA, those who conspire to allow any premises to be used as a brothel (S. 3) or those who live on the earnings of exploitation, even partly (S.4), or those who procure or induce or take the person for prostitution (S.5) are all considered conspirators.

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

CRIMINAL ACTS AND RIGHTS VIOLATIONS ON THE TRAFFICKED PERSONS

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

- Displaced from her community, which tantamounts to kidnapping/abduction (Sections 361, 362, 365, 366 IPC may apply).
- Procured illegally (S.366 A IPC).
- Sold by somebody (S.372 IPC).
- Bought by somebody (S.373 IPC).
- Imported from a foreign country (if she hails from a foreign country, or even from J & K State, and is under 21 years of age – S.366 B IPC).
- Wrongfully restrained (S.339 IPC).
- Wrongfully confined (S 340 IPC).
- Physically tortured/injured (S.327, 329 IPC).
- Subjected to criminal force (S. 350 IPC).
- Mentally tortured/harassed/assaulted (S. 351 IPC).
- Criminally intimidated (S.506 IPC).
- Outraged of her modesty (S 354 IPC).
- Raped/gang raped/repeatedly raped (S 375 IPC).
- Subjected to perverse sexual exploitation ('unnatural offences') (S.377 IPC).

- Defamed (S 499 IPC).
- Subjected to unlawful compulsory labor (S.374 IPC).
- Victim of criminal conspiracy (S 120 B IPC).

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

The **offences envisaged under the ITPA** are specific to the context of CSE. They are briefly listed out below:

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

The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act 2000) also has penal provisions. Anybody in control of a child who assaults, abandons, exposes or willfully neglects the child or procures him to be assaulted, abandoned or exposed causing the child unnecessary mental or physical suffering, is liable under S. 23 JJ Act.

There are so many **Human Rights violations that take place on trafficked person**. The list includes the following:

- Deprivation of the right to life (slave-like conditions).
- Deprivation of the right to security.
- Deprivation of dignity.
- Deprivation of the right to access to justice and redressal of grievances.
- Denial of access to health services.
- Denial of right to self determination (e.g. when the victim is re-trafficked).
- Denial of right to return to own community.
- Double jeopardy (e.g., a person trafficked across a border is sometimes convicted for non-possession of passport/visa, etc. and is simultaneously punished for ‘soliciting’).
- Denial of right to representation.
- Denial of right to be heard before decision making.

The list of rights violations is long and several such violations can be listed out depending on the provisions of the Constitution/Protocols/Conventions etc.

Which law to use and when:

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

THE STRENGTHS OF ITPA AND HOW BEST TO USE THEM

ITPA is a comprehensive legislation which gives power and strength to the law enforcement/justice delivery agencies to combat and prevent trafficking. Since its enactment in 1956, the legislation was amended by the Indian Parliament twice, in 1978 and 1986. The latter amendment focused on prevention, a provision which is not so common in the legal regime across the world. However, for various reasons, the different provisions of this special law are not being used and, furthermore are often misused and abused. One of the main reasons, as research has shown, is ignorance and lack of understanding of these provisions. Therefore this checklist is a reference guide to the law enforcement agencies and other stake-holders, providing answers to several frequently asked (or not yet asked) questions and frequently overlooked aspects.

3.1 The legal regime relevant in the context of trafficking:

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

3.2 The inherent strengths of ITPA

3.2.1 General provisions:

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

3.2.2 The offences under ITPA :

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

3.2.3 Whether “clientele” (“customer”) is liable:

The answer is yes. Firstly, he should be booked u/s 5(1) (d) and u/s 7(1) ITPA. He is a person who ‘causes’ or ‘induces’ another person to carry on prostitution and is, therefore, liable u/s 5(1)(d). (*Cherian Vs. Kerala, 1973 Cr.L.J 839*) Moreover he is a person “with whom prostitution is carried on” and is therefore liable u/s 7(1). Further subsection IA of section 7 ITPA makes it clear that if the offence of ‘prostitution’ is committed in respect to a child or minor then the **person committing the offence** (i.e. including the customer/clientele) is liable for a graver punishment and fine with a mandatory minimum imprisonment of 7 years.

Besides these provisions of ITPA, he is an **abettor** to all violations on the victim, which attracts S.114 IPC. If the victim is a **child**, S.376 IPC (**rape**) should be added to the charges against the “customer”. If the victim is an **adult**, S.376 IPC will come into operation if it can be established that she had not given **informed or willing consent**. Moreover **perverse sexual acts** on the victim invite liability under S.377 IPC.

3.2.4 Liability of traffickers:

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

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

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

3.2.5 Jurisdiction of Police and Courts:

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

- The place from where the person (victim) has been procured, induced to go, taken or caused to be taken or from where an attempt to procure or take the

person (the victim) is made. **This means the place where trafficking took place i.e, the source point.**

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

Since the court of law has jurisdiction in the source, transit and the destination points, the police stations in all these points also have jurisdiction. In this context, the following are the do's and don't's.

- In a case of trafficking, police agencies at the source point, the transit point and at the destination point have a duty and responsibility to register FIR in their police station.
- There is no legal bar in having FIRs registered both at the source point and destination point if the former is only on charge of trafficking and the latter is only on the charge of sexual exploitation. However, the best situation would be to have the FIR at one of the two places and, thereafter, the investigation should cover the entire spectrum of the offences from its origin to the last part.
- In the event of registration of two FIRs at both the source and destination points, the investigation can be clubbed together, as and when the linkage is established in evidence. Thereafter, police is free to file a charge report before the court of law at either place (i.e. the source point or the destination point) and simultaneously close the investigation in the other place, so as to avoid double jeopardy.
- Since attempt to trafficking is also a specific offence under this section, it gives very strong weapon to the law enforcement agencies to bring to book the traffickers as well as abettors and conspirators in trafficking.

Law of double jeopardy will not be attracted if the offences alleged (though they are essentially part of a continuing offence) are independently acted upon. For e.g., there is no legal wrong if the FIR in one place is u/s 5 ITPA for trafficking and the FIR in another place is for exploitation u/s 7 ITPA, 376 IPC etc, both with respect to the same victim.

3.2.6 The doctrine of presumption as a good weapon for preventing and combating trafficking:

ITPA gives so much strength to the law enforcement agencies by virtue of the fact that the specific provisions of presumption casts onus of proof on the accused. The following are the provisions.

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

3.2.7 CSE of child/minor:

Law views CSE of children/minors as a grave offence and therefore, has the following special provisions u/s 7 ITPA:

- Consent is immaterial.
- Enhanced punishment for prostituting a child/minor.
- Minimum punishment is rigorous imprisonment for 7 years.
- Mandatory fine along with jail.
- If sexual exploitation of a child takes place in a Hotel, the hotel license can be cancelled. (See proviso of S.7(2)(c).

3.2.8 Who can order rescue of a trafficked person (victim of trafficking)?

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

S.15 ITPA gives powers to Special Police Officers to search without warrant and carry out rescue u/s 15(4). This gives enormous powers to SPO.

3.2.9 Can any civilian (say, an NGO) move the Magistrate and seek orders for rescue of any person?

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

- Police
- Any person authorized by the State Government (e.g. rescue officer notified by U.P government)
- Any NGO
- Any other source

3.2.10 If a notified police officer is not available, is rescue possible?

Yes u/s 16 ITPA, the Magistrate can authorize any police officer (whether notified u/s 13 ITPA or not), provided the police officer is of the rank of SI of police or above.

3.2.11 How to prevent/combat misuse of public places?

The legal provisions u/s 7 ITPA envisage a very important role of law enforcement agencies in not only taking action against the offenders who misuse public places, but also in preventing such misuse. In this context, the following aspects be taken note of.

3.2.11.1 What is a public place?

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

- Any premises within an area notified by the Government.
- Any premises within a distance of 200 meters of any place of public worship, educational institution, hotel, hospital, nursing home or other official/public domain.
- Any hotel (As defined under S.2(6) of the Hotel Receipts Tax Act, 1980, any place where residential accommodation is provided by way of business, for a monetary consideration, is a hotel).
- Any transport or vehicle to which public has access.
- “Any place intended for use by, or accessible to the public” is a public place. “It is not necessary that it must be public property”, “Even if it is a private property, it is sufficient that the place is accessible to public”. *Gaurav Jain vs UOI, AIR 1997 SC 3021*.

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

Yes, u/s 7(2) (c) ITPA, if the public place which is misused happens to be a hotel, the hotel licence may be suspended for a period not less than 3 months and may be extended to one year. Therefore in such circumstances, the police officer should move the concerned court (District Magistrate is the competent court) for the suspension of the hotel licence.

3.2.11.3 Can the hotel licence be cancelled?

Yes, u/s 7(2) (c) ITPA, if it can be proved that the victim of prostitution or CSE in the hotel happens to be a child or minor (i.e. any person, male or female, who is under 18 years of age), then the hotel licence is liable to be cancelled. The police officer has to move the court of the District Magistrate for the same.

3.2.11.4 Who are all liable for misuse of public places?

U/s 7 ITPA, the persons liable are:

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

3.2.11.5 Closure and Eviction of Brothels after notice:

- The District Magistrate (DM) u/s 18(1) ITPA, can act on information from police or NGO or anybody else. The Commissioner of Police or any other official who has been vested with the powers of DM is also empowered to take action under this section of law.
- The information should be that any house, room, place or portion thereof, located within a distance of 200 meters of any public place is being used as a brothel by any person, or is being used for commercial sexual exploitation of anybody.
- DM can issue notice to the owner, lesser, landlord (of the house, room, place or portion thereof) or their agent, as well as the tenant, lessee, occupier of, or any other person in charge of such house, room, place or portion thereof.
- The notice sent to them by the DM directs that show cause be filed within 7 days of the receipt of the notice stating why the property should not be attached for misuse.
- The DM should hear the party before taking a decision.
- After hearing, if the DM is satisfied about the misuse, he can (a) direct eviction of the occupier within 7 days of the order and (b) direct that prior approval of the DM be obtained before letting out the place again during the following one year (and during the following 3 years if a child or minor has been found during the search of the premises).
- The order of the DM is non appealable nor stayable as per S. 18(3) ITPA.
- Since closure of brothel would entail loss of 'income' for the exploiters, and no relief is available by way of appeal, this is a **stringent section of law**

which the administrators, police, prosecutors and NGO's can effectively utilize to combat and prevent trafficking.

- The Sub Divisional Magistrate (SDM) also can exercise all these powers.

3.2.11.6 **Closure and eviction of brothels without notice:**

According to S.18 (2) ITPA, the court convicting a person of any offence under S.3 ITPA (keeping a brothel, etc.) or S.7 ITPA, (misuse of public places for CSE) may pass orders of closure and eviction without any notice to any such person. Therefore in the event of a conviction u/s 3 or 7 ITPA, the police/prosecutor should immediately move the court for closure/eviction u/s 18 ITPA. However, the eviction order of the judicial magistrate is a sequel to the conviction of the person to be evicted, and cannot precede conviction (*A.C. Aggarwal and another Vs. Mst. Ram Kali, 1968 Cri L.J.82*)

3.2.11.7 **No appeal against order of closure/eviction:**

According to S. 18 (3) ITPA, orders passed by the DM u/s 18(1)ITPA and orders by the convicting court u/s 18(2)ITPA shall not be subject to appeal and shall not be stayed or set aside by any court, civil or criminal. Therefore, the finality of order by a competent court is a very powerful tool to combat CSE.

3.2.11.8 **Special provisions against CSE of child (under 16) and minor (under 18):**

Anybody involved in CSE of a child/minor is liable for conviction for a minimum term of 7 years imprisonment which may go upto life imprisonment, u/s 7(1A).

- In such convictions, along with imprisonment, fine is also mandatory.
- If the abuse takes place in a hotel, and the victim is a child or minor, the hotel license shall be liable to be cancelled u/s 7(2) (c) ITPA.

3.2.12 **Surveillance of convicted persons:**

According to S 11 ITPA, any person, who has earlier been convicted under ITPA or relevant sections of IPC (363, 365, 366, 366A, 366B, 367, 368, 370, 371, 372 or 373), is again convicted under ITPA, for a period of 2 years or more, may be subjected by the court to notify, according to the rules made by the State Government in this regard, of any change of his residence or any absence from such residence after release, for a period upto 5 years. If the State rules exist, this

is a potent weapon for the law enforcing agencies to keep surveillance on the movement and activity of the convicted person so as to prevent any such crime in future. If there are no rules, the state government be moved for bringing out comprehensive Rules under ITPA.

3.2.13 Externment of convicted persons

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

3.2.14 Finality of proceedings and fast-track mechanisms.

ITPA is a special legislation which has certain inherent provisions to ensure that the legal proceedings are not long drawn. These provisions and restrictions are meant to be invoked by the agencies concerned (police, prosecutors and judiciary) so that the trial is expedited and justice is delivered without delay. The following are the provisions.

- U/s 18 ITPA, there is neither appeal nor stay against the order of eviction by a Magistrate or Court.
- Any appeal against the order for protective custody u/s 17 (4) ITPA, issued by the Magistrate (SDM, DM, MM or JM), shall go to the Court of Sessions, whose decision shall be final. Therefore, there is no appeal beyond the Sessions Court.
- Special Courts (including Exclusive Courts) for the trial of offences under ITPA can be constituted not only by State Government (u/s 22 A) but also by the Central Government (u/s 22 AA ITPA).
- Summary Trial: Whenever necessary, the State Government may authorize the Court to try cases summarily (in accordance with the provisions of CrPC dealing with Summary Trial, ie. Sections 262, 263, 264 and 265 CrPC). However, the maximum punishment in Summary Trial is up to 1 year. If the Court thinks that enhanced punishment is called for, then the case can be reverted to regular trial.

3.2.15 **Special Police officer of the State Government:**

U/s 13 (1) ITPA the State Government can notify one or more police officers, not below the rank of Inspector of Police, as SPO having powers over a specific jurisdiction, which may include the entire state. Since many trafficking cases have inter-district and even inter-state ramifications, it is better to issue such notifications, without jurisdictional restrictions. The jurisdiction of the SPO is to be at least co-terminus with “that of the offender” so that the SPO can carry out unrestricted investigation. (A case in point is the Anti-trafficking Act, 2000 of USA, where the law enforcement agency has jurisdiction anywhere and everywhere in the world where the investigation of the crime leads him.)

3.2.16 **If there is a shortage of police officers in the district, is there any mechanism to overcome the situation in addressing trafficking?**

Yes, S.13 (2A) ITPA authorizes the **District Magistrate** to notify **any retired police officer** (who, when retired, was not below the rank of Inspector of Police) **or any retired military officer** (who, when retired, was a Commissioned Officer) as SPO. It is advisable that the Superintendent of Police identifies appropriate retired officials and moves the DM for notification.

3.2.17 **Is women police officer essential?**

U/s 13(3) (a) ITPA, the SPO notified by the State government shall be assisted by an adequate number of **Subordinate Police Officers including women police officers, wherever practicable**. The best situation would be to notify a combination of male and female police officers for each unit. Wherever women police officers of the rank of Inspector or above are available, they should be notified as SPO. If woman police official is not available, the SPO should take assistance of woman NGO/social worker.

3.2.18 **Can Government of India notify special police officers under ITPA?**

U/s 13(3) (4) ITPA, Govt. of India can notify Anti-trafficking police officers (ATPO) with powers throughout India. Such ATPO can be appointed for investigating offences:

- Under ITPA
- Under any law dealing with sexual exploitation of persons committed in more than one State. Therefore, a notified ATPO will have powers to investigate, crimes relating to not only trafficking but also other such crimes,

relating to pornographic rackets, 'sale' and 'purchase' of women etc., which have inter-state and international ramifications.

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

3.2.19 **How to invoke CBI investigation:**

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

3.2.20 **Role of NGOs in law enforcement and justice delivery under ITPA**

ITPA is a social legislation which envisages a large role for NGOs/CBOs and social workers. The following are noteworthy:

- **Advisory Body:** The State Govt. may notify, u/s 13(3) (b) ITPA, a non-official advisory body of leading social workers (upto a maximum of five persons), including women social workers. This body has powers to advise the SPO on questions of general importance, regarding the working of ITPA. Therefore, this body can advise and facilitate the police to (a) carry out rescue, (b) ensure that the rights of rescued persons are protected (c) initiate steps for victims' best care and attention, keeping in view victims' best interests, (d) take steps for empowerment and rehabilitation of victims

(e) take steps for stringent action against traffickers and other exploiters and (f) initiate and implement steps for prevention of trafficking and (g) network with all concerned government and non government agencies.

- **Accompanying Police during search:** The SPO while carrying out search for victims or even accused persons should arrange two or more respectable persons of the locality (one of whom should be a woman, as provided u/s 15(2) ITPA to attend and witness the searches. NGOs are the appropriate agencies to be contacted by police in such situations. The male witness should be from the locality, whereas the female witness could be from any where, vide proviso to S.15 (2) ITPA. It would be better to take a lady social activist along. Police officials should maintain a list (ready reckoner) of women activists and NGO's, whose services can be called upon in such situations. This section gives a legal right to NGOs to be part of the rescue process.
- **Interviewing rescued/removed persons:** U/s 15(6A) ITPA, any female person rescued or removed during a search (this includes victims, suspect and accused) can be interviewed by the police officer only in the presence of a female police officer or a female member of NGO. This gives a legal right to NGOs to be part of the investigation process.
- **Home verification of rescued persons:** A mandatory duty is cast upon the Magistrate u/s 17(2) ITPA to cause home verification of the rescued person before taking a final decision regarding her rehabilitation. Direction is to be given to the Probation Officer (under the Probation of Offenders Act, 1958). The Magistrate can call upon NGOs to carry out the task. Even the Probation Officer who has been tasked for the same can, in turn, entrust the job to NGOs. This gives a legal right to NGOs to be part of the rehabilitation process.
- **NGOs to advise Magistrate on rehabilitation:** The Magistrate may, as provided u/s 17(5) ITPA. Summon a panel of five respectable persons, three of whom shall be women, to assist him in taking decision in home verification and rehabilitation of the rescued person. It would be better that the Magistrate is provided with a list of NGOs who are working in the field so that their services can be utilized at the appropriate time. This section also gives a legal right to NGOs to be part of the justice delivery process and an opportunity to ensure that the processes conform to the principles of human rights and the decisions are in the best interest of the rescued person.

3.2.21 **Can a witness refuse to cooperate with police in search and rescue?**

As per S.15 (3) ITPA, any person who, without reasonable cause, refuses or neglects, to attend and witness a search when called upon to do so by an order in writing, delivered or tendered to him, shall be deemed to have committed an offence u/s 187 IPC (Refusal to assist public servant when bound by law to give assistance). Though, it is a non-cognizable and bailable offence, it entails punishment upto 6 months imprisonment and fine.

3.2.22 **How to carry out Home verification of the Rescued persons?**

As per the mandatory requirements u/s 17(2) ITPA, Home verification of the rescued person needs to be carried out. The points of verification include (a) the correctness of age, (b) character and antecedents, (c) the suitability of the parents/guardian/husband for taking charge of the person, (d) the nature of the influence which the condition in the home is likely to have on the person if she is sent home, (e) the personality of the person and (f) the prospects of rehabilitation u/s 17(5) ITPA. Since the task of verification can be entrusted to NGO's, the law enforcement officials need to network with appropriate NGO's and bring to the notice of the Magistrate the name, address and other details of the NGO's. Once the task is assigned to the NGO's, it needs to be facilitated and followed up so that the verification is expedited. Objectivity is called for in the process of verification. The verifying authority should consult the victim, her well-wishers, friends, parents, guardians, neighbours and all persons who can share information. There are instances where the guardians themselves have indulged in trafficking. Therefore extreme care is called for in arriving at conclusions (See Patkar, 2004, for details on Home Verification).

3.2.23 **Protection and safety (estoppels) for police officers and NGO's against litigation.**

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

POLICE RESPONSE TO TRAFFICKING IN WOMEN AND CHILDREN: DOs AND DON'Ts

4.1 Rescue: Dos and Don'ts

- Special police officer (SPO) **can search without warrant** u/s 15 ITPA and **carry out rescue**. Therefore the SPO is free to act on his own and promptly.
- The Magistrate can authorize **any police officer** (SI and above) u/s 16 ITPA to rescue anybody any time. If SPO has not been notified, the available police officer should feel empowered under this provision. He/she should go to the Magistrate, get orders and then move for rescue.
- **Do not delay** rescue at any cost. Delay denies justice delivery and also exacerbates exploitation. Do gather intelligence and act in time.
- Information **source** for rescue could be anybody, although NGOs play a significant role.
- Magistrate can take cognizance of report by **anybody** including NGO (S.16 ITPA).
- Magistrate can be **anybody** from the categories of JM/MM/SDM/DM (S.16 ITPA), having jurisdiction over the area.
- The search/ rescue party should have two **women police officers** (WPO) as required u/s 15(6A). Maintain a list of WPOs residing in the jurisdiction of the PS, neighbouring PS and other nearby locations. If there is shortage of WPO, get retired WPO notified as SPO u/s 13 (2 A) ITPA.
- Two respectable persons are required as **witnesses** (PW) during search and one of them shall be a women u/s 15(2) ITPA. Utilize the services of local NGO's. Do network with NGO's in the area.
- **Interview** of rescued person should be done only in presence of or by WPO or woman from an NGO, as per Section u/s 15 (6A) ITPA. Maintain list of NGO's in the P.S.

- Rescued persons are to be **produced** before the Magistrate forthwith (S.16 ITPA).
- Keep the victims **segregated** from the accused and suspects, so that they do not intimidate or violate the rights of the victims.
- **Rights** of rescued persons are to be ensured during rescue and post rescue situations. This includes the following:
 - **Facilitate** the rescued person to carry along with her all her possessions like clothes, money, jewellery, etc.
 - If the rescued person has **children**, they should be allowed to accompany her. Extra care should be taken to see that the children are not left behind in the brothel.
 - One should be **careful** in the use of language/gestures/demeanors. They should not be abusive or intimidatory and should no way violate her rights.
 - Avoid **publicity** of the victims so that anonymity is maintained.
 - Carry out a **brief interview** of the victims at the place of rescue to know their age (so that the applicability of JJ Act could be decided) and to locate their assets and possessions (which could be carried along with them before leaving the place). One or two officials should be earmarked exclusively for this purpose.
 - Ensure proper handing over of **victim's possessions** to her at the appropriate place and time (i.e, the victim's clothes, etc should be delivered to her immediately after recovery).
 - Provide **counselors** for trauma counseling. Keep a list of NGOs and trained counselors who are willing to work in this field.
 - **Legal counseling** be provided to the victim. Keep a list of lawyers willing to work for the victims.
 - Immediate **medical relief** be provided. Medical relief should include mental health as well. As per s.15(5A) ITPA, the Magistrate has to order medical examination for –
 - ✓ Age determination
 - ✓ Injuries
 - ✓ Sexual assault
 - ✓ Presence of STD
- **Children** are to be dealt under JJ Act. Therefore, while rescue is going on, please do segregate the children from the adult victims and proceed with

them under JJ Act. They are children in need of care and attention and, therefore, are to be handled by the Child Welfare Committee (CWC) set up under the JJ Act.

- The police officers need to know before hand as to where the **Rescue Home** is available. If there is a need for such Homes, it should be taken up with the concerned authorities. Of late many NGO's have set up such Homes. Keep a list of their address, telephone, contact person, etc.
- As and when the rescue is done, please **notify** the authorities of the concerned Home regarding the number of persons going to be lodged so that they could be prepared to receive them and organize themselves.
- Rescue Party should have adequate number of **vehicles** so that the rescued persons could be transported without publicity and glare. Accused and suspected persons should never be allowed to mix up with the rescued persons.
- **Search and seizure** of all material evidence, including documents in the brothel, is an important job. This should be done at the first available opportunity so that evidence is not destroyed or made to disappear by anybody, especially the exploiters.

In a case of rescue in Mumbai in 2002, the document which was left behind by the rescue party included a register maintained by the brothel owner regarding the details of money received in CSE and payments made to various exploiters, abettors and conspirators. Thorough investigation of the document would have brought out the nexus in trafficking and brought all offenders to book. For details see the case study in the NHRC report of 2004 on the Research on Trafficking in women and children (published by Orient Longman, 2005)

- **Training** of police officials on victim protocols is a pre-requirement to see that they are aware and sensitized to the issues concerned. A copy of this handbook, translated in the local language, would be an appropriate tool kit.
- Ensure **accountability** of all the officials taking part in the rescue. Brief them well in advance on all the points mentioned above and ensure compliance. Accountability demands appreciation of good work as well as condemnation of all wrong-doings, including acts of omission and commission. Utilize the services of reputed NGOs, as independent agency, to understand and assess how things are and were during the search so that appropriate steps could be taken accordingly.

4.2 Post rescue: Dos and Don'ts

- Interview the rescued persons to know about their personal details like age, nativity, health status, family history, etc and also to identify their best interests so that actions can be oriented accordingly. Interview is essential in the investigative process to identify the traffickers and other exploiters so that they can be brought to book. NGOs and trained counselors are useful in de-traumatizing the person and helping in ice breaking so that the police officials can carry on with the interview. Interview must be carried out by a female police officer or in the presence of a female NGO worker as mandated u/s 15(6A) ITPA.
- There can be one or more statements u/s 161 and 164 CrPC. Hence do record statements as the story unfolds and when the victim is comfortable to speak, especially after counselling.
- Do not delay production of the rescued persons (usually called victims or survivors) before the Magistrate (s.17 ITPA).
- SPO can produce the rescued person before any Magistrate (s.17 ITPA).
- Intermediate custody can be obtained for a period not exceeding 10 days by which time the person has to be produced before the appropriate Magistrate (s.17 ITPA).
- Rescued children should be produced before the Child Welfare Committee (CWC) constituted under the JJ Act.
- During the pendency of verification the person can be kept in a recognized rehab institution after obtaining orders from the Magistrate concerned.
- Home verification is to be done by Probationary Officer, who can utilize services of NGOs.
- Suitability of the rehabilitation home should be verified before the person is lodged.
- Magistrate may utilize the services of five NGOs (including 3 female NGO workers) for home verification and also consult with them in the process of decision making u/s 17(5) ITPA.
- For trauma counseling of victims, it is ideal to utilize the services of NGOs. A list of such volunteers/NGOs, who have specialization in this field, be maintained at the police station. The Family Counseling Centres (FCC) available at certain police stations in certain states have trained counselors whose services can be utilized.

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

4.2.1 Can an adult person be sent to protective custody?

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

4.3 Registering the Crime (FIR) at the Police Station (PS): Dos and Don'ts

- There should not be any delay in registering FIR.
- The FIR has to be on the statement of the complainant. The statement cannot be altered or amended by the police. If the complainant is the victim herself, she may be traumatized and, therefore, may not be able to recall the events which constitute specific offences. The police officer can help her to recall such events. Even otherwise, the statement of the victim u/s 161 or 164 CrPC, recorded in due course, should bring in all details, including those which have been missed out in the FIR.
- Anybody can be the complainant. If nobody comes forth, the police official should be the complainant.
- Jurisdiction of the PS need not be disputed. As trafficking is a continuing offence, the FIR can be lodged at the source or destination. Both courts have jurisdiction. This has been specifically provided u/s 5(3) ITPA. However if two or more FIRs are lodged at different PS on the same issue, the police officials can consult each other and transfer the evidence and case documents to one of the PS, who can follow it up thereafter.
- The copy of the FIR has to be given free of cost to the complainant.

- Female witnesses/victims are to be interviewed at the place of their choice. Police should go to them for the interview, and not vice versa.
- No female witness should be summoned to the police station after sunset.
- Do not deny the right of the victim/complainant to know the progress of information.
- Do maintain proper and regular contact with the victim and her well wishers, including the NGO who is attending to her.
- FIR is the first document in the process of justice delivery. The steps that follow are mostly dependent on the FIR. Distorted FIR where the victim has been shown as accused entails further violations and harm to the victim. Therefore, victim must be projected as victim and this be done loud and clear from the FIR onwards.
- Do register cases under the relevant provisions of ITPA and other laws which are applicable, viz IPC, special legislations like Bonded Labour System (Abolition) Act, 1976, Child Labour (Prohibition and Regulation) Act 1986, Children (Pledging of Labour) Act 1933, Maharashtra Control of Organised Crime Act 1999 etc.
- All cases of trafficking be treated as ‘Grave Crimes’ or ‘Special Report’ Crimes (depending on the terminology in vogue) and be investigated and supervised by senior police officials, specially those who are sensitized and trained for the same. The SP/DCP can take initiative in this.
- Do understand the abuser-abused dynamics involved. All steps should be oriented accordingly.

4.4 Investigation of trafficking Crimes: Dos and Don’ts

4.4.1 Salient features

- Distinguish victim from the suspect/accused by a process of intelligence collection and interviewing. **Do not treat victims as suspects or accused.**
- While ensuring that the rights of accused are protected, do not forget to ensure that the **victim’s rights** are ensured. This includes the following:
 - Do not allow suspects and accused to mix up with victims.
 - Do not **intimidate** or abuse victims by words/action/gesture/demeanor.
 - No **publicity should** be allowed. Ensure anonymity.

- Support the victim. Validate the harm done to her. Make her feel and realize that she is a victim, that she has been harmed and that she is never at fault.
- **Empower** the victims. Make them aware of their rights so that they can also ensure that their rights are not violated further.
- See that the victim gets **possession** of all her belongings, assets, etc and without any delay.
- See that the **children of the victims** are provided due care and attention and are not separated from the mother, if they were living together before rescue.
- Help the victim to get all her **dues and rightful claims**, as most brothel keepers are reluctant to part with her earnings.
- Ensure physical **safety** of victims during rescue and post-rescue transfers and movements.
- Get the medical examination of the victim done without delay. Utilize the services of female doctors/para medical staff, as far as possible. Do provide lady constables to accompany the victim. Age verification is also a part of the medical exam. If any malafide is suspected, especially with reference to age assessment, do get the matter referred to a Medical Board after obtaining orders of the competent judicial authority.
- Utilize the services of female social workers/NGOs in these activities. Do get them notified in the Advisory Body as envisaged u/s 13(3) (b) ITPA. Even if they are not notified, nothing stops the police in associating them in their activities.
- Considering the **social stigma** attached to prostitution, there is a tendency to look down upon trafficked persons by branding them as 'prostitutes'. This should be condemned and not allowed to happen, as the victim of trafficking is neither accused, accomplice nor abettor. The **victim's status** should be maintained and ensured all through. All protection and care be extended for the same.
- The process of investigation should not be intimidatory or violative of victim's rights. For example, avoid repeated interviewing by several levels of police officers as the victim is made to recall and relive the trauma repeatedly.

- If the statement of the victim is to be recorded u/s 164 CrPC, do it at the earliest so that restoration/repatriation is not held up. Additional statements u/s 161 and 164 CrPC are possible, hence do not hurry to close down, especially when the victim is still in trauma.
- Investigation be based on a plan of action which is to be drawn up (in consultation with colleagues and other professionals), keeping the victim's rights in focus.
- Dissect the law and list out the elements of the offence. Thereafter attempt to check out the contents of each of these elements. Carry out investigation into each element so that none of the elements is missed out. The evidence be marshaled element-wise so that the presentation is cogent and convincing. The elements vary with the offence alleged, though there are certain common points in all the offences. A check list will ensure that no aspect is omitted. *(The major elements of the penal sections of ITPA and the nature and type of evidence which can be adduced are given in the Checklist in Appendix-I on this Hand Book.)*

4.4.2 Scene of Crime (SOC) investigation: Dos and Don'ts

The investigating officer (IO) should see that the investigation is not perfunctory or superficial. Usually the SOC is perceived to be a room in a brothel. This is incorrect. The scene of crime extends to the place from where the person was trafficked, the places where she was taken to, the transit places, the final destination where she was exploited, etc. Therefore the SOC should include:

- the **source point** (e.g., place of recruitment)
- the **trafficking routes** (including mode of transport)
- the **transit points** (e.g., halting places enroute)
- the **destination point**
- the **points of exploitation** (e.g. brothel)
- the **places** where the 'products' of exploitation were **transferred to** (eg. in a case where the CSE was to produce pornography, the SOC includes places where the pornographic materials were sent to, stored, transported, and places where they were sold/purchased, etc).
- A **trafficking map** should be developed and kept as part of the case diary. The map should link up the source-transit-demand places.

- **Documents at the SOC:** Investigation should be caused into the records maintained in the various SOC (e.g., the register in the brothel regarding income, expenditure and persons involved). Role of the various exploiters whose names may find mention in the register are to be investigated and evidence extracted against them. These documents have tremendous value, informatory and evidentiary, if investigated properly.
- **Photograph/video graph of the SOC:** Electronic documents can make a visible impact of the extent and intensity of exploitation and therefore, are advisable. Care should be taken to see that the photographs and videographs do not violate the rights of the victims. (e.g., avoid exposing the identity of the victims).

4.4.3 Identification and arrest of offenders: Dos and Don'ts.

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

Who are the exploiters who should be investigated ?

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

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

- **Search of SOC:** The scene of crime provides a lot of evidence for a discerning eye. Search should be systematic and scientific. Secure the place beforehand to avoid disturbance. The victim can lead the IO to the various locations especially the places where trafficked persons are kept hidden. Chain of custody has to be ensured while seizing, labeling and transporting.
- **Linking up role of suspects:** Statement of victim and other witnesses are to be recorded in detail to link up the role of the various suspects involved in the entire process of trafficking and exploitation. Record the statement in the language in which the person speaks. Do not miss the emotions, feelings and other expressions conveyed by the person.
- **Medical examination of the suspects** be carried out at the earliest. In a crime where the accused has been caught in a compromising position, the medical examination can reveal the level of exploitation. Medical examination should be followed by other scientific examination such as forensic examination of the materials recovered from the SOC.
- **Interview of the suspects:** Interviewing helps to identify the suspects' background, and to understand the strengths and weaknesses of the person, which can be utilized to develop themes during interrogation. Interrogation should be scientific to lead the accused through the various events. As per the Indian Evidence Act (S.25) confession before police officer is not admissible in the court of law unless it leads to a recovery (u/s 27). Therefore IO should strive for **recoveries and discoveries** during interrogation. However admission and confession of accused before police do provide a lot of inputs for further investigation. The alibi of the accused should be further verified and, if found wrong, should be negated by facts. Evidence to rebut the same, including oral statement of witnesses, should be incorporated in the case diary.
- **Interrogation** of suspects should be in detail, with an aim to bring out the role of other suspects, the extent of the crime, involvement in other crimes, the various dimensions of not only the process of trafficking, but also the exploitation, the money generated, the expenditure, the assets

created and the investments made etc. All these should be brought on record so that in the event of conviction, these illegal assets could be forfeited and confiscated. Therefore, the IO should question the suspect on all dimensions of the crime, (i.e., WHAT, WHO, WHEN, WHERE, WHY and HOW.)

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

Under ITPA, even **attempt** for trafficking is an offence. Therefore the IO has a **long list of persons** who can be brought into the trafficking net. Anybody who is involved in any act, even partly, or contributes to, or leads to the process of trafficking, should be investigated and brought on record. The offender's intention and knowledge are two relevant aspects to establish the offence. Even if the person had no intention, but had the knowledge that the act indulged in by him contributes to trafficking, it would suffice to bring him under the realm of offender. Therefore investigators should probe not only into the acts of omissions and commissions by the suspects but also into the frame of mind behind such acts.

4.4.4 **Arrest of Accused: The Legal Provisions in ITPA**

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

- A notified SPO is fully empowered to arrest without warrant (u/s 14(i) ITPA.
- SPO can authorize and order any police officer in writing for arrest (u/s 14(ii) ITPA.
- SPO can authorize any police officer u/s 14(iii), even without a written approval, in case of urgency if:
 - The accused is likely to escape.
 - The identity of the accused is suspect.
- The grounds for authorization should be specifically recorded in police documents (General Diary and Case Diary).
- The authorization should be by name and not a general authorization.
- Authorization for arrest is distinct from authorization for investigation.
- Only the competent and notified official can take up the investigation of the crime. Technical errors often lead to discharge of the case in the court.
- The arrest of the accused is guided by the provisions of CrPC and Evidence Act, as it applies to any other offence.

4.4.5 Mapping the harm done to the victims:

This is an area usually neglected in the present day investigation process. Do map and document the entire harm and damage done to the victims. This includes

- Injuries of physical assault (beating, cigarette burning, etc).
- Injuries of rape and other sexual assaults.
- Injuries consequential to the various act of exploitation (e.g. abortion due to denial of safe sex methods).
- Injuries consequential to the denial of medical care and attention (e.g. UTI, which arises due to lack of timely treatment of earlier injuries).
- The medical status including STD, HIV etc. (HIV testing is possible only if the person consents).
- The psychological harm (ie. the mental torture, trauma, tension, etc on the person) not only due to exploitation, intimidation, and denial of privacy and dignity but also as a result of neglect of oneself, one's children, and abuse of children).

- ❑ Physical and mental harm to the children of the victim, especially those who are staying with them.

The mapping of harm could be professionally done with the expert assistance of doctors, forensic experts, psychiatrists, and psycho-social experts. However, documenting the victim's own experience and the observation of the NGOs, counselors, etc associated with the victim are also relevant. They should be well recorded and presented in the case records. Record the statement in the language spoken to by the victim. Do not ignore the emotions, the feelings, etc conveyed by the victim. Do document them all. As regards child victims, their own version of the events be appropriately recorded without editing the language and content.

4.4.6 Mapping the exploiter's profit:

This is another investigative component, usually neglected. In cases of trafficking, the exploiters gain monetarily and otherwise, while the victim continues to be harmed and exploited. Additionally younger the girl, higher the level of exploitation and, consequentially, more 'earning' for the exploiter. The NHRC study has brought out the unbelievably high profits that the traffickers and other exploiters have made at low or no cost to themselves. Therefore it is essential to map these assets and take appropriate action to prevent and combat trafficking. The following are the dos and don'ts in this context:

- Investigate into and bring on record all assets, incomes, earnings, profits and expenditures related to trafficking.
- Establish the linkage of the crime of trafficking to the "fruits of crime" through documentary and oral evidence. (e.g., investigate the movable and immovable property acquired by the traffickers, the extravagant lifestyle and expenditure by them etc.).
- Collect intelligence regarding these aspects from the trafficked victims, their parents/wards, etc through careful interviewing.
- Conduct sustained interrogation of the accused and suspects to bring out the details of profit, places of deposit, utilization of money/assets, etc.
- Investigate into the assets and profits of the traffickers to expose the linkages with other exploiters and profiteers. This will also bring to focus the gravity and extent of the exploitation.

- The case diary should specifically list out the details of investigation in this regard and should invite the attention of the court during trial so that in the event of conviction, the court could be moved to attach and confiscate the properties.

4.4.7 Interviewing victims: Dos and Don'ts

- Female victims should be interviewed by WPO. If WPO is not available, involve women NGO's or counselors during interview.
- Ensure that the accused/suspected offenders are nowhere in the vicinity.
- Conduct the interview at a place where she is comfortable. It should be a place of her choice.
- Keep the ambience child friendly, if the victim is a child.
- Do associate the person whom she is comfortable with. A 'child minder', a counselor etc would be appropriate.
- Avoid onlookers, interventions and interruptions during interview.
- Include psychiatrists and forensic experts, as and when required.
- Avoid repeated interviews, unless essential. Senior officers and supervisory officers should ensure that they participate in the interview alongwith the IO. Repeated interviews be avoided so that the victim does not have to relive the trauma.
- Effort should be made to help the victim come out of trauma so that she is able to recall events properly, logically and fully.
- Support the victim. Validate the harm done to her. She should be made to feel and realize that she is a victim, that she has been harmed and that she is never at fault.
- Listen to the victim carefully and empathetically. Do understand her from her perspective. A child victim may not know the adult language and terminology. I.O has to go to her level of understanding.
- Avoid making value judgements, comments and criticisms.
- Remember that the victim is the best witness to speak about all aspects of trafficking and exploitation. Therefore her statement should be logical, detailed and should incorporate all aspects of the trafficking process, such as the exploitation, the role of various persons involved and the entire chain of events.
- Prepare a check list of events, facts and themes on which the victim needs to

be interviewed. As the interview progresses, new events, facts and themes will emerge and the interview has to be logically oriented to bring out all the relevant details.

- Interviewing of victims must be carried out with care and caution. See that the investigative processes do not traumatize her any further. It is essential to adopt sensitive techniques (i.e., cognitive interviewing) to help the victim recall all the facts which are of evidentiary value. The victim may not know about the significance of these facts, whereas the police officers ought to know. The interview processes should be done keeping in mind her best interest and not anybody else's.
- With the victim's informed consent, electronic documentation (eg. videography) of the recording of the statement can be arranged which can be eventually used in the court of law. However, every effort should be made to protect her anonymity.
- Facilitate the victim to ask questions and raise doubts. It will open up the conversation.
- Record statement in the victim's language. Translation can be done later. Do not forget to include the emotional content and body language as displayed during the interview.
- The police officer recording statement should sign and record his full name, designation and address.
- There should be no publicity of the victim and her statements. Ensure anonymity at all occasions, including the period of transfer to court and back.
- If re-examination is required, do seek her consent and convenience.
- Do not delay in recording the statement of the victim u/s 161 and 164 CrPC as it would delay restoration /repatriation. However one should not be in an unusual hurry. There is no bar in having additional statements recorded, as and when the victim desires to speak.
- Provide proper escort by WPO at all places of stay and movement.
- Do look after victim's comforts. Ensure that there is place of rest, easement, etc. Provide food, water, tea, etc. as and when required. Child victims need special attention regarding choice of food.
- Ensure that the actions taken by police are in the best interest of the victim. The thumb rule for decision making should be "victim's best interest".
- Do not forget to thank the victim after interview.

4.4.8 Medical Care and attention of victims: Dos and Don'ts

- All examinations should be done by a female doctor. If no female doctor is available, do associate other female persons like nurses/counselors/NGO workers during medical examination.
- Male police officers and attendants should keep away, if female officials are available.
- The doctor should do a mapping of not only physical injuries but also the psychological harm. If required associate a psychiatrist.
- Medical exhibits should be carefully preserved and the chain of custody be ensured.
- Do not delay medical attention. Timely care helps to de-stress and detraumatise the victim.

4.4.9 Psychosocial care of victim: Dos and Don'ts

Mental health care is an area often neglected by the police and other after-care agencies, despite its crucial role in victim care and rehabilitation. Do associate appropriate government/non-governmental agencies to attend to this issue. As an untrained counselor can cause further damage and trauma to the victim, it is very important to associate a trained and qualified expert, from the very beginning itself. Trauma counseling should be ensured even at the home/lodging house. This should be a continuous process as the victim will take time to get over the trauma. Moreover the counselor/psychiatrist will be an important witness in the court of law. Hence he/she should be cited as an expert witness in the charge sheet filed against the accused persons.

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

4.4.10 Age verification/assessment:

The Magistrate, before whom the rescued person is produced, shall u/s 17(2) ITPA, cause verification of the age of the person. Age is crucial in deciding on the application of IPC Sections like 372, 323, 375, 366 A, 366 B etc and that of JJ

Act. If the person is less than 18 years of age, JJ Act comes into effect and the Magistrate should refer the person to the appropriate authority, ie, the CWC. Therefore, correct assessment of age of the rescued person is an important step. Though u/s 49 JJ Act the competent authority is authorized to take steps in determining the age, in practice, it is left to the rescuing officials to take a prima facie decision as to whether the rescued person is an adult or a child. The following are the dos/don'ts in this regard.

- Presumption of age, at first sight, be drawn in favour of the rescued person.
- Interview the person to arrive at objective yardsticks, like date of birth in school records etc. There are several events in the life of a person which can reveal her age.
- Associate social workers, CWC members etc, in assisting the police official in age determination.
- Do not go by the age spoken to by the brothel 'madam' or the exploiters. They will confuse.
- The victim may be under pressure by the exploiters to speak out wrong age. Careful interviewing of the victim can bring out the truth.
- Age verification by the medical/professionals and forensic experts involve ossification test and other parameters. Do involve these professionals as early as possible.
- If the expert is not able to categorically state the exact age, but opines it to be falling under a range (say 17-19 years) the benefit of doubt should go to the person (and in this case the person should be treated to be a child of 17 years).

4.4.11 Investigating the organized crime of trafficking.

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

- Intelligence on traffickers and exploiters in one case of trafficking can be appropriate inputs for investigating another crime of trafficking. One case can lead to another. Therefore, such intelligence should be shared at once with all concerned and, as far as possible, documented.
- Data base on traffickers, and exploiters, including their modus operandi, origin, place of activity, movements and influence, the communication

linkages, the income generated, transmitted, invested etc, the expenditure patterns, the operational linkages among the exploiters, the linkage between the source area the transit area and the demand area etc., be developed.

- Searches conducted earlier at the scene of crime, documents in this regard including police documents and even media reports are relevant not only as evidence but also as clues for investigation into the organized linkages.
- In case of inter district crime, the SSP should take initiative for follow up. In case of inter state crimes, the police managers and CID wing should take initiative to provide support to the investigators. Nothing legally stops an IO to investigate anywhere in India.
- Involve NGOs for intelligence collection. As of today, NGO networks like ATSEC, CBATN, SAPAT etc have developed net works across the boundaries and do have intelligence sharing on trans-border traffickers. Their services could be effectively utilized by the Law Enforcement Agencies. Nothing prevents the Law Enforcement officials from associating competent NGOs.
- Recording of statements of witnesses: Do get the witness statements, especially the important ones, recorded and/or video-recorded by a Magistrate u/s 164 CrPC, so that do not turn hostile. If they do so, it would invite prosecution for perjury. (*Zahira Habibullah Sheikh vs Gujarat, 2004 (91) AIR 3114SC*)

In case of a transnational crime like AHT, investigations may have to be caused abroad. For legal and officials transfer of evidence, Letters Rogatory (LR) are to be prepared, sent and followed up. (For details, see Nair PM, *Combating Organised Crime 2002*, Konark Publishers) Electronic documentation of the material exhibits will be of immense help in transfer of evidence in such crimes. However, the services of NGO networks having linkages across the borders (eg. ATSEC) could be utilized for collection and collation of information which can, if required as legal evidence, be brought over through official channels, by sending LR.

PROSECUTION OF TRAFFICKING CRIMES: DOS AND DON'TS

5.1 Expediting trial

- Ensure timely intimation to witnesses and facilitate their appearance in the court. Delayed trials are mostly due to non-appearance of witnesses.
- Witness care requires that transport and other contingencies are taken care of.
- Provide protection to the witnesses against undue publicity
- To encourage experts to appear in the court as witnesses, it is essential to maintain their address, contact telephones, e-mail and networking. Maintaining regular personal contacts is advisable.
- Police officials who are witnesses do get transferred out. Therefore, keep an update of their addresses and contact numbers.
- Ensure liaison with the prosecutors and court staff for timely redressal of the problems and issues which come up in trial.
- Liaison between the Presiding Officer of the court, the Prosecutor and the Police official concerned is a *sin-qua-non* for removing all bottlenecks and ensuring early and prompt delivery of justice. Prosecutor is the officer of the court and, therefore should take initiative in ensuring this liaison.
- Prosecutor has a large role to play in the delivery of justice by bringing to the notice of the court any major flaw or deficiency in investigation. This would facilitate the court to take an appropriate decision whether to proceed further or to refer the case back to police for further /fresh investigation or draw the attention of senior police officers/or refer the case to specialized agency like CID etc for investigation.
- S.22 ITPA provides for special courts to be constituted by the State Government or the Central Government. Prosecutor should take initiative in this direction as this is an important step in delivering justice expeditiously.
- Ensure that all facts are brought to the notice of the court. “ It is as much duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice”

(Shakeela Abdul Khan Vs Vasant Dhote, 2003 (7) SCC 749 and Zahira Zaifullah Vs Gujarat, 2004 (4) SCC 158).

5.2 Victim and witness care & protection during trial : Dos and Don'ts

- Victims are wary of the court ambience. Do orient and counsel them. Assure them that their rights will not be violated and that their truthful version of all facts is essential for delivery of justice which is in their interest and also in the larger public interest.
- Victims require briefing on the facts of the case, especially to recall the events in a logical way. This should be done before she is put in the witness box.
- Prosecutors ought to ensure that the defense-side does not violate the rights of the victim. Embarrassing questions need to be avoided. Intervention of the court should be sought immediately to prevent any such violations.
- All efforts should be made to ensure the anonymity of the victim. Anonymity provides strength and confidence to the victim.
- Move the court for allowing in-camera trial. The Supreme Court of India (*Refer Judgement dated 26 May 2004, in 'Sakshi vs Union of India'*) has directed that in-camera trial should be extended to all cases of sexual assault on children. A screen has to be provided in the trial court so that the child victim is not exposed to the suspect and accused persons. A child counselor should be provided to assist in the court. Adequate recess should be allowed during trial proceeding so that the child victim gets rest. This is a landmark judgement in ensuring child rights and, therefore, needs to be implemented in letter and spirit. The police and prosecutors should move the trial courts for the same.
- Video conferencing is an ideal mechanism to prevent victimization of the trafficked victim. It should be done whenever possible. The Supreme Court, in its landmark decision, *in State of Maharashtra vs Dr. Praful B. Desai 2003 (4) SCC 601*, has underscored the validity of video conferencing and enumerated the safeguards to be ensured during the trial of cases.
- Victim care and protection also requires the following:
 - Depute a sensitive liaison officer with the victim, preferably a WPO.
 - Brief the victim on the facts of the case before trial starts.
 - Orient the victim to the court scenes before the trial.
 - Debrief the victim immediately thereafter.
 - Follow up on the debriefing and make required amendments.

- If the victim speaks a different language, make arrangements for appropriate translators.
 - Ensure transportation of the victim to and fro.
 - Provide for contingency expenditures. Court has funds for this. In some states like Tamil Nadu, Government has provided special funds for this work.
 - Take care to return the victim to the concerned destination.
 - Do look after other logistics and contingencies such as providing facility for rest, easement, etc.
 - Do not forget to thank the victim/witnesses and all those who assisted in getting the victim to the court. Do ensure their safe and comfortable return.
- Post Conviction Matters requires special attention by the prosecutor. This includes the following major steps:
- Seeking enhanced punishment for repeated offences/offenders.
 - Moving the court to impose fine alongwith punishment (refer section of law discussed earlier where fine is mandatory).
 - Seeking compensation for the victim from the offender (refer section 357 CrPC).
 - Seeking compensation from the state (refer supreme court decision in 'Delhi Domestic Working Women's Forum vs UOI').
 - Taking steps for closure and eviction of brothels u/s 18 ITPA (this can be taken up even before conviction as discussed earlier under Para 3.2.11.5 to 3.2.11.7).
 - Taking steps for surveillance of convicted person (refer discussion in Para 3.2.12).
 - Initiating steps for externment of the convicted person (see discussion in Para 3.2.13).

5.3 Victim/ witness protection systems

There are several constitutional, legal and administrative provisions in India for ensuring the rights and protection of witness/victim. Some of these are listed below which can be of ready reference to the law enforcement agencies:

- **Right to anonymity** is a legal right (*S.C in Smt Sudesh Jakhu vs Narender Verma 2004*).

- **In camera trial**, u/s 327 CrPC is essential in rape crimes. The provisions of in camera trial have been extended to all crimes of sexual assault against children (*refer Sakshi judgement*) Therefore in camera trial should be invoked in all crimes of trafficking of children for CSE.
- **Video Conference** is allowed in the trial of crimes (*refer Praful Desai judgt*). This ensures not only anonymity but also protection to the victims and witnesses.
- Provision of **free atmosphere**: In *Sakshi vs UOI*, it was held that “the whole inquiry before a court is to elicit the truth. It is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. A screen or some such arrangements be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused”.
- **Recess** during court proceedings: In *Sakshi vs UOI* the Supreme Court directed that whenever a child or a victim of rape is required to give testimony, sufficient breaks should be given as and when required.
- **Legal representation** is a legal right. In *Delhi Domestic Working Womens Forum vs UOI, 1995 (1) SCC 14.*) The requirement of legal representation and counseling has been extended to the victim right from the Police Station itself.
- Victim can have **Private Lawyers** who can assist the Public Prosecutor and even submit written arguments, nevertheless functioning under the public prosecutor, vide Section 301(2) CrPC.
- Victim is **never an accomplice** (*Gurcharan Singh vs Haryana, AIR 1972 SC 2661*).
- Right of accused to **cross examine the victim/witness**, though a legal right, is restricted *by Sakshi judgt*, in such a way that in a case of sexual assault of children, the defence cannot question the victim directly, but has to furnish the questions to the court and the court will, in turn, communicate it to the victim.
- **Compensation** is an entitlement of the victim for injury/loss, u/s 357 CrPC.
- **Compensation** can be awarded to the victim from the convicted person even if there was no fine as part of the sentence (*Bodhi Sattwa Gautam vs SubraChakroborty, 1996 1 SCC 490*).

- **Compensation** can be awarded to the victim even **without conviction** and even during pendency of trial (*Delhi Domestic Working Womens Forum vs UOI*).
- **Age assessment** of the victim should be done, when in doubt, in favour of the victim. In *State of Karnataka vs Majamma*, it was held that even if the prosecution has not proved that the girl was less than 16 years, her own statement should be trusted and accepted.
- **Delay in reporting** of the case will not affect the case if reasonable explanation is given/brought out during investigation (*Harpal Singh vs HP, 1981(1) SCC 560*).
- **Defective Investigation:** Flawed investigation is no ground to deny justice to the victim. “It would not be right to acquit an accused person solely on account of defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective” (*Karnal Singh vs MP, 1995 5 SCC 518* and *Zahira Habibullah vs Gujarat, 2004 (4) SCC 158*).
- **Prosecutrix need not be examined:** in *State of Himachal Pradesh vs Mohan Misra, 1995 CrLJ 3845*, the Supreme Court held that “merely because the victim girl is not examined, this can never be a ground to acquit an accused if there is evidence otherwise available proving the criminal act of the accused.
- **Character and antecedents** of the victim has no bearing or relevance... and can never serve either as mitigating or extenuating circumstance. No stigma should be implied against the victim/witness. ‘After all it is the accused and not the victim of sex crime who is on trial in the court’. (*Haryana vs Prem Chand and others, 1990 (1) SCC 249, Maharashtra vs Madhukar Narayen Marvikar, AIR 1991 SC 207, State of Punjab vs Gurmit Singh, AIR 1996 SC 1393*).
- **On reliability:** The evidence of a victim of sexual offence is entitled to a great weight, absence of corroboration notwithstanding (*Punjab vs Gurmeet Singh*) The rule of prudence that the evidence of a victim of sexual assault must be corroborated in material particulars has no application (*Maharashtra vs CPK Jain, AIR 1990 SC 658*).
- **On corroboration:** In *Punjab vs Gurmeet Singh* it was held that the statement of the rape victim who was between 15-17 years, inspired confidence for acceptance and, therefore corroboration of evidence was not needed. Held that there is no legal compulsion to look for

corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted (*Himachal Pradesh vs Raghbir Singh*) There is no rule of practice that there must in every case be corroboration before a conviction can be allowed to take place (*Rameshwar vs Rajasthan, AIR 1952 SC 54*).

- On **discrepancy** in the statement of victim/witness: In cases involving sexual assault minor contradictions or insignificant discrepancies in the statement of the witnesses should not affect the case (*Punjab vs Gurmeet Singh, AIR 1996 SC 1393 and Andhra Pradesh vs Gangula Satyamurthy, JT 1996 (10) SC 550*). It was held that the court must appreciate the evidence in totality of the background of the entire case and not in isolation.
- On **medical report**: In *Rampal vs State of Haryana, 1994 Supp(3) SCC 656*, conviction was based on the sole testimony of the prosecutrix. Though the doctor did not find any visible injuries, the court held that, there was no reason to suspect the testimony of the victim and upheld the conviction of the accused.
- **Expeditious trial** is an essential ingredient of reasonable, fair and just procedure guaranteed by Article 21 (*Menaka Gandhi vs State, 1978 (1) SCC 248*). It is the constitutional obligation of the state to devise such a procedure as would ensure speedy trial (*Sheela Barse vs UOI, 1986 (3) SCC 632*).
- Courts need to take **participative role** to deliver justice to victim. “The Courts have to take a participative role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. S.311 of CrPC and S.165 of Ev. Act confer wide and vast powers on presiding officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process” (*Zahira Habibullah vs Gujarat, 2004 (4) SCC 158*).
- **Witnesses to turn up in trial**: In order to ensure fair trial, a duty has been cast on the prosecution to produce witnesses on time. “The presence of the Investigating Officer at the time of the trial is must. It is his duty to keep the witness present. If there is a failure on the part of the witness to remain present, it is the duty of the court to take appropriate action” (*Shailendra Kumar vs Bihar, 2002 (8) SC 13*).

- **Right to be rescued:** Section 16 ITPA provides powers to Executive Magistrates and Judicial Magistrates for directing any police officer of the rank of SI and above to rescue a person based on information received from any source. This accrues a right to the victim to notify the Magistrate, by whichever means possible, and a duty is cast on the Magistrate to ensure steps for rescue.
- **Right to restoration to a safe place after rescue:** Section 17 ITPA provides that a rescued person shall not be restored to or placed in the custody of a person who may exercise a harmful influence over the person. This section of law calls for Home verification to verify whether the original home of the rescued person is safe enough for her return.

5.4 Role of prosecutor in prevention of trafficking

The prosecutor has a large role to play in preventing trafficking.

- If the trafficker is convicted and kept behind bars, as a corollary, the trafficker is being deprived from indulging in trafficking. Therefore, by aggressive law enforcement, prosecutors can ensure prevention of trafficking.
- If the post conviction measures discussed in the previous paras, are taken properly against the trafficker and other exploiters, it will make a tremendous impact in preventing trafficking.
- Eviction of brothels and such other places of commercial sexual exploitation carried out effectively, is another method of preventing trafficking. Prosecutor should take initiative u/s 18 ITPA.
- Post rescue care and attention of victims and survivors, if carried out properly, in such a way that they are rehabilitated according to their best interest, would mean prevention of re-trafficking. Prosecutors can play a role in such post rescue activities by involving the government department or the civil society either directly or by taking up with the concerned Magistrate (Judicial or Executive) depending on the issues concerned and getting an appropriate direction issued by the Magistrate to the concerned government agency/NGO.

RESEARCH AND REFERENCE:

Research is an essential requirement of progress and development. Action plans and programmes can be properly oriented, strategized and executed if they are realistic and appropriate. Only research can provide such inputs. Therefore, action research should be followed by appropriate programmes and these responses should be further studied so as to bring in improvements. Lack of integration of research with response system is one of the banes of the existing scenario. However, action research on trafficking in women and children sponsored by the NHRC is a classical example of integration of research into response systems because of the fact that the findings of the action research have been effectively utilized in training, advocacy, policy making and several other action programmes (especially in the project by UNODC during 2006-2007).

The conviction of the offenders is the final test of successful investigation. Therefore, the court judgements need to be studied, analyzed and researched. The problems, if any, should be flagged and appropriate remedial steps should be taken thereafter. The senior officers should review the case with the investigators and prosecutors, and help with introspection and improvement. Case studies of 'good practices' should be discussed and documented to help improve the situation. Do associate academics for such analysis, discussion and micro studies. Academia has a large role in improving justice delivery. Do facilitate micro researches by research scholars on topics relating to the cause, dynamics, impact and responses to human trafficking.

Reference materials, especially on laws, court rulings, protocols, manuals, etc. are essential for timely reference and use. It has been noticed that most of the police stations in several states do not have this facility. Supervisory officers should ensure that these reference materials are provided at the police stations. The essential reference should include the latest Supreme Court rulings/judgements and Handbooks, SoPs, Checklists etc.

ASSOCIATING NGOS IN LAW ENFORCEMENT PROCEDURES

7.1 How to begin:

- The SP/DCP should call a meeting of NGOs working in the related fields. Do not associate other government departments too. The discussion should focus on generating awareness, networking and developing synergy in preventing and combating trafficking. This would entail addressing the larger dimensions of women's rights and child rights.
- In the Police Station, do not maintain a list of NGOs showing their expertise, specialization as well as contact address, telephone, e-mail, etc.
- Notification of an advisory body, including NGOs, u/s 13(3)(b) ITPA should be got issued from Government. Suggest appropriate NGOs.
- Home verification by NGOs u/s 17(5) and u/s 17(a) ITPA is essential. Hence associate NGOs during rescue and post rescue activities. Maintain list of NGOs and provide this list to Magistrate.
- NGOs play an effective role in rescue operations as witnesses, advisors, and partners and as human rights ombudsmen. This should be appreciated and acted upon.
- Association with NGOs can be a good source for intelligence collection. They can help identifying victims, vulnerable persons and carrying out risk assessment. NGOs can give intelligence on traffickers and exploiters. Involve them even before planning rescue.

7.2 Post-Rescue Role of NGOs:

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

- Counseling of victim and de-traumatization.
- Interviewing the victim, as mandated u/s 15(6A) ITPA.
- Helping the police to identify the best interest of the victim so that police officers can act accordingly.
- Helping police to get clues in investigation, especially regarding the traffickers and the process of trafficking.

- Providing translators, when required.
- Facilitating victim empowerment and rehabilitation programmes such as:
 - Providing orientation and motivation to the victim.
 - Identifying the appropriate programmes for the victim.
 - Empowering the victim with knowledge, skills and resources for rehabilitation. Resources should include adequate funding sources. Do involve MNCs and those dealing with CSR of corporates.
 - Providing networks to sustain the programmes.
 - Marketing the products and facilitating marketability.
 - Ensuring sustenance of the programmes and thereby preventing re-trafficking of the victim.
- NGOs provide the appropriate linkage between police and civil society as well as between the victim and civil society. The box presents a few examples of rehabilitation by NGO's.

- *Prayas Bharti*, an NGO based at Patna, was instrumental in rehabilitation of a trafficked girl of 16 years, who was lodged in jail for two years on the charge of 'soliciting'. The villagers refused to accept her back, 'branding' her as prostitute. *Prayas Bharti* spent one full day with the entire villagers, speaking to them, coaxing them, and finally convincing them that the girl is a 'victim of trafficking' and a 'child in need of care and protection'. The commendable initiative by this NGO helped proper rehabilitation of the girl.
- *STOP*, based at Delhi, took initiative to assist the rescued young women locate partners and facilitated their public marriage. The empowerment programmes by *STOP*, coupled with marriage to a suitable partner, could ensure that these young women were rehabilitated and that there would be no re-trafficking.
- *Prajwala*, Hyderabad and *Prayas*, Delhi worked with the corporate sector and rehabilitated several young women, who were victims of trafficking and sexual assaults for a long period. They tied-up with AMUL cooperative, to help train these young women in the sale processes and, thereafter, the corporate sector utilized their services for sale and marketing of their products. This is a landmark initiative in involving the corporate sector in the rehabilitation and empowerment of trafficked girls. This has been recognized to be a 'good practice' in permanent rehabilitation.
- *SANLAAP*, based at Kolkata, networks with police and BSF and ensures that the women and children trafficked from Bangladesh are not 'pushed back' (as is the usual case with illegal immigrants) but are properly transferred to responsible NGO's across the border. The networking of *SANLAAP* with the NGO's and government agencies across the borders have ensured not only proper rehab but also prevented re-trafficking and further violations of the trafficked persons.

7.3 Role of NGO's in the trial of cases in courts:

NGOs can play a constructive role in the process of trial of accused persons and, thereby, help in the conviction of offenders. This is an area which is largely untapped, though there are some examples of 'good practices' in the past. The police and prosecutors can associate NGOs in the following ways:

- NGOs are of great help as **counselors** to orient and prepare the victim/witness to face the court and proceedings in the court. They can assist in interpreting children's perceptions and views.
- NGOs can act as '**child minders**' in the court to help out the child victim. The Supreme Court of India, in its judgement dated 26th May 2004, (*Sakshi vs UOI*) directed that such provision be made in the trial of all cases of sexual assault on children.
- NGOs can assist in providing **translators** when the victim speaks a different language (i.e. STOP, a Delhi-based NGO assisted the court in translating Bengali to Hindi when child victims trafficked from Bangladesh to Delhi were tendering their evidence in the Delhi Court).
- **NGO as prosecutor:** According to an order passed by the High Court of Calcutta, *SLARTC*, a Kolkata-based NGO, has been authorized to handle the prosecution work of all trafficking cases. The NGO has substituted State prosecutors and is utilizing the services of private lawyers to argue the case on behalf of the victim and the state. This experiment has been working well for several years.
- **NGO Networks** are a very good tool for police in addressing inter state and trans-border trafficking. Several strong and effective networks of NGOs are available. Their services can be utilized for rescue, repatriation, transfer of information and such other services and processes in combating and preventing trafficking. Since government agencies are bound by rules and procedures which have jurisdictional restrictions, NGOs come handy as they have no such limitations. However, all such information and intelligence need to be formally brought through official channels, if they are to be utilized as evidence in the court of law. Moreover confidentiality of the information and the integrity of the NGO are relevant issues in decision making.
- **NGO Resource centres:** Many NGOs have set up vast resource centres and networks which can be effectively utilized by the police in understanding the issues, for training and sensitization, as reference manuals and as guide books. (for example, the Resource centre of PRERANA, an NGO based at Mumbai). These resource centres are also helpful for evidence collection against offenders

and in understanding the processes involved in trafficking.

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

PREVENTION OF TRAFFICKING: DO'S AND DON'TS

Prevention is the *sumum bonum* of all activities that one can do to address trafficking. It includes prevention of re-trafficking too.

- Law enforcement processes should be **integrated** and **comprehensive**. There should be a combination of steps for **Prosecution** (of offenders), along with **Protection** (and care of victims) and **Prevention** (of trafficking). An integrated P-P-P model is essential. Adequate attention should be paid to all the three legs and the efforts should be dove-tailed.
- Prevention of trafficking requires attention at all the scenes of crime. Accordingly they can be classified into three :
 - Prevention at the **demand point**:
This requires proper investigation, prosecution, conviction, addressing the demand effectively and all post conviction measures. This also involves proper care and protection of victims to ensure prevention of re-trafficking.
 - Prevention at the **transit area**:
Trafficking when carried out from one place to another involves transit places. The major hub of such transit are railway junctions, bus stops, ports, border entry posts etc. 'Rights intervention centre' started by the NGO 'SEWA' of Gorakhpur at Sanauli, with the partnership of local police, is a classic example of prevention of trafficking. In a span of nine months, 65 girls could be prevented from exploitation, by interception at the transits place (for details see the case study in the NHRC book). Effective surveillance and watch on suspects at the transit places by deputing spotters in association with NGOs can be a good method. The details of transit routes, mode of transport and the names of persons involved could be gathered on careful interviewing of victims and interrogation of suspects.

- Prevention at the **source point** requires several steps, like addressing vulnerabilities, attending to missing persons, networking with the civil society and Panchayati Raj institutions, empowering the vulnerable sections along with other police strategies on prevention. The details of these strategies are discussed below:
 - Do ensure conviction, punishment and stringent action against traffickers and all exploiters (see discussions in the earlier chapters).
 - Do ensure post conviction steps. This includes closure and eviction of brothels and other places of exploitation, externment of the convicted persons, surveillance and dossiers on convicted and suspected persons, confiscation of illegal assets etc (see discussions in the earlier chapters).
- **Address the demand factor effectively.** This calls for a strategic intervention, depending on the persons who ‘demand’.
 - All traffickers and intentional abusers, who are usually called “customers”, should be prosecuted and firmly dealt with. Further, all those who perpetuate the demand, including financiers, colluders, conspirators, abettors etc be prosecuted.
 - Adolescents/youths also come in as ‘customers’ and contribute to the demand. They require a different treatment, as they have the knowledge but may not have the intention to exploit. Advocacy and orientation of such persons, with the help of NGOs, on issues of sexuality, gender, women’s rights, child rights, etc. be carried out to address the demand in this sector.
- **Protection and care of victims** commence with proper rescue processes. Do not criminalize them. FIR should be only against traffickers and abusers, but never against the victims. All further steps in investigation and justice delivery should follow this principle. Simultaneously, do see that the victims are empowered and properly rehabilitated. Often police officials think that they have nothing to do with the rehabilitation of the victims. This is a mistaken notion. Prevention of crime is a mandate to police under the Police Act. To prevent re-trafficking, it is essential to rehabilitate the trafficked victim.
- **Preventing re-trafficking** The NHRC study has established the fact that a large number of rescued persons are re-trafficked. The reasons are many. Victimization of the victims, arrest of trafficked persons as accused and their criminalization are some of the reasons. Improper/inadequate

rehabilitation/empowerment lead to lack of livelihood options which, in turn, make these persons highly vulnerable and subjects of prey by traffickers.

Therefore the following can be done to prevent re-trafficking..

- Provide proper counseling, right-based empowerment and appropriate livelihood options, including adequate resources, skills and marketing facilities, to the rescued persons.
 - Police should network with other departments of government (i.e.. women's development, child development, social welfare, health care, etc.) as well as with NGOs and INGOs working in the related fields, in addition to Corporates who would like to be associated, and involve them in the various processes of empowerment..
 - Ensure that the repatriated/ rehabilitated person is reintegrated properly by taking regular feedback.
 - Accountability be cast on the village-level functionaries to monitor the same. Do involve Panchayat Raj Institutions in this task.
 - Do remember that re-trafficking is more often done by known traffickers and their coteries. Hence strict action/surveillance on such persons can be an effective tool to prevent re-trafficking.
- **Addressing vulnerable persons/areas** is an important strategy in the prevention of trafficking. Police should develop synergy with the concerned governmental and non governmental organizations and undertake the following steps:
- Identify the vulnerable persons/areas and focus attention on them. Empower them. Let this be a priority.
 - Pay special attention to the most vulnerable persons (e.g., children in brothels). This needs to be top priority.
 - Mount surveillance for suspects and look-out for victims at possible transit/transfer points like bus stands, railway stations, wayside hotels (Dhaba), beach resorts, etc.
 - Facilitate empowerment programmes by networking with government departments, MNCs etc.
 - Involve multiple agencies to provide sustainable livelihood options.
 - Adopt a "Human Rights approach" in all activities and programmes and discard the "welfare act" orientation. This requires change of mind-set. Proactive policing, with the support of NGO's, can stimulate such a change.

- **Networking with other government agencies:** Partnership with the departments of women and Child Development, Social Welfare, Paramilitary agencies manning the borders, viz., BSF, SSB, ITBP etc is essential, depending on the area of functioning. In fact, it should be a process of mutual assistance. Agencies like BSF should have anti-trafficking cell with its network extending to State Police Systems, Human Rights agencies, NGO's etc. Similarly police agencies should network with Human Rights Commission, Women Commission etc so that preventive steps could be meaningful, effective and institutionalized.
- **Networking with Civil Society Members:** Since concerted efforts are called for, the law enforcement officials should develop synergy with NGO's, CBO's, Social activists, academia, lawyers etc. **Panchayat Raj Institutions** can play a large role in identifying and addressing vulnerabilities, keeping surveillance on exploiters and in public awareness/empowerment programmes. Tamil Nadu (Dept of Social Defence) has developed a good model in this direction.
- **Issue of Missing Persons:** There is a strong linkage between 'trafficking' and 'missing persons'. The research report of NHRC on trafficking (2004) shows that in one year more than 30,000 children are reported missing and one-third of them remain untraced. This study has established with examples that many of these 'missing children are, in fact, trafficked. Hence prevention of trafficking requires the following:
 - Do realize the linkage between 'missing' persons and 'trafficked' persons, because many who are 'reported missing' have been, in fact, trafficked.
 - Do cross-check the list of persons rescued from brothels and other places of exploitation with the list of persons reported missing from anywhere in India.
 - The linkage will also help to expose the traffickers, trafficking routes and trafficking processes.
 - Do follow up missing women and children till a logical conclusion is arrived at. Constitute special teams to go into the root of the issue and ensure rescue/return/recovery of the missing person. Follow-up all the leads in this process to ensure that those responsible for making the person missing are brought to book. Any slight suspicion should immediately be taken cognizance of a proper FIR registered, followed by sustained investigation.

- It is often seen that the trafficked person is blamed ‘as if he /she is responsible for being ‘missing’. One should realize that more often children who were missing are from the vulnerable sections of the society and are essentially ‘children in need of care and protection’.
 - Provide the details of missing children to the police agencies and NGOs who are working in the rescue of trafficked persons so that they could also follow up.
 - Network with NGOs/Helpline/Child line, etc. to identify the linkage. Expand the database of missing persons to link it up with trafficked and rescued persons.
 - Do a mapping of missing persons for a specific time in a particular place (i.e. for one year period in the area of a police station) and undertake special operations to locate them. One linkage to a brothel elsewhere in the country could be a clue for locating many who are still missing.
- **Utilizing preventive sections of CrPC:** Section 110 CrPC provides enough scope for preventing offences. Executives Magistrates are vested with the powers. The Magistrate can bind down the persons for ensuring good behaviour. Steps u/s 111, 116, 121, 122 CrPC will further affirm the preventive actions against likely offenders.
 - **Helplines:** The Police Managers (especially the SsP, DCP) should establish proper and functional networks with the existing help-lines like child-line, Women’s helpline etc. Such help-lines should be linked up to the police control rooms and police stations for prompt response.
 - **Strengthening Police Stations:** Institutionalization of the response systems requires that the police stations, being the fundamental unit of police administration and public service, be strengthened. Besides empowering the police stations with the required human and material resources, their capabilities need to be enriched by regular training and discussions. The methodology prescribed for the functioning and training of STF are applicable here too.
 - **Involving local self government agencies:** The Panchayat Raj Institutions (PRIs) have lot of sway over the local public. Therefore their services can be effectively channelised towards the prevention strategies. Tamil Nadu has started this process through a Government order issued in 2002 followed by training/orientation programmes for PRI members on preventing trafficking. This model could be adopted by others too. Police

officers should network with the PRI's, orient them, sensitize them and involve them in the anti trafficking processes. District level and village level Monitoring Committees could be set up by the DM/SP, involving all stake holders and PRI's.

- **Data-base:** One of the essential ingredients of crime management is to develop a proper data base. It is utmost essential for not only combating trafficking but also prevention of trafficking. As of today lack of database is one of the major impediments in law enforcement. Since the Investigating officials are more or less confined to their limited jurisdictions, the police managers like SP/DCP and other higher formations should take initiative in developing the data base, not only on traffickers and exploiters, but also on victims and survivors. The data should include the profile of the offenders, the area of operations of the traffickers, their networks, the details of source, transit, destination etc. This should be regularly updated. The second aspect of data base is data analysis. This would facilitate in developing criminal intelligence. The third aspect of data base is sharing of criminal intelligence with all concerned and initiating appropriate action for combating and preventing trafficking. Collation, analysis and dissemination of data and intelligence are professional aspects of policing and therefore the responsibility for the same is with the police managers. It is advisable to involve appropriate NGOs working in the field and associate them fully in all activities mentioned above.
- **Anti Human Trafficking Unit (AHTU):** An in-depth understanding of the dimension of trafficking will clearly bring to focus the essentiality of multi stake holder partnership in preventing and combating trafficking. The law enforcement agencies need to have close association with other departments like health, social welfare, labour, department of women and child, department of correctional administration, development department, panchayati raj institutions etc. These government agencies need to have symbiotic partnership with the NGOs working in this field. The police managers especially the SP/DCP should take initiative in setting up an AHTU by developing close partnership of the police with all these responders. Such an AHTU will be the best mechanism in the given situation to prevent and combat trafficking. The officials and NGOs who are put in the AHTU should be specially trained and oriented. Protocols should be drawn up to

demarcate the role of each stake holder. The scope of AHTU can be widened to include Corporates so that they could lend the services of their corporate social responsibility(CSR) for not only funding the programmes but also giving appropriate back up support in empowering the survivors, utilizing the services for productive activities, marketing their produces etc.

INTELLIGENCE GATHERING AND DISSEMINATION:

Trafficking is an organized crime. Therefore, prevention and combating trafficking is possible only if the law enforcement agencies deal with the issues from the perspective of organized crimes. An essential aspect of organized crime is that there are multiple crimes and multiple criminals having direct or indirect linkages. Therefore, investigation of one crime should lead to other crimes and other criminals. Similarly investigating one suspect /criminal should lead to other crime/criminals. This is possible only when the intelligence emanating from each instance is collated, consolidated and disseminated. Since the investigations of crimes are mostly done at the junior level in the police hierarchy, who may not have much networking and liaison, especially outside their limited jurisdiction, the police managers/leaders have to take initiative in consolidation and dissemination of criminal intelligence. Given the dimensions of trafficking, intelligence should be all pervading and cannot be segregated into distinct pockets of source, transit and destination areas. Moreover intelligence includes both **strategic** and **tactical** components.

Strategic intelligence is essential to assess the trends and dimensions of trafficking, for policy planning, for allocation of resources (human, financial and technical), to generate media and public awareness, to identify strategic resources (i.e. interstate and, international cooperation) and to formulate training modules and programmes for various stake holders. Strategic intelligence encompasses the socio economic profile of vulnerable areas and persons, including cultural, historical and social factors that play a role in trafficking, as well as the geographical factors that facilitate trafficking.

Tactical intelligence helps in rescue and rehabilitation, provides insights for investigation, facilitates synergic activities to prevent trafficking, improves the care and attention of victims, contributes inputs for training law enforcement agencies and gives value addition to all activities in addressing trafficking.

Intelligence on operational aspects cover a vast spectrum, viz., the recruitment methods, including media advertisements, travel documents (in case of international trafficking), the routes, mode and time of travel, places and time of transit, the persons and finances involved, as well as the problems and challenges in the existing response systems.

The processes involved in gathering intelligence are both human and technical. The golden rule is that police officers should:

- Be alert
- Verify inputs to test the veracity
- Objectively assess the inputs
- Uphold confidentiality of inputs
- Ensure anonymity and protection of sources
- Facilitate the sources for intelligence collection
- Collate and analyze inputs to develop operational intelligence
- Disseminate intelligence to the operational levels
- Monitor activities and performance
- Develop feedback and undertake assessment and improvement required and
- Link up intelligence with the activities in preventing and combating trafficking.

There are many intelligence sources which are often revealed from the traffickers' network itself. Their communication could be intercepted after observing due protocols and the data analyzed. The surveillance of traffickers, especially the convicted ones, also provides a lot of inputs. The witnesses at the places of recruitment, halt, transit etc will provide additional intelligence. Interview of victims and survivors is another important source of intelligence. The counselors and service providers in the rescue homes etc. can elicit a lot of information from victims and survivors. NGO networks, PRI institutions etc. also can help in collecting intelligence from the grassroots level.

Since international transfer of intelligence through official channels is formal and takes time, many NGOs have developed informal networks which can be of immense help in timely dissemination of intelligence. Such informal systems should be facilitated. The ATSEC, CBATN, NASCET are few examples of

such networks. They have linkages in several states in India as well as in Nepal, Bangladesh and Pakistan. There have been several instances during which the ATSEC network has been instrumental in developing and disseminating intelligence which helped in facilitating the timely care and attention of rescued persons, in preventing trafficking of girls, and in facilitating prosecution of traffickers etc. (For details, see case studies in the NHRC Book.). Similarly SAPAT, a network of professionals facilitated by UNIFEM, can be utilized for dissemination of transborder intelligence.

The existing scenario of intelligence sharing between the police agencies of different states in India on traffickers and other aspects of trafficking leaves much room for improvement. There is no institutionalized mechanism, except certain adhoc initiatives by some individuals. Therefore the rescue of a victim at a place in one state does not find its resonance in another state where the victim was trafficked from. Oftentimes, Investigating officers, bound by legal and administrative limitations of jurisdiction, are not able to go ahead. Therefore it is incumbent on the police leadership to take initiative to develop and establish effective and institutionalized networks for timely and effective intelligence collection, dissemination and follow up action.

The National Human Rights Commission(NHRC), had advised the states to earmark two nodal officers on dealing with trafficking issues, one representing the police department and the other representing other departments involved in rehabilitation, after care, empowerment etc. The nodal officers have been earmarked by the states. Thereafter, Ministry of Home Affairs, Government of India organized a conference of such nodal officers in Delhi. UNODC, alongwith BPRD, organized a training programme too. These officers should take the initiative to network among themselves and take all steps in preventing and combating trafficking. The states with linkages of source/transit/destination should have regular communication system among themselves.

The data base to be set up on traffickers in the states (refer discussions in the previous chapter) will be an important source of intelligence gathering and dissemination. Therefore, the police managers should give more thrust to developing, updating and disseminating the data-base and developing actionable intelligence. Priority should be given to the database on convicted traffickers and their networks. Their profiling and surveillance can be an effective tool for intelligence collection and for prevention of trafficking.

MEDIA COVERAGE AND LINKAGE: DO'S AND DON'TS:

Anonymity is a legal right of the victim as provided u/s 327 CrPC and s.21 JJ Act. The latter calls for ensuring anonymity of all children in need of care and attention, which includes trafficked victims. The former provides for anonymity of all victims of rape. However, the Supreme Court of India in its judgment dated 26 May 2004 (*Sakshi vs Union of India*) has extended the scope of S.327 CrPC to all crimes of sexual assault on children, which includes those who have been subjected to CSE. Police officials and prosecutors have to ensure that these directives of the Apex Court are complied with so that child rights and women's rights are not violated.

Media can play an important proactive role. Investigators and police managers should capitalize on this. Targetted dissemination of the rights of women and girl children through the media would:

- Empower the masses, especially the vulnerable sections.
- Increase their awareness and alertness to the various issues.
- Help them to come out of the 'culture of silence' and more towards a culture of 'zero tolerance'.
- Involve them in the processes of preventing and combating trafficking.
- Facilitate their wilful participation in addressing the violations.
- Provide intelligence on traffickers and exploiters.
- Provide valuable inputs to the law enforcement agencies and other stakeholders in dealing with the various related issues. For example, the case studies listed in the NHRC Report on Trafficking (*ibid*) shows that the media intervention had brought about tremendous change in the anti-trafficking scenario in Meghalaya. Children who were reported 'missing' turned out to have been trafficked. The state with no 'reported crime under ITPA' started getting several cases of trafficking, being reported to the NGO (*in particular*, the INGON Network). This proves the point that media has a large mandate

and scope in preventing and combating trafficking. It is upto the media persons and police managers to develop a proper working network and proceed further. In this context the following activities can be initiated:

- Sensitize media personnel to child rights, women's rights, the various constitutional and legal provisions as well as court rulings. Facilitate workshops and debates.
- Create linkages and rapport with media to ensure that the rights of women and children are protected.
- Give adequate publicity on good practices by police and by other stake holders including NGOs.
- Give adequate publicity about convictions of traffickers and other exploiters. Naming and shaming has a positive deterrent effect.
- Supply information to the media about the various modus operandi of traffickers so as to create public awareness, especially among the vulnerable sections of society, against trafficking.
- Utilize the media to disseminate information about missing persons and trafficked persons so that intelligence could be generated to locate and rescue them.
- Utilize media help in addressing trafficking sanctioned by cultural/religious/ conventional practices.
- Utilize the services of the media to address the issues of demand. Public opinion and public alertness can be important tools to check violations.
- Enable media to play large role in addressing the adolescents and youth on matters of sexuality, gender, women's rights and child rights. This can contribute not only to the prevention of trafficking and other violations of rights of women and children, but also help develop zero-tolerance to all violations.
- Liaise with media to ensure anonymity of victims. Prevent photographs of victims being taken and made public. Ensure that their rights are not violated.
- Do develop institutionalized network and synergy of the media with the officials of the police department, other government departments as well as non governmental agencies involved in the process, academia, researchers, activists, lawyers, counselors, medical professionals, UN bodies and other agencies working in the cause of Anti Human Trafficking.

Appendix-I: A Checklist of the Elements of the Law and Possible Evidence*

Section of law (ITPA)	Elements of the law	Nature and type of evidence possible in the given situation
S.3 Keeping a brothel or allowing any premise to be used as a brothel.	<ul style="list-style-type: none"> ❑ That the place is a brothel. ❑ That the person owns or keeps or manages or occupies or acts/assists in keeping or managing the brothel. ❑ The brothel owner, the manager and the building owner (if he has the knowledge) are the accused persons under this section. 	<ul style="list-style-type: none"> ■ An earlier conviction of any member of the group. ■ A report (any time) in a local newspaper that any part of the building has been used for prostitution (as revealed during an earlier search). ■ A copy of the earlier search list which was given to the person concerned. ■ Land deeds, registration documents, lease deeds. ■ Receipt of payment of rent or cess/tax for water, electricity, telephone etc. ■ Voter's list, ration card, bank accounts ■ All documents in the brothel. ■ Statement of victims, their medical exam reports, their psychological profiling etc. ■ Statement of other witnesses. <p>Note: If a person allows premises to be used as a brothel, the law presumes that he had the knowledge of the place being used as a brothel if any of the relevant document is produced as evidence.</p>
S.4 Living on the earnings of prostitution.	<ul style="list-style-type: none"> ❑ Person is above 18 years of age. ❑ Source of income is prostituting others, even if part of the income comes from this source. ❑ or that the person is living with a prostitute. ❑ or that the person is habitually in the company of a prostitute. ❑ or exercises control over the prostitutes by way of aiding, abetting, compelling. ❑ or acts as a tout or pimp on behalf of the prostitute. <p>Note: In the above circumstances, presumption will be drawn against the person that he is living on the earnings of prostitution.</p>	<ul style="list-style-type: none"> ■ Income statements, Receipts of payments, vouchers of expenditure, ■ Books of accounts, other documents which are maintained in the ordinary course of business. ■ Earlier convictions, charge sheets filed earlier which are pending trial, ■ Medical report of victims, ■ Psychological profiling of victims.

<p>S.5 Procuring, inducing or taking persons for prostitution.</p>	<ul style="list-style-type: none"> ❑ Procures or attempts to do the same (with or without consent). ❑ Induces a person (with intention) to prostitute. ❑ Takes or attempts to take a person for prostitution. ❑ Causes or induces a person to prostitute. <p>Note: 1. Even attempt is punishable. 2. Graver punishment if the offence is committed against the will of the person, or if the person is a child or minor. Further the offence is punishable at any place, which could be the source, transit or destination.</p>	<ul style="list-style-type: none"> ■ The age of the trafficked person. ■ The consent or lack of consent. ■ If the consent was obtained, whether it was under duress, coercion, threat, deceit etc. ■ That the trafficker/ exploiter had displaced the victim from the community of the latter. ■ The intention or knowledge of the trafficker/exploiter can be established by his contact/association with the brothel or the persons in the brothel. ■ Medical examination of the trafficked person. ■ Psychological profiling of the victim. ■ Medical examination of the abusers to establish the act of sexual assault. ■ The details of the destination point, viz. brothel or such other places where sexual exploitation takes place under the facade of other activity (viz, massage parlour). ■ The details of the source point from where the person was trafficked or attempted to be trafficked. ■ The transit points, halting places etc. ■ The mode of transport, statement of transporters, travel documents like train ticket etc. ■ Documents of money transactions. ■ A map showing the entire trafficking route and the places of exploitation and the role of exploiters.
<p>S.6 Detaining a person in premises where prostitution is carried on.</p>	<ul style="list-style-type: none"> ❑ Detaining anybody with or without consent. ❑ In any brothel. ❑ Or any place with intention for sexual exploitation. ❑ Age of the person. ❑ Consent of the person. ❑ If there was consent, it needs to be probed further whether it was under duress ,coercion, force, lure, deceit etc. 	<ul style="list-style-type: none"> ■ Proof of the place being a brothel or a place of commercial sexual exploitation. ■ Earlier reports, oral statements, newspaper advertisements/ reports etc., land deeds, electricity/telephone/water bills etc. ■ Medical examination report of the age of victim. ■ Medical exam report of sexual assault/ related injury on the victim. ■ Psychological profiling of the victims.

	<ul style="list-style-type: none"> ❑ Intention/knowledge of the accused. ❑ There need not be physical restraint. Control/ persuasion/ influence etc are enough. 	<ul style="list-style-type: none"> ■ The harm done by the brothel keepers and other exploiters to the victim viz., detaining her jewellery, money, property, wearing apparel etc, the debt bondage inflicted on the victim. ■ The details of the intimidation/threat extended to her. <p>Note: In certain brothels the managers keep account of the belongings taken away from the victims. There are documents which show the transaction and earnings/ expenditures in the brothel. Documents also show the debt bondage of the victims. Such documents need to be thoroughly probed and adduced as evidence.</p>
<p>S.7 Prostitution in or in the vicinity of public places.</p>	<ul style="list-style-type: none"> ❑ Existence of brothel or place of exploitation. ❑ That it is located within a notified area or within two hundred metres 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. ❑ Graver punishment if the detained person is a child/ minor. ❑ If the offence takes place in a hotel, the license is liable to be suspended/ cancelled. ❑ Liability 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. 	<ul style="list-style-type: none"> ■ Earlier reports/advertisements newspaper reports. ■ Evidence to establish the presence of the places mentioned in col.2 (ie School, hospital place of worship etc). ■ Physical measurement of the distance of the brothel/place of exploitation from the places mentioned in col.2. ■ Age of the person detained. ■ The detailed statements of the victims. ■ Medical examination of the victim. ■ Psychological profiling of the victim. ■ If the place is used as a hotel, the documents to establish the same. ■ The documents to establish the linkages of the person with the place of exploitation. For eg, the title deed to show ownership, the lease deed to show the status of lessor/lessee, books of accounts to show the income/ expenditure and the beneficiaries thereon etc. ■ The statement of persons affected/ harmed (other than the victims of commercial sexual exploitation) by the brothel being run in the vicinity. For example, the statements of religious priests, hospital employees, residents in the area etc.

<p>S.8 Seducing or soliciting for purpose of prostitution.</p> <p>Note: The offender could be a male or female (though S.8 (a) speaks about a female person, the proviso to the Section 8 does speak about males also).</p>	<ul style="list-style-type: none"> ❑ In any public place or within sight of public place or in such manner as to be seen or heard from a public place. ❑ Within or outside any building ❑ Tempts or attracts, or endeavours to tempt or attract the attention of any person for prostitution. ❑ By words, gestures or wilful exposure of one's person or otherwise (otherwise can include telephonesex, soliciting advertisements in yellow journals etc). ❑ Solicits or molests any person for prostitution, or loiters or acts in such manner as to cause obstruction or annoyance to residents or passers-by or offends against public decency. 	<ul style="list-style-type: none"> ■ The evidence discussed in the previous para under S.7 in order to establish that it is a public place. ■ The intention/knowledge of the accused person is important and should be brought out in the statement. If a person is made to solicit by force/threat/deceit/lure etc by another person, the latter is responsible and not the former. ■ The statement of witnesses as to how it annoyed/offended them. The witnesses could be residents or passers-by. ■ Documents regarding earlier charge-sheet/conviction of the person (Subsequent convictions invite graver penalty).
<p>S.9 Seduction of a person in custody.</p>	<ul style="list-style-type: none"> ❑ Any person who has the custody or charge or care of any person or a position of authority over another person. ❑ Causes or aids or abets the seduction for prostitution of that person. ❑ If a trafficked person is confined to a brothel by the brothel keeper or to a hotel by the hotel manager etc, and thereafter seduced/exploited, the brothel keepers or hotel managers, as the case may be, are liable under this section too. <p>Note: There is minimum punishment prescribed for the offence and, therefore, can be a deterrent against trafficking, if used against all those who command and control the trafficked persons.</p>	<ul style="list-style-type: none"> ■ Documents and statements to establish that the victim is in the custody/charge/care or under the authority of the offender. This includes registers maintained (more often kept surreptitiously) in the brothel/hotel etc. ■ In places where the exploitation is done under the facade of another activity (for e.g., prostitution taking place under the façade of massage parlour) there may be regular documents to show that the victims are employed viz, payroll, attendance registers, leave registers etc. ■ Documents from previous search/charge sheet etc to show that the offender is in command/control/authority over the victim. ■ Documents regarding earlier conviction, charge sheet etc. ■ Documents regarding age of the victims ■ Medical examination reports of the victims. ■ Documents/ statements to show the bondage of the victim.

<p>S.18 Closure of brothel and eviction of offenders from the premises.</p>	<ul style="list-style-type: none"> ❑ A Judicial Magistrate convicting a person u/s 3 or 7 ITPA can order closure of the brothel and eviction of the offenders (without any further notice), u/s 18(2). ❑ If an DM/SDM receives information from police or otherwise (could be NGO too) that any room/house/ place in a public place (as defined u/s 7) is being run or used as a brothel or as a place to carry on prostitution, <ul style="list-style-type: none"> ➤ Issue notice to the owner lesser/ landlord/ agent/ tenant/ lessee/ occupier/ person in charge of the place/house/ hostel etc, u/s 18(1). ➤ Show cause within 7 days of the receipt of notice. ➤ As to why the place should not be attached for improper usage. ➤ The Magistrate has to hear the person. ➤ If satisfied thereafter, direct eviction within 7 days. ➤ Direct that further letting out requires prior approval. ❑ Orders passed by the court/ Magistrate is not appealable nor stayable nor can be set aside by any court, u/s 18(3). ❑ Enhanced punishment, if the victim is a child. ❑ Lease/agreement regarding the house becomes void and inoperative on conviction. 	<ul style="list-style-type: none"> ■ Documents and physical measurements to show that the scene of crime is in a public place (refer docs listed u/s 7). ■ Bills/vouchers/receipts regarding electricity/telephone/ water/ hospitality etc to establish linkage of the offender to the place. ■ Land deeds/agreements etc relating to the ownership/title of the property ■ Conviction order of the court (if the person is convicted). ■ In the event of conviction, the prosecutor should move the court immediately thereafter, for action u/s 18(2). ■ Report of police/NGO etc, regarding abuse of the place, before the DM/SDM so that even before conviction by a judicial court, eviction can be done u/s 18(1). ■ Medical exam report of the victim. ■ Proof of age of the victims. ■ Earlier reports of police regarding the exploitation taking place in the same place.
---	---	--

*Note: The chart is only illustrative and not exhaustive as the evidence that can be adduced depends on the specific situation. Much depends on the initiative and ingenuity of the investigator and prosecutor as to how to lead and link up the evidence in a cogent and objective manner. The investigators should use their initiative in following all the leads, howsoever trivial it may appear to be, and thereafter fathom the ramifications and bring up evidence to establish the linkages.

Appendix-II: Some Good Practice Models*

- **Delhi Police** has utilized the provisions of Maharashtra **Organised Crime Control Act** for dealing with trafficking crimes. The recognition that trafficking is an organized crime has led to further initiatives in addressing the issues in a comprehensive manner, with all the seriousness it deserves.
- The 'PROTOCOL' for Pre-Rescue, Rescue and Post-Rescue Operations of Child victims of Trafficking for Commercial Sexual Explanation' by DWCD (2005) lays down the general principles for the State Governments and response agencies in addressing the issues from a Human Rights perspective.
- **Bal Sakha at Patna** has established institutionalized linkages with Police stations (under the system called **police chacha**) and has been able to locate/trace/return more than ninety percent of the children reported missing, which goes to more than 500 per year. Good initiative in preventing child trafficking.
- **The Rights Awareness-cum-counseling Centre being run by SEVA** (Manav Seva Sansthan) of Gorakhpur at Sanauli border, (facilitated by the author in the beginning) by involving local police and counselors, have been instrumental in preventing trafficking taking place under the garb of migration. The experiment has been able to expose the trends in trans-border trafficking.
- **The Guidance and Monitoring Committee** of Maharashtra, started by PRERANA, in partnership with the Police and the **government of Maharashtra** has institutionalized the Co-management of Homes, thereby ensuring right-based care and attention of rescued persons. Their efforts have prevented re-trafficking.
- HRLN (Human Rights Law Network) has made commendable initiatives by filing several PILs in the Supreme Court of India on various important issues in addressing trafficking.
- The AHTU (Anti Human Trafficking Unit) set up by UNODC in 2007 in certain states, by involving police, prosecutors, other government officials and NGOs and by providing non-expendable and expendable resources as well as protocols, is a classic example of integrated, multi-stakeholder synergy in anti trafficking. The AHTU is making commendable performance with best outputs.
- **Video Conferencing** for recording the evidence of witnesses has been approved by the Delhi High Court on a PIL by Prajwala and HRLN. This is a landmark decision to protect the rights of victims of trafficking, as it protects them from harm, harassment and secondary victimization during the court trial proceedings. The police and prosecutors of NCT Delhi can utilize this in all cases of trafficking.
- **The Judicial activism** by the High Court of Delhi during 2002-04 led to radical transformation in the justice delivery scenario. The High Court directives ensured that the government agencies guarantee complete protection of the rights of victims, confirm effective steps for rehab and firm steps against re-trafficking. The Government - NGO partnership became institutionalized. The victimization of victims came down drastically and law enforcement became victim-oriented and human-rights oriented.
- The initiative by **SANLAAP** in networking with NGOs in Bangladesh and the police agencies (including BSF) in India, led to the safe transfer of persons trafficked from Bangladesh to India. The 'push back' system of illegal immigrants gave place to right-based 'hand over' of trafficked persons with dignity.
- The **prosecution work** being done by **SLARTC**, Kolkata is a unique affair. Here is an NGO doing the prosecution work in trafficking cases. This shows that NGOs can substitute government agencies in specific roles. Of course, the transfer of prosecution work from government prosecutor to the NGO lawyers came out during the deliberations and judgement by the High Court in a PIL.
- **Prajwala**, Hyderabad, has demonstrated the best of kinship and partnership among the Government-NGO-Corporates. The AMUL experiment, wherein the Corporate has employed trafficked persons and settled them properly, has **made history** in the world of rehabilitation in India.

- **Prayas**, Delhi, working for several years with children in distress has networked with corporates and **institutionalized** the rehabilitative mechanism by involving government agencies, NGO's , Corporates and multinationals.
- **STOP**, Delhi, has brought in revolution in the history of anti trafficking in India by their Human Rights approach in addressing the issues. They were instrumental in getting several trafficked persons rehabilitated appropriately by understanding the capability/need/interest of the person. Many have been respectfully married and settled by STOP. Many have got back to their original homes and are comfortably settled in their own private ambience.
- The initiative by **INGON Network of Meghalaya** (some of them facilitated by the author) has brought about radical changes in the law enforcement and justice delivery scenario of Meghalaya. The state which never knew (or rather officially acknowledged) about trafficking, had to come to reality to the fact that several young women were trafficked and exploited to many metros like Mumbai, Pune etc. The network by this NGO has been instrumental in resuscitating several young girls and providing them with adequate strength to carry on with a life free from exploitation.
- **Prayas Bharti at Patna** has done yeoman service in the rehab of girls and women who were otherwise condemned. Even children who were 'branded' as prostitute by the police were brought out of "jail" and rehabilitated (The first instance was facilitated by the author) The plus point here is the networking of NGO+GO. The police agencies can have the best achievements from a genuine partnership with such NGO's.
- **Bhoruka Public Welfare Trust** has done door-to-door-survey of the vulnerability of women and children in those areas which were trafficking-prone. After the survey, the empowerment programmes which they initiated in partnership with state government and state police agencies have produced such marvelous results that they could ensure that the erstwhile trafficking-prone areas are now "sanitized" and are "trafficking- free". This is a great achievement which many times even government agencies cannot vouch for.
- **WISE**, Mumbai has carried out micro research in the field to understand the dimensions of trafficking. Their initiative has empowered women and children in rural Maharashtra and, thereby, prevented Trafficking.
- The **Tamil Nadu** Government, (Department of Social Defence) has set up a 'Social Defence Fund' under which the incidentals and contingencies involved in the transfer and rehabilitation of trafficked persons and accompanying NGO's can be met with. This is the first time in the country that the government has set up a separate fund and provided special resources for addressing the trafficking issues at the ground level.
- **Odanadi, Mysore**, has taken ingenious steps in the rehabilitation of trafficked persons. The Home provided by them is typically from the "Human Rights" paradigm. The constant efforts by them, despite all odds and resistance from the response agencies, have been a beckoning factor in the path of human rights delivery. They have demonstrated the best mechanisms in rehabilitation.
- **Research** is an integral part of any social activism. **The Institute of Social Sciences**, New Delhi, with its commitment to integrating social action with Social research, has done pioneering research in trafficking, perhaps unparalleled in the world (The author was the principal researcher-cum-investigator-cum-report writer in the project of NHRC, sponsored by UNIFEM). It has underscored the importance of action-oriented research in addressing social issues.
- The several **Action Programmes** carried out across the country by the Nodal Officer of the NHRC (the author) during the course of the Action Research on Trafficking (2002-2004) shows that initiative, commitment and concern can make radical transformation in the response systems. Some of these

initiatives are presented as Case Studies in the book ‘Trafficking in Women and Children in India’, Orient Longman, 2005. These Case Studies can be used as effective models, as they present not only ingenious and innovative steps in ‘Prevention, Protection and Prosecution’, but also shows how good initiatives can be institutionalized and the best results are achieved.

- **Saarthak** (Dr Achal Bhagat) has brought out a Manual for forming therapeutic relationships. This is a guide book for counseling of trafficked persons from a human rights perspective, keeping in view their best interests. This NGO has set up a vast resource bank of trained counselors.
- **Centre for Social Research (CSR)** New Delhi has carried out several training programmes for law enforcement officials. The training modules and curriculum have been prepared accordingly. Their training manual is unique.
- **Joint Women’s Programme** has mapped the trafficking routes, destinations, sources and has brought out a trafficking map for the first time.
- **HAQ Centre for Child Rights** has developed a national network for providing immediate relief to children in distress.
- **Childline India** has developed help-lines for children in need and attention. The helpline has been integrated and functional in many cities/towns in India.
- **Apne Aap** is working on sensitizing persons on the need to address demand. Several efforts have been undertaken in this regard. Addressing demand, though often neglected, is one of the most important aspects in anti trafficking. The demand manual is a masterpiece in addressing this issue.
- **Shaktivahini** has been instrumental in bringing out the linkage of trafficking to illegal marriages and illegal organ transplant. Their initiative has brought succour to lot of victims and prevented many crimes. The various dimensions of trafficking, hitherto not recognized, have been exposed.
- **International Justice Mission** has been instrumental in the rescue, post-rescue care and effective prosecution of trafficking cases in Mumbai and other places.
- **Stree Adhar Kendra, Pune** has been instrumental in empowering women and children at the grass roots and thereby preventing trafficking.
- **The Supreme Court of India**, in its landmark judgement in September 2004 (*Sakshi vs Union of India*) has directed several important steps in ensuring child rights and women’s rights in the process of criminal justice delivery. In-camera trial, which under S.327 CrPC is available only for the offence of rape, has been extended to all crimes of child sexual assault. The Apex Court has also directed several child sensitive procedures in the trial of such cases. This landmark judgement on protecting child rights arises out of a PIL by Sakshi, an NGO.
- **The High Court of Delhi**, in a PIL, followed by *suo motu* action by the Court, had regularly monitored the progress of rescue and post rescue activities in Delhi during the period 2000-2004. The judicial activism and the landmark decisions led to drastic improvements in the anti-trafficking scenario, especially in the protection of the rights of trafficked persons, prevention of trafficking and ensuring Rights-based response by all concerned. This ensured accountability of the officials and led to the institutionalization of the coordination among government agencies as well as the partnership between government agencies and NGOs in addressing trafficking.

*These are only a few of the ‘good practices’ in India which have come to notice. There are many more who are doing excellent services, some of whom have not even been noticed and advertised.

GLOSSARY

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

SELECT REFERENCES

- Anand, A.S, Chief Justice. 2004. *Justice for Women, Concern and Expression*, 2nd ed: Universal Law Publishing Co. Pvt. Ltd.
- Bajaj, Nawal. *Child prostitution in south Mumbai: Experimenting with unorthodox methods of control*, in SVP National Academy Journal, Vol.56 No.2: July-Dec 2004.
- Balaji Pandey and Others. 2003. *Trafficking in Women in Orissa*: Institute for Socio-Economic Development, Bhubaneswar.
- Bhat, Aparna. 2003. *Supreme Court on Rape Trials*: Combat Law Publications (P) Ltd., New Delhi.
- Childline India Foundation. 2003. *Child Trafficking, Issues and Concerns*.
- Department of Social Defence, Govt. of Tamil Nadu. 2003. *A Reference Manual on Combating Trafficking in Tamil Nadu*.
- ECOSOC, UN. 2003. *Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices*.
- ECPAT International.2000. Professional Policing: A Handbook for Better Police Investigation Technique to Combat Crimes Against Children.
- Gracy Fernades and Cecily Stewart Ray. 2002. *Raids, Rescue and Rehabilitation*: College of Social Work, Mumbai.
- INTERPOL. 2002. Manual For Investigation. The Interpol Working Group on Trafficking in Women for Sexual Exploitation. (restricted in circulation)
- Jose Vetticattil and Sunitha Krishnan. 2002. *The Shattered Innocence*: Prajwala, Hyderabad.
- Nair P.M.1998. Procedures in the Investigation of cases of Child Abuse-New Trends. The Indian Police Journal, Vol.XLV No.3.
- Nair P.M.2000, Gender-sensitive Procedures in the Investigation and Prosecution of Crimes Against Children. The Indian Police Journal, Vol.XLVII, No.7.
- Nair P.M. 2002. Combating organized crime: Konark Publishers, Delhi.
- Nair P.M. 2002. Combating Trafficking in Women and Children. CBI Bulletin (April), Vol.VI No.3.
- NHRC, UNIFEM and Institute of Social Sciences, *Trafficking in Women and Children in India*, Orient Longman, 2005.
- NHRC. 2002. *Information Kit on Trafficking in Women and Children*.
- Patkar, Pravin and Priti. 2002. *Frequently Asked Questions on CSE and Trafficking*.
- Patkar, Pravin and Priti. 2004. *Home Investigation Report*.
- Saarthak and UNIFEM. 2002. *The Sounds of Silence: A Manual for Forming Therapeutic Relationships*: Saarthak, New Delhi.
- Sanlaap. 2002. A Handbook for Better Police Investigation Techniques to Combat Crimes Against Children.
- UNODC: A Toolkit to Combat Trafficking in Human Beings, 2006.
- U.S. Department of Justice, National Institute of Justice. *Eyewitness Evidence: A Guide for Law Enforcement*.