



# STANDARD OPERATING PROCEDURES 2023

## Trafficking in Persons for Commercial Sexual Exploitation

- Law Enforcement Agencies,
- Government and Non-Government Service Providers

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# **STANDARD OPERATING PROCEDURES**

## **on Trafficking in Persons for Commercial Sexual Exploitation**

**For  
Law Enforcement Agencies,  
Government and Non-Government  
Service Providers**

**2023**



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# CONTENTS

Acknowledgements	i
<b>MESSAGES</b>	
Chief Minister of Goa	iii
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Director General of Police, Goa	v
List of Abbreviations	vii
Introduction	ix

## CHAPTERS

<b>Chapter 1.</b>	Missing Persons	1
<b>Chapter 2.</b>	Search & Rescue Operations	27
<b>Chapter 3.</b>	Recording of Statements of Victims	49
<b>Chapter 4.</b>	Medical Examinations	65
<b>Chapter 5.</b>	Care and Protection at Shelter Homes	87
<b>Chapter 6.</b>	Compensation to the victim.	101
<b>Chapter 7</b>	Alternative Livelihood Promotion	113
<b>Chapter 8.</b>	Inquiry into Cases	123
<b>Chapter 9.</b>	Release & Custody	147
<b>Chapter 10.</b>	Repatriation	155
<b>Chapter 11.</b>	Investigation	165
<b>Chapter 12.</b>	Collection of Evidence	177
<b>Chapter 13.</b>	Filing of Charge-Sheet	187
<b>Chapter 14.</b>	Witness Protection	201
<b>Chapter 15.</b>	Deposition before Court	213
<b>Chapter 16.</b>	Trial of Case	235

## **ANNEXURES**

<b>I</b>	<b>LANDMARK HIGH COURT/SUPREME COURT CASES</b>	<b>247</b>
1.	Prerana vs. State of Maharashtra Decided 18-4-2007	248
2.	Prerana vs. State of Maharashtra, (2003) 2 BOMLR 562	254
3.	W.P.No.36807 of 2006, order of Madras High Court dated 31.12. 2006	255
4.	State of Punjab vs. Gurmit Singh, AIR 1996 SC 1393	264
5.	Sakshi vs. Union Of India on 26 May, 2004	264
6.	Hori Lal vs. Commissioner of Police, 2002	265
7.	Vishal Jeet vs. Union Of India And Ors on 2 May, 1990	266
8.	Lalita Kumari vs Govt.Of U.P.& Ors on 12 November, 2013	268
9.	Budhadev Karmaskar vs The State Of West Bengal 19 May, 2022	269
<b>II</b>	<b>STANDARDS AND FORMATS</b>	<b>275</b>
1.	GUIDELINES & PROTOCOLS: Medico-legal care for victims of sexual violence (Ministry of Health and Family Welfare, GOI)	276
2.	Minimum Standards of Care in Homes for Victims of Trafficking	294
<b>III</b>	<b>PROMINENT ADVISORIES</b>	<b>313</b>
1.	Ministry of Home Affairs (MHA) Advisory on Missing Children to Prevent Trafficking	314
2.	MHA Advisory on Preventing and Combating Human Trafficking in India	321
3.	MHA Advisory on Crime against Children	332
4.	MHA Advisory on Associating SSB and BSF in crime meetings on Human Trafficking	336
5.	MHA Advisory on preventing and combating human trafficking in India – Dealing with foreign nationals	339
6.	MHA Advisory on Human Trafficking as organized crime	343
<b>VII</b>	<b>Bibliography</b>	<b>353</b>

# ACKNOWLEDGEMENTS

Arz (anyay rahit zindagi) is an organization working to combat human trafficking for commercial sexual exploitation. Over the years of working on the issue, we have found that the law enforcement agencies and service providers, especially the front-line workers, are not well versed with the standard procedures to be followed. Furthermore, the law enforcement agencies have neither the resources nor the time to refer to the numerous legislations, rules, advisories and judgments dealing with the issue. This lack of knowledge results in them not following mandatory provisions, as a result of which they on one hand violate the rights of the victim and on the other make it more difficult for the victim to get justice. The front-line workers need to have this information readily accessible if they are to work more effectively with the victims.

We have therefore put together this SOPs, in order to provide Law Enforcement Agency & Government and Non-Government Service Providers with a comprehensive reference document to enable them to deal more effectively with cases relating to Trafficking in Persons for Commercial Sexual Exploitation.

The book provides the recommended SOPs for all the important stages that follow once the criminal justice system is activated. These stages include dealing with Missing Persons, Search & Rescue Operations, Recording of Statements of Victims, Medical Examinations, Care and Protection at Shelter Homes, Compensation to the Victim, Alternative Livelihood Promotion, Inquiry into Cases, Release and Custody, Repatriation, Investigation, Collection of Evidence, Filing of Charge-Sheet, Witness Protection, Deposition before Court, and Trial of Case. The book gives references for the different standard operating procedures suggested, and provides sample formats relating to application for complaint, recording of the statement, passing of the final order, etc.

We would like to thank Mr. Sushil Kumar, Ms. Mini Mathew and Arz team for assisting in drafting the SOPs. It is due to their hard work and extensive

research that Arz has been able to prepare and publish this book.

Arz staff Ms. Juliana Lohar and Ms. Vijayashree Irraker have played an invaluable role in assisting me and thus enabling me to finalise the SOP.

We are indebted to Mr. Vidyadhar Gadgil for editing assistance and to ECPAT Luxembourg for their financial support for printing the book.

We hope that the book will be of use to the Law Enforcement Agencies (LEAs), and Government and Non – Government service providers (GNSPs) working with Persons Trafficked for Commercial Sexual Exploitation.

**Arunendra Kumar Pandey**  
**Director, Arz**





**Dr. Pramod Sawant**  
Chief Minister, Goa



## MESSAGE

Article 23 of the Constitution of India prohibits trafficking in human beings in any form. The Government of India has made sincere efforts by enacting various legislations and issuing appropriate advisories to combat trafficking of persons.

Goa government acknowledges the problem of human trafficking and has taken various initiatives, such as setting up Anti-Human Trafficking units, a protective home, a special court under ITPA, and notifying the "Prabhat Scheme" to combat the problem. The government has also collaborated with NGOs such as Arz (anyay rahit zindagi) in providing livelihood to the victims of trafficking in Goa.

In order to combat and prevent human trafficking, proper implementation of anti-trafficking laws by the law enforcement agencies needs to be done. The current book titled "Standard Operating Procedures (SOP): Trafficking in Persons for Commercial Sexual Exploitation", published by Arz (anyay rahit zindagi), an anti-trafficking NGO, is a good effort to bring together all the possible provisions and procedures to be followed while dealing with cases of sex trafficking.

I am sure that the SOP would serve as a useful reference for the police, magistrates, prosecution, medical officers, judicial officers and members of the non-government organisations.

**(Dr. Pramod Sawant)**  
Chief Minister, Goa



**Shri Arun Kumar Mishra , IAS**  
Secretary,  
Women & Child Development,  
Government of Goa



## MESSAGE

Human trafficking is, undebatably, among the highest forms of violations of human rights and dignity. Despite the fact that the government has criminalized trafficking under section 370 of the IPC, about 95% of the trafficked victims get exploited for commercial sex. The victims include girls and children from poor families. There are approximately three million sex workers in the country, 40% of whom are trafficked children, generally girls from lower cases.

There is also a lack of proper understanding of SOPs among the front-line officials in handling this crime. The effort by Arz, social work organization, to put together SOPs for all the important stages that follow, once the criminal justice system is activated, will be of substantial help to the stakeholders' addressing cases of human trafficking for commercial sexual exploitation. This second edition of "Standard Operating Procedures on Trafficking in Persons for Commercial Sexual Exploitation" will serve as a reference document for the Law Enforcement Agencies, Government and Non-Government Service Providers in helping them deal with cases related to sex trafficking more effectively.

I congratulate each and every member of Arz who has contributed to curating this handbook and making the necessary information readily accessible to the police department and civil society. The handbook will definitely be instrumental in curbing sex trafficking immensely and making the victims feel safer.

**Shri Arun Kumar Mishra, IAS**



**Shri Jaspal Singh, I.P.S.**  
Director General of Police,  
Goa



## MESSAGE

Trafficking in human beings particularly for commercial sexual exploitation is not only dehumanizing but also the worst human rights violations committed against any human being. It reduces the human beings to the status of Chattels. The victims of commercial sexual exploitation suffer extreme form of mental, physical, psychological, financial and societal exploitation.


The Fight against the menace of human trafficking is very complex and arduous and there are numerous challenges faced by Law Enforcement Agencies (LEAs). Being an organized crime, it is complex and transcends national borders and at times is International in its spread and linkages. The perpetrators and the facilitators of this crime are usually located in different police jurisdictions. Therefore, it requires the co-operation and co-ordination of multiple agencies at the State and National level in combating trafficking for commercial sexual exploitation. In addition to detecting the crime, it is equally important to protect and rehabilitate the victim of the crime.

There are numerous legislations which provides for protection and rehabilitation of victims and prosecution of traffickers. The Legislative lacunae and gaps have been filled by Judicial decisions by the constitutional courts. The Government have also issued advisories incorporating such decisions. Various government and non-government agencies have been working towards addressing trafficking of persons for commercial sexual exploitation. But we are yet to make a dent on this inhuman malady, protecting the victims of the crime and their successful rehabilitation. The conviction rate is also not satisfactory. There are several reasons for this. Most significantly, the lack of proper understanding of Law, Procedure and Standard Operating Procedures among the front-line responders.

The book titled, "STANDARD OPERATING PROCEDURES: Trafficking in Persons for Commercial Sexual Exploitation" is a very significant effort by 'Arz' (Anyay Rahit Zindagi), towards empowering the LEAs and NGOs with knowledge and skills which would enable them to follow provisions laid down in the relevant legislations.

The compilation succinctly covers various stages at which the law enforcement agencies and/or the NGOs come into contact with the victim - to protect, provide legal support, reintegrate with family and rehabilitate. The book not only provides the mandatory standard procedures which should be followed but also provides references for the procedures suggested. There are also sample formats for complaint letters, recording of the statement, passing of the final order, etc.

It is indeed a stupendous effort by 'Arz' in empowering concerned stakeholders with knowledge and skills. I am certain that the compilation would go a long way in helping LEAs, Judiciary, and those involved in care, protection and rehabilitation of the victims of commercial sexual exploitation in India. 'Arz' deserves commendation for this great effort.

  
**Shri Jaspal Singh, IPS**

# LIST OF ABBREVIATIONS

AHTU	Anti-Human-Trafficking Unit
ASI	Assistant Sub-Inspector
CRC	Convention on the Rights of the Child
CrPC	Code of Criminal Procedure
CSA	Commercial Sexual Abuse
CSE	Commercial Sexual Exploitation
CSO	Civil Society Organization
CWC	Child Welfare Committee
CCTNS	Crime and Criminal Tracking Network & Systems
DMPU	District Missing Persons Unit
DNA	Deoxyribo-Nucleic Acid
DLSA	District Legal Services Authority
DW&CD	Department of Women and Child Development
FSL	Forensic Science Laboratory
IEA	Indian Evidence Act, 1872
IERP	Individualized Economic Rehabilitation Plan
IO	Investigation Officer
I.P.C	Indian Penal Code
ITPA	Immoral Traffic (Prevention) Act, 1956
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2000
JJB	Juvenile Justice Board
MHA	Ministry of Home Affairs, Government of India
ML&J	Ministry of Law & Justice, Government of India
MPS	Missing Persons Squad
NCPCR	National Commission for Protection of Child Rights
NCRB	National Crime Record Bureau
NGO	Non-Governmental Organization
NHRC	National Human Right Commission
PEP	Post-Exposure Prophylaxis

POCSO	Protection of Children from Sexual Offences (POCSO) Act, 2012
SCRB	State Crime Record Bureau
SLSA	State Legal Services Authority
SOPs	Standard Operating Procedures
SPO	Special Police Officer
UNODC	United Nations Office on Drugs and Crime
ZIPNET	Zonal Integrated Police Network

# INTRODUCTION

Trafficking in persons, a contemporary form of slavery, affects millions of children and women worldwide. India, a country with a huge population of 126.7 crore people and extensive international borders, is very vulnerable to human trafficking.

The worst form of human trafficking is trafficking in persons for commercial sexual exploitation. The victims of such trafficking face severe human rights violations. In the last two decades, the Government of India and Civil Society Organizations have proactively addressed the issues of human trafficking. Other than Constitutional provisions, these endeavors are also reflected in various legislations and policy documents, including recent amendments in the CrPC, the ITPA Act and introduction of the POCSO Act. The criminal justice system has also played an active role in preventing and combating trafficking by pronouncing many landmark judgments in different cases and in Public Interest Litigations. Numerous NGOs and CSOs throughout the country are also working hard to combat the phenomenon of commercial sexual exploitation, in both source and destination areas.

This handbook is meant to provide assistance to law enforcement agencies and other stakeholders who have been involved in addressing the issues of commercial sexual exploitation. It aims to introduce readers to the different Standard Operating Procedures (SOPs) when dealing with cases of commercial sexual exploitation. While there are many other publications dealing with SOPs in human trafficking, the present handbook adds an empirical approach, highlighting the human rights perspective of the victims. In keeping with its central aim of assisting law enforcement agencies and other connected stakeholders, the handbook has attempted to cover the various processes involved in commercial sexual exploitation.

In order to address the issue of missing persons or children more effectively, **Chapter 1** illustrates the SOPs while dealing with cases of missing individuals. The issue of missing persons is of grave concern for all stakeholders at the state and national levels, as the magnitude of the problem, already huge, increases every day. Various agencies have been tasked with effectively addressing the problem of missing persons, including the police, MHA, ML&J, NHRC, NCPCR and other legal and quasi-judicial bodies. But there has been no substantial improvement in terms of the success rate in tracing missing persons.

The issue becomes even graver when it comes to missing children, as children are the most vulnerable segment of society. Article 35 of the Convention on the Rights of the Child (CRC) states that State parties shall take all appropriate national, bilateral, and multilateral measures to prevent the abduction of, sale of, or traffic in children for any purpose or in any form. Article 23 of the Constitution of India provides children the right to be protected from being trafficked. But, according to data reported by the MHA to the Parliament of India, over 3.25 lakh children went missing between 2011 and 2014 (till June). In other words, India officially records around 1 lakh children as ‘missing children’ every year. Amongst the worst-affected states, Maharashtra stands first in terms of missing children, with over 50,000 children having disappeared in just three-and-a-half years. Madhya Pradesh, Delhi and Andhra Pradesh follow, with 24836, 19948, and 18540 missing children respectively for the period. All these States have more missing girls than boys. In Andhra Pradesh, the number of girls missing (11,625) is almost twice that of boys (6,915). Similarly, Madhya Pradesh has over 15,000 girls missing compared to around 9,000 boys. Delhi, too, has more girls (10,581) missing compared to boys (9,367). Only a small fraction are ever traced, while a few return on their own.

Commercial sexual exploitation is a clandestine, hidden phenomenon. This makes the rescue of victims of commercial sexual exploitation (CSE) a delicate process that involves careful assessment, planning, deployment, and execution of a series of tasks. It is also pertinent to mention that victims of CSE face multiple forms of exploitation, including physical



abuse, mental torture, emotional trauma, and financial fraud. Therefore, a humanitarian approach should be borne in mind during search-and-rescue operations, without compromising the legal provisions. **Chapter 2** provides SOPs for rescue processes and operations. The chapter also highlights the crucial check-lists that need to be observed by the team leader during rescue operations.

Once the rescue operation is completed, the victims and witnesses are usually brought to the concerned police station for recording of statements. A statement may be written or have been put into written form. In certain situations it may be an audio-video-recorded account. The recording of statement as evidence is a very crucial and critical phase for strengthening the case before the criminal judicial system. The statement of the victim is recorded under Section 161 by Investigation Officer (IO) or, in some situations, under Section 164 of CrPC before a competent magistrate. **Chapter 3** has listed the steps for recording the statement of the victims and witnesses, primarily at the police station. It is important that the decision to record the statement under Section 164 of CrPC should be taken on priority. The victim should be comfortable and fully willing to record the statement. If required, a counselor's services may be sought before recording the statement. The recording of statement may be done *in camera* and in a non-intimidating milieu. The IO officer may submit a prayer for this under Section 327 (2) of the CrPC.

The complete medical-forensic examination of the rescued victims plays a crucial role in establishing the nature of exploitation and its impact on the victims. The medico-legal examination assists the investigation, arrest, and prosecution of those who committed the sexual offence. Every rescued victim should be medically examined without any delay for the purpose of recording and treatment of physical injuries, sexual assault, related diseases, mental health problems, and administration of PEP137 treatment, if required. It should be noted that delay in medical examination and/or deficiencies in medical examination are found to be some of the important causes of low rates of conviction (*Journal of Indian Academy of Forensic Medicine*, 30(4)). The IO should adequately apprise

the doctor about the circumstances of the case. The presence of a NGO staffer/female social worker during the medical examination and medical care may provide relief and comfort to the victims. **Chapter 4** describes SOPs for medical examination of the rescued victims.

After the victims are rescued from commercial sexual exploitation, they are admitted to shelter homes, primarily to prevent re-trafficking and to render care and protection. The police should maintain a list of agencies running such Homes (government and non-government), including their contact numbers and other details. In no circumstances should the victims be sent for shelter to a brothel or place of commercial sexual exploitation. In 2007, a raid and rescue operation was conducted by the Delhi police. The rescued women and children were brought to the police station by late evening. The Delhi police official, citing non-availability of a safe place to stay, sent the rescued victims and children back to the brothel. The rescued persons could not be traced the following morning. The shelter homes should ensure the personal safety of the victim and provide all possible assistance for relief and rehabilitation. Under Section 21 of ITPA, the State Government has to set up Protective Homes and Corrective Institutions for ensuring proper implementation of ITPA. In some places there are transit homes with facilities for trauma counseling, victim care, vocational guidance and re-integration co-managed with credible NGOs under centrally sponsored schemes. **Chapter 5** deals with SOPs to be followed for admission, care and protection at shelter homes.

The release/custody of rescued victims of commercial sexual exploitation is the most crucial aspect in preventing re-trafficking of persons. The phenomenon of human trafficking is multi-faceted. Therefore, an intensive investigation should be performed prior to any release order. The release may be from Protective/Shelter Homes and Children's Homes established and recognized under The Immoral Traffic (Prevention) Act, 1956, and Juvenile Justice (Care and Protection) Act, 2000, respectively. The chief agencies entrusted with specific roles and duties for release and custody include Judicial, Social Welfare, and Non-Governmental Agencies. To keep the spirit of "best interest of the child" as provided in the Juvenile Justice Act, 2000, no minor should be released in self-

custody. It should be ensured that no victim is released from the police station in the custody of a person who produces a document proving his/her relationship.

**Chapter 6** provides information about different schemes for compensation to the victims of commercial sexual exploitation. It also covers the procedures for receiving benefits under the scheme. Taking this further, **Chapter 7** discusses the need for providing alternative livelihood to victims of commercial sexual exploitation for an exit from prostitution or an exploitative situation. It stresses that an alternative livelihood combined with quality psychological assistance, social and legal services to address the trauma from constant abuse, and care and protection to the victim, make the right blend for the rehabilitation of women in prostitution. The chapter suggests certain principles and Do's and Don'ts while providing alternative livelihoods. **Chapter 8** focuses on the inquiry being conducted by the magistrate or the CWC. It highlights the importance of the inquiry to decide custody, institutionalized care and protection, release, and repatriation of the rescued victim. The chapter covers in detail the steps to be followed while conducting an inquiry.

**Chapter 9** describes SOPs for release/custody of victims of commercial sexual exploitation.

Repatriation typically refers to restoration or return to the country of birth, citizenship or origin. In case of victims of commercial sexual exploitation, it involves steps and procedures adopted after the rescue of victims till their effective restoration with their families or legal guardians or others. The post-release repatriation process may involve repatriation outside India or within India. In case of repatriation outside India, the SAARC protocol provides a mandate and a platform for cooperation and exchange of information. Repatriation within the country may involve intra-state (if victim belongs to state of rescue) or inter-state (if victim belongs to any other state) repatriation. **Chapter 10** focuses on the SOPs relating to repatriation of victims of commercial sexual exploitation within and outside the country.

Investigation constitutes much of the process through the pre-trial stage until the submission of a Charge-Sheet in Court. Trafficking is an organized crime wherein gangs operate across districts, states, and countries. Therefore, thorough investigation attempts should be made to unearth the entire sequence of events. ‘Investigation’ includes all proceedings under the CrPC for the collection of evidence, conducted by a Police officer or by any person who is authorized by a Magistrate.<sup>1</sup> The officer-in-charge of a Police Station can start investigation either on information or otherwise.<sup>2</sup> Human trafficking for commercial sexual exploitation involves spotters, recruiters, buyer, seller, transporters, harbourers, financiers, conspirators, abettors, brothel-keepers, pimps, clients and powerful elements who maintain the nexus. Therefore, investigation should cover all possible angles of the crime. **Chapter 11** focuses on the SOPs for conducting investigation in the cases of commercial sexual exploitation.

One of the effective means of securing better conviction rates of traffickers is to base the case on documentary, forensic, and material evidence. Therefore, it is necessary to collect foolproof evidence against the perpetrators and traffickers. Collection of evidence may be in the form of oral statements of witnesses,<sup>1</sup> and in the form of documents and seizure of material objects, articles, and movable properties involved in the reported crime. A foolproof set of evidence should include biological evidence, latent print evidence, trace evidence, electronic and digital evidence, tool and toolmark evidence, drug evidence, firearm evidence etc. **Chapter 12** discusses the SOPs for collection of evidence in cases of commercial sexual exploitation. The Investigating Officer collects material from all sources and prepares a report, which is filed in the court as a Charge-Sheet. This report is an intimation to the magistrate that upon investigation into a cognizable offence, the Investigation Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. A correct and proper charge-sheet is an essential prerequisite in securing a conviction. **Chapter 13** illustrates the SOPs for filing of charge-sheet before the court in cases of commercial sexual exploitation.

One of the many challenges faced by victims who become victim-witnesses is that they and their families are often subjected to significant harassment and intimidation from traffickers, sometimes escalating into violence, which could be fatal. Therefore, the police and judiciary are required to play crucial roles in witness protection. Often victims live in close proximity to their traffickers, making it difficult to take legal action due to fear of retribution. Many victims have to travel significant distances to depose or attend court. Not only is this costly, meaning missing out on wages during the period, but also dangerous. **Chapter 14** covers the SOPs for Witness Protection in cases of commercial sexual exploitation.

A deposition means taking and recording the testimony of a witness under oath before a court reporter in a place away from the courtroom before trial. This serves two basic purposes. First, it helps to discover what the deponent knows about the case. Second, it helps to preserve that deponent's testimony. The testimony can be used in the trial, either to contradict (impeach) or refresh the memory of the witness, or be read into the record if the witness is not available. A deposition does not take place before judge or jury, except in special instances. Instead, it usually takes place at an attorney's office. The attorney places a series of questions before witness or deponent related to the complaint, case, crime etc.. The deponent is required to answer all questions under oath. The entire deposition is preserved word-for-word by a court reporter, who is present throughout the session. A transcript is produced at a later time. The deponent can have his or her attorney present at the deposition. A deposition can be videotaped. A deposition can be as short as fifteen minutes or as long as a week or more. All depositions are very serious matters. What is said at a deposition is very important. The deponent should listen to the questions carefully and be precise in his or her answers. There are consequences for false statements made under oath. **Chapter 15** discusses SOPs to be observed for deposition before a court in cases of commercial sexual exploitation.

India has a well-defined statutory, administrative, and judicial network for trials of criminal cases. The penal laws are primarily governed by the Code of Criminal Procedure, 1973; Indian Penal Code, 1960; and Indian

Evidence Act, 1872. The CrPC largely covers procedural law for conducting a criminal trial in India, including the manner of filing of complaint, search and rescue, investigation, recording of statements, collection of evidence, deposition, examination of witnesses, interrogation of accused, arrests, safeguards and procedures to be adopted by Police and Courts, bail, process of criminal trial, method of conviction, and the rights of the accused for a fair trial. The procedure for a criminal trial is based mainly on the CrPC. The IEA is a detailed treatise on the law of 'evidence', how it may be tendered in trial, manner of production of the evidence in trial, and the evidentiary value which can be attached to such evidence. IEA also deals with the judicial presumptions, expert, and scientific evidence. There are certain applicable laws. India largely follows the adversarial system, where the onus of proof is generally on the State (Prosecution) to prove the case against the accused. But in the POCSO Act, 2012, the onus of proof has been put on the accused person. The courts in India, particularly High Courts, and Supreme Court have been proactively guarding the rights of the accused. Even Article 21 of the Constitution of India has been interpreted in a highly dynamic manner to protect the rights, life, and liberty of the citizens, also incorporating the principles of natural justice. **Chapter 16** discusses SOPs to be observed during trial of the case in offences related to commercial sexual exploitation.

We are confident that this book will serve as a reference tool for different stakeholders dealing with cases of human trafficking, especially trafficking in persons for commercial sexual exploitation.

# CHAPTER 1

---

## Missing Persons

The issue of missing children needs to be made a “Priority Issue” by all stakeholders, especially the law enforcement agencies...

– **National Human Rights Commission (NHRC), India**

## IMPLEMENTING AGENCY: POLICE

A missing person, in a rudimentary sense, can be understood as a person whose whereabouts are unknown to his/her relatives, and/or who, on the basis of reliable information, has been reported missing.

In order to evoke a specific section of the Indian Penal Code (IPC)/Code of Criminal Procedure (CrPC), the reason why a person is missing has to be established. “Abduction” is established when a person is taken from one place to another either by “force” or by “deceitful means”, whereas “kidnapping” is established when a minor person or person of unsound mind is removed from the lawful guardianship or simply taken away, or enticed to go away, with the kidnapper. In kidnapping the consent of the kidnapped is immaterial, while in abduction consent would condone the offence. In kidnapping intention of the accused is irrelevant.

The Ministry of Home Affairs (MHA)<sup>1</sup> has defined a missing child as a person below 18 years of age whose whereabouts are not known to the parents, legal guardians or any other person who may be legally entrusted with the custody of knowing the whereabouts/well-being of the child, whatever may be the circumstances/cause of disappearance. The child should be considered missing and in need of care and protection, until located and his/her safety/well-being is established.”

It is important to note that multiple agencies are involved while intervening in a case of missing persons or missing children. The key responsibility lies with the different units of the police department. Other agencies include CWC, DLSA, SLISA, DW&CD, NCPCR, NGOs, and CSOs.



## **SOPs to be followed in cases of missing persons:**

1. A Missing Report should be lodged in the Daily Diary at once, clearly indicating the date and time of incident.
2. The report should have details of the missing person such as name, parentage, age, height, complexion, sex, clothes worn, and any special mark of identification.
3. The photograph of the missing person and the contact number of the complainant/relative should be obtained and be placed in the file.
4. Fill up the Missing Persons Identification Form and send it to DMPU and MPS.
5. In case of a complaint with regard to any missing child, the same should be reduced into a FIR and should be entertained under Section 154 CrPC, and appropriate steps should be taken to see that follow-up investigation is taken up immediately thereafter.<sup>2</sup>
6. It is mandatory to register a criminal case in case of all missing children (age up to 16 years for boys and 18 years for girls).<sup>3</sup>
7. Whenever any complaint is filed before the police authorities regarding a missing child, the same should be entertained under Section 154 CrPC.<sup>9</sup>
8. Cases of missing children should be assigned to an experienced officer not below the rank of an ASI. A lady officer should preferably be entrusted with the investigation of a case related to a minor girl.<sup>3</sup>
9. In case of a missing child reported, there should be an initial presumption of either abduction or trafficking, unless, during the course of the investigation, the same is proved otherwise.
10. The missing child details to be uploaded & updated on TrackChild portal (National Tracking System for Missing and Vulnerable Children) <http://www.trackthemissingchild.gov.in> by the concerned police officer.
11. The Police Control Room, SCRB, NCRB and ZIPNET should be informed immediately.
12. Wavelet Transform (WT) Message should be flashed on all-India level with the detailed description of the missing person by concerned police personnel.

13. Information should be shared with the CBI, where a cell relating to missing children has been set up as per the direction of the High Court.<sup>10</sup>
14. The reward for furnishing clues about the missing person should be announced within a month of child's disappearance.<sup>4</sup>
15. Hue and Cry notice should be prepared and issued within a month.<sup>4</sup>
16. The IO should immediately begin enquiries from persons present at the scene or last seen, collect details of possible suspects, and question them without loss of time.
17. Cellphone details, if any, of the missing person should be immediately obtained for further investigation as to his/her whereabouts.
18. Photographs of the missing person should be given wide publicity at all prominent outlets of the city/town/village concerned – that is, at railway stations, inter-state bus stands, airports, regional passport office, and through law enforcement personnel at Boarder Check Posts. This should be done promptly and in any case not later than one week of the receipt of the complaint. But in case the missing person is a girl/woman, prior written permission of parents/guardian/husband shall be taken before the photograph is published/broadcast.<sup>4</sup>
19. Make inquiries in the neighborhood, the place of work/study of the missing girl from friends, colleagues, acquaintance, relatives etc. immediately.<sup>4</sup>
20. In case a school going girl is missing, IO should contact the Principal, Class Teacher and Students at the missing person's most recent school/ educational institution.<sup>4</sup>
21. If the missing girl or woman is employed, then contact the most recent employer and her colleagues at the place of employment.<sup>4</sup>
22. It is important to scrutinize the missing person's computer, diaries etc., if any, and his personal belongings for any clue. This exercise should be done with the concurrence of the family members/complainant.
23. The IO should conduct an enquiry into the whereabouts from the extended family of relatives, neighbours, school teachers including school friends of the missing girl or women.<sup>4</sup>
24. The IO should make inquiries whether there have been past incidents or reports of violence in the family.<sup>4</sup>
25. Border check-posts should be alerted immediately. In case of a missing

of minor, check-post staff should also be sensitized to question unaccompanied minors/children or adults carrying children and behaving with them abnormally, during checking of vehicles/public transport.

26. Publicity should be given in surrounding areas using loud-hailers, if necessary.
27. All necessary publicity should be given in newspapers/electronic media. Publicity should also be given through local cable TV network.
28. The parents/family members/friends and relatives should be examined to find out the probable cause of disappearance of the person.
29. In case of missing of minor, area/spots of interest should also be searched.
30. If available, surveillance/security cameras (CCTV) in the vicinity of the area where the person was last seen should also be scanned.
31. Any person having inimical terms with the missing person should be examined.
32. The police officer handling the Missing Report should remain in touch with the complainant/family members to ascertain if any demand for ransom has been received.
33. Whenever foul play is suspected, a case should be registered under relevant sections of law and investigated.
34. Enquiries should be made from the neighboring police stations about any unidentified dead body found, or information about missing persons admitted in the hospitals.
35. Enquiries should also be made from the hospitals about unidentified injured persons admitted in hospitals.
36. Poorhouses, children's homes, rain baseras, Nari Niketans, mortuaries in hospitals, NGO records, etc. should be checked for missing persons.
37. An exercise to check all the unclaimed and unidentified children who are kept under safe custody in various shelter homes of the government/non-government agencies may be undertaken, and details may be matched with the available missing children's data base in the country, as most of the children lodged in these shelter homes are indeed missing children.
38. Missing Persons Bureau in the state should have a centralized database on

children lodged in shelter homes run by government/non-government agencies in the state, with mechanism to update the data on regular basis. This data, along with the photographs of the children, should be digitized and regularly sent to NCRB. The NCRB should upload this data on their website [www.ncrb.gov.in](http://www.ncrb.gov.in) for pan-India search by other state police/stakeholders. <sup>1</sup>

39. In appropriate cases, a declaration of reward for furnishing clues about the missing person should be announced within a month of her/his disappearance.
40. The IO of the missing complaint should periodically keep in touch with the complainant to update him on the efforts made, ascertain further clues, if any, and also to find out if the missing person has since returned on his/her own.
41. The local police should continue the search till the missing person is located.
42. Addl. CsP/DCsP (Additional commissioner/Deputy Commissioner of police) shall ensure that the investigation of all cases related to missing children between the age of 3 to 8 years, who are not rescued or found for a period of 4 months, should be transferred to AHTU of the district for effective investigation. <sup>5</sup>
43. SHO to ensure that a copy of the FIR registered with regard to missing children is delivered to DLSA by hand or by post with details. <sup>6</sup>
44. An officer not below the rank of a DIG should be declared Nodal Officer for every state/UT for handling the cases of missing children. <sup>1</sup>
45. Nodal Officer appointed by Police shall coordinate with the DLSA/SLSA. <sup>6</sup>
46. In metropolitan cities like Delhi, Mumbai, Kolkata and Chennai, the Investigation Officer should immediately check red-light areas and try to identify minor girls. If any minor (may or may not be recently brought there) is found, CWC (Child Welfare Committee) permission be taken and she may be taken to the children's home (Section 34 of the Juvenile justice (Care and Protection of the Children Act 2000). The IO to take appropriate steps that all medical/other facilities are provided to her. <sup>4</sup>
47. The concerned police commissioner or the DIG/IG of the State Police should find out the feasibility of establishing a multi-task force for

locating girl children/women. <sup>4</sup>

48. In cases of girls/women, investigation should be made through women police officers as far as possible. <sup>4</sup>
49. The Deputy Commissioner of Police shall over-see all investigations related to missing children between the age of 3 to 8 years if such children are abducted and sole purpose is trafficking. <sup>6</sup>
50. If a missing child is not rescued or found for a period of six months, the case should be handed over to the Anti-Kidnapping Cell for effective investigation. <sup>6</sup>
51. In cases where children and women have been smuggled illegally out of the country, the investigation agencies should utilize Interpol channels to communicate with member countries and, if needed, to have appropriate Interpol Notices issued through CBI/Interpol Wing in order to trace the victim. <sup>1</sup>
52. A number of children reportedly die after they go missing and their dead bodies remain unidentified. State/UTs should consider making it mandatory for the IOs, and provide the necessary infrastructure to have DNA profiling of all such unidentified dead bodies for future comparison and identification. DNA profile of the nearest blood relative through informed consent should be taken if child is not found for 3 months. Both the DNA databases may be maintained at the State MPS for future comparison and matching. <sup>1</sup>
53. Efforts should be made to correlate the pictures of the missing child with the cases of pornography, cyber crimes etc.
54. The data available in each missing children file should be uploaded to the computer maintained at the police station for this purpose.
55. It would be the responsibility of each IO to ensure that efforts made towards tracing the missing children are also uploaded on the computer, which should be linked to the national database and via CCTNS. <sup>1</sup>
56. The SHO/Inspector of the police station should ensure that the computerized record of missing children is maintained up-to-date and the same is sent to DCRB and from there to SCRB.
57. The State and District/City Police Control Room/local Police net, ZIPNET, [www.tracktehmissingchild.gov.in](http://www.tracktehmissingchild.gov.in), etc should be updated immediately. It would be useful to access data on missing children

through other websites maintained by [www.childlineindia.org.in](http://www.childlineindia.org.in) and [www.stoptrafficking.in](http://www.stoptrafficking.in), to mention a few. <sup>1</sup>

58. Every Police Station across the country should have Special Squad/ Missing Persons Desk to trace missing children. This Squad/Desk should have a Registering Officer who should be made responsible of registering complaints of missing children. <sup>7</sup>
59. The State Police Headquarters should evolve a system of mandatory reporting whereby all incidents of missing children across the country should be reported to the newly constituted National Commission for Protection of Child Rights (NCPCR) within 24 hours of occurrence. <sup>7</sup>
60. In order to make the investigative procedures concerning missing children more transparent and user-friendly, the police investigating team should involve the community at large, such as representatives of Panchayati Raj Institutions / Municipal Committees/ Neighborhood Committees/Resident Welfare Associations, etc, in addition to existing helplines. <sup>7</sup>
61. In case the missing person is traced, the Police Control Room, DMPU/ MPS should be informed immediately for updating the record and for discontinuing the search.

## **Other key considerations in cases of missing persons or children**

1. The Directors General of Police of States should take appropriate steps to issue police orders/circulars/standing instructions etc., sensitize all officers on issues of missing children, and also make them accountable. <sup>7</sup>
2. NCRB should establish a National Tracking System that would encompass the grass-root level in locating and tracing missing children. There should be prompt reporting of not only missing children cases but also of return/rescue/recovery. <sup>7</sup>
3. To revive State/District Crime Records Bureau. The database on

missing persons, their return, and the processes involved should be properly documented. The State Missing Person's Bureau (MPB), needs to be revamped, made functional and strengthened. The officers should be well-trained and knowledgeable to address the issues in an analytical manner and from the perspective of Human Rights.<sup>7</sup>

4. In places where vulnerable groups of children are found in large numbers, there is need for enforcement agencies to evolve some kind of a mechanism in partnership with non-governmental organizations and social workers, whereby apart from rendering counseling to them, awareness-raising activities are also carried out.
5. To keep special vigils at railway stations, bus-stands, airports, seaports and other such places which act as transit points for missing persons, including children who run away or are made to run away. In this context, the Government Railway Police, the Railway Protection Force, Airport and Seaport authorities needs to be oriented about the issue of missing children.<sup>7</sup>
6. Each police station should have at least one Police Officer, especially instructed and trained and designated as a Juvenile Welfare Officer in terms of Section 63 of the Juvenile Justice Act. A Special Juvenile Officer should be on duty in the police station in shifts.<sup>8</sup>
7. SLISA should constitute a team comprising a lawyer and social worker to follow up the case with the police.<sup>6</sup>
8. In cases where FIR has not been lodged and the child is still missing, an FIR should be immediately lodged and further investigation may proceed on that basis.<sup>8</sup>
9. The rights and interests of missing persons should be protected by all the concerned agencies, NGOs and CSOs.

# **CHECKLIST**

## **for compliance with procedures and processes by IOs/EOs in case of missing child:**

- » Whether FIR has been lodged immediately
- » Whether the parent(s)/Guardian(s) who made the initial report were interviewed.
- » Whether the police officer dealing in missing children case is in plainclothes.
- » Whether the fact of missing was confirmed.
- » Whether the status of child's custody was confirmed.
- » Whether the circumstances of the disappearance were identified.
- » Whether the individuals who had last contact with the child were interviewed.
- » Whether a detailed description was obtained of the missing child, abductor, and any vehicle involved.
- » Whether the photograph/video footage of the missing child/abductor were secured.
- » Whether the WT message has been flashed on all-India level with the detailed description
- » Whether Hue and Cry notice has been prepared and issued
- » Whether names/addresses/telephone numbers of the child's friends/associates and other relatives and friends of the family have been obtained.
- » Whether the scene and area of the child's home has been protected.
- » Whether the information that the child has cellular telephone or other electronic communication device or access to internet was ascertained.
- » Whether Principal, class teacher and schoolmates of missing child have been contacted.
- » Whether DMPU, MPS, DLSA, SCRB, NCRB, NCPCR and other mandatory agencies have been informed.
- » Whether reward for furnishing clue about the missing child has been announced



- » Whether children home, shelter homes, mortuaries in hospitals, NGOs records have been checked.
- » Whether the details of missing child have been uploaded and updated on TrackChild portal.
- » Whether the investigation is on until the child is recovered

## REFERENCES

1. **MHA, Government of India Advisory dated 31/01/2012 (F.No. 15011/60/2011) on measures needed to prevent trafficking and to trace missing children (Annexure-III 6).**
2. **Hon'ble Supreme Court in the Writ Petition (Civil) No. 75/12 on May 10, 2013:**

“that in case a complaint with regard to any missing children was made in a police station, the same should be reduced into a First Information Report and appropriate steps should be taken to see that follow up investigation was taken up immediately thereafter. An element of doubt has been raised on behalf of the State of Madhya Pradesh regarding the recording of First Information Report relating to a missing child, having regard to the provisions of Section 154 of the Code of Criminal Procedure, 1973, which relates to information in cognizable cases. We do not, however, see any difficulty in the orders, which we have already passed. We make it clear that, in case of every missing child reported; there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise. Accordingly, whenever any complaint is filed before the police authorities regarding a missing child, the same should be entertained under Section 154 CrPC. However, even in respect of complaints made otherwise with regard to a child, which may come within the scope of Section 155 CrPC, upon making an entry in the Book to be maintained for the purposes of Section 155 CrPC, and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint. The Magistrate, upon receipt of the information recorded under Section 155 CrPC, shall proceed, in the meantime, to take appropriate action under sub-section (2), especially, if the complaint relates to a child and, in particular, a girl child.”

3. **Addendum to Standing Order No. 252/2010 on missing children by Commissioner of Police, Delhi**

“Registration of a case is mandatory if the missing child is below the age of 16 years in case of boys and 18 years in case of girls. The case should

be assigned to an experienced officer not below the rank of an ASI. A lady police officer should preferably be entrusted with the investigation of a case related to a minor girl.”

**4. Hon’ble Supreme Court Order dated November 14, 2002 Writ Petition (Criminal) 610/1996 Hori Lal Vs Commissioner of Police & Other Respondents**

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

- A. Publish photographs of the missing persons in the Newspaper, telecast them on Television promptly, and in case not later than one week of the Receipt of the complaint. Photographs of a missing person shall be given wide publicity at all the prominent outlets of the city /town / village concerned that is at the Railway Stations, Inter- state bus Stands, airport, regional passport office and through law enforcement personnel at Border checkpoints. This should be done promptly and in any case not later than one week of the receipt of the complaint. But in case of minor/major girl such photographs shall not be published without the written consent of the parents / guardians.
- B. Make inquiries in the neighborhood, the place of work/study of the missing girl from friends, colleagues, acquaintance, relatives etc. immediately. Equally all the clues from the papers and belongings of the missing person should be promptly investigated.
- C. To contact the Principal, Class teacher and Students at the missing persons most recent school/educational institutions. If the missing girl or woman is employed somewhere, then to contact the most recent employer and her colleagues at the place of employment.
- D. Conduct an inquiry into the whereabouts from the extended family of relatives, neighbors, school teachers including school friends of the missing girl or woman.
- E. Make necessary inquiries whether there have been past incidents or reports of violence in the family.

**Thereafter the investigation officer/agency shall:**

- i.** Diligently follow up to ensure that the records requested from the parents are obtained and examine them for clues.
- ii.** Hospitals and Mortuaries to be searched immediately after receiving the complaint
- iii.** The reward for furnishing clues about missing person should be announced within a month of her disappearance.
- iv.** Equally Hue and Cry notices shall be given within a month.
- v.** The Investigation should be made through women police officers as far as possible.
- vi.** The concerned police commissioner or the DIG/IG of the State Police would find out the feasibility of establishing a multitask force for locating girl children women.

Further, in the Metropolitan cities such as Delhi, Mumbai, Kolkata and Chennai the Investigating Officer should immediately verify the red light areas and try to find out the minor girls. If any minor girl (may or may not be recently brought there ) is found her permission be taken and she may be taken to the children's home (Sec 34 of the Juvenile Justice (Care and Protection of the Children) Act 2000, and the I.O. to take appropriate steps that all medical /other facilities are provided to her.

**5. Corrigendum to Standing Order No. 252/2010 on Missing Children by Commissioner of Police, Delhi**

"The Para No. 36 of the Addendum to S.O. No. 252/2010 issued vide No. 3021-3377.HAR/PHQ, dated 02.05.2013 shall be substituted with the following – Addl. CsP/DCsP shall ensure that the investigation of all cases relating to Missing Children between the age of 3 to 8 years, who are not rescued or found for a period of 4 months, should be transferred to Anti-Human Trafficking Unit (AHTU) of the district for effective investigation."

**6. Hon'ble High Court of Delhi in Writ Petition (Crl.) No. 249/09 Court of its Own Motion Vs State)**

“The Hon’ble High Court of Delhi has in Writ Petition (crl.) No.249/09 (Court on its Own motion Vs State) directed as follows:-

- A.** Requirement to send a copy of FIR by-post/e-mail to the Delhi Legal Services Authority.
  - i.** By post:- It shall be the responsibility of the SHO to ensure that a copy of FIR registered with regard to missing children is delivered to Delhi Legal Services Authority by-hand or by-post (under UPC) along with the addresses and contact phone numbers of parents of the missing children. To avoid extra work, it should be ensured that while recording FIRs pertaining to missing children the names of parents/next of kins, their addresses besides their mobile and landline telephone numbers and, if neither of these are available, any contact telephone number is clearly recorded in the FIR itself so that there is no need to subsequent change the party to send the information to the DLSA.
  - ii.** E-mail:- As far as sending a copy of FIR by e-mail is concerned, this will be done by the Missing Persons Squad/Crime Branch after relevant information has been uploaded by the district on the ZIPNET. The district should ensure that such action taken expeditiously.
- B.** DLSA will constitute a team comprising a lawyer and social worker to follow up the case with the Delhi Police. The said team will not only provide all possible legal aid to the parents and families of the missing children but shall also act as an interface between the parents of the missing children and the Delhi Police. DLSA will maintain a record of all cases of missing children.
- C.** Both DLSA and the Delhi Police shall ensure that the Supreme Court interim directions/guidelines pertaining to missing/ kidnapped children passed in Writ Petition (Crl.) No.610/1996 (Horilal Vs. Commissioner of Police, Delhi) and in the case of Lalita Kumari Vs. State of U.P. & Ors. (Writ Petition (Crl.) No.68/2008) are strictly complied with.

- D. All I.Os/SHOs/Police Stations should extend full co-operation to the members of DLSA on any information relating to missing children etc.”

**7. National Human Right Commission recommendations:**

“After carrying out intensive consultations, the NHRC committee headed by Shri P.C. Sharma, Member, NHRC came out with the following recommendations:

- A. The problem of 'Missing Children' is a grave matter, therefore this issue needs to be made a "priority issue" by all stakeholders, especially the law enforcement agencies. The Directors General of Police of States should take appropriate steps to issue police orders/circulars/standing instructions etc., sensitize all officers in this regard and also make them accountable.
- B. Every Police Station across the country should have Special Squad/Missing Persons Desk to trace missing children. This Squad/Desk should have a Registering Officer who should be made responsible of registering complaints of missing children. He/she should maintain complete records of efforts made by them to trace missing children as well as by the Special Squad. In addition to this, the Registering Officer should also work as an Enquiry Officer whereby he/she should be made responsible for following up the entire procedure of tracing/tracking the missing child.
- C. There is a need to reiterate the implementation of the Supreme Court Guidelines in Writ Petition (Cri.) No 610 of 1996 filed by Horilal Vs. Commissioner of Police, Delhi & others with regard to effective steps to be taken for tracing missing children. The steps include publishing of missing persons photographs, making inquiries in the place of work, school friends and relative etc., inquire about any incidents of violence within the family in the past, thereafter, the Investigating Officer / Agency will obtain the records from parents and examine them, search hospitals and mortuaries, reward for furnishing clues to be announced, women police officers to be involved, immediately verify the red light areas in metropolitan

cities.

- D.** The Cell relating to missing persons/children set up in the Central Bureau of Investigation (CBI) is to be strengthened to enhance its capacity, to coordinate and investigate criminal cases relating to missing children and persons.
- E.** As per the legislation, the district administration in the country should get the places periodically inspected where children are employed. The Committee noticed that the district administration all over the country has failed in this task. The State Police Headquarters should evolve a system of mandatory reporting whereby all incidents of missing children across the country should be reported promptly to the newly constituted National Commission for Protection of Child Rights (NCPCR) within 24 hours of occurrence.
- F.** In order to make the investigative procedures concerning missing children more transparent and user-friendly, it would be preferable for the police investigating team to involve the community at large, such as representatives of Panchayati Raj Institutions / Municipal Committees/ Neighbourhood Committees/ Resident Welfare Associations, etc, in addition to existing help lines.
- G.** Enforcement agencies in partnership with non-governmental organizations and social workers should evolve a mechanism, whereby besides counseling to them, awareness to be brought about.
- H.** The National Crime Research Bureau should establish a National Tracking System in the form of a data that would encompass the grass-root level in locating and tracing missing children. There should be prompt reporting of not only missing children cases, but also of return/rescue/recovery. The database should be updated on a regular and systematic basis. This also involves revising the reporting format with respect to the rescue and recovery of persons who have been trafficked. The Director NCRB should liaise with the Project Coordinator, Anti Human Trafficking UNODC, New Delhi and workout a format as the UNODC is working in the field of Anti Human Trafficking and related issues.
- I.** There is an urgent need to revive State/District Crime Records Bureau. The database on missing persons, their return, and the

processes involved should properly be documented. The State Missing Person's Bureau (MPB) needs to be revamped, made functional and strengthened. The officers should be well trained and knowledgeable to address the issues in an analytical manner from Human Rights perspective.

- J.** There is a need to establish a Child Helpline through NGOs/PRI's/ other agencies with adequate support from Government in all the districts. The Department of Women & Child Development, Govt. of India, may take the initiative to set up such a national network.
- K.** The Police and the NGOs can work together in addressing this issue and in providing tremendous support to the police agencies who are preoccupied with several other tasks, especially in those places where the police station strength is very poor. Therefore, Preliminary Inquiry into missing persons could be outsourced to NGOs, who are willing to undertake this task. MHA may issue appropriate guidelines to the States in this regard.
- L.** As of now the issue of missing children is not a cognizable offence and the very fact of missing of a child does not convey occurrence of a crime. However, it is advisable that an FIR is registered by the police with respect to the issue of missing children. Though, experience shows that all such issues may not warrant registration of an FIR immediately. It is advisable to register FIR if a missing child does not come back or is not traced within a reasonable time. The State Governments should issue directions to the law enforcement agencies to set a time limit of 15 days from the date of the missing.
- M.** There is a need to sensitize all ranks of police personnel and other stakeholders to the issue of missing children. For this a two-day module should be designed by BPRD, so that uniform training is imparted to all concerned.
- N.** There is a need to identify "run away, abandoned, neglected and vulnerable children" found roaming around places where they are particularly exposed to abuse and exploitation. Proper identification, provision of care and support, and a 'safe place' is vital for them. These children under the JJ Act, are the children in need of care and attention which they should be given. This can be achieved by



producing them before Child Welfare Committees and ensuring proper care in the concerned Homes.

- O.** The local administration with the assistance of State / Central Government should facilitate the schools to keep a watch on their children, especially when they become untraced or become dropouts. Schools and all teaching institutions should introduce photo identity cards of children, so that tracing is possible.
- P.** Poverty has been acknowledged as one of the main factors in pushing children into inhospitable conditions and vulnerable to exploitation. Several Central and State Government schemes on poverty alleviation should be properly implemented and monitored for getting maximum results.
- Q.** There is a need to involve State Human Rights Commissions, Women Commission of State/ Centre etc., with regard to the issue of missing children.
- R.** Media can play an active and important role in increasing public awareness of missing children and the plight of the thousands of hapless families whose children are listed as untraced. This could be achieved by -- having the subject as a regular beat, a separate section on missing children in newspapers, announcement/ advertisement on the issue in newspapers or channels free of charge, investigative stories and awareness campaigns in collaboration with agencies like NHRC or NGOs.
- S.** Need to keep special vigils at railway stations, bus-stands, airports, sea- ports and such other places, which act as transit points for missing children, including children who run away or are made to run away. For this, the Government Railway Police, the Railway Protection Force, Airport and Seaport authorities need to be oriented about the issue of missing children.
- T.** The issue of missing children from across the border largely remains unaddressed. It has been reported that several foreign children who have been trafficked into India have been punished as illegal immigrants and are made to suffer. NHRC recommends the State governments to undertake review of all such cases and provide relief to such children, irrespective of their nationality. Moreover, there is

a need to develop a Protocol on this issue.

- U. The world of missing children is unknown and there is no proper study or research on the issue. Even today, the exact figures of missing or traced children are not available. The existing legislation requires the State and District authorities to periodically carry out inspections/surveys of places where children are employed, with a view to identify missing children and those engaged in bonded labor/child labor. The State administration should undertake micro studies especially at the places where children are reportedly vulnerable. A village-wise survey would be of help in this regard.
  - V. The recommendations would now be forwarded to the relevant authorities across the States and the Union Territories and also to the Government of India, so that tracing and restoring missing children back to their families would become an easier task.”
8. **Hon’ble Supreme Court Direction on file FIR in case of Missing Children and subsequent MHA Advisory on same dated 25/06/2013 (F.No. 24013/62/2012-SC/ST-W176).**

No. 24013/62/2012 – SC/ST-W176

Government of India

Ministry of Home Affairs

Centre State Division, 5th Floor, NDCC-  
II Building, Jai Singh road, New Delhi

Dated the 25th June, 2013

To

The Additional Chief Secretary/ Principal Secretary (Home)

Sub : Advisory on Hon’ble Supreme Court’s direction to file FIR in case of Missing Children

Sir/Ma’am,

Hon'ble Supreme Court while hearing a Writ Petition (Civil) no. 75 of 2012, on 10.05.2013, Bachpan Bachao Andolan vs. Union of India has directed the following:

- i. In case of complaint with regard to any missing children; made in a police station, the same should be reduced into a First Information Report and appropriate steps should be taken to see that follow up investigation is taken up immediately thereafter.
- ii. In case of every missing child reported; there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise.
- iii. Whenever any complaint is filed before the police authorities regarding a missing child, the same should be entertained under Section 154 CrPC. However, even in respect of complaints made otherwise with regard to a child, which may come within the scope of Section 155 CrPC, upon making an entry in the Book to be maintained for the purposes of Section 155 CrPC, and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint.
- iv. The Magistrate, upon receipt of the information recorded under Section 155 CrPC, shall proceed, in the meantime, to take appropriate action under sub-2 section (2), especially, if the complaint relates to a child and, in particular, a girl child.
- v. Each police station should have, at least, one Police Officer, especially instructed and trained and designated as a Juvenile Welfare Officer in terms of Section 63 of the Juvenile Act. Special Juvenile Officer on duty in the police station should be present in shifts.
- vi. Para-legal volunteers, who have been recruited by the Legal Services Authorities, should be utilized, so that there is, at least, one paralegal volunteer, in shifts, in the police station to keep a watch over the manner in which the complaints regarding missing children and other offences against children are dealt with.
- vii. The State Legal Services Authorities should also work out a network of NGOs, whose services could also be availed of at all levels for the purpose of tracing and reintegrating missing children with their

families which, in fact, should be the prime object, when a missing child is recovered

- viii.** Every found/recovered child should be immediately photographed by the police for purposes of advertisement and to make his relatives / guardians aware of the child having been recovered / found
- ix.** Photographs of the recovered child should be published on the website and through the newspapers and even on the T.V. so that the parents of the missing child could locate their missing child and recover him or her from the custody of the police.
- x.** Standard Operating Procedure should be laid down to handle the cases of missing children and to invoke appropriate provisions of law where trafficking, child labor, abduction, exploitation and similar issues are disclosed during investigation or after the recovery of the child, when the information suggests the commission of such offences.
- xi.** A protocol should be established by the local police with the High Courts and also with the State Legal Services Authorities for monitoring the case of a missing child.
- xii.** Definition of Missing Children: Missing child has been defined as a person below eighteen years of age, whose whereabouts are not known to the parents, legal guardians and any other person who may be legally entrusted with the custody of the child, whatever may be the circumstances/causes of disappearance. The child will be considered missing and in need of care and protection within the meaning of the later part of the Juvenile Act, until located and/or his/her safety/well being is established.
- xiii.** In case a missing child is not recovered within four months from the date of filing of the First Information Report, the matter may be forwarded to the Anti-Human Trafficking Unit in each State in order to enable the said Unit to take up more intensive investigation regarding the missing child.
- xiv.** The Anti-Human Trafficking Unit shall file periodical status reports after every three months to keep the Legal Services Authorities updated.
- xv.** In cases where First Information Reports have not been lodged at

all and the child is still missing, an F.I.R. should be lodged within a month from the date of communication of this Order and further investigation may proceed on that basis.

- xvi.** Once a child is recovered, the police authorities shall carry out further investigation to see whether there is an involvement of any trafficking in the procedure by which the child went missing and if, on investigation, such links are found, the police shall take appropriate action thereupon
- xvii.** The State authorities shall arrange for adequate Shelter Homes to be provided for missing children, who are recovered and do not have any place to go to. Such Shelter Homes or After-care Homes will have to be set up by the State Government concerned and funds to run the same will also have to be provided by the State Government together with proper infrastructure. Such Homes should be put in place within three months, at the latest. Any private Home, being run for the purpose of sheltering children, shall not be entitled to receive a child, unless forwarded by the Child Welfare Committee and unless they comply with all the provisions of the Juvenile Justice Act, including registration. It is requested that the above directions of the Hon'ble Supreme Court may be adhered to in letter and spirit and implementation at the ground level may closely be monitored to eradicate any loophole within the system.

**Dr. (Smt.) Praveen Kumari Singh Director (SR)**

**9. Section 154 & Section 155 in The Code Of Criminal Procedure, 1973.**

**Section 154 in Code of Criminal Procedure, 1973.**

- A.** Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given

in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

- B. A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.
- C. Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

**Section 155 in Code of Criminal Procedure, 1973.**

- 1. When information is given to an officer in charge of a police station of the commission within the limits of such station of a non- cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.
- 2. No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.
- 3. Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.
- 4. Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non- cognizable.

**10. Revised Standing Order No. 252/09 on missing children by Commissioner of Police, Delhi**

Information will also be shared with the CBI, where a Cell relating to missing children/persons has been set up in CBI as per the directions of the Hon'ble High Court, Delhi.





## CHAPTER 2

# Search & Rescue Operation

“It is unfortunate that the Investigating Officers and the Courts ordinarily fail to bear in mind a distinction between the rescued children including girls, on the one hand, and the persons who have been organizing such immoral traffic in a systematic manner and have otherwise been aiding and abetting the commission of offences there under”.

**- GURIA, SWAYAMI SEVA SANSTHAN VS. STATE  
OF U.P. & ORS. 2010 CRL.L.J.1433**

## IMPLEMENTING AGENCY: POLICE

The word “Rescue” literally means to free or liberate from confinement, violence, danger, or evil.

Commercial sexual exploitation being an extremely clandestine nature of phenomenon, the rescue of victims of commercial sexual exploitation (CSE) becomes a delicate process that involves careful assessment, planning, deployment, and execution of a series of tasks. Victims of CSE encounter multiple forms of exploitation, including physical abuse, mental torture, emotional trauma, and financial fraud. Therefore, a humanitarian angle should be kept in mind during search and rescue operations, with due considerations to legal provisions.

## SOPs for Rescue Process and Operation

1. First is the source of information about captive victims of CSE. The informant may be a helpline, CSO staff, victim of CSE, arrested perpetrator or trafficker, well-wisher and any other individual or group.
2. Utmost care should be taken in case of ill-motivated complaints.
3. The complaint/information received should be entered in General Diary (GD) at once without any compromise.
4. Time management is the key to success of any rescue operation.
5. First Information Report (FIR) is not a pre-requisite for conducting a rescue operation and police do not require a warrant to search and/or arrest in a situation of commercial sexual exploitation (CSE). The search may be with or without warrant.<sup>1</sup>
6. The police officials are empowered to conduct a search and rescue without warrant but where possible a warrant should be taken from competent Magistrate.<sup>2</sup>
7. Sections 97 and 98 of CrPC permit search and rescue of victims with warrant.<sup>3</sup>
8. After the entry into General Diary (GD), Special Police Officer (SPO), not below the rank of Inspector of Police, should form the required rescue team.<sup>4</sup>
9. SPO should carry out reconnaissance of the area where traffic victim(s) are confined. He should draw a map of the area that would be used for briefing and assigning specific roles and duties to rescue team members such as who shall be cordoning the entry and exit points? where could be possible locations of the hide-outs etc.<sup>5</sup>
10. The search and rescue operation may be conducted in a brothel, house/ apartment, hotel/lodge/resort/beauty parlor/massage parlor, or any other place including a railway station, bus stand, port, airport, highway, agricultural field, street, etc.
11. The rescue team can be headed by a police officer of SI or above rank to conduct rescue operation only after authorization by the Magistrate.<sup>6</sup>
12. The rescue team members should be accountable to the rescue team leader. The team should be trained, knowledgeable, sensitive, skilled,

and should be adequately informed about legal procedures & provisions.

13. The rescue team should have a female staff member of an NGO, preferably working on human trafficking, to assist in rescue.
14. The team should have at least two women officials, women NGO personnel or social workers.<sup>7</sup>
15. The rescue requires two witnesses (Panchas), of whom at least one has to be a woman. The woman witness need not be from the locality.<sup>8</sup>
16. Steps taken should be entered in the GD and before conducting rescue operations, re-check that all police formalities are completed.
17. Arrange adequate number of vehicles (minimum two) and escorts for the rescued persons so that the offenders are segregated from the victims.
18. Some clothes, first aid, adequate packed food, warm blanket and water for victims should be carried along.
19. Adequate boxes/bags/cartons to carry personal belongings of victims should be arranged before rescue.
20. Arrange materials and equipment required for documentation and evidence collection (such as writing pad, carbon paper, white paper, pen, pencil, box for transporting the exhibits, camera, videographer, audio recording equipments, first aid kit, torch lights, hammers, cutters, etc.).
21. Protective Homes should be identified and checked for vacancy before the rescue.
22. Instruct rescue team that during the rescue operations, the rescue team members should not physically touch the girls, women, or their belongings. Only female members of the rescue team should deal with the victims.
23. Instruct rescue team that during the rescue operations, no rescue team members should use abusive language towards the children, girls and women. Special care should be taken with children.
24. If a decoy is being utilized, brief the decoy properly to maintain his anonymity and security.
25. The police should clearly instruct the decoy not to indulge in any form of sexual relationship with the victim.
26. The rescue team should preferably be in plainclothes.
27. A backup police team should be kept on standby and in case of any

emergency the team should be requisitioned.

28. To prevent leakage of information prior to the actual rescue operation, mobile phones and any other modes of communication belonging to the rescue operation team members should be taken in custody by rescue team leader.
29. On reaching the site of rescue, everyone (i.e., Police, Panchas and NGOs) should take their respective positions as per plan decided.
30. The area should be cordoned off, all entry and exit points should be sealed before entering the building/house/ hutment/or any such place.
31. If decoy is used, once money is given by decoy to the pimp or victim for sexual services, the rescue team should enter the site/brothel etc. on signal from decoy.
32. The women police personnel along with NGO member should enter the brothel prior to the rest of the male team members to ensure that the victims are properly dressed.
33. If the victims are found inadequately dressed/covered, they need to be provided clothes and enough time to cover themselves.
34. Child victims should be immediately segregated from adult victims and safely escorted out and transferred to a Police Station or a suitable location/home, depending on the circumstances.
35. The rescue team should systematically start the search for the victims by processing each and every nook and corner of the rescue site with possible hide-outs. (Trafficked persons may be kept hidden in cubicles, false ceilings, basements, boxes, attics, wardrobes, toilets, surrounding areas etc).
36. During search, the rescue team should carefully look for hidden victims, children, offenders and incriminating materials.
37. There may be a situation where a victim other than the one being searched for is also identified. All identified victims, whether Indian nationals or foreigners, adults or children, should be rescued.
38. Victims should be clearly identified and handled with sensitivity.
39. Victims should be separated from perpetrators.<sup>9</sup>
40. Help and take all steps to retrieve all possessions and belongings of all rescued persons.<sup>10</sup>
41. Victims should be provided immediate reassurance by the NGO or the

police about (a) their personal safety (b) their status as a victim (not an accused) and (c) all possible options for assistance including post-rescue relief and rehabilitation (d) anonymity and basic amenities such as, food, water, blanket, rest room, etc.

42. Offenders should be segregated from all rescued persons to avoid any intimidation by the offenders.
43. The victims should be taken to a safe place where they are counseled and also explained about the legal process to follow.
44. The victim should be asked about the activities and names of perpetrators including aliases.<sup>11</sup>
45. Document the rescue operation in the diary, in the presence of the two independent reliable witnesses and get it signed by them for authentication.
46. The person rescued should not be transported in the same vehicle as the accused to any location.
47. During transportation of victim/s a counselor, lady police officer or social worker should be present with the victim as indicated in Protocols on rescue, Government of Maharashtra, Women and Child Department 26.10.2007.
48. The rescued persons should be escorted to the local Police Station.
49. At the police station the victim/s should be kept segregated from the accused and without any public display.<sup>12</sup>
50. The rescued victims should be provided counseling to reduce psycho-social impact of trafficking and commercial sexual exploitation.
51. If it is known or suspected that a victim is not from the State or speaks a different language, the services of an interpreter should be utilized.
52. Care should be taken to ensure that interpreters are not compromised or act in collusion with the accused. In no circumstances should the accused be used as an interpreter by the police to converse with the victim.
53. Special attempt should be made to identify children/minor (any individual below 18 years of age) and they should be treated as “children in need of care and protection” as per Juvenile Justice Act, 2000.<sup>13</sup>
54. Policies / government orders / circulars providing interim relief to the rescued person need to be immediately pursued.<sup>14</sup>

55. Services of sensitized counselors / NGO should be utilized and any violation of the rights of the victim should be dealt in appropriate manner.<sup>15</sup>
56. In case a search or rescue warrant had been taken by police from the magistrate, then the rescued victims should be immediately produced before the competent Magistrate/Magistrate issuing the search and rescue warrant.
57. Police should ensure that the victims do not influence each other at any stage of search and rescue.
58. Each rescued persons should be interviewed separately to avoid any form of influence or coercion of one victim on another victim.
59. Victims should be allowed to speak telephonically to their family/guardians/relatives/trustworthy/support systems.
60. Before allowing the victim to talk on the phone the police should ascertain that the person she is talking to is not a trafficker.
61. If a foreign national is found without valid passport or visa and after investigation, the woman or child is found to be a victim of human trafficking then the person should not be prosecuted under the Foreigners Act. 14 (d).

## **Some considerations for Inter-district and Inter-state rescue operations**

1. On receipt of information/complaint, a police team referred to as the 'rescue team' comprising sufficient number of police personnel, including woman police officers and credible NGOs, should be immediately sent to the destination district.
2. The rescue team should be led by the IO or a senior police officer, depending on the situation.
3. The rescue team should obtain a formal order from the district SP, permission for railway warrants for travel/travel advance, relevant warrants from competent Magistrate and identification details for the victim. If available and willing, a credible identifier such as a parent may be sent along with the rescue team.
4. The rescue team should contact the SP of the destination district and with his/her permission, jointly with the destination team (usually police team of the concerned police station) should conduct search/rescue operation.
5. If there is inadequate time for the rescue team to reach the destination district, and it is highly likely that the victim might be shifted out to some other places, the SP of the source district should immediately contact the SP of the destination district with a request for immediate search/rescue operation.
6. A formal memorandum along with copy of FIR and authorization under Section 166 CrPC for search & rescue should be dispatched to SP of destination district through fax/email/special messenger without delay. The rescue team, however, should also be immediately dispatched to deal with all post-rescue matters.
7. The SP of the destination district should ensure that a search/rescue operation is conducted as per prescribed procedures. The district Nodal Officer should be made in-charge of such operations.
8. The destination district police should take all legal and other necessary steps on its own till such time the rescue team from source district joins in. In no case should the destination team wait for the source team to initiate the steps of rescue operation.



9. The procedures for recording the statement of a victim and rendering victim assistance should be followed by police.
10. All arrested persons should be produced before competent Magistrate within 24 hours of arrest, excluding time of journey.
11. The rescue team should make an application to the local Court for 'transit remand' of all arrested persons. The Competent Authority in the destination district before whom the victim is being/has been produced, should also be requested by the rescue team for transfer of the victim to a suitable home in the source district and also the proceedings in the matter under notification to the Competent authority in the source district. Such a transfer should not take place in a rush i.e. without having rendered immediate assistance to the victim and ensuring availability of adequate assistance at the source district at such point in time.
12. Ideally, the witnesses should be a judicious mix of the local credible NGOs and other local witnesses. The FIR should reflect the names of the key witnesses to build a solid case for proactive investigation.
13. The rescue team from the source should not escort the accused and the victim together.

# CHECKLIST

## **Important check points during search and rescue operation for IOs:**

- » Ensure secrecy of the rescue operation till its completion.
- » Ensure that rescue team has female police staff and social workers apart from other team members.
- » Convey adequate assurance to victims that they will “not be treated as accused”.
- » Respect and render due dignity to rescued victims.
- » Employ complete precaution to ensure that the identity of the victim is kept undisclosed and complete anonymity is maintained.
- » Make use of competent translator for victims speaking different languages.
- » Ensure compliance of provisions of Section 21 of Juvenile Justice Act, 2000, and Section 228(a) of Indian Penal Code.
- » At no point should victims and accused be kept together or have any interaction.
- » Protect the vulnerable victim from other influential victims.
- » Victims should be allowed to collect and carry their belongings along with them.
- » Ensure adequate custody and protection to the victim’s children.
- » Ensure adequate number of vehicles (at least two) for transportation post-rescue to ensure segregation of victims and accused.
- » Neither use abusive language nor treat CSE victims as accused.
- » It is quite common to face resistance and use of abusive words from CSE victims because of their nature of exploitation and trauma. Do not get offensive with such victims.
- » Do not permit media publicity of victims.
- » Do not allow anybody to photograph the rescued victims.
- » Do not keep the victims and offenders together after rescue.
- » Do not let the accused/ offender intimidate, threaten, or harm the victims.
- » Do not leave behind the children of CSE rescued victims, since exploiters may try to hide the children of victims as a bait to ensure that the victim returns to the brothel.

## REFERENCES

1. Section 15 and Section 16 of Immoral Traffic (Prevention) Act, 1956.

### Section 15 of Immoral Traffic (Prevention) Act, 1956

#### **Search without warrant**

1. Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer or the trafficking police officer as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.
2. Before making a search under sub-section (1), the special police officer or the trafficking police officer, as the case may be shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search and may issue an order in writing to them or any of them so to do: Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search.
3. Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 of the Indian Penal Code (45 of 1860).
4. The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove all the persons found therein.
5. The special police officer or the trafficking police officer, as the case may be, after removing person under sub-section (4) shall forthwith produce her before the appropriate Magistrate. (5-A) Any person who is produced before a Magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes

of determination of the age of such person, or for the detection of any injuries as a result of sexual assault or for the presence of any sexually transmitted diseases. (In this sub-section, “registered medical practitioner” has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956).

6. The special police officer or the trafficking police officer, as the case may be, and other persons taking part in, or attending, and witnessing a search shall not be liable to any civil or criminal proceeding against them in respect of anything lawfully done in connection with, or for the purpose of, the search. (6-A) The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated it shall be done by woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognized welfare institution or organization. (For the purposes of this sub-section and Section 17-A, “recognized welfare institution or organization” means such institution or organization as may be recognized in this behalf by the State Government.
7. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under 94 of the said Code.

### **Section 16 of Immoral Traffic (Prevention) Act, 1956**

#### **Rescue of person**

- a. Where a Magistrate has reason to believe from information received from the police or from any other person authorized by State Government in this behalf or otherwise, that any person is living, or is carrying, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove there from such person and produce her before him.
- b. The police officer, after removing the person shall forthwith produce her before the Magistrate issuing the order.

2. Section 47, Section 103, Section 165 within PS Jurisdiction and Section 166 outside PS jurisdiction of CrPC

### **Section 47**

A police officer having authority to arrest a person, has a reason to believe that the person to be arrested has entered into or is within, any place, can enter and search the place to arrest the accused. In such situations if a victim is found or identified, police officer should rescue him/her and produce him/her before the competent magistrate.

### **Section 103**

Any Magistrate may direct a search to be made in his/her presence of any place for the search of which he is competent to issue a search warrant.

### **Section 165 within PS Jurisdiction**

Whenever IO (or OC) has reasonable ground for believing that something necessary for the purposes of investigation into an offence which s/he is authorized to investigate, may be found in any place within the limits of the PS, and such a thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search or cause search to be made, for such thing in any place within the limits of PS.

### **Section 166 outside PS jurisdiction**

Whenever the OC or the investigator (not below the rank of a Sub-Inspector (SI)) may require OC of another PS, whether in the same or different district to cause a search to be made in any place, would approach him/her with the requirement for search. But whenever there is reason to believe that the delay occasioned by requiring OC of another PS to cause a search to be made under 166 might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for the OC or the IO to search or cause to be searched, any place

in the limits of another PS in accordance with the provisions of 165 CrPC, as if such a place were within the limits of his/her own PS.

**3. Section 97 and Section 98 of CrPC**

**Section 97**

A police officer can seek a search warrant from a DM, SDM or Magistrate of the first class to rescue a person believed to be confined under such circumstances that the confinement amounts to an offence. Such a person upon rescue will be produced before the Magistrate issuing the warrant. A warrant issued under this section may be executed at any place within India.

**Section 98**

Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a DM or SDM or Magistrate of First Class may make an order for the immediate restoration of such woman to her liberty, or such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order using such force as may be necessary.

4. According to Section 13 ITPA, for each area specified by the State Government a Special Police Officer, not below the rank of Inspector of Police will be appointed (Section 13(2)). As per Section 13 (3) the Special Police Officer is to be assisted by a number of subordinate police officers including women and also advised by a non-official advisory body of not more than five Social Welfare workers of that area. An SPO and only an SPO can conduct and carry out the investigation necessary to convict the perpetrators (Delhi Administration Vs Ram Singh AIR 1962 SC 63).
5. Protocol for Pre-rescue, Rescue and Post-rescue operations of child victim of trafficking for commercial sexual exploitation, Ministry of Women and Child Development, Government of India.
6. Special police officer notified u/s. 13 (1) ITPA 1956 or an officer of the

rank of SI of police or above authorized by the Magistrate (Section 16, ITPA). (Bachu Lakhman Vs State of Gujarat Air 1960 Guj 37):

- A.** Police officers authorized to investigate crimes under ITPA, 1956 are:

Notified police officers u/s. 13 (1), (2) ITPA, or Subordinate police officers, authorized by the State Government u/s. 13 (3) (a) 18, or Central (Anti) Trafficking Police Officers u/s. 13 (4)

- B.** Police officers authorized to arrest offenders:

u/s. 14 (i) arrest without warrant can be done by a special police officer or anybody acting under his direction or guidance, or u/s. 14 (ii) arrest without warrant can be done by subordinate officer when authorized in writing by a special police officer u/s. 14 (iii) arrest even without a written order by the SPO can be done by any police official, provided he/ she:

- a.** is of the rank of SI or above
- b.** believes delay will lead to destruction/ concealment of evidence, or
- c.** the offender is likely to escape, or
- d.** suspects that the person is stating a false name/ address, etc.

- C.** Police officers who can undertake rescue are:

- i.** Any notified police officer as stated at (A) above.
- ii.** Any police officer authorized to arrest an offender as stated in (B) above, can rescue any victim while undertaking arrest of suspect.
- iii.** Any police officer of the rank of SI, and above, specially authorized by any competent Magistrate (MM, JM Ist class, DM or SDM) u/s. 16 ITPA.

- 7.** (Protocols on rescue, Maharashtra Government, Women and Child 26.10 2007)

Trained or experienced women social workers/NGO can be taken as witness.

8. Locality does not necessarily mean the street in which the house is situated. Whether the Panchas belong to the same locality or not has to be decided on the facts of each case (Bachu Lakhman Vs State of Gujarat AIR 1960 Guj 37). Rest assured that improper searches will be challenged by the accused and such searches are liable to be quashed completely if Section 15 (2) is not complied with.
9. (Guria, Swayami Seva Sansthan vs. State of U.P. & Ors. 2010 CRI.L.J.1433), (Prerana Vs State of Maharashtra 2003 1 ILD 438 Bom). “It is unfortunate that the Investigating Officers and the Courts ordinarily fail to bear in mind a distinction between the rescued children including girls, on the one hand, and the persons who have been organizing such immoral traffic in a systematic manner and have otherwise been aiding and abetting the commission of offences there under. The Legislature as also the Executive have also failed to draw a well-thought out plan for rehabilitation of the rescued children in the society by bringing in suitable legislations or schemes. The victims of immoral trafficking, most of whom are minor or young girls are let off on bail. They again in most of the cases are forced to go back to the brothels from where they have been recovered and are subjected to prostitution again at the instance of the same persons. Bails are also granted to other accused who are arrested from the brothels without bearing any distinction in mind as to whether they work from behind or may be held to be guilty of offences of higher magnitude. The question as regards grant of bail, therefore, should be considered having regard to the gravity of the offence wherewith the accused had been charged. The High Court, therefore, in our opinion, was not correct in dealing with the matter in such a cursory manner. The High Court has also gone wrong in recording that the statements of the girls have not been recorded under Section 164 of the Code of Criminal Procedure, as the same was not necessary. We would place on record that in a case of this nature, the High Court should have dealt the matter cautiously. As the private Respondents have been granted bail long time back and in some cases trials have also been concluded, it would not be proper to cancel the bail at this stage”.
10. This may include personal belongings including cash, jewellery, personal documents, passports, property papers and documents such



as voter card, ration card, Aadhar card, pan card and any other relevant documents which may have been kept locked by the exploiters. This is important. They should not be put in a position where they have no choice but to go back to the place /persons /site of exploitation. The victim's personal belongings are not case exhibit and should be handed over immediately/or produced before the Competent Authority at the time of production of the victim with a prayer for restoration of the belongings to the victim.

11. Each person should be interviewed separately, to elicit basic information including the name, age, home address, parents' names, plan and purpose of travel/being found at site, relationship with others found at the spot, name/identity of perpetrators etc. By cross-checking the answers, a trained police officer would be able to prima facie identify/differentiate victim (as well as a suspect) in most situations.
12. Privacy of victims should be preserved. Identification of the victims should be kept confidential, her name, address, photograph or any other information should not be published in any newspaper, magazine, news-sheet or visual media. (Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000, Section 228A IPC prohibits publication/printing of (a) name or any matter that reveals the identity of victims of certain offences and (b) any matter in relation to the proceedings before a court with respect to such offences without permission of the court (SC Smt. Sudesh Jakhu Vs Narendra Verma 2004).
13. Children should be later sent to the Child Welfare Committee as they are 'children in need of care and protection' under the Juvenile Justice Act 2000. The rescued adult persons are to be later sent to the Magistrate. The SPO/Police team along with NGO partner, and based on the prima – facie appearance of the person should take a decision as to whether the rescued person is a child or an adult. It would be appropriate to leave it to the decision of the CWC, if there is any doubt regarding the age.
14. According to WCD GO. MS. 13 dated 21-04-06 of Andhra Pradesh, (as per Standard Operating Procedures (SOP) on Investigating Crimes of Trafficking for Commercial Sexual Exploitation UNODC, 2007, a publication of United Nations Office on Drugs and Crime Regional

Office for South Asia ), the victim is entitled to an interim relief of Rs. 10,000/- immediately after rescue. The rescued victim, irrespective of her native place, can be extended this relief. Similarly, the Government of Tamil Nadu has made provisions for victim support from the Social Defence Fund. The IO should send proposals to the concerned authority immediately after rescue, requesting that such benefits are extended to the rescued person, wherever applicable.

15. Ministry of Home Affairs Issues Advisory on preventing and combating human trafficking in India – dealing with foreign nationals

No. 14051/14/2011-FVI

Government of India

Ministry of Home Affairs

(Foreigners Division)

Dated: 1st May, 2012

OFFICE MEMORANDUM

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

1. The undersigned is directed to refer to this Ministry's Office Memorandum No. 15011/6/2009-ATC (Advisory) dated 09.09.2009 on the above mentioned subject (copy enclosed). It has come to the notice of this Ministry that foreign nationals are associated in some instances of human trafficking among women and children.
2. Further to the detailed procedure outlined in the above mentioned Office Memorandum, it has been decided with the approval of the competent authority that in cases of foreign nationals who are apprehended in connection with human trafficking, the State Governments/UT Administrations may follow the following procedure:-
  - a. Immediately after a foreign national is apprehended on charges of human trafficking, a detailed interrogation/ investigation

should be carried out to ascertain whether the person concerned is a victim or a trafficker.

- b. The victims and the persons actually involved in human trafficking should be treated differently by the police authorities. This is in line with the SAARC Convention which advocates a victim-centric approach.
- c. Missions/Posts in India may be informed of the arrest/detention of the foreign national by the concerned state or other authorities through CPV division in the Ministry of External Affairs(MEA) or the concerned territorial Division in MEA.
- d. It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge-sheet against the victim. If the charges sheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned. Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels.
- e. During the interim period, pending repatriation, the victim may be taken care of in an appropriate children's home, or "Ujjawala" home or appropriate shelter home either of the State Government concerned or of any NGO aided by the Government of India / State Government.
- f. If the investigation reveals that the person is actually a trafficker, he/she may be charge-sheeted under the Immoral Trafficking Prevention Act and the Foreigners Act and due process of law should be followed in such cases.
- g. In order to ensure better conviction rates of perpetrators of the

crime of trafficking, prosecution should be based on documentary, forensic and material evidence. State Governments are advised to encourage the law enforcement agencies to investigate the cases in a manner that they are able to build fool proof cases against the traffickers, so that convictions can be guaranteed. Use of fast-track courts and video conferencing to the extent possible also need to be ensured.

3. All other instructions contained in this Ministry's Advisory dated 09.09.2009 including reporting to the Anti Human Trafficking Nodal Cell in MHA will be applicable in the case of foreign nationals associated with human trafficking, whether they are women or children (children means both boys and girls upto 18 years of age).
4. You are requested to issue suitable directions to all concerned under intimation to this Ministry.
5. The receipt of this Office Memorandum may kindly be acknowledged.

(G.V.V. Sarma)

Joint Secretary to the Govt. of India

To

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

Copy for information and necessary action to:-

- a. The DGs/IGs (In-charge of Prisons)/- All State Governments/ UTs
- b. Sri Sandeep Goel, Joint Commissioner(Crime), 3rd Floor, Police Station Kamla Market, Delhi
- c. Ministry of Women and Child Development(Smt. Aditi Ray, Senior Economic Advisor), Shastri Bhavan, New Delhi
- d. Secretary, Ministry of Labour, Shram Shakti Bhavan, New Delhi
- e. Secretary, Ministry of Social Justice & Empowerment, Shastri Bhavan, New Delhi
- f. Secretary, Ministry of Overseas Indian Affairs, Akbar Bhavan, New Delhi
- g. Ministry of External Affairs:
- h. (a) Addl. Secretary(PV)

- i.** (b) JS(Consular)
- j.** (c) JS(BSM)
- k.** Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi.
- l.** Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chanderlok Building, Janpath, New Delhi
- m.** Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi
- n.** Director General, NCRB, R.K. Puram, New Delhi
- o.** Director General, BPR&D, New Delhi
- p.** Director General, Border Security Force, New Delhi
- q.** Director, CBI, New Delhi
- r.** AS(CS) / JS(CS) / JS(UT) / JS(NE) / JS(K), MHA, North Block, New Delhi

(G.V.V. Sarma)

Joint Secretary to the Govt. of India



# CHAPTER 3

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## Recording of Statement

Recording of evidence for multiple times is the primary reason for delay of the trial.

**- Justice Gyan Sudha Misra & Justice V. Gopala Gowda,  
Bench of Hon'ble Supreme Court of India**

## IMPLEMENTING AGENCY: POLICE

A statement is written or reduced to written form by someone; in certain situations it is an audio-video-recorded account of what happened, how it happened and who was involved whom it happened. The recording of statement as evidence is a very crucial and critical phase for strengthening the case before the criminal justice system. The recording of statement is a multi-stage phenomenon.



## SOPs for Recording Statement of Victim

1. The registration of FIR should be ensured before recording of statement.
2. The victims and witnesses should be brought to the concerned police station or any place convenient to the victim and witness for recording of statements.
3. In case it is not viable to take a victim to a police station, she/he should be taken to a recognized 'Shelter/ Protective Home' directly from the rescue site. In such a situation, legal formalities should be completed by concerned authorities at the home itself.
4. The statement of the victim should be recorded under Section 161 of CrPC by IO.<sup>1</sup>
5. The statement of the victim should be recorded by a woman police officer or any woman officer as per new criminal law amendment (2013).<sup>2</sup>
6. The officer-in-charge should remember that victim has the right to representation. If necessary, he should contact DLSA/SLSA to render necessary legal assistance to victims.<sup>3</sup>
7. If a victim does not 'feel' or 'seem' physically or mentally fit to make a statement, the IO should provide adequate time before recording the statement.
8. IO should requisition services of a professional counselor through the Chief Medical Officer (CMO) of government hospital/NGO counselor, if required.
9. The IO can also make a prayer to the CWC/Court to issue an order to arrange for a professional counselor for a victim, if required.
10. As far as possible, any delay in conducting interviews should be avoided.
11. In case the victim, due to adverse mental health condition, provides incomplete/incorrect information about a case, including personal identity, it should be dealt empathetically.<sup>4</sup>
12. If the victim is not ready to give a statement, IO should make an entry to this effect in the Case Diary and should not compel the victim to give her statement.
13. The fact of delay in recording the statement, if any, should be submitted before the Magistrate/Child Welfare Committee at the time of production of victims.

14. Interview should be carried out by a female police officer or in the presence of a female NGO worker as mandated under Section 15 (6 A) Immoral Traffic (Prevention) Act, 1956.<sup>5</sup>
15. The detailed information-oriented interview of the victim(s) and witnesses should be performed by trained and experienced personnel.<sup>6</sup>
16. The statement of the victim and witnesses should be recorded in her own language, with the help of a translator, if required.
17. The interview should be exhaustive covering all the details since the beginning, including process of luring, false and fabricated promises, deception, key circumstances, different transits and destinations, etc.
18. The interview should record physical, emotional and mental harm done to the victim.
19. There should be a narration of facts, which should be as complete as possible.
20. Special emphasis should be laid on recording the different form of abuses and exploitations inflicted on rescued victims.
21. Non-cooperation is quite common with victims of commercial sexual exploitation. Being traumatized, the rescued person may not come out with full facts in the initial statement. Therefore, statement can be recorded when the victim is ready to share information. Prepare further statements where required.
22. Supplementary statement can be recorded in the safety of the Protective Home in the presence of the social worker, probation officer or counsellor, if required.
23. The information should Include full details of facts and events, and victims' personal details like name, alias, name given to them during CSE, age, nativity, health status, education, mother tongue, family history, the modus operandi of traffickers, the events at source, transit and destination, identification details of any local contact at the source, the first contact that got in touch with the victim at source, photographs of persons where possible, identification details of other suspected traffickers and their contacts, details about source, destination and routes, phone numbers, addresses, transport details, bank details of anyone who appears relevant to the trafficking.
24. The 164 CrPC statements of complainant, victims, witnesses, suspects

and accused should be recorded as per the provisions of New Criminal Law (Amendment) Act 2013.<sup>7</sup>

25. The police officer may opt to record the statement under Section 164 of Code of Criminal Procedures, 1973 , in the following situations:
  - A. When the rescued victim(s) may be repatriated to their far-flung native place of origin and she/they might not be available as and when required.
  - B. When the victims are likely to remain absent during recording of evidence because of trauma, family pressure, and, social and cultural taboos.
  - C. When the victims suffer from serious and chronic illnesses and health status prevent travel.
26. It is important to understand that decision to record the statement under Section 164 of CrPC should be taken on priority. The recoding of statement should be done as soon as the commission of the offence is brought to the notice of the police.
27. The recording of statement should be done by the Judicial Magistrate.
28. The victim should be comfortable and fully willing to record the statement. If required, a counsellor's services may be sought before recording the statement.
29. The recording of statement may be done in camera and in a non-intimidating milieu. The IO should submit a prayer on this under Section 327 (2) of CrPC.<sup>8</sup>
30. The content of the statement should not be disclosed to anybody till the charge-sheet is filed.<sup>8</sup>

## Recording the Statement of a Child

1. The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector (POCSO Act, 2012)
2. The police officer while recording the statement of the child shall not be in uniform.
3. The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child comes in contact in any way with the accused.
4. No child shall be detained in the police station in the night for any reason.
5. The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.
6. If the statement of the child is being recorded under Section 164 of the CrPC, the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child.
7. The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.
8. The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.
9. Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.
10. The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be

prescribed, to record the statement of the child.

11. Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means

## REFERENCES

### 1. Section 161 of Code Of Criminal Procedure, 1973.

#### Examination of witnesses by police

- A. Any police officer making an investigation or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
- B. Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
- C. The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

### 2. In Section 161 of the Code of Criminal Procedure, in sub-section (3) after the proviso, the following proviso shall be inserted, namely:-

“Provided further that the statement of a women against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of Indian Penal Code is alleged to have been committed or attempted shall be recorded by a woman police officer or any woman officer”

### 3. Delhi Domestic Working Women’s Forum vs. Union of India (UOI) and Others 1995 (1) SCC 14.

“The case laid down parameters under which a case of rape has to be tried by taking into consideration the plight of the victims during and after the trial; For the first time recognised the need for legal representation for the victim; Laid down parameters about the treatment of the victims in police station; Made it mandatory for the victim to get the help of a social worker; Made it mandatory to maintain the anonymity of the

victim's identity; In this case, four women were brutally raped by seven army officers while travelling on a train from Ranchi in Bihar (now Jharkhand) to Delhi. The petition was brought to the Supreme Court by a group representing female domestic workers in Delhi.

The SC held that not only should the complainants of sexual assault cases be provided with legal representation, it is important to have someone who is well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, prepare her for the case, and assist her in the police station and in the court, but to also provide her with guidance as to how she might obtain assistance of various kinds from other agencies; for example, mind counseling or medical aid. It is important to secure a continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represented her up to the conclusion of the case; Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, and the guidance and support of a lawyer at this stage and later whilst she was being questioned would be of great assistance to her; The police should be under a duty to inform the victim of her right to representation before any questions were asked of her, and that the police report should state that the victim was so informed; A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable; The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorized to act at the police station before leave of the court was sought or obtained."

#### **4. Standard Operating Procedure for Raid and Rescue of Trafficked Victims, Department of Social Welfare, Government of Bihar**

Since a police officer is not a mental health expert, s/he should get a mental health expert to examine such a victim and get a statement about his/her mental health condition. Such a fact must also be recorded in

the case diary and should be highlighted before the CWC/ Court with a prayer for recording the statement of such a victim only when the person is in position to do so.

**5. Section 15 (6-A) of Immoral Traffic (Prevention) Act, 1956**

“Where any woman or girl removed under sub-section (4) is required to be interrogated it shall be done by woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognized welfare institution or organization. For the purposes, “recognized welfare institution or organization” means such institution or organization as may be recognized in this behalf by the State Government”

6. Include full details of facts and events about victims’ personal details like name, alias, name given to them during CSE, age, nativity, health status, education, mother tongue, family history, the Modus operandi, the events at source, transit, destination, identification details of any local contact at the source, the first contact that got in touch with the victim at source, photographs of persons where possible, identification details of other suspects traffickers and their contacts (check phones for photographs and enquire about the same), details about source, destination and routes, if known, phone numbers, addresses, transport details, bank details of anyone who appears relevant to the trafficking (The Anchorage case (SC) Criminal Appeal No. 1208-1210 of 2008 Child-Line India Foundation & others Vs Allan John Waters & Others).

A witness should never be suggested any answers/theories. Efforts should be made to collect all relevant and necessary details for further action including: -

1. Identification details of all the victims in captivity, photographs etc
2. Identification details of missing person, if any with latest photographs.

A witness should be asked to furnish reliable identity document, but the SPO should be aware that a witness may or may not be able to produce such a document readily. Personal knowledge about the identification details of rescued victims, suspects and accused,



present at the site, should be checked. This would include name, age, nationality, name of parents and guardians, home address, mother tongue, physical appearance & characteristic, and also knowledge about identification document that should be obtained by the IO.

Personal knowledge about the identity of victims/suspects/accused/witnesses who may not have been present at the site, purpose of being found at the site, relationship with victim/suspects/accused/other witnesses, observation about going-on at the site before search/rescue, personal knowledge about the crime and related events/ people/ evidences should be recorded.

**7. In Section 164 of the Code of Criminal Procedure, AFTER SUB-SECTION (5), the following sub-section shall be inserted, namely:-**

“(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (I) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5) as soon as the commission of the offence is brought to the notice of the police.

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement;

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video-graphed

**8. Guidelines for recording statement of a rape victim, Hon’ble Supreme Court of India**

The bench comprising of Justice Gyan Sudha Misra and Justice V.

Gopala Gowda issued the following guidelines in exercise of powers under Article 142 of the Constitution, the interim directions in the form of mandamus to all the police station in charge in the entire country regarding recording of the statement of a rape victim:

- a.** Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC is filed.
- b.** The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.
- c.** The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.
- d.** If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
- e.** Medical Examination of the victim: Section 164 A CrPC inserted by Act 25 of 2005 in CrPC imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC.

**9. Court On Its Own Motion vs State And Anr. on 14 August, 2007.****RECORDING OF STATEMENT BEFORE MAGISTRATE**

1. The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided. In case the same is unavoidable, reasons to be recorded in writing.
2. In the event of the child victim being in the hospital, the concerned Magistrate shall record the statement of the victim in the hospital.
3. To create a child-friendly environment, separate rooms should be provided within the Court precincts where the statement of the child victim can be recorded.
4. The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of "Ascertaining voluntary nature of statement" unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice.
5. Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded.
6. No Court shall detain a child in an institution meant for adults.

## Sample Format

### for recording the statement at police station

(The details given here are indicative only.)

I, XY (verifiable name) @ \_\_\_\_\_ @ (name given by traffickers) @ \_\_\_\_\_, aged \_\_\_\_\_ (approx/verifiable), home/permanent address \_\_\_\_\_, presently residing at \_\_\_\_\_, \_\_\_\_\_ (verifiable education qualifications) in \_\_\_\_\_ language /mother tongue do hereby state as under:

I say that I am originally from \_\_\_\_\_. I understand \_\_\_\_\_ and speak \_\_\_\_\_. I say that my father was a drunkard and died 5 years back. I have 5 other younger siblings. They live with my aged mother who worked as an agricultural labourer.

We grew up in extreme poverty \_\_\_\_\_.  
 \_\_\_\_\_ (details). After the death of our father we shifted to a slum in Delhi where my mother's sister was working as a maid. My mother's sister found it very difficult to support all of us and every day the situation worsened. My mother grew extremely tired and weak after she found work also as a maid. There was a man (verifiable name) @ \_\_\_\_\_ @ (business name etc) @ \_\_\_\_\_, aged \_\_\_\_\_ (approx/verifiable), home/permanent address \_\_\_\_\_, presently residing \_\_\_\_\_ age, nationality, parents/relatives' name, home address, mother tongue, physical appearance/features, identity marks such as tattoo, limp, cuts etc and also knowledge about identification document etc ) in my locality who kept approaching me and said that he loves me and would take care of everything \_\_\_\_\_.  
 \_\_\_\_\_ I met him for over 6 months as I thought he was in love with me and thought he would marry me.

However after 6 months he took me to an agent (verifiable name) @ \_\_\_\_\_ @ (business name etc) @ \_\_\_\_\_, aged \_\_\_\_\_ (approx/verifiable), home/permanent address \_\_\_\_\_, presently residing \_\_\_\_\_ age, nationality, parents/guardians' name, home address,

mother tongue, physical appearance/features, identity marks also knowledge about identification document etc.) said he would find work for me but that I should go with him for an interview.

I was taken to Hotel \_\_\_\_\_, Room \_\_\_\_\_. There were 4 men. I don't know their names (detailed descriptions, Personal knowledge/observations about the identity of suspects, everything she observed/noticed about mannerisms/language/remarks made etc.). I was offered a cold drink. I felt light-headed and was told to sit down comfortably. My limbs were powerless and all 4 men took turns to rape me. At the end they threw some rupees at me. The agent who was watching, told me, look how much you can earn. I noticed one of the 4 men (detailed description, Personal knowledge/observations about the identity of suspect, everything she observed/noticed about mannerisms/language/remarks made etc) giving him money and walking away. The agent left me at the railway station and after a while when I was able to move I went home. A few days later the agent introduced me to a man AB (verifiable name) @ \_\_\_\_\_ @ \_\_\_\_\_ nick names @ \_\_\_\_\_, aged \_\_\_\_\_ (approx/verifiable), home/permanent address \_\_\_\_\_, presently residing \_\_\_\_\_ age, nationality, parents/guardians' name, home address, mother tongue, physical appearance/features, identity marks and also knowledge about identification document etc ). He told me he would pay me a fixed monthly salary of Rs 20,000/. He sent me to customers every day. During this time (Personal knowledge about the crime and related events/ people/ evidences-----)( harm (physical, emotional, mental, etc.) done to the victim) (medical condition etc)

On \_\_\_\_\_, AB told me he would pay Rs 25,000/ to go for 10 days to Benaras. There I stayed with his pimp \_\_\_\_\_ (verifiable name) @ \_\_\_\_\_ @ \_\_\_\_\_ street/nick names @ \_\_\_\_\_, aged \_\_\_\_\_ (approx/verifiable), home/permanent address \_\_\_\_\_, presently residing \_\_\_\_\_ age, nationality, parents/guardians' name, home address, mother tongue, physical appearance/features, identity marks and also knowledge about identification document etc ). During this time (Personal knowledge about the crime and related events/ people/ evidences of (harm (physical, emotional, mental, etc.) done to the

victim). I had to \_\_\_\_\_ with many men. (Identify accused/witnesses who may not have been present at \_\_\_\_\_, situation in which found at site, If other victims/suspects/accused/other witnesses present, Observation about going-on at the site before search/rescue, Observation/knowledge about usual going-ons at the site.)

On \_\_\_\_\_ police entered the hotel room and brought me to the police station

My statement is read over and explained to me. The NGO representative \_\_\_\_\_ was present.

# CHAPTER 4

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## Medical Examination

Delay in medical examination is an important  
cause of low rate of conviction  
- **Journal of Indian Academy of Forensic Medicine**

## IMPLEMENTING AGENCY: MEDICAL OFFICER

The complete medical-forensic examination of the rescued victims plays a crucial role in establishing the nature of exploitation and its impact on the victims. Every rescued victim should be medically examined without any delay for the purpose of recording and treatment of physical injuries, sexual assault, related diseases, mental health problems and administration of PEP137 treatment<sup>1</sup>, if required. Delay in dispatch of medical evidence to the chemical examiner will make the report worthless (Arbinda Dey Vs West Bengal 1953 Cr LJ 511 (Cal)).



## SOPs for medical examination of rescued victims

1. The IO should get the victims examined by a Registered Medical Practitioner (Section 164A of Cr. P.C)<sup>7</sup> as early as possible or within 24 hours.<sup>2</sup>
2. The examination of a victim by registered medical practitioner is also mandatory under section 15 (5A) of ITPA.<sup>3</sup>
3. The IO should take informed Consent of the victims for medical examination. The same has been mandated under Section 164(A) of CrPC and Guidelines for medico-legal care for victims of sexual violence, 2003, World Health Organization).
4. In case the victim is a child (under 12 years of age), consent for examination needs to be sought from the parent or guardian.
5. If any personnel denies or fails to provide treatment to victims, it would call for punishment under section 166B of I.P.C. and section 357C of CrPC.<sup>4</sup>
6. If possible, the medical examination should be conducted by a female doctor as illustrated under Section 53 (2) Cr. P.C.
7. In case of medical examination of children,<sup>5</sup> the medical examination shall be conducted by a woman doctor in case the victim is a girl. The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence. In case the parent of the child or other person referred to in Sub-Section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.
8. Age verification test is mandatory as per the Section 15 (5A) of Immoral Traffic Prevention Act, 1956 and Section 49 of Juvenile Justice Act, 2000.
9. The medical person should explain to the victim in simple and understandable language the rationale for various procedures and details of how they will be performed.
10. Ensure confidentiality and explain to the victim that she/he should

reveal the entire history to the health professional without fear. The victim may be persuaded not to hide anything.

11. The fact that genital examination may be uncomfortable but is necessary for legal purposes should be explained to the victim.
12. The two-finger test should not be conducted.<sup>6</sup>
13. The victim should be informed about the need to carry out additional procedures such as X-rays, etc. which may require him/her to visit other departments.
14. Maintain the chain of custody scrupulously.
15. The doctor should record name of hospital along with other details such as:
  - i. Name:
  - ii. Address:
  - iii. Age:
  - iv. Sex (male/female/other) of the victim:
  - v. Date:
  - vi. Time of receiving the patient in the hospital and commencement of examination:
  - vii. Name of the person who brought the victim:
  - viii. Relationship to accompanying person 1.
  - ix. Relationship to accompanying person 2.
  - x. Relationship to accompanying person 3.
  - xi. Informed consent of the victim:
  - xii. Two marks of identification such as moles, scars, tattoos etc., preferably from the exposed parts of the body, should be documented. While describing identification mark, emphasis should be on size, site, surface, shape, colour, fixity to underlying structures. Left Thumb impression should be taken in the space provided.'
  - xiii. Relevant medical/surgical history
    - a. Menstrual history (Cycle length and duration, Date of last menstrual period). If the victim is menstruating at the time of examination then a second examination is required on a later date in order to record the injuries clearly. Some amount of evidence is lost because of menstruation. Hence it is important to record whether the victim was menstruating at the time of

assault/examination:

- b.** Vaccination history is important with regard to tetanus and hepatitis B, so as to ascertain if prophylaxis is required.
- xiv.** Sexual violence history:
- a.** A relative could be present with the consent of the victim, if s/he is comfortable.
  - b.** Details of the date, time and location of incident of sexual violence should be recorded.
  - c.** In case of more than one assailant, their number should be recorded along with the names and relation if known.
  - d.** The doctor should record the complete history of the incident, in victim's own words as it has evidentiary value in the court of law.
  - e.** Use of any Physical violence during assault should be recorded with detailed description of the type of violence and its location on the body (e.g. beating on the legs, biting cheeks, pulling hair, kicking the abdomen etc.).
  - f.** Note history of injury marks that the victim may state to have left on the assailant's body as it can be matched eventually with the findings of the assailant's examination.
  - g.** If any weapon(s) were used such as sticks, acid burns, gun shots, knife attacks etc.; if the use of drugs/alcohol was involved. Verbal threats should be recorded in victim's words, e.g. harming her or her near and dear ones.
  - h.** Information regarding attempted or completed penetration by penis/finger/object in vagina/anus/ mouth should be properly recorded.
  - i.** In case of children, illustrative books, body charts or a doll can be used if available, to elicit the history of the assault. When it is difficult to elicit history from a child, please call an expert.
  - j.** Details of clothing worn at the time of assault should be recorded.
  - k.** Post assault Information should be collected on activities like changed clothes, cleaned clothes, bathed/urinated/defecated/showered/washed genitals (in all cases) and rinsing mouth, drinking, eating (in oral sexual violence)/had sexual intercourse

after the incident of sexual violence. This would have a bearing on the trace evidence collected from these sites.

- l. If vaginal swabs for detection of semen are being taken then record history of last consensual sexual intercourse in the week preceding the examination. It should be recorded because detection of sperm/semen is valuable evidence. While seeking such history, explain to the victim why this information is being sought, because the victim may not want to disclose such history as it may seem invasive.
- m. Information related to past abuse (physical/sexual/emotional) should be recorded in order to understand if there is any health consequence related to the assault. This information should be kept in mind during examination & interpretation of findings.
- n. Relevant Medical & Surgical History: Relevant medical history in relation to sexually transmitted infections (gonorrhea, HIV, HBV etc.) can be elicited by asking about discharge per-urethra/per-anus, warts, ulcers, burning micturition, lower abdominal pain etc. Based on this information reexamination/ investigations can be done after incubation period of that disease. If there is vaginal discharge, record its type, i.e., texture, colour, odor, etc. · Relevant surgical history in relation to treatment of fissures/injuries/scars of ano-genital area should be noted.
- xv. General physical examination
  - a. Record if the person is oriented in space and time and is able to respond to all the questions asked by the doctor. Any signs of intoxication by ingestion or injection of drug/alcohol should be noted.
  - b. Pulse, B.P., respiration, temperature and state of pupils is recorded.
  - c. A note is made of the state of clothing if it is the same as that worn at the time of assault. If it is freshly torn or has stains of blood/semen/mud etc.; the site, size, and colour of stains should be described.
- xvi. Examination for injuries:
  - a. The entire body surface should be inspected carefully for signs of

bruises, physical torture injuries, nail abrasions, teeth bite marks, cuts, lacerations, fracture, tenderness, any other injury, boils, lesions, discharge specially on the scalp, face, neck, shoulders, breast, wrists, forearms, medial aspect of upper arms, thighs and buttocks

- b. Describe all the injuries. Describe the type of injury (abrasion, laceration, incised, contusion etc.), site, size, shape, colour, swelling, signs of healing, simple/grievous, dimensions. Mention possible weapon of infliction such as - hard, blunt, rough, sharp, etc.
  - c. Describe any stains seen on the body - the type of stain (blood, semen, lubricant, etc.) its actual site, size and colour. Mention the number of swabs collected and their sites.
- xvii. Local examination of genital parts/other orifices**
- a. External genital area and Perineum should be observed carefully for evidence of injury, seminal stains and stray pubic hair. Pubic hair is examined for any seminal deposits/ stray hair. Combing is done to pick up any stray hair or foreign material, and sample of pubic hair, and matted pubic hair is taken and preserved. If pubic hair is shaven, a note is made.
  - b. The vulva should be inspected systematically for any signs of recent injury such as bleeding, tears, bruises, abrasions, swelling, or discharge and infection involving urethral meatus & vestibule, labia majora and minora, fourchette, introitus and hymen.
    - i) Examination of the vagina of an adult female should be done with the help of a sterile speculum lubricated with warm saline/ sterile water. Gentle retraction allows for inspection of the vaginal canal. Look for bruises, redness, bleeding, and tears, which may even extend onto the perineum, especially in the case of very young girls. In case injuries are not visible but suspected; look for micro injuries using good light and a magnifying glass/ colposcope whatever is available. If 1% Toluidine blue is available it is sprayed and excess is wiped out. Micro injuries will stand out in blue. Care should be taken that all these tests are done only after swabs for trace

evidence are collected.

- ii) Per speculum examination is not a must in the case of children/young girls when there is no history of penetration and no visible injuries. The examination and treatment as needed may have to be performed under general anaesthesia in case of minors and when injuries inflicted are severe. If there is vaginal discharge, note its texture, colour, odour.
- iii) Per-Vaginum examination commonly referred to by lay persons as 'two-finger test', should not be conducted for establishing rape/sexual violence and the size of the vaginal introitus has no bearing on a case of sexual violence. Per vaginum examination can be done only in adult women when medically indicated.
- iv) The status of hymen is irrelevant because the hymen can be torn due to several reasons such as cycling, riding or masturbation among other things. An intact hymen does not rule out sexual violence, and a torn hymen does not prove previous sexual intercourse. Hymen should therefore be treated like any other part of the genitals while documenting examination findings in cases of sexual violence. Only those that are relevant to the episode of assault (findings such as fresh tears, bleeding, edema etc.) are to be documented.
- v) Genital findings should also be marked on body charts and numbered accordingly.
- c. Bleeding/swelling/tears/discharge/stains/warts around the anus and anal orifice should be documented. Per-rectal examination to detect tears/stains/fissures/hemorrhoids in the anal canal should be carried out and relevant swabs from these sites should be collected.
- d. Oral cavity should also be examined for any evidence of bleeding, discharge, tear, odema, tenderness.
- xviii. Collection of samples for hospital laboratory/clinical laboratory
  - a. If requested by police radiographs of wrist, elbow, shoulders, dental examination etc. can be advised for age estimation.
  - b. For any suspected fracture/injury- appropriate investigation for

the relevant part of the body is advised.

- c. Urine Pregnancy test should be performed by the doctor on duty and the report should be entered.
  - d. Blood is collected for evidence of baseline HIV status, VDRL and HbsAg.
- xix.** Collection of samples for central/ State forensic science laboratory
- a. After assessment of the case, determine what evidence needs to be collected. It would depend upon nature of assault, time lapse between assault and examination and if the person has bathed/ washed herself since the assault.
  - b. If a woman reports within 96 hours (4 days) of the assault, all evidence including swabs should be collected, based on the nature of assault that has occurred. The likelihood of finding evidence after 72 hours (3 days) is greatly reduced; however it is better to collect evidence up to 96 hours in case the victim may be unsure of the number of hours lapsed since the assault.
  - c. The spermatozoa can be identified only for 72 hours after assault. So if a victim has suffered the assault more than three days ago, please refrain from taking swabs for spermatozoa. In such cases swabs should only be sent for tests for identifying semen.
  - d. Evidence on the outside of the body and on materials such as clothing can be collected even after 96 hours.
  - e. The nature of swabs taken is determined to a large extent by the history and nature of assault and time lapse between incident and examination. For example, if the victim is certain that there is no anal intercourse; anal swabs need not be taken.
  - f. Request the victim to stand on a large sheet of paper, so as to collect any specimens of foreign material e.g. grass, mud, pubic or scalp hair etc. which may have been left on her person from the site of assault/ from the accused. This sheet of paper is folded carefully and preserved in a bag to be sent to the FSL for trace evidence detection.
  - g. Clothes that the victim was wearing at the time of the incident of sexual violence are of evidentiary value if there is any stains/ tears/trace evidence on them. Hence they should be preserved.

Please describe each piece of clothing separately with proper labeling. Presence of stains - semen, blood, foreign material etc - should be properly noted. Also note if there are any tears or other marks on the clothes. If clothes are already changed then the victim should be asked for the clothes that were worn at the time of assault and these should be preserved.

- h.** Always ensure that the clothes and samples are air dried before storing them in their respective packets. Ensure that clothing is folded in such a manner that the stained parts are not in contact with unstained parts of the clothing. Pack each piece of clothing in a separate bag, seal and label it duly.

**Body evidence:**

- a.** Swabs are used to collect bloodstains on the body, foreign material on the body surfaces seminal stains on the skin surfaces and other stains. Detection of scalp hair and pubic hair of the accused on the victim's body (and vice-versa) has evidentiary value. Collect loose scalp and pubic hair by combing. Intact scalp and pubic hair is also collected from the victim so that it can be matched with loose hair collected from the accused. All hair should be collected in the catchment paper which is then folded and sealed.
- b.** If there is struggle during the sexual violence, with accused and victim scratching each other, then epithelial cells of one may be present under the nails of the other that can be used for DNA detection. Nail clippings and scrapings should be taken for both hands and packed separately. Ensure that there is no underlying tissue contamination while clipping nails.
- c.** Blood is collected for grouping and also helps in comparing and matching blood stains at the scene of crime.
- d.** Collect blood and urine for detection of drugs/alcohol as the influence of drugs/ alcohol has a bearing on the outcome of the entire investigation. If such substances are found in the blood, the validity of consent is called into question. In a given case, for instance, there may not be any physical or genital injuries.



In such a situation, ascertaining the presence of drug/alcohol in the blood or urine is important since this may have affected the victim's ability to offer resistance. Urine sample may be collected in a container to test for drugs and alcohol levels as required.

- e. Venous blood is collected with the sterile syringe and needle provided and transferred to 3 sterile vials/vacutainers for the following purposes: Plain Vial/Vacutainer - Blood grouping and drug estimation, Sodium Fluoride - Alcohol estimation, EDTA - DNA Analysis. · Collect oral swab for detection of semen and spermatozoa. Oral swabs should be taken from the posterior parts of the buccal cavity, behind the last molars where the chances of finding any evidence are highest.

#### **Genital and anal evidence**

- a. In the case of any suspected seminal deposits on the pubic hair of the woman, clip matted portion of the pubic hair; allow drying in the shade and placing in an envelope.
- b. Pubic hair of the victim is then combed for specimens of the offender's pubic hair. A comb should be used for this purpose and a catchment paper should be used to collect and preserve the specimens. Cuttings of the pubic hair are also taken for the purpose of comparison or to serve as control samples. If pubic hair has been shaved, do not fail to make a mention of it in the records.
- c. Take two swabs from the vulva, vagina, anal opening for anogenital evidence. Swabs should be collected depending on the history and examination. Swabs from orifices should be collected only if there is a history of penetration. Two vaginal smears are to be prepared on the glass slide provided, air-dried in the shade and sent for seminal fluid/ spermatozoa examination.
- d. Often lubricants are used in penetration with finger or object, so relevant swabs should be taken for detection of lubricant. Other pieces of evidence such as tampons (may be available as well), which should be preserved.
- e. Swab sticks for collecting samples should be moistened with



## REFERENCES

1. Post Exposure Prophylaxis (PEP) treatment is an emergency medical response to reduce the chance of HIV infection following sexual assault or accident. It includes medication, laboratory testing, and counseling. To be effective, ideally medication should start within two hours and no later than 72 hours after potential exposure.
2. Section 15 (5A) of ITPA
3. “Any person who is produced before a Magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual assault or for the presence of any sexually transmitted diseases. Explanation in this sub-section, "registered medical practitioner" has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956)”.

Victims of CSE can be safely presumed to be victims of rape as well, as this presumption will be in the ‘best interest’ of the rescued person. If any rescued person is under 18 years of age, (2013 criminal law amendment) vide s. 375 Clause Sixthly, IPC, the offence of rape should be included in the FIR. (Standard Operating Procedures (SOP) on Investigating Crimes of Trafficking for Commercial Sexual Exploitation UNODC, 2007: A publication of United Nations Office on Drugs and Crime Regional Office for South Asia)

In a trafficking crime, reports and opinions of physical injury to the victim, of sexual assault perpetrated on the victim of sexually transmitted diseases, of relevant medical history of victim (e.g., medical termination of pregnancies, miscarriages, etc) to prove earlier violations on her, of age verification/ determination, of psychosocial trauma, of the accused in case of rape/ sexual assault, of DNA finger printing if there is any issue of establishing identity of the persons, other relevant forensic reports to prove/ substantiate the crime or the role of the offenders (e.g. viscera report in a case where the victim was drugged before she was assaulted) are relevant.

Any HIV test/ other medical test should be organized by the IO only

after the informed consent of the victim ([http://www.nacoonline.org/guidelines/guideline\\_10.pdf](http://www.nacoonline.org/guidelines/guideline_10.pdf))

4. Refusal of medical care to victims/victims of sexual violence and acid attack amounts to an offence under Section 166B of the Indian Penal Code read with Section 357(C) of the Code of Criminal Procedure . Vide Criminal Law (Amendment) Act 2013 which came into effect from 2 April 2014. Section 357C has been added to the code wherein hospitals public or private has to immediately provide first-aid or treatment free of cost to victims of any offence covered under 326A, 376, 376(A)(B)(C)(D)(E). Further vide Section 166B contravention of the Section 357C of the Code of Criminal Procedure Code 1973 i.e. for non-treatment of the victim whoever is in charge of the hospital whether public or private will be punished with a term up to one year or fine or both. This will go a long way in ensuring that victims are given prompt treatment when necessary.

5. Section 27 of The Protection of Children from Sexual Offences Act 2012 requires examination in presence of child's parent/guardian or person in whom child has trust and confidence.

Rules 4(2) c, 5(4) (v) of POCSO Act 2012, provide Referral to Psychologists, counseling, Mental health experts either by police or by a doctor. The Role of Mental Health and allied professional, information essential to medical history, head to toe examination and other mandatory requirements has to be kept in mind.

While the principles of medical examination and treatment for children remains the same as that for adults, it is important to keep some specific guidelines in mind:

- ☐ In case the child is under 12 years of age, consent for examination needs to be sought from the parent or guardian.
- ☐ Children may be accompanied by the abuser when they come for medical treatment, so be aware and screen when you suspect abuse. In such situations, a female person appointed by the head of the hospital/institution may be called in to be present during the examination.
- ☐ Do not assume that because the child is young he/she will not be able to provide a history. History seeking can be facilitated by

use of dolls and body charts.

- Believe what is being reported by the child. There are misconceptions that children lie or that they are tutored by parents to make false complaints against others. Do not let such myths affect the manner in which you respond to cases of child sexual assault.
- Specific needs of children should be kept in mind while providing care to child victims. Doses of treatment will have to be adjusted as required in terms of medical treatment.
- For psychological support, it is imperative to speak with the care taker of the victim in addition the victim themselves.
- Health professionals should make a note of the following aspects while screening for sexual assault. Assurance of confidentiality and provision of privacy are keys to enabling children to speak about the assault. However genital and anal examination should not be conducted mechanically or routinely. A few indicators for routine enquiry are:
  - ▶ Pain on urination and /or defecation
  - ▶ Abdominal pain/ generalized body ache
  - ▶ Inability to sleep
  - ▶ Sudden withdrawal from peers/ adults
  - ▶ Feelings of anxiety, nervousness, helplessness
  - ▶ Inability to sleep
  - ▶ Weight loss
  - ▶ Feelings of ending one's life

6. As for medical examination, other than the Criminal Law amendments of 2013, The Supreme Court in *Lillu @ Rajesh & Anr vs. State Of Haryana* on 11 April, 2013 in Criminal Appeal No. 1226 of 2011 has held that the two-finger test on a rape victim violates her right to privacy, and asked the government to provide better medical procedures to confirm sexual assault. A bench of Justices B.S. Chauhan and F.M.I. Kalifulla said that even if the report of the two-finger test is affirmative; it cannot give rise to presumption of consent on part of a rape victim. “Undoubtedly, the two-finger test and its interpretation violate the right of rape victims to

privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent,” the bench said. Referring to various international covenants, the judges said rape victims are entitled to legal recourse that does not violate their physical or mental integrity and dignity. “Medical procedures should not be carried out in a manner that constitutes cruel, inhuman or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. “The State is under an obligation to make such services available to victims of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with her privacy,” the bench said. Keeping in mind the International Covenant on Economic, Social, and Cultural Rights 1966 and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, the apex court said, rape victims are entitled to legal recourse that does not re-traumatize them or violate their physical or mental integrity and dignity. “They are also entitled to medical procedures conducted in a manner that respects their right to consent,” it said.

Guidelines and Protocols issued by the Ministry of Health and Family Welfare , Government of India on Medico-legal care for victims/victims of sexual violence: Two – finger test should not be conducted.

The said guidelines and Protocol in no uncertain terms state

“Per-Vaginum examination commonly referred to by lay persons as 'two-finger Test', should not be conducted for establishing rape/sexual violence and the size of the vaginal introitus has no bearing on a case of sexual violence. Per vaginum Examination can be done only in adult women when medically indicated.”

Often times, the doctor may not find visible injuries. There is no reason to suspect the testimony of the prosecutrix. Conviction can be based on sole testimony of the woman (Rampal Vs State of Haryana 1994 Supp (3) SCC 656).

Mere absence of an injury does not prove that no resistance was offered by the rape victim. In this case, it was argued that a complainant in a rape case is expected to offer resistance which would normally cause injury and that where such injury is not present there could have been no rape.

The Court held, however, that: “[the complainant] was not expected to offer such resistance as would cause injuries to her body...it cannot be said that whenever resistance is offered there should be some injury on the body of the victim.” (Balwant Singh and Ors Vs State of Punjab 1987 (2) SCC 27).

7. Section-164 A of CrPC.- Medical examination of the victim of rape.
  - A. Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.
  - B. The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely:-
    - a. the name and address of the woman and of the person by whom she was brought;
    - b. the age of the woman;
    - c. the description of material taken from the person of the woman for DNA profiling;
    - d. marks of injury, if any, on the person of the woman;
    - e. general mental condition of the woman; and
    - f. other material particulars in reasonable detail.
  - C. The report shall state precisely the reasons for each conclusion arrived at.
  - D. The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

- E.** The exact time of commencement and completion of the examination shall also be noted in the report.
- F.** The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.
- G.** Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.



## Sample Format to make Referral by Police for Medical Examination

I .....@.....aged .....original  
resident of ..... , presently residing at... ..  
.....

being under the treatment of ... ..  
..... (state here name of doctor/  
hospital/nursing home) do hereby give consent to the performance of  
medical examination/evidence collection/ surgical /anesthesia/ diagnostic  
procedure of ..... (mention nature  
of procedure / treatment to be performed, etc.) upon myself/upon .....  
..... aged ..... who is related to me as .....  
(mention relationship here).

I was informed about ... ..  
..... I understand that I will  
get an injection if I am being treated. ... ..  
..... I will give a blood sample  
with a finger prick. I was explained what is expected of me as a Victim-Patient.  
I have been explained what is involved in a medical examination and why  
procedures are being conducted.

I have read this information (or had the information read to me). I have my  
questions answered and know that I can ask questions later if I have any.

I declare that I am more than 18 years of age. I have been informed that there  
are inherent risks involved in the treatment/procedure. I have signed this  
consent voluntarily out of my free will without any pressure and in my full  
senses.

Place:

Date:

Time:

SIGNATURE

WITNESS

(To be signed by parent /guardian in case of minor)

## Sample Format for informed consent of victim for Medical Examination

No: \_\_\_\_\_

Police Station: \_\_\_\_\_

Date: \_\_\_\_\_

To,

The Medical Officer

\_\_\_\_\_

### **Sub: Referral for Medical Examination and Conduct of Medical Examination on rescued victims**

Ref: \_\_\_\_\_ Police Station, Crime No \_\_\_\_\_ u/s \_\_\_\_\_

Madam/Sir,

I am sending herewith the below-named rescued victim girls in above referred case with request for Referral for Medical Examination and Conduct of Medical Examination on rescued victims:

- 1.
- 2.
- 3.

The brief facts of the case are \_\_\_\_\_. In connection with the case the \_\_\_\_\_ Police Station has u/s \_\_\_\_\_ registered FIR. Further Investigations are in progress.

The Rescued victims are admitted to \_\_\_\_\_ Shelter Home \_\_\_\_\_ for care and protection vide order of

\_\_\_\_\_ dated \_\_\_\_\_.

It is kindly requested that the victims be provided treatment as required. It is kindly requested to conduct full medical examination including forensic medical examination and ossification test of the above named rescued victims. Kindly issue medical examination reports to the Police station at the earliest.

Kindly hand over a copy of report to victim (through \_\_\_\_\_) as well.

Thank you,

Police Inspector,

Police Station



## CHAPTER 5

# Care and Protection at Shelter Home

The prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings ... a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty.

**- Justice Markandey Katju and Justice Gyan Sudha Misra  
(Budhadev Karmaskar v. State of West Bengal,  
Criminal Appeal No. 135 of 2010)**

## **IMPLEMENTING AGENCY: DEPARTMENT OF WOMEN & CHILD DEVELOPMENT AND CIVIL SOCIETIES**

After the victims are rescued from commercial sexual exploitation, they need to be admitted in a shelter home, primarily to conduct an inquiry under section 17 of ITPA, prevent re-trafficking, and to render care and protection. The shelter homes should ensure the personal safety of a victim and provide all possible assistance for relief and rehabilitation.

Under Section 21 of ITPA, the State Government has set up Protective homes and Corrective Institutions for ensuring proper implementation of ITPA. As per the Act “protective home” means an institution, by whatever name called (being an institution established or licensed as such under Section 21), in which persons who are in need of care and protection, may be kept under this Act and where appropriate technically qualified persons, equipments and other facilities have been provided but does not include (1) a shelter where under-trials may be kept in pursuance of this Act, or (2) a corrective institution.

## **SOPs for Care and Protection at Shelter Home (Admission, Care, Facilities, and Protection)**

### **Admission in Shelter Home:**

1. IO should seek orders to send the victim to a place of safety such as a Protective Home/Shelter Home/Children's Home run by Government / NGO
2. If the victim is a minor she should be produced before CWC (Child Welfare Committee) and if she is above 18 years in age she should be produced before a Metropolitan Magistrate or Judicial Magistrate of the first class, District Magistrate or Sub-Divisional Magistrate.
3. All belongings of the victims identified and seized should be handed over to the Shelter Home authority where victim is sheltered.
4. The belongings retrieved during rescue including, money, phones, jewellery, etc, should be kept in safe custody and returned when victims leave.
5. The new residents should be well oriented by a team comprising of superintendent, home staff, older residents, and female social worker.
6. The new residents should be provided information regarding the procedures, rules and facilities in the Home.
7. The new residents should be informed about their legal and civic rights.
8. The residents should be informed about benefits they are entitled to from the government, such as immediate relief, rehabilitation packages such as livelihood skill training, livelihood options, education for children, etc.
9. The new residents should be served adequate food on admission to Shelter Home.
10. The Superintendent of the Home should inform the relatives of the new resident that she is admitted at the Home.
11. The rescued women should be linked with Ujjawala scheme.<sup>1</sup>

### Assessment of the resident:

1. Assessment of the new resident should be done after the admission.
2. The assessment should be done by a professional and trained counselor.
3. The assessment should include psychological, physical, addiction, illness, etc.
4. The assessment should be periodically updated.
5. The preliminary assessment report of the new resident should be filled in the prescribed form.

### Communication

1. The resident should be allowed to communicate with their relatives only after verifying the relationship and confirming non-involvement of the person in trafficking and exploitation of the victim.
2. The meeting with the relatives should be allowed only after the permission from the CWC or the magistrate (depending on the authority which has ordered admission of the victim girl).
3. The inmate should be allowed to talk to the relatives on phone at least once a week. Before allowing the resident to talk to her relatives, the superintendent/matron of the home should check the identity of the person and relationship with the victim.
4. The resident should not be allowed to meet anyone or call anyone till her statement is recorded by the CWC/Magistrate.

### Confidentiality of details at Shelter Home

1. A photograph of the resident should be taken immediately after admission.
2. The Home should maintain absolute care in confidentiality of victims at every stage.
3. The documents pertaining to any information and details (such as case profile, medical reports and similar information) should be secured properly.



4. The information sharing should be based on informed consent of the resident.
5. The residents should not be exposed to any type of media.

### Protection of Residents at Shelter Home

1. The Home should have round-the-clock security arrangements without appearing custodial in nature, and should ensure adequate security to the residents.
2. The doors and windows in the entire premises should have provisions for opening from outside in cases of emergency.
3. The sharp objects, ropes, wires, screwdrivers and other similar items should be checked for any misuse.
4. The materials that may be inflammatory or hazardous, such as LPG gas cylinders, power supply, generator, kerosene, petrol, pesticide, phenol, medicines, acid, bleaching powder, soaps, rat killers, sedatives, etc, should be kept under tight security. The residents should have 'zero' access to such materials or only under proper supervision. A proper stock register should be maintained to check any misuse.
5. The visitors should be checked for proper permission, and prohibited and hazardous articles. The details of all visitors should be maintained in the visitors' book.
6. The home should have adequate surveillance through public address system and CCTV cameras.

### Key Services & Facilities at Shelter Home

1. Each resident should be provided with individual bed, bedding, bedsheets, blanket and pillow, and mosquito nets every year.
2. The residents should be provided with toiletries and essential hygiene products.
3. The residents should have facilities such as garden, playground and other recreational activities.
4. The residents should be provided adequate time in the open air and

unrestrained movement within the home.

5. Immediately after admission every resident should be provided medical support (check-up, treatment for immediate ailment, etc). Pediatric support should be given for children and a check-up by a gynecologist if the woman is pregnant
6. Tests for HIV/AIDS should be done only after the resident gives her informed consent.
7. The Home should provide special care to residents in need of critical care, like residents with STD/HIV, disabilities, pregnant and lactating mothers, and sick residents.
8. The residents should have access to counseling services whenever required.
9. A panel of medical practitioners (both government and private) should be available in addition to regular clinics within the Home. Referrals should be made to hospitals as per requirement and need.
10. They should be allowed phone calls under the supervision of social workers.
11. The residents should be allowed to take part in daily activities of Home management. They should be part of the committees managing the home. The residents should be given opportunity to serve in different committees like recreation committee, emergency committee, grievance committee, food committee, cloths committee, cultural committee, etc.
12. The minutes of the meeting in each committee should be properly documented.
13. The committees should be reconstituted at fixed intervals as agreed by the residents.
14. Facilities for education as per literacy levels should be provided along with livelihood training.
15. The residents should receive daily classes on life skills such as grooming, socialization, communication, conflict management, stress management and leadership.
16. An Individualized Economic Rehabilitation Plan (IERP) for each resident should be developed.<sup>2</sup>
17. Any initiative for restoration/repatriation process should start only after getting the informed consent of the resident.

18. Restoration/repatriation plan for a resident should be undertaken only after a satisfactory home investigation.
19. It should be ensured that no rescued person is sent back home / to family without ensuring social acceptance and family support to prevent re-trafficking and further commercial sexual exploitation.
20. For legal assistance, existing State legal services with monitoring and support from NGOs should be made available.
21. In case of a minor, she should be counseled about her stay in the Home and that she is kept there for her safety and well-being. It is important to ensure the following: -
  - A. Only plain-clothes police/social workers/counselors accompany the child to the Protective/Children's Home.
  - B. The functionaries of the Protective/Children's Home should ensure that the child does not come in contact with any such persons who may have bad influence on him/her.
  - C. The medical examination, including age verification test should be carried out properly and scientifically. The age verification test is mandatory as per Section 15 b (5A) of Immoral Traffic Prevention Act, 1956 and Section 49 of Juvenile Justice (Care and Protection of Children) Act, 2000.
  - D. The child victim should be produced before the Child Welfare Committee within 24 hrs of taking him/her into the home. In case, the Child Welfare Committee is not available, then he/she should be produced before concerned Magistrate for relief.
  - E. The child should have immediate access to standardized counselling, health care and legal aid. On behalf of the victim, the personnel from the NGO, including social worker or Protective/Children Home should sign the Vakalatnamas (or the consent for a lawyer's representation).
  - F. A social worker should accompany the child whenever he/she leaves the place of safety.
  - G. A counsellor should be present whenever a child is giving testimony in the Court.
  - H. The concerned Magistrate or the members of the competent authority, as the case may be, should visit the rescue home once in

every fifteen days to conduct legal proceedings.

- I. The child should be prepared by explaining to him/her about court proceedings, so that he/she is aware of the procedures and is mentally well prepared. After every hearing of the case, the child should be informed about the court order, if any, so that he/she is kept fully updated on his/her case.
- J. At the Protective home, the child should be informally welcomed and introduced to other residents and shown around. She should be shown to her room and her locker where she can keep her personal belongings.
- K. It is advisable that for the first few days, she should be given space for privacy and if possible kept separately from the others or with those who have been rescued like her.
- L. Provide a welcome kit that includes a change of clothes, towel, undergarments, chappals/slippers and toiletries (soap, oil, hair brush/comb, toothbrush, paste, powder, rubber band, shampoo, sanitary napkins, etc.), to the child on arrival.
- M. Explain to him/her the rules and regulation of the Protective/ Children Homes and their objectives, once he/she settles down. This will make him/her feel comfortable and secure in his/her new environment. Also, explain to the child his/her responsibilities and duties during his/her stay in the Home.
- N. A registered medical doctor should examine the child for any ailments, allergies, skin rashes and psychological disorders or problems. Routine blood, urine, lung X-rays and stool tests should be carried out. In case the child is suffering from any ailment, she should be given appropriate medication as prescribed by the doctor and there should be continuous follow-up on her condition.
- O. Talk to the child and find out whether he/she is interested in continuing with her education. Accordingly, admit him/her to a regular school or make arrangements for non-formal education or tutoring so that she can catch up with his/her studies. In any case, the child should be given some basic education which will help him/her to be independent when he/she leaves the Home.
- P. Provide the child with vocational training, including marketing

strategies that are marketable, sustainable and practical.

- Q.** Prepare the child for his/her repatriation/integration with his/her family. No rescued child should be sent back to his/her family without ensuring social acceptance and family support to prevent re-trafficking and further exploitation.
- R.** Foster care of child victims or children of victims of trafficking should be arranged whenever possible .
- S.** Trafficking cases should be fast-tracked to reduce the trauma and suffering of the child.

## REFERENCES

1. The Ministry of Women and Child Development, Government of India, runs Short-Stay Homes and Swadhar Homes for women in difficult circumstances. The target beneficiaries include rescued female victims of trafficking and women/girls victims of sexual crimes who are disowned by family or who do not want to go back to respective family for various reasons. The homes provide shelter, food, clothing, counseling, clinical, medical, legal and other support, training and economic rehabilitation and helpline facilities. At present, over 146 Swadhar Homes and more than 342 Short-Stay Homes are being run in different parts of the country. MWCD has recently launched a comprehensive scheme “Ujjawala” for prevention of trafficking and rescue and rehabilitation of victim of trafficking for CSE. The target beneficiaries of the scheme are:
  - A. Women and children who are vulnerable to trafficking for commercial sexual exploitation, and
  - B. Women and children who are victims of trafficking for commercial sexual exploitation.

The scheme is sought to be implemented by the Social Welfare/ Women and Child Welfare Department of the State Government, Women’s Development Corporations, Women’s Development Centres, Urban Local Bodies, reputed Public/Private Trust or Voluntary Organizations.

### **The objectives of Ujjawala scheme are:**

- a. To prevent trafficking of women and children for commercial sexual exploitation through social mobilization and involvement of local communities, awareness generation programmes, generate public discourse through workshops/seminars and such events and any other innovative activity.
- b. To facilitate rescue of victims from the place of their exploitation and place them in safe custody.
- c. To provide rehabilitation services both immediate and long-

term to the victims by providing basic amenities/needs such as shelter, food, clothing, medical treatment including counseling, legal aid and guidance and vocational training.

- d. To facilitate reintegration of the victims into the family and society at large
  - e. To facilitate repatriation of cross-border victims to their country of origin.
2. Supreme Court Justice Markandey Katju and Justice Gyan Sudha Misra in *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010 stated

“We strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed. As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body.”

**Sample Format for seeking Magistrate’s  
Order for Admission to Shelter Home**

To,  
The SDM/DM/Judicial Magistrate  
\_\_\_\_\_

**Sub: Production of Victims for an order to lodge rescued female victims at Shelter Home**

Ref:                      Case                      No \_\_\_\_\_,                      Sections  
\_\_\_\_\_

Sir,  
With reference to the above, \_\_\_\_\_  
\_\_\_\_\_ (in brief case details).

Based on reliable information,/decoy etc. a raid/rescue was conducted  
on \_\_\_\_\_ at \_\_\_\_\_.

The information provided reveals that they are trafficked for commercial  
sexual exploitation.

The below-named females who were trafficked /forced into commercial  
sexualactivities were rescued:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_

In this connection an offence vide \_\_\_\_\_  
\_\_\_\_\_ u/s \_\_\_\_\_ IPC, \_\_\_\_\_ ITPA,  
\_\_\_\_\_ stands registered against  
\_\_\_\_\_ (@ \_\_\_\_\_), (address of  
trafficker/s) \_\_\_\_\_ @ \_\_\_\_\_  
\_\_\_\_\_, etc. and 4 are absconding. The investigation is in progress.

In view of the above, necessary orders be passed:

That the rescued women \_\_\_\_\_ be lodged



at \_\_\_\_\_ Shelter Home

That Shelter Home is directed to permit the police to take the victim for identification of places and persons as required and medical examination, recording of the statement under 164, etc.

Any other orders to serve the course of justice.

Thank You

Police Inspector

\_\_\_\_\_ Police station



## CHAPTER 6

# Compensation to victim

All the states and union territories shall make all endeavours to formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation. Indisputably, no amount of money can restore the dignity and confidence that the accused took away from the victim. No amount of money can erase the trauma and grief the victim suffers. This aid can be crucial with aftermath of crime.

**- Justices M. Y. Eqbal and Arun Mishra**

## IMPLEMENTING AGENCY: LEGAL SERVICE AUTHORITY (DISTRICT/STATE)

India's lawmakers have demarcated numerous provisions dealing with issues of relief, compensation, and rehabilitation of victims of crimes. Based on recommendation(s) of the court, the compensation is provided by Legal Service Authorities. The compensation may be in form of interim compensation (during investigation or trial) or final compensation at the conclusion of trial. The compensation is payable according to "Victim Compensation Schemes" of the concerned state.

### Central Victim Compensation Fund (CVCf)

Ministry of Home Affairs (MHA), GOI, has set up a CVCf with initial corpus of Rs 200 Crores. The scheme is designed to compensate victims on grounds of various injuries, loss and death with respect to acid attack, rape, human trafficking, disabilities and burns inflicted on them. Women victims of cross-border suffering permanent or partial disability or death will also be covered under the Central Victim Compensation Fund Scheme. The scheme has the following objectives:

1. To support and supplement the existing Victim Compensation Schemes notified by States/UT Administrations.
2. To reduce disparity in quantum of compensation amount notified by different States/UTs for victims of similar crimes.
3. To encourage States/UTs to effectively implement the Victim Compensation Scheme (VCS) notified by them under the provisions of Section 357A of Cr. P.C. and continue financial support to victims of various crimes especially sexual offences including rape, acid attacks, crime against children, human trafficking, etc.

It has been suggested to States to make appropriate changes in State Victim Compensation Schemes to reduce disparities in quantum of compensation amount notified by them, and claim financial support from the Central Victim Compensation Fund Scheme.

## Procedure for Disbursement of Compensation (Varies from State to State)

1. At the state level, there should be fund called "The Victim Compensation Fund" from which the amount of compensation is paid to victims as per decision of the Legal Service Authority (State/District) based on recommendation of the court.
2. The quantum of compensation is decided by the Legal Service Authority (State/District) DLSA.
3. The Legal Service Authority (State/District) peruses the claim with regard to loss or injury or rehabilitation as a result of crime. It may also call for additional information.
4. The compensation is provided to victim or her dependents through account in nationalized bank.
5. 75% of the amount is put into a fixed deposit for a minimum period of three years and 25% is made available to meet initial expenses.
6. In case of minor, 80% amount is deposited and can be availed on attaining the majority, but not before three years of the deposition, except in exceptional situations such as for educational or medical treatment at the discretion of Legal Service Authority (State/District).
7. The interest is credited directly by bank in account.

## Rehabilitation-Based Schemes

The Hon'ble Supreme Court in its Order dated 14/02/2011 delivered in Criminal Appeal No. 135 of 2010, between Budhadev Karmaskar versus State of West Bengal, directed the State Governments to prepare scheme for giving technical/vocational training to sex workers and sexually abused women to enable them to earn their livelihood. Consequently, different states have formulated rehabilitation schemes for their respective states.

### A. Government of Goa:

Government of Goa has notified a scheme called the "Goa (Technical/Vocational training to sex workers and sexually abused women) Scheme, 2013 (PRABHAT)".

1. **Objectives of the Scheme:** The objective of this Scheme is to provide technical/vocational training to sex workers and sexually abused women to enable them to earn for their livelihood by such technical/vocational training and skill.
2. **Implementing Department:** The Department of Women and Child Development, Government of Goa shall implement this Scheme. The Department will take the assistance of members of reputed NGOs/Trust/Society/professionals/expert bodies, who are involved in rehabilitation of sex workers.
3. **Eligibility Criteria:** A victim of commercial sexual exploitation and resident of Goa is eligible to apply for the benefits under this Scheme.
4. **Manner of making application:**
  - a. Application for availing the benefits under this Scheme shall be made to the Probation Officer.
  - b. The Probation Officer shall place the application before the Monitoring Committee who shall recommend on releasing immediate relief, if required, appointment of Mentor, technical/vocational training, admission in educational institution, etc. of sex workers.
5. **Immediate relief:** A victim of commercial sexual exploitation (excluding victims housed in Protective Home) will be provided a stipend of Rs. 2500/- per month, after rescue or exit from commercial

sexual exploitation. The stipend will be paid for a period of three months or till she joins a livelihood programme, whichever is earlier.

6. **Technical/Vocational Training:** The Mentor/Probation Officer shall assess about literacy, skills, interest, etc. of sex workers and help them to join technical/vocational training programme. Emphasis shall be given to the training programmes which have opportunities for jobs or setting up own enterprise, such as, repair of home appliance, mobile repair, beauty treatment, tailoring, bakery, catering, etc. The said training will be provided by the Government or Non-Government institutes. The Government will bear the fees, travel and other miscellaneous expenses through the corpus fund created under clause 17 of the scheme.
7. **Education:** A victim of commercial sexual exploitation, if she is interested in pursuing her education, will be supported for her education till Standard XII. All the expenses related to her education, boarding, travel, fees, books, toiletries, etc. may be paid through the corpus fund created under clause 17 of the scheme subject to the recommendations of the Monitoring Committee.
8. **Monitoring Committee:**
  - a. There shall be a Monitoring Committee to monitor implementation of this Scheme and to perform the duties assigned under the Scheme.
  - b. The Monitoring Committee shall be headed by Director of Women and Child Development, who shall be its Chairperson and consist of following other members.
    - i) Two social workers, especially members of NGOs or expert bodies involved in rehabilitation of sex workers to be nominated by Government.
    - ii) An Official from Police Department preferably, in-charge of the Integrated Anti Human Trafficking Unit as nominated by Government of Goa.
    - iii) A qualified doctor having experience in mental health as nominated by Government of Goa.
    - iv) A person having experience in business enterprise (preferably representative of Goa Chamber of Commerce

- and Industry) as nominated by Government of Goa.
- v) Two other members preferably victims of commercial sexual exploitation as per nomination by Government of Goa and
  - vi) Probation Officer, who shall be Member Secretary of the Monitoring Committee.
- c. The Committee shall meet as often as deemed fit by Chairperson; but shall meet within a week from the date of receipt of application to give its recommendation thereon.
  - d. (a) During the meeting, the monitoring team shall look into the progress in each case supported under this Scheme. (b) The Committee may interact with the victim to know about her progress.
  - e. The Committee shall transact such other business and follow such rules of procedure in transacting business as deemed fit by the Chairperson.
9. **Shelter:** A victim of commercial sexual exploitation, if in need of shelter, shall be admitted in a shelter home/Protective Home being managed by non-Government organization or Government organization or organization receiving grants from the State/Central Government.
  10. **Psycho-Social Services:** A victim of commercial sexual exploitation will be provided counseling by Probation Officer or by a person appointed as “Mentor” or by a professional counselor or psychiatrist working in a Government or non-Government organization. Expenses incurred for fees, travel, medicine, etc. will be met through the corpus fund created under clause 17 of the scheme.
  11. **Health:** The victim shall be provided health services for all kinds of ailments at the government hospital. Victims suffering with HIV or Tuberculosis will be connected to ART and DOTS schemes. In cases where the victim is suffering from AIDS and requires institutional care, she shall be admitted to one of the care centres meant for people with HIV/AIDS, for a period of six months.
  12. **Children:** The children of the trafficked victim shall be provided counseling and assistance for admission in the school by the



Probation Officer or by a person appointed as “Mentor”. All the expenses related to the education of the children, such as boarding, travel, fees, books, toiletries, etc. up to Std. XII shall be met through the corpus fund created under clause 17 of the scheme.

13. **Reintegration:** The Probation Officer or “Mentor” shall help the victim in reintegrating with her family and community by providing counseling to the family members and if necessary to the members of the community.
14. **Protection:** The Probation Officer or “Mentor” shall take the assistance of the family members, community members, religious leader, local police and Integrated Anti-human Trafficking Unit of Goa police in ensuring that the victim is not harassed by the traffickers. The Probation Officer or Mentor may also make a written complaint to the Chairperson of the Goa State Commission for Women for victim protection and the Commission shall take necessary action to protect the victim.
15. **Livelihood:**
  - a. The Probation Officer or “Mentor” shall assist the victim in finding a job, based on the interests and skills of the victim. In case the victim is unable to get a job or is not interested in a job, then the Probation Officer or “Mentor”, based on the interest, skill and the viability of a business shall help her in setting up a business enterprise.
  - b. Those victims who have successfully completed the vocational training may be provided all the support by the Probation Officer/Mentor for preparation of project report, availing loan from financial institutions etc. The Department of Women and Child Development may provide such financial assistance to the victim through the corpus fund created under clause 17 of the scheme for setting up business enterprises as may be decided by the Government from time to time.
16. **Fund:** A corpus will be created in the name of “Sex Workers Rehabilitation Fund”. Government will provide funds for corpus in the form of annual grants for the implementation of the scheme and will accept voluntary contributions from Individuals,

Organisations, Trusts, Companies and Institutions etc. All grants/ voluntary contributions received in the name of said fund shall be deposited in a Bank Account in any nationalised Bank which shall be jointly operated by two members of the Monitoring Committee, i.e. Chairperson and Member Secretary. Contributions by Individuals, Organisations, Trusts, Companies and Institutions etc. to the fund shall qualify for exemption under Section 80 G of the Income Tax Act, as applicable, after obtaining necessary approval from concerned authorities.

17. **Review:** The Monitoring Committee shall submit quarterly reports to the Secretary, Women and Child Development, Department of the Government of Goa, on the status of cases before it.
18. **Relaxation:** The Government, if it is of the opinion that it is necessary to do so, may relax any provisions of this Scheme.
19. **Amendment of Scheme:** The Government may vary, amend or modify this Scheme from time to time.

#### **B. Government of West Bengal:**

The West Bengal government has introduced a scheme for sex workers' rehabilitation through alternative means of livelihood. The scheme called 'Muktir Alo' (Ray of Freedom). Muktir Alo is a State funded comprehensive scheme for rehabilitation of Commercial Sex Workers.

The scheme is intended for providing skill up-gradation and capacity building of the sex workers who wish to leave the prostitution to enable them to start a life afresh through alternative livelihood options. This scheme is also intended to provide dignified opportunities to the women who have been drawn into the profession of sex work by force or otherwise.

1. The scheme has provision for immediate relief and long term rehabilitation initiative through technical/vocational training. As part of immediate assistance and relief, the scheme provides a stipend of Rs. 2,500/- per month per head up to nine months.
2. Under long term rehabilitation relief there is provision for

Institutional Care to the beneficiaries where all the maintenance cost is borne from the scheme.

3. The annual budget for the scheme is Rs. 66,71,000/- (sixty six lakh seventy one thousand only).
4. Women Development has been as the Nodal Agency for implementation of the Scheme on behalf of the Department of women and child development.
5. The department has selected Women Interlink Foundation as NGO for implementation of the Scheme. The project will provide opportunities to girls and young women who are rescued from trafficking and red-light areas to become self-reliant economically and helping them to develop the confidence to live and work independently and fulfill their dreams.
6. The WD and Social Welfare Department has resolved that Women's Interlink Foundation will organize vocational training on Block Printing and Spice Grinding at Nijaloy Home located at Madhyamgram, North 24 Parganas for 25 trainees on each trade.

## Key Provisions in different legislations

1. Section 33 (8) of Protection of Children from Sexual Offences (POCSO) Act, 2012

In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

2. Section 357(A) of Criminal Code of Procedure: Victim compensation scheme

- A. Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
- B. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).
- C. If the trial court, at the conclusion of the trial, is satisfied that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
- D. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
- E. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- F. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-

aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

3. Hari Kishan & Anr vs Sukhbir Singh & Ors on 25 August, 19<sup>88</sup>

Section 357 empowers the Court to award compensation to victims while passing judgment of conviction. This power of Courts to award compensation to victims is not ancillary to other sentences but it is in addition thereto. This power is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is recommended to all Courts to exercise this power liberally so as to meet the ends of justice in a better way. The payment by way of compensation must be reasonable. What is reasonable may depend upon the facts and circumstances of each case, e.g. the nature of crime, the justness of claim by the victim and the ability of the accused to pay etc.

4. Section 372 of Criminal Code of Procedure.

“Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”



# CHAPTER 7

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## Alternative Livelihood Promotion

**{This chapter is based on the experience of Arz (Anyay Rahit Zindagi), NGO involved in providing economic rehabilitation to the victims of commercial sexual exploitation at Swift Wash (a mechanized laundry unit) since last 10 years}**

Unless we fight for the victims and champion their dignity, we will not be able to embrace fully our own dignity as human beings. Let us act now, tomorrow may be too late.

**- Dr. A.S. Anand, Former Chief Justice, Supreme Court**

Rehabilitation is a need for sex workers as well as victims of CSE. The only difference is that for sex workers rehabilitation is a precondition for exit from prostitution whereas for a victim of CSE rehabilitation is demanded post-rescue to prevent re-trafficking. It is important to understand that post trafficking for CSE, victims encounter repeated physical violence—beating, choking, burning, sexual assault, gang rape—and psychological abuse such as manipulation, threats, blackmail at the hands of the trafficker, facilitators in the trafficking trade, and buyers. They use such strategies to ensure complete control over the victims. Alternating acts of violence and cruelty with acts of kindness and ‘love’ helps build strong bonds between the trafficker and victim, thus making it very difficult for the victim to leave. The victims are at increased risk of injury, sexual assault, infectious diseases, substance misuse, untreated chronic medical conditions, malnutrition, post-traumatic stress disorder (PTSD), major depression and other mental health disorders, homicide, and suicide.

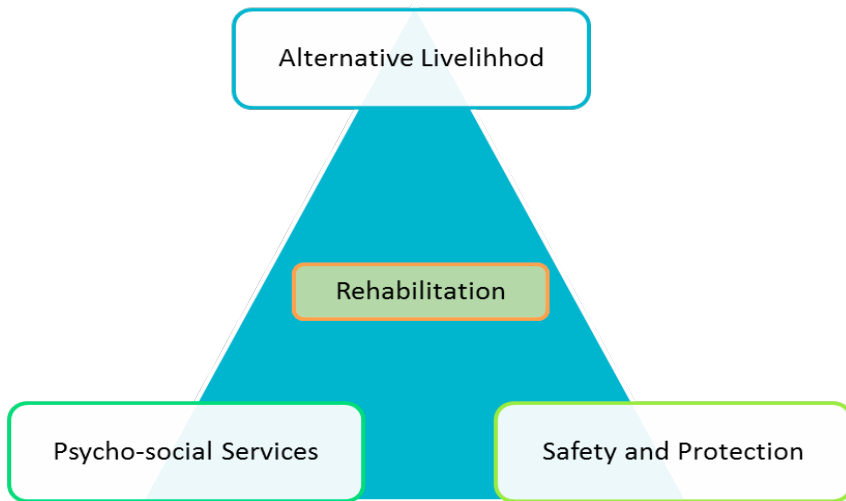
Many of the victims, especially the adults, continue in the situation of exploitation or do not participate in a rehabilitation programme ever after rescue. The primary reason is lack of alternative livelihood to sustain their expenses. In fact, the most important need of women in prostitution for an exit from prostitution or an exploitative situation is alternative livelihood. An alternative livelihood combined with quality psychological assistance, social and legal services to address the trauma from constant abuse; and care and protection to the victim is the right blend for the rehabilitation of women in prostitution.

### Partnership Model of Rehabilitation

Providing economic rehabilitation to women in prostitution is one of the most challenging tasks. The deep exploitation—physical, psychological, financial, sexual and social—often makes it difficult for the women in prostitution to take up any other livelihood. The women in prostitution require employment, psychosocial services and protective care. Therefore there is a need for different agencies/organizations having an expertise in these fields to come together and provide services jointly to the women in prostitution.



The economic alternative programme for the victims of commercial sexual exploitation broadly includes three components –alternative livelihood, psycho-social services and safety.



Alternative livelihood is a critical component. There are many ways to provide an alternative livelihood and one of the ways can be to setup a business unit especially for this group. To manage the economic rehabilitation unit successfully one requires resources and technical inputs that can be best provided by successful entrepreneurs, that is, corporate.

For rehabilitation, the agency needs a good understanding about the situation of the women in prostitution and trained staff who possess experience of social work intervention with such girls and women. Such an agency can be either the Department of Women or Child Development or a non-government organisation. The state government can play an important role to ensure that when the women in prostitution exit they are safe and protected from the perpetrators. To ensure that the livelihood programme is sustainable the State can play an active role by providing infrastructure required for the economic rehabilitation, followed by job work for the unit, finances, tax and other subsidies, etc. Also, to ensure that the women in prostitution take the

benefits of government schemes and participate in the democratic processes of the country, the State needs to issue documents such as ration cards, voting cards, Aadhar cards, etc.

## Business Selection Criteria

Selection of business is a very important component for the participation and continuity of women in the alternative livelihood scheme. The business should consider the following:

1. **Management:** For economic rehabilitation to be successful it is important that the management of the organisation that is setting up the business unit has an in-depth understanding of the situation of women in prostitution and is sensitive about the social work services required by the women in prostitution. It is important that the members of the organisation managing the programme have some direct work experience of working with this group of women.
2. The business should be such that it provides an opportunity to work in a group. Working in a group provides protection and safety from traffickers and abusers. It also fosters a team spirit among the workers. Individual responsibilities and job pressure on women needs to be avoided. Working in a group enables the women to help each other in the time of need and function like a family, a support structure that is usually absent in the life of most of the girls.
3. The business should be such that education and skills are not mandatory. The job should not require knowledge of reading and writing or require certain skills. In case any skills are required, they should be such that can be learned easily during the course of work. There should also be opportunities for skill building, which can include communication, customer relationship, use of a computer, etc, to increase their employability in the job market.
4. The business should be such that the distribution of work does not discriminate amongst the women based on their age and health.
5. The business should provide a variety of tasks so that there is a range of work opportunities that also cater to those who are older in age or

are unable to manage strenuous physical activities or have poor mental health.

6. The business should have opportunities of creativity and not be a monotonous job. It should ideally provide for a lot of movement, be less noisy and less demanding regarding time/deadlines.
7. The business should not require frequent business mobilization and the pressure of job mobilization should not be on the women.
8. The business should entail less interaction of the women with the public. Interaction of women with public often leads to harassment, discrimination, pressure of work, etc.
9. Needless to say, the payment to the women should be sufficient for them to stay comfortably with their children/family members/relatives. The salaries of the women should not be dependent on the profit or loss of the business. The salary should be paid regularly and should have components of provident fund and ESI.
10. The business should allow enough pauses for the women to adjust with the new job and should have provisions for leave, including paid leave.
11. Social work services such as counseling for women and their family members, and supervisory staff are essential.
12. Mentor: Once a new person joins, she needs to be entrusted to a senior worker who needs to function as a mentor. The mentor helps her in adjusting to the new work environment, building relationships with other employees, following the rules of the organisation, etc. The mentor also helps the woman to share her problems/difficulties with the relevant social workers of the organisation.
13. Work plan: A weekly work plan made by the work supervisor after a consultation with the counselor, social worker, and guide goes a long way in providing the girls with a focus. The work plan should be based on the mental and physical capacities of the girl. The work plan should be reviewed every week.
14. Crèche services for children ensure the safety and protection of children who are below six years. There should also be arrangements for children above six years to come to the crèche during school holidays.
15. The business should provide its worker pick-up-and-drop services from and to their house. This ensures the protection and safety of workers

while travelling. It also helps in building discipline, especially with regard to reporting to work on time.

### Social Work Services

1. The women who have exited from prostitution/commercial sexual exploitation would require initial support for accommodation and monthly expenses till they get their first salary. The social worker, while selecting the room/house on rent, should give importance to the safety of the women and her family members. The deposit for the room/house and the first month's rent needs to be paid by the agency employing the girl.
2. The women will also require financial support for expenses for the first month. The agency will need to provide for ration, travel, health, school fees, pocket money, etc, for the first month. The support should be based on actual expenses as they will vary from person to person. The social worker should plan the monthly expense in consultation with the women.
3. The money paid for the rent and first month's expenses should not be expected to be returned by the women or deducted from her salary. The purpose of not asking the girl/women to return the money is to avoid any debt on the women and to facilitate a new beginning on a positive note. This will enable the women to manage their expenses after they get the first salary.
4. The unit should have social work services. This should include services on mental and physical health; work with family and community; legal support; help in financial management; protection, etc. These services need to be provided by trained and experienced persons.
5. The economic rehabilitation unit should have trained and experienced persons working on mental health. Depending on the number of girls, the number of counselors and psychiatrists needs to be determined. The girls should be allowed to spend enough time with the counselors while at work.
6. Attention needs to be given to health issues such as TB, HIV, weakness, etc. The girls should be encouraged to visit doctors at the government

hospital, and if required, the girls should be accompanied by a social worker. Arrangements would also be required for the payment of travel and medicinal costs.

7. Safety and protection of the victim is paramount. In case there is an effort made by the traffickers, old customers or anyone else trying to harass the girl, or she is required to depose as witness in any court case, she should be provided legal assistance. The social worker should seek police assistance to ensure the safety of the women and taking action against the trafficker or the concerned persons.
8. The girls may also require legal assistance in matters of domestic violence. It needs to be ensured that there is no physical, emotional, and financial abuse of the girls, and if violence is reported then counseling, legal help and police intervention needs to be provided.
9. Social work intervention needs to also take into account the family members of the women. This may include counseling family members, follow-up of education of children, health of family members, and job for adult members of family, etc.
10. Initially the women may require help in planning their weekly/monthly expenses. The social worker needs to be given inputs in reducing the daily expenses and pushing the family members to work to increase the income of the household. The girls should be encouraged to open bank accounts and take advantage of recurring saving schemes.
  - A. Assistance needs to be provided in preparing important documents such as identity card, ration card, voting card, Aadhaar card, caste certificate, etc, to enable the women to receive subsidized ration and other benefits from government schemes.
  - B. The women should be encouraged to use the government/public services such as health, education, etc. The women should be helped in receiving benefits from government schemes relating to poverty alleviation, women empowerment, skill building, health insurance, housing, etc.

## Important Principles

1. No refusal of job: No victim of trafficking/women in prostitution/sex worker should be refused employment due to lack of vacancy, capacity, health, religion, or behavior.
2. Joining of the alternative livelihood programme should be voluntary. There should not be any pressure, force, or false information provided to make the women join the programme.
3. At the time of joining, or after joining, there should not be any conditions laid down for the women other than that she should not be prostituting.
4. The women need to be accepted as they are. It needs to be understood that the women will require sufficient time and external help to address the harm caused to them by the abuse they have undergone, or to bring about a change in behavior, manage any addiction, and improve their capacity to work. One should avoid being judgmental about their behavior, relationships, attitudes, lifestyle, language, etc. There should not be any direct or indirect effort to control their life.
5. Business not at the cost of the victim: There should not be any undue pressure on the girls to work or perform beyond their capacity. Pressure of work may cause further trauma and psychological stress. A balance between business and rehabilitation is key. Undue pressure to perform or to increase the business will negatively impact the rehabilitation process.
6. Every client is different and therefore they are entitled for different treatment: Every girl or woman joining the programme will have a different experience of abuse, therefore services and duration of services will also need to differ. Consequently, whether it is responsibility, discipline at work, breaks, loans, or social work services, the parameters will differ from person to person. It is important, therefore, that the employer has flexible rules that suit the needs of each employee. The employer should be flexible and open to amending the rules in the interest of the girls. This would include aspects such as release of salaries, providing loans, granting of leave, and provisions to help the employees during crises such as health, education of children, death in the family, etc.
7. The employer needs to have patience and give time to the employee to

adjust to a job, learn new skills, and acquire work discipline. It needs to be kept in mind that the girls and women have faced extreme forms of sexual, physical, psychological, and financial abuse and will take time to adjust. Also, she comes from a different kind of occupation that has different norms regarding timings, job expectations, etc. The employer should also keep in mind that the duration of adjustment would vary from girl to girl.

8. A woman should not be made to feel that she does not have capacity or has lesser capacity than others in the workplace. Comparisons should not be made between workers and neither should there be any sort of competition with regard to performance. Incentives should not be based purely on work performance. They should take into account change in behavior, de-addiction, etc. It should be kept in mind that the women will often require external help to improve their work capacity, or bring about a change in behavior and discipline.
9. The girl needs to be trusted. As far as possible, she should be involved in every decision taken by the employer with regard to her or her group. There is need for complete transparency in decision making as well as financial management of the organisation. The employee needs to have a feeling that the decisions are taken in a democratic process.





# CHAPTER 8

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## Inquiry

When a child is produced before the committee, the members must interact with the child directly, especially in the cases of child sexual abuse.

– **Department of Women & Child Development, Government of NCT of Delhi**

## **IMPLEMENTING AGENCY:**

### **1. CHILD WELFARE COMMITTEE**

**(in case of rescued victim being a child)**

### **2. MAGISTRATE (as defined in ITP Act)**

**(In case of rescued victim being major in age)**

The inquiry is conducted primarily with the objective of rehabilitation of the rescued victim. This includes the issues connected to custody, institutionalized care and protection, release, and repatriation of the rescued victim.

## SOPs for conducting inquiry

1. The IO should escort the rescued child/adult along with the required documents to CWC/Magistrate.<sup>1</sup>
2. The concerned magistrate/CWC should issue necessary orders related to shelter at Short-Stay Homes/Protective Home, medical examination and treatment, home investigation report, and addressing special needs of victims (u/s. 17 (2) ITPA) (notified under u/s. 21 ITPA or u/s. 37 of J.J. Act).<sup>2</sup>
3. The magistrate should conduct an inquiry under Section 17 of ITPA to decide upon safe custody, institutionalized care and protection, release, and repatriation of the rescued victim.
4. In case of a minor, such inquiry should be completed within 4 months of the receipt of the order from CWC or within such shorter period as may be fixed by the Committee (Section 33 of Juvenile Justice (Care and Protection) Act, 2000).<sup>3</sup>
5. Before the inquiry, the magistrate should seek a report under Section 17 (A) of ITPA from Probationary Officer. The Magistrate should ask the Probation Officer to submit a report.
6. Home Investigation Report (HIR) or Home Verification Investigation is an important component of enquiry process. The Magistrate should seek for a HIR.
7. The Magistrate/CWC should seek a report from case worker/counselor providing details of the victim for the purpose of conducting inquiry.
8. For the inquiry, the IO should make available following documents:
  - A. A copy of FIR
  - B. 164 CrPC statements of witnesses, if available at this stage
  - C. Report of medical examination of victims
  - D. In case of victim being child, a copy of proof of age including the statement of a parent/birth certificate/school certificate/Panchayat identify card.
9. For the inquiry, the IO should arrange for a translator(s), if required. (The translator should not be the same who has been used earlier to communicate with the accused to prevent any influence or contamination of evidence, threat, or coercion.

10. While conducting the inquiry under section 17, ITPA, the magistrate should summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him. He may keep readily available list of experienced social workers for this purpose.
11. To conduct the inquiry, the Magistrate and the panel members should visit the state protective home or short-stay home where the victim is lodged for care and protection as per the orders of the magistrate/ CWC. (The practice of meeting the victim in shelter home, instead of summoning victim to court, creates a victim-friendly environment and reduces the trauma and further harassment of the victim).
12. During the inquiry, victim should be provided an opportunity to be heard and it should be verified if she is a victim of Commercial Sexual exploitation. (This is important not just to ascertain the best interests of victims but significantly also to keep a check on police excesses, unwarranted moral policing and corrupt practices).<sup>1</sup>
13. The panel should record the statement of the victim.
14. During the inquiry with victim, the panel should investigate the following:
  - A. Details of the victim (name, age, nationality (Indian or Foreigner), education, family details etc.
  - B. How was she trafficked? (modus operandi- deception, lured, coercion, threat, blackmailed, or was it a case of abduction and kidnapping)
  - C. When was she trafficked? (Probable day/month/year/age of the victim at the time of trafficking). Was she a child at the time?
  - D. Where was she trafficked from? (state/block/tehsil/panchayat/ village)
  - E. Trafficking routes (including transit points).
  - F. Who were the traffickers? Was there any involvement of parents/ relatives by act of omission and commission?
  - G. What were the circumstances that contributed to her trafficking (e.g. violence).
  - H. Examine the safety of the victims post release.
  - I. Assess the following needs of the victim:
    - i. Health care

- ii. Economic
  - iii. Psychological
  - iv. Legal
- J. Probe the availability of documents such as travel permit, passport, visa etc. in case of victim being a foreigner.
- K. Gathering details of the person who has moved the application for the custody of the victim such as:
  - i. Relationship with the victim,
  - ii. His/her involvement in trafficking,
  - iii. Competency in providing care and protection
  - iv. Capacity to prevent re-trafficking
- 15. Check with victim the choice of her place (like country, state, city, village etc.) for stay after release.
- 16. The panel should record the statement of parents and/or relatives, in case of they move an application for the custody of victim.
- 17. Based on above inquiry and findings, panel should decide about the custody, release, repatriation, and institutionalization of the victim.
- 18. The panel and the magistrate should meet the victim and inform the decision of the panel to the victim. (This process strengthen the participatory and victim friendly approach in dealing with the cases of CSE)
- 19. The magistrate should pass an order giving detailed instructions regarding the custody, release, repatriation and institutionalization, rehabilitation of the victim
- 20. The order should provide information about implementing agencies/ institutions/organizations with precise role and responsibility.

## REFERENCES

1. Section 17 of Immoral Traffic (Prevention) Act, 1956.

**Intermediate custody of persons removed under Section 15 or rescued under Section 16**

- A. When the special police officer removing a person under sub-section (4) of section 15 or a police officer rescuing a person under sub-section (1) of section 16, is for any reason unable to produce before the appropriate magistrate as required by sub-section (5) of section 15, or before the magistrate issuing the order under sub-section (2) of section 16, he shall forthwith produce her before the nearest magistrate of any class, who shall pass such orders as he deems proper for her safe custody until she is produced before the appropriate magistrate, or, as the case may be, the magistrate issuing the order. Provided that no person shall be:
  - i. Detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or
  - ii. Restored to or placed in the custody of a person who may exercise a harmful influence over him.
- B. When the person is produced before the appropriate magistrate under sub-section (5) of section 15 or the magistrate under sub-section (2) of section 16, he shall, after giving her an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of section 16, the age, character and antecedents of the person and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in home are likely to have on her if she is sent home, and, for this purpose, he may direct a probation officer appointed under the Probation of Offenders Act, 1958, (20 of 1958), to inquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.
- C. The magistrate may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the safe custody

of the person [Provided that where a person rescued under section 16 is a child or minor, it shall be open to the magistrate to place such child or minor in any institution established or recognised under any Children Act for the time being in force in any State for the safe custody of children: Provided further that,] no person shall be kept in custody for the purpose for a period exceeding three weeks from the date of such an order, and no person shall be kept in the custody of a person likely to have a harmful influence over her.

- D.** Where the magistrate is satisfied, after making an inquiry as required under sub-section (2),—
  - a.** That the information received is correct; and
  - b.** That he is in need of care and protection, he may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable: Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person and that those entrusted with the custody of the person including the persons in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a person appointed by the court, which will be in force for a period not exceeding three years.
- E.** In discharging his functions under sub-section (2), a magistrate may summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in persons.
- F.** An appeal against an order made under sub-section (4) shall lie to the Court of Session whose decision on such appeal shall be final.

2. Prostitution of a woman should be for gain of another person as to the premises to be called as a brothel (In re John, AIR 1966 Mad 167). A place used once for the purpose of prostitution may not be a brothel (Krishnamurthy vs Public Prosecutor 1967 Cr.LJ 544 (SC))

There may be instances of politically or financially motivated moral policing and/or blackmail which must be guarded against. A number of findings demonstrate that women engaged in commercial sex work, whether willingly or otherwise, are being disproportionately punished and that traffickers are able to act with relative impunity (Coomaraswamy, 2000, 30) There have also been suggestions that these raids are at times politically motivated by communal or anti-migrant groups, since most of the women are from lower castes, tribal groups or neighboring countries (Joint Letter to the Chairperson, National Commission for Women, dated 21 February 2002). While the raids are justified on the grounds that they are a means through which exploited women and children can be 'rescued', several problems have been identified with the raid process. These include a lack of sensitivity and legal knowledge by the police with respect to trafficking; the bribing of the police by brothel-owners before, during or after raids; the serious human rights violations occurring during raids; the arrest of 'rescued' women for soliciting while brothel-owners remain at liberty; and the failure to inform women of the reasons for which they have been arrested (Sen and Nair, 2004, 85, 86, 110, 133, 250, 269, 274; Kapur R, India, Collateral Damage).

3. Section 33 of Juvenile Justice (Care and Protection) Act, 2000.
  - i. Section 33 (2): The inquiry under this section shall be completed within four months of the receipt of the order or within such shorter period as may be fixed by the Committee: Provided that the time for the submission of the inquiry report may be extended by such period as the Committee may, having regard to the circumstances and for the reasons recorded in writing, determine.
  - ii. Section 33 (4): After the completion of the inquiry, if, the Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may allow the child to remain in the children's home or shelter home



till suitable rehabilitation is found for him or till he attains the age of eighteen years.

4. The inquiry will cover if whether victim is from within the state or outside. Home study reports can be in coordination with government or NGOs from the source state. Home Investigation report includes interview done with help of counselor with woman/child to ascertain correct address, names, conducted by state of origin or state of destination, utilizing services of NGOs, done in a discreet and sensitive manner.

Sample Format for Home Verification/Investigation

<b>Name of Interviewer:</b>		<b>Date of interview:</b>	
<b>Name of Organization:</b>			
<b>Case Number:</b>		<b>Time of interview:</b>	
<b>Place of interview:</b>			

Personal details of the Rescued Survivor/Child/Victim

<b>Name of the Survivor/Child/Victim</b>	<b>First Name</b>	<b>Middle name</b>	<b>Surname</b>
<b>Given Names/Alias, if any</b>			
<b>Age</b>			
<b>Address of the Survivor/Child/Victim (with land mark)</b>			
<b>Details of home/village, transportation route from home and other information helpful for family tracing</b>			
<b>Date of Birth:</b> (collect documentation proof of age, if any)			
<b>Religion/Caste:</b>			
<b>Education:</b> (level of education, name of school, last date attended)			
<b>Marital Status:</b>			
<b>Spouse Details:</b> (physical description, permanent address, phone number, supporting documents)			
<b>Languages spoken:</b>			
<b>Parents Names:</b> (include phone numbers if available)			

### Details of person being interviewed:

<b>Name, Phone number and Relationship to the Survivor/Child/Victim:</b>	
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### Family Information

Sr. No	Name	Relation to Survivor	Age	Education	Occupation	Income	Remark

<b>Combined family Income per month:</b>			
<b>Standard of Living:</b>			
<b>Land (or other asset) ownership:</b>			
<b>Access to electricity, sanitation and water:</b>			
<b>Standard of housing:</b>			
<b>Household members with bank account:</b>			
<b>Given the families current resources, is the family able to adequately support themselves and the Survivor should they return?</b>			

### Details of Circumstances

<b>Date on which Survivor/Child/Victim left house:</b>	
Why/how did the Survivor/Child/Victim go? What happened?	
<b>Has the Survivor/Child/Victim is gone with the parent's permission?</b>	

<b>If not, is a missing complaint filed?</b>  If yes, take a copy of the missing complaint.	
<b>Has the Survivor gone missing before?</b>  If yes, give details of previous incident.	
<b>Has there been any money transaction?</b>  If yes, give details, amounts, dates, persons involved.	
<b>Did the parents or guardians have any information about where the child was?</b>  What contact was made with the Survivor?	
<b>What action did the family take when Survivor was known to be trafficked/missing?</b>  Police complaint, search details, contact with any NGO etc. (provide details).	
<b>Did the Survivor send money to the family?</b> If yes, how much, how often and what was the source of the income?	
<b>Date of last contact:</b>  Give contents of discussion	
<b>What was the Survivor doing before leaving the home?</b> (e.g. household work, assisting parents with farming/other family occupation, education, employment, unwell)	
<b>Has the Survivor/Child/Victim worked before:</b>  (Details)	
<b>Does the Survivor/Child/Victim have any addictions/habits:</b>  (Details)	
<b>Medical conditions of the Survivor/Child/Victim:</b>	

Details of Survivor’s relationship with family

<b>Reaction of the family to the news of Survivors/ Child/Victims vulnerable situation/ involvement with prostitution or other forced exploitation:</b>  (e.g. sympathy/empathy, shame, despair, indifference, judgment)	
<b>Quality of Survivor’s/Child/Victim’s relationship with family:</b>  Family’s willingness to accept Survivor after time in brothel. Does the family perceive the Survivor as trouble or benefit to the home?	
<b>Does the family want the Survivor/Child/Victim to return home:</b>  Give impressions as well as what is verbally stated.	
<b>Relevant statements/comments made by family during the visit?</b>	
<b>Protective Factors:</b>  Family Strengths	
<b>Risk Factors:</b>  Domestic Violence, Substance Abuse, Family Illnesses, Current Stressors, Other	
<b>Does the Survivor/Child/Victim have any positive peer or mentor relationships outside of the family?</b>  (teacher, coach, neighbors, school friends)	

TRAFFICKER’S DETAILS

With whom did the Survivor go or who trafficked her?

<b>Full Name:</b>	
<b>Age</b>	
<b>Sex</b>	
<b>Address / Phone number</b>	
<b>Relationship status</b> (details)	
<b>Occupation</b>	
<b>Parents names</b>	

<b>Description</b> (height, weight, complex)	
<b>What is the origin of the trafficker?</b> (country, state and district, ethnic and religious group)	
<b>Is he/she related to the Survivor?</b> (explain)	
<b>How well did the family know the trafficker?</b> (e.g Very closely, or distant relationship, explain)	
<b>What was the reason given by the person to take the child?</b>	
<b>Family's knowledge of traffickers' interaction(s) with other families/ Survivors:</b>	
<b>Frequency and duration of traffickers' visits to area:</b>	
<b>Details of any other person known to be involved/ connected:</b>	
<b>Contact information of closest police station:</b>	<i>Contact person:</i>  <i>Address:</i>

## OBSERVATIONS AND COMMENTS:

<b>Recommendation:</b>
List and explain any factors affecting likelihood of girl returning to vulnerable situation/prostitution/other form of exploitation:
If needed, include any other notes:

Note: Collect and attach the following documents

- » Photo of the Survivor
- » Photo of the Survivor along with the family (most recent photo)
- » Copies of School certificate, birth certificate, ration card etc
- » Copies of ID proof

Signature of Interviewer		Date:	
Signature of person being interviewed:		Date:	

**Sample Format for**

**“Consent of the victim for handing over her custody to her relative”: (details given herein are indicative only)**

I, XYZ (verifiable name) @ \_\_\_\_\_ @ (name given by traffickers) @ \_\_\_\_\_, aged \_\_\_\_\_ (approx/verifiable), home/permanent address \_\_\_\_\_, presently residing \_\_\_\_\_, 12 STD fail \_\_\_\_\_ (verifiable education qualifications) in \_\_\_\_\_ language /mother tongue do hereby state as under:

I say that I am originally from \_\_\_\_\_. I understand \_\_\_\_\_ and speak \_\_\_\_\_. I say that my father was a drunkard and died 5 years back. I have 5 other younger siblings. They live with my aged mother who works as an agricultural labourer.

We grew up in extreme poverty \_\_\_\_\_. After the death of our father we shifted to a slum in Delhi where my mother’s sister was working as a maid.

Description of events, names of traffickers: source/transit destination, all identifying details: \_\_\_\_\_

On \_\_\_\_\_ police entered the hotel room and brought me to the police station

(There may at times be additional information about the crime itself.)

(Detailed facts about the person seeking custody/ circumstances/ background/financial status, whether the victim is likely to be re-trafficked, etc)

My mother is aged \_\_\_\_\_ and continues to work as a maid. My brother lives with her and helps her. My brother works as a mechanic and will



help me till I \_\_\_\_\_ (details of family, circumstances to show that victim will not be re-trafficked). I may be given in the custody of my mother.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

## Sample Format

### for recording statement under Section 17 of ITPA

I, XY (verifiable name) @ \_\_\_\_\_ @ (name given by traffickers)  
 @ \_\_\_\_\_ , aged \_\_\_\_\_ (approx/verifiable),  
 home/permanent address \_\_\_\_\_  
 \_\_\_\_\_, presently residing \_\_\_\_\_  
 \_\_\_\_\_, 12 class fail  
 \_\_\_\_\_ (verifiable education qualifications)  
 in \_\_\_\_\_ language /mother tongue do hereby state as  
 under:

I say that I am originally from \_\_\_\_\_.

I understand \_\_\_\_\_ and speak \_\_\_\_\_.

I say that my father was a drunkard and died 5 years back. I have 5 other younger siblings. They live with my aged mother who worked as an agricultural labourer.

We grew up in extreme poverty \_\_\_\_\_  
 \_\_\_\_\_ (details). After the death of our  
 father we shifted to a slum in Delhi where my mother's sister was working as  
 a maid.

(Description of events, names of traffickers: source/transit destination) all  
 identifying details.)

On \_\_\_\_\_ police entered the hotel room and brought me to  
 the police station.

(There may sometimes be additional information about crime itself,)

(Detailed facts about the person seeking custody/ circumstances/  
 background/financial status, whether the victim is likely to be re-trafficked  
 etc)

My mother is aged \_\_\_\_\_ and continues to work as a maid. My brother

lives with her and helps her. My brother works as a mechanic and will help me till I \_\_\_\_\_ (details of family, circumstances to show that victim will not be re-trafficked). I may be given in the custody of my mother.

**Name:**

**Date:**

## Sample Format for Final Order of The Magistrate:

The notified Police Inspector, \_\_\_\_\_ Police Station, vide report no \_\_\_\_\_,

Dated \_\_\_\_\_ informed that on \_\_\_\_\_ upon receipt of credible information from reliable sources, trap was laid at \_\_\_\_\_, by engaging decoy to rescue women trafficked for commercial sexual activity wherein, XY (@ \_\_\_\_\_, @ \_\_\_\_\_ add \_\_\_\_\_ was rescued at \_\_\_\_\_ on \_\_\_\_\_.

As per Police Inspector of, \_\_\_\_\_ Police Station the XY victim was medically examined at \_\_\_\_\_, treated/medication provided and declared fit to lodge in \_\_\_\_\_ Shelter/Protective home. The Police Inspector, \_\_\_\_\_ Police Station applied for an order to admit the XY victims (@ \_\_\_\_\_, @ \_\_\_\_\_ at \_\_\_\_\_ Shelter/Protective home.

Rescued victims were heard. I was Prima facie satisfied with the application of Police Inspector of, \_\_\_\_\_ Police Station that XY was victim of trafficking, this office vide order dated \_\_\_\_\_ referred victim to \_\_\_\_\_ Shelter/Protective home for protection.

Police Inspector of, \_\_\_\_\_ Police Station vide letter \_\_\_\_\_ dated \_\_\_\_\_ submitted medical reports of the victim whose medical examination was done at \_\_\_\_\_.

This office vide letter dated \_\_\_\_\_ thereafter convened a “Panel Meeting” which was held on \_\_\_\_\_ at \_\_\_\_\_ at the \_\_\_\_\_ Shelter/Protective home to conduct an inquiry u/s 17 (5) of Immoral Traffic (Prevention) Act 1956.

The victim XY stated that she is a victim of commercial sexual exploitation. She shared that *the man AB she had believed to be in love with had taken her to Delhi from her village in Bihar, thereafter they resided in a lodge where AB, used to sell her for prostitution to different buyers every day and would beat her if she refused. Thereafter she was taken to Mumbai where she was handed over to the accused, brothel owner who asked her to call him, 'Papa,' and his wife, 'Ma': Here XY was sold to different buyers and beaten badly on refusal. Her earnings were kept with the accused for "safe keeping" on their insistence.*

XY's mother tendered statement that she had gone away with a man and had only informed that she was working in a beauty parlor. She was informed about her daughter being at Shelter Home when a person from NGO \_\_\_\_\_ approached her home to inquire details about her family.

She stated that she did not know the accused and requested that custody of her daughter be given to her. She submitted birth certificate of XY in which her name appears as mother. She has also tendered a copy of her Pan Card.

The case details, medical reports including psychological reports and Home Investigation Report of \_\_\_\_\_ NGO was discussed during the Panel Meeting.

The Co-ordinator of \_\_\_\_\_ NGO stated in her report dated \_\_\_\_\_ that the victim may be released in the custody of her mother with the clear understanding that she would take all steps necessary to ensure that she would prevent re-trafficking of XY.

The Panel members namely \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ were present at the meeting.

As per the minutes of the Panel meeting held on \_\_\_\_\_, the Panel Members opined that XY should be released in the custody of her mother after furnishing an indemnity bond of Rs 20,000/. As she is new to the city, the NGO \_\_\_\_\_ has been requested to provide assistance and act as Mentor to XY as and when required by XY.

I have considered the report of Police Inspector of, \_\_\_\_\_ Police Station, report of NGO \_\_\_\_\_, Home Inquiry Report, documents, the statement of the victim,

statement of her mother, inquiry and minutes prepared by the Panel members.  
(names of panel members) \_\_\_\_\_

(Note: There should be application and discussion of each matter. The order should reflect the manner in which the decision was arrived at. There should be reason /fact/ document etc to support a finding, the conclusions recorded should not be diametrically contrary to facts on record and the conclusions based on facts/documents/interactions with victim arrived at are such as would be arrived at by a reasonable person.)

I pass the following order:

1. The Superintendent of \_\_\_\_\_ Shelter/Protective home is hereby directed that the victim XY be released in the custody of her mother \_\_\_\_\_ after completion of formalities and execution of the Indemnity Bond of Rs 20,000/.
2. The Superintendent of \_\_\_\_\_ Shelter/Protective home shall release all the belongings of the victim.
3. \_\_\_\_\_, mother of XY is responsible to ensure that XY receives adequate support , and guidance to to prevent a situation of re-trafficking. The mother if required should approach the NGO \_\_\_\_\_ for guidance and support.
4. Given under my hand and seal of this Court on \_\_\_\_\_ 2015.

To,

1. The Superintendent of \_\_\_\_\_ Shelter/Protective home
2. The Police Inspector, \_\_\_\_\_ Police Station
3. NGO \_\_\_\_\_

**Copy to:**

1. \_\_\_\_\_, Mother of XY
2. The Collector \_\_\_\_\_
3. All Panel Members
4. Victim XY







## CHAPTER 9

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# Release & Custody

The magistrate shall cause an inquiry as to the correctness of the parents, guardian or husband and the nature of the influence which the conditions in the victim's home are likely to have on the victim if she is sent home.

**Section 17 (2) of ITPA, 1956**

## IMPLEMENTING AGENCY:

- 1. Magistrate Or Child Welfare Committee**
- 2. Superintendent of Government and Non-Governmental Shelter Homes**

The release or custody of rescued victims of commercial sexual exploitation is the most crucial aspect of preventing re-trafficking of persons. Therefore, an intensive investigation should be performed prior to any release order. The release may be from protective home/shelter homes and Children's homes established & recognized under The Immoral Traffic (Prevention) Act, 1956 and Juvenile Justice (Care and Protection) Act, 2000 respectively.

## **SOPs to be followed for release/ custody of victims of CSE/CSA:**

1. To keep the spirit of “best interest of the child” as given in Juvenile Justice Act, 2000, no minor should be released in self-custody.
2. It should be checked that no victim is released from the police station in the custody of the person even if he/she produces documents proving his/her relationship.
3. The concerned authorities should ensure that the victims are “fit for release” based on their psycho-medical status. No victim should be released while on critical care or on emergency treatment.
4. Advocate, appearing before the Child Welfare Committee, should not be handed over the custody of any rescued child (Prerna Vs. State of Maharashtra).<sup>1</sup>
5. Before handing over the custody, the authorities should check to establish the genuineness of the family/relatives/claimant by examining the key documents such as AADHAR card, voter ID card, school certificates, age proof etc.
6. The indemnity bonds/undertakings should be taken from parents/guardians to ensure safety of the victim and to prevent the re-trafficking.
7. All the belongingness/property of the victims should be handed over to them at the time of release from the home by the concerned authorities (of the home).
8. In cases where the article/property/belongingness of the victims are left behind with the brothel keeper/pimps, the Magistrate should summon the concern person in whose custody the property was left behind and order for depositing the same in his office.
9. It should be ensured that proper treatment information and medication are provided to victims/family/guardians before release from any protective home/shelter homes and children’s homes.
10. The Magistrate/Home authorities should ensure that victims, released in self custody, have adequate money to meet travel expenses, have information about nearby railway station/bus stand, and contact details of local NGOs in destination.

- 11.** It should be ensured that adequate security is provided to the victim/ accompanying person/NGO during the transfer of the victim.
- 12.** A follow-up plan of action should be visible in release order with clear roles and responsibilities of individuals, group, and institution.

## REFERENCES

### 1. Prerana vs. State Of Maharashtra And Others; on 7 October, 2002;

(C) Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the Probation Officer.

(D) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.

(F) No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose.

### 2. Section 17 of The Immoral Traffic (Prevention) Act, 1956.

1. When the special police officer removing a person under sub-section (4) of section 15 or a police officer rescuing a person under sub-section (1) of section 16, is for any reason unable to produce him before the appropriate magistrate as required by sub-section (5) of section 15, or before the magistrate issuing the order under sub-section (2) of section 16, he shall forthwith produce him before the nearest magistrate of any class, who shall pass such orders as he deems proper for his safe custody until he is produced before the appropriate magistrate, or, as the case may be, the magistrate issuing the order: Provided that no person shall be—
  - i. detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or
  - ii. restored to or placed in the custody of a person who may exercise a harmful influence over him.
2. When the person is produced before the appropriate magistrate under sub-section (5) of section 15 or the magistrate under sub-

section (2) of section 16, he shall, after giving him an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of section 16, the age, character and antecedents of the person and the suitability of his parents, guardian or husband for taking charge of him and the nature of the influence which the conditions in his home are likely to have on him if he is sent home, and, for this purpose, he may direct a probation officer appointed under the Probation of Offenders Act, 1958, (20 of 1958), to inquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.

3. The magistrate may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the safe custody of the person; Provided that where a person rescued under section 16 is a child or minor, it shall be open to the magistrate to place such child or minor in any institution established or recognised under any Children Act for the time being in force in any State for the safe custody of children: Provided further that, no person shall be kept in custody for the purpose for a period exceeding three weeks from the date of such an order, and no person shall be kept in the custody of a person likely to have a harmful influence over him.
4. Where the magistrate is satisfied, after making an inquiry as required under sub-section (2),—
  - i. that the information received is correct; and
  - ii. that he is in need of care and protection, he may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable: Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person and that those entrusted with the custody of the person including the persons in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain

undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a person appointed by the court, which will be in force for a period not exceeding three years.

5. In discharging his functions under sub-section (2), a magistrate may summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in persons.
6. An appeal against an order made under sub-section (4) shall lie to the Court of Session whose decision on such appeal shall be final.

**Sample Format for undertaking from Parent/  
individual/ Fit Institution taking Custody**

**Undertaking by \_\_\_\_\_ ( Parent/‘Fit Person’/Fit  
Organization Taking Custody)**

I \_\_\_\_\_ resident of House no.  
\_\_\_\_\_ Street \_\_\_\_\_  
Village/Town \_\_\_\_\_ District \_\_\_\_\_  
State \_\_\_\_\_ do hereby declare that I am willing to take charge  
of \_\_\_\_\_ Aged  
\_\_\_\_\_ under the orders of the \_\_\_\_\_  
\_\_\_\_\_ subject to the following terms and  
conditions:

If his/her conduct is unsatisfactory I shall at once inform the  
\_\_\_\_\_.

I shall do my best for the welfare of \_\_\_\_\_ as  
long as he/she remains in my charge and shall make proper provision for his/  
her immediate needs till she finds employment.

In the event of his/her illness, I shall assist her in obtaining medical attention  
in the nearest hospital.

I undertake to produce him/her before the competent authority as and when  
required.

I shall ensure that she is not re-trafficked

Date this ... .. day of ... .. Signed and Witness  
having read and understood contents/terms of the Undertaking  
\_\_\_\_\_

1. WITNESS:  
NAME & ADDRESS:

2. WITNESS:  
NAME & ADDRESS

(Signed before me)



## CHAPTER 10

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# Repatriation

If, after investigation, the woman or child who is foreign national is found to be a victim, she should not be prosecuted under the Foreigners Act.

- **Advisory, Ministry of Home Affairs, Government of India**

## IMPLEMENTING AGENCY:

### **In case of victim being Indian Citizen:**

1. Department of Women and Child Development
2. Superintendent (Government and Non-government Shelter Homes)
3. Police

### **In case of victim being Foreign Citizen, additional agencies:**

4. Concerned Embassy/High Commission
5. Ministry of Home Affairs, Government of India
6. Ministry of External Affairs, Government of India
7. Foreigner Regional Registration Office (FRRO)
8. Foreigner Registration Office (FRO)

Repatriation is typically referred to restore or return to the country of birth, citizenship, or origin. In case of victims of commercial sexual exploitation, it would involve steps and procedures adopted after the rescue of victims till their effective restoration with their families or legal guardians or others. Post release repatriation process may involve repatriation outside the India or within India.

## **SOPs for Repatriation of Rescued Victims: IN CASE OF VICTIM BEING AN INDIAN CITIZEN**

1. An informed consent of the rescued victims should be taken to initiate any repatriation process on her behalf.
2. A comprehensive home investigation should be completed prior to any repatriation plan. It should include an assessment of the family (is there any trafficking linkage), family and community's keenness to accept the girl and the family's environment.
3. No victim of CSE should be repatriated back to the family without adequate assessment and without ensuring acceptance and family support.
4. The police needs to be notified. A detailed report along with all documents needs to be submitted to Magistrate for repatriation order.
5. The order needs to direct repatriation of victims to home state and directions to Department of Women and Child Development to make all logistical and financial arrangements for Repatriation. The order also needs to include direction to the NGO partner, counsellor to assist and accompany the victim to ensure safe passage to home.
6. The escort team should comprise of two lady police constables, one matron from protective home and one NGO staff.
7. Non-governmental entities (NGOs) working with the issue of trafficking, especially those which have track record in repatriation of victims from other states, should be involved in the process of repatriation at both ends.
8. In case the victim is not repatriated either by choice or due to any other reasons, all provisions of rehabilitation should be applicable to the victim.
9. There should be adequate recording and documentation (photos, undertaking from parent/guardian etc.).
10. Adequate financial assistance should be provided for meeting the needs of rescued victims during travel while repatriating them to their families or institutions in source states.
11. A follow-up plan should be developed and should be followed for a

minimum period of 2 years on a monthly basis.

### **IN CASE OF VICTIM BEING A FOREIGN CITIZEN**

1. In case of victim of commercial sexual exploitation being a foreign citizen, immediate action should be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels.<sup>1</sup>
2. On Inquiry if it is found that the victim of commercial exploitation is from outside the country, the procedures adopted will depend on the Source Country.
3. Efforts should be made to trace the family of trafficked person back in Home Country to enable him/her to return.
4. A home Investigation report is required to be arranged with the government and non-government agencies in the Home Country.
5. The police/superintendent of shelter home/NGO should submit to the magistrate a detailed report along with all documents such as birth certificate, citizenship certificate, photographs, passport, visa etc. for final order of repatriation.
6. The order of the magistrate/CWC should direct repatriation of victims to home country and directions to Department of Women and Child Development to make all logistical and financial arrangements for Repatriation. The final order should also cite the roles of different agencies in ensuring safe passage and repatriation.
7. The final order should be shared with the concerned embassy/high commission to facilitate smooth repatriation of the victim to state of origin.
8. In case of embassy request for the custody of the victim, the superintendent should arrange for travel and escort of the victim till the embassy.
9. The escort team should preferably be comprised of two lady police constables, one matron from protective home, and one social worker.
10. The authorities in charge of repatriation shall use diplomatic channels of communication to inform the other authority as well as the concerned

NGOs of repatriation arrangements of trafficked victims in advance.

11. Non-governmental entities (NGOs) working on the issue of trafficking, especially those which have track record in repatriation of victims from other countries, should be involved in the process of repatriation at both ends.
12. In case the victim is not repatriated, either by choice or due to any other reasons or till she is repatriated, all provisions of rehabilitation should be applicable to the victim.
13. During repatriation the human rights of trafficked victims should be protected by state parties and under no circumstances should they be jailed during time of waiting in either country.
14. Being victims of human trafficking, they should not levied with penalty fee.<sup>2</sup>

Reference file of each victim being repatriated should be crated and handed over to receiving organization for necessary follow-up. The file should include following documents:

1. Copy of FIR
2. List of Perpetrators Arrested
3. Name and address of Perpetrators in the Source
4. Health Details (HIV Status (only with the informed consent of Victim), Psychological Assessment, Other diseases and illness, treatment (current and follow-up)
5. Counseling Services
6. Request Made by Victim for assistance (protection, child education, vocational training, employment etc.

## **SUGGESTED PROCESS TO BE FOLLOWED FOR REPATRIATION TO BANGLADESH**

1. Contacting NGOs in Bangladesh for tracing the families and to collect documentary evidence to establish citizenship of the victim.
2. Submit the case details, home investigation report, and documents of the victim as per the proforma to Bangladesh High Commission (BDHC).
3. Issuance of repatriation order/list/consent letter from Ministry of Home Affairs, Bangladesh.
4. Collect travel permit documents from BDHC.
5. Submit the travel documents to BDHC after taking victim's signature on the travel permit.
6. After receipt of travel permit from BDHC.
  - A. In case of FRRO at the state level, approach the FRRO for exit permit
  - B. In absence of FRRO at the state level, approach Home Department of the state from where the victim has been rescued for exit permit.
7. After receipt of travel permit from BDHC send a copy of travel permit and final order u/s 17 (3) of ITPA to NGO in the source country.
8. Department of Women and Child at place of destination should make arrangement for travel and book tickets.
9. Submit the copy of tickets to FRRO and inform the NGO in the source country about date, time and place of repatriation.
10. FRRO to issue 'exit permit and NOC'.
11. In case of FRRO, the FRRO of destination state to inform the Home department of West Bengal (whose border is being used for repatriation).
12. Directorate of Women and Child of destination state to write to IG, Border Security Force (BSF), West Bengal, regarding repatriation.
13. FRRO of destination state to write to IG, BSF, West Bengal for repatriation.
14. Department of Women and Child Welfare of destination to escort the victim till the border points for handing over.
15. Physical handing over of the victim to Bangladeshi authority at the border point.
16. Handing over to the relevant authority by endorsing handing-over note.

17. Reception of victim on the other side of the border at the border post.
18. Compliance report of handing over to be sent to BDHC, FRRO, Magistrate/CWC. Ministry of Home Affairs, GOI.

## REFERENCES

1. It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge-sheet against the victim. If the charge-sheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned. Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels (No. 14051/14/2011-FVI , Government of India, Ministry of Home Affairs (Foreigners Division), Dated 1st May, 2012 , Advisory on preventing and combating human trafficking in India - dealing with foreign nationals)
2. MHA direction regarding waiver of penalty payment in respect of the Bangladeshi Nationals.

No. 14051/10/2010 FVI  
Government of India  
Ministry of Home Affairs  
(Foreigners Division)

NDCC-II Building, Jai Singh Road  
New Delhi-110001,  
Dated the May 17, 2013

To  
F.R.R.O  
East Block-8, Level-II  
Sector-I  
R.K. Puram, New Delhi



Sub:- Repatriation of Bangladeshi girls

Sir

Please refer to your letter No. 2587/For (SO) dated 16.5.2013 regarding waiver of penalty payment in respect of the Bangladeshi Nationals.

The matter has been examined in the Ministry of Home Affairs and it has been observed that these cases are of human trafficking and the persons are actual victims of human trafficking. Hence, it has been decided with the approval of the competent authority to waive off the penalty fee to be paid by these Bangladeshi Nationals.

It is, therefore, requested to expedite the repatriation of the said Bangladeshi Nationals on priority basis.

Yours faithfully

(Vikas Srivastava)

Under Secretary to the Government of India

Tel:011-23438040



# CHAPTER 11

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## Investigation

The investigation team should investigate the case in a manner that they are able to build foolproof cases against traffickers.

– **Ministry of Home Affairs (MHA), Govt. of India advisory dated 1.5.2012**

## IMPLEMENTING AGENCY: POLICE

Investigation constitutes the larger part of the process through the pre-trial stage until the submission of a charge-sheet in court. Trafficking is an organized crime wherein gangs operate across districts, states and countries. Therefore, thorough investigative attempts should be made to unearth the entire sequence of events. “Investigation” includes all the proceedings under CrPC for the collection of evidence conducted by a Police officer or by any person who is authorized by a Magistrate.<sup>1</sup>

The aim of the IO should be to find out the truth. To achieve this purpose, it is necessary to preserve an open mind throughout the Inquiry. Investigating officers should caution themselves against prematurely committing themselves to any view of the facts – be it for or against a person. The officer-in-charge of a Police Station can start investigation either on information or otherwise.<sup>2</sup>

Human trafficking for commercial sexual exploitation involves spotters, recruiters, buyers, sellers, transporters, harbourers, financiers, conspirators, abettors, brothel-keepers, pimps, clients and powerful elements who maintain the nexus. Therefore, investigation should cover all possible angles of crime.

## **SOPs for Investigation into Trafficking Crimes:**

1. It is important that only notified person should take up investigation or else technical errors will end in acquittal of perpetrators.<sup>3</sup>
2. The IO should collect relevant material from the site during rescue or immediately thereafter, under panchanama. No time should be lost in collection and seizure, as the accused or other perpetrators might destroy or conceal the materials.
3. The IO should search the accused person for relevant material such as cell phones, travel documents, notebooks, etc.
4. The IO should look for documents, materials, exhibits at the scene of crime in the source– transit–destination areas.
5. The IO should undertake a thorough search of vehicles of transportation.
6. The IO should carry the investigation at places, hotels, dhabas and similar other places where the offenders and/or victims may have stayed or halted during the process of trafficking. The search should also be performed at hideouts, residence and place of stay.
7. The IO should search the bank lockers, bank accounts and other instruments where the offenders may have made investments.
8. The IO should also search the customers/clientele whose names figure as exploiters and any other person whose name figures in the trafficking nexus.
9. The IO should explore places where the data or information are stored, collated and maintained regarding any activity. This may include CD, DVD, electronic gadgets, e-mails, SMS and other places where physical evidence may be available such as video library with pornographic material developed from the exploitation of the trafficked victims.
10. The IO should make a detailed scrutiny of the relevant materials, prepare scrutiny reports and record them in the Case Diary. She/he should examine scrutiny report for possible clues in order to carry further investigation and evidence.
11. Deposit the relevant materials as per State Rules.
12. The IO should ensure proper chain of custody which may involve different police agencies, both inter and intra state.

13. The IO should connect crime to criminal, as the source and the destination may be in different places.
14. The IO should share intelligence derived from the document analysis with other police agencies, as this will help in preventing and curbing phenomenon of trafficking.
15. The IO should interrogate all the accused within 24 hours as the IO has to produce the accused within 24 hours of arrest (Section 57 CrPC) before the magistrate. The initial 24 hours are extremely crucial for collecting evidence.
16. The interrogation of suspects should focus on all aspects of the trafficking process and all activities of the offenders for the following purposes:
  - A. To reveal the entire organized linkage of trafficking (source-transit-destination).<sup>4</sup>
  - B. To understand the entire process the dimensions, demand–supply patterns, ‘push and pull factors’, etc. which will not only help in locating evidence against the offenders but also provide intelligence in prevention of crimes of HT.
  - C. To explore contacts, sources and witnesses in the source-transit-destination areas.
  - D. To locate the means, routes and methods used for transportation of victims.
  - E. To discover the communication channels (cell phones, internet, etc.) used by traffickers.
  - F. To investigate the modus operandi of traffickers (all operational ways and means, strategies and tactics, such as false marriage, lover-boy tactics, promise of jobs, work in cinemas, industry, customary practices such as devadasi, jogin, bhogini).
  - G. To ascertain the criminal antecedents of the offenders which can be used to investigate the various dimensions of organized crime, the nexus etc., for enhanced punishment after conviction and to locate and rescue victims trafficked earlier by the same offenders.
17. For information/evidence, the IO should tap into local networks including hotel/motel owners, taxi-drivers, auto-drivers, hawkers and dhabawalas at railway stations and bus stands, placement agency

owners/ agents, labour contractors, massage parlors, escort services, “specialized “event management and anyone who are likely to come in contact with trafficked persons or might happen to observe any of the activities in relation to trafficking.<sup>5</sup>

18. The IO should update the General Diary (GD) about each and every activity through the course of a day and based on the finding of investigation.<sup>6</sup>
19. The IO should prohibit any form of pressure from accused, perpetrators and others who intent to weaken the case.<sup>7</sup>
20. The IO should be familiar with the range of challenges faced by victims who press charges against perpetrators and litigate.<sup>8</sup>
21. The legal provisions invoked in the FIR would have to be altered or strengthened with other applicable provisions. And if an accused is under custody and some case material has been seized on the basis of the FIR, then the Investigation Officer would also have to inform the Court about the changes in the charges made out during investigation, so that, the relevant warrants can be suitably amended and executed by Court’s order.
22. During investigation, if new issues and facts crop up, then the investigation officer should record a supplementary statement of the concerned witness.
23. The Investigation officer should not bring victims face-to-face with the traffickers or their agents.
24. The IO should Interview the accused before interrogation to elicit themes/ideas for interrogation. This is an essential requirement for scientific interrogation.
25. The IO should make use of flow charts to show the movement of trafficked persons, mode of transportation and financial transactions. Use them as tools for interrogation as well as to present them in the Case Diaries.
26. The IO should summon in writing for investigation anyone familiar with the facts and circumstances of the case.<sup>9</sup>
27. The IO should examine every potential witness and record a detailed statement in writing.
28. In trafficking situations, many a times more than one victim is rescued

from a site. Such victims become genuine witnesses for each other's case, especially for verification of identities and details about crime and criminals. The IO should consider these victims as witnesses in the case.

29. The IO should conduct thorough search of earlier pending cases, complaints filed, missing person reports, and documents related to earlier convictions.
30. In case of IO arresting a woman offender s/he should not fail to utilize the provisions of (no woman should be arrested after sunset and before sunrise, but in exceptional circumstances, the woman police officer shall obtain prior permission from the jurisdictional Judicial Magistrate First Class).<sup>10</sup>
31. When IO discovers inter-state trafficking linkages, a follow up with the concerned SHO as well as the SP/DCP in the other states should immediately be initiated.
32. In the instances wherein the victim and the accused are the same in two different FIRs due to the facts of both cases being different. In such situations, the two FIRs should be investigated separately by the police stations having jurisdiction over respective case. (e.g. if in a source district an FIR has been registered about 'kidnapping' of a minor and in the destination district another FIR is registered about 'selling minor for prostitution' then, both the cases should be investigated separately).
33. The IO should conduct Test Identification (TI) parade for a witness who is sure about identifying an accused, who has not been exposed in media and has not been remanded into police custody earlier.
34. The IO, when required, should make forward exhibits and get reports or opinion from the scientific experts.<sup>11</sup>
35. The IO should take utmost care while dealing with victims. The IO should ensure that social workers are present and conducive environment is created in advance to deal with victims.
36. The Investigation officer should form opinion as to whether on the materials collected, there is a case to place the accused before a magistrate for trial and if so, taking necessary steps for filing a charge-sheet, and Submission of a Final Report to the court (section 173 CrPC) in the form of a CHARGE SHEET along with a list of documents and a Memo of Evidence against the accused person(s) or in the form of a



REFERRED CHARGE SHEET or a report referring the case as UN, MF, ML, Civil nature and Action dropped, as the case may be, on the basis of the evidence collected during the course of the investigation.

## REFERENCES

1. Section 2(h) of Code Of Criminal Procedure  
(h) "'Investigation' includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf."
2. Section 157 of Code Of Criminal Procedure  
Procedure for investigation and preliminary inquiry.  
(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender; Provided that-  
(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;  
(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.  
(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub- section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub- section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.
3. The offences under the act is to be investigated by Special police officers

in accordance with this special law and the magistrate can decline to take cognizance of a report under Section 173(1) on completion of investigation if an objection of his jurisdiction is raised. An ordinary police officer cannot submit a report under Section 173 (1) Criminal procedure Code in order to proceed with trial. Section 190 (1) Criminal Procedure Code 1898 lays down the modes in which a magistrate can take cognizance of an offence. It is important to emphasize that given that raids and rescue operations under ITPA are often challenged as arbitrary, leading to further entanglement of women with a harsh judicial system, stigmatization, increase in debt bondage due to legal costs of women many times being arrayed as accused, loss of livelihood, separation of children on one hand and on the other hand arrest being challenged to the highest Courts by the accused, it becomes imperative that parties involved should be well informed, prepared and engaged completely to see that justice is done.

4. From 'source' through 'transit' to 'destination' and also to identify all the partners in crime (Nair. P. M Handbook for Law Enforcement agencies in India on Human Trafficking, 2007 Published by UNIFEM/ UNODC).
5. The investigation of the rape and murder of a young techie in Mumbai in 2013 revealed an entire network involving rickshaw/cab drivers at the Kurla Terminus who identified women as "Batair" "Maal Batair" etc using names of birds denoting the ease with which they could be abducted "Safed Bakri are coming". Within days of the Nepal Earthquake the number of Nepali girls zoomed in Lucknow brothels. (The tremor of trafficking, Cover Story, India Today Aug 10, 2015).

Some Sources from where/ whom information can be obtained and intelligence collected, include:

- » Emails, SMS, MMS, etc.
- » Illegal drug dealers
- » Dealers in legal/ illegal liquor trade
- » Destination/ transit points like:
- » Bus stops/Railway stations
- » Airports/Tourist spots

- » Pilgrimage surroundings
- » Immigration offices at borders
- » Custom offices at borders
- » Travel agents, authorized and unauthorized
- » Tour operators
- » Immigration agents
- » Marriage bureaus
- » Domestic Workers/Care-giver's bureaus
- » Hotels
- » Beauty parlors/Spas/Massage parlors
- » Escort services
- » Media reports:
- » Print and electronic/Advertisement
- » Internet sites/Friendship clubs
- » Social networking advertisements
- » Websites
- » Illegal abortion clinics
- » Help lines/help desks run by Government/ NGOs

6. A case diary should be maintained by an Investigation Officer to record the progress of investigation in a chronological manner. It is required to be produced before a Court through the phase of investigation as well as prosecution of a case.

7. Section 160 of the Criminal Procedure Code

**Police Officer's power to require attendance of witnesses**

Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person (Criminal Law (Amendment) Act, 2013) shall be required to attend at any place other than the place in which such male person or woman resides.

The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under Sub-Section (1) at any place other than his residence.

**8. Section 46 of Criminal Procedure Code:**

1. In making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there is a submission to the custody by word or action.
2. Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.
3. If such person forcibly resists the endeavor to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.
4. Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.
5. Save in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

**9. Section 293 of Code Of Criminal Procedure:**

**Reports of certain Government scientific experts**

- A. Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding

under this Code.

- a.** The Court may, if it thinks fit, summon and examine any such expert as to the subject- matter of his report.
- b.** Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.
- c.** This section applies to the following Government scientific experts, namely:-
  - i)** Chemical Examiner or Assistant Chemical Examiner to Government;
  - ii)** Chief Inspector of- Explosives;
  - iii)** Director of the Finger Print Bureau;
  - iv)** Director, Haffkeine Institute, Bombay;
  - v)** Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
  - vi)** Serologist to the Government.

# CHAPTER 12

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## Collection of Evidence

Collusion, Corruption, inadequate evidence gathering and / or reluctant, slow investigations by the police are identified as hindrances to successful delivering of justice and compensation to victims.

**- Putting Justice First: Legal Strategies to Combat  
Human Trafficking in India, 2014**

## IMPLEMENTING AGENCY: POLICE

One of the effective means of securing better conviction rates of perpetrators of the crime of trafficking is to base the case on documentary, forensic and material evidence. Therefore, it is necessary to collect foolproof evidences against the perpetrators and traffickers. Collection of evidence may be in the form of oral statements of witnesses,<sup>4</sup> and in the form of documents and seizure of material objects, articles and movable properties concerned in the reported crime. A foolproof bundle of evidence should include biological evidence, latent print evidence, trace evidence, electronic and digital evidence, tool and tool mark evidence, drug evidence, firearm evidence etc.



## SOPs for collection of evidence into Trafficking Crimes

1. As per Criminal Procedure Code provisions, any police officer has the powers under section 102 CrPC to seize any property which may be found in circumstances which create suspicion of the commission of any offence. <sup>1</sup>
2. The investigation team should investigate the case in a manner that they are able to build foolproof cases against traffickers. (MHA advisory dated 9.9 2009 and 1.5.2012)
3. The SPO should be present to conduct the search as per the compliance to ITPA provisions.
4. All exits should be identified and covered by the team members to ensure that nobody leaves the site without permission of the officer in charge or tampers with any relevant piece of evidence.
5. All telephones should be taken charge of immediately and the process should be photographed or video-taped.
6. The search team should divide itself into sub-teams and systematically search the entire place. The evidence may be in the form of documentary evidence, forensic evidence material evidence or digital evidence.

### Documentary evidence includes:

- ☐ Registers carrying details such as money transactions, visitors, personal details of victims, tasks assigned to people connected with the case, etc.
- ☐ If façade of massage parlors or suchlike has been created, then payrolls, leave registers, attendance registers, records of advance given, etc.
- ☐ Documents, if any, of earlier cases
  - ▶ Letters / memos
  - ▶ Phone bills / electric bills / water bills / establishment bills
  - ▶ Marriage certificates
  - ▶ Medical bills and certificates
  - ▶ Medical reports
  - ▶ Train/bus/plane tickets
  - ▶ Contact diaries/business cards

- ▶ Personal phone books/phone contacts
- ▶ Business related registers
- ▶ Account related registers
- ▶ Property papers/Rent receipts
- ▶ Employment certificates
- ▶ Contract papers
- ▶ Identification documents (passport, ration card, voter's card, Aadhar etc.)

### Biological evidence includes:

- ☐ Stains of blood on bed/ clothes/soil/floor/walls/bed sheets
- ☐ Stains of semen on clothes/floor/bed sheets
- ☐ Stains of saliva on clothes, floor, soil, bed sheets, cigarette butts
- ☐ Hair
- ☐ Vomit
- ☐ Drugs (especially contraceptive pills, steroids, etc)
- ☐ Psychotropic substances
- ☐ Remnants of drugs/alcohol etc in containers/ syringes and ampoules
- ☐ drinking glass containers with remnants of tablets /pharmaceuticals
- ☐ Steroid pills
- ☐ Alcohol
- ☐ Tobacco
- ☐ Blotters carrying drugs
- ☐ Contraceptive pills
- ☐ Injections
- ☐ Condoms
- ☐ Weapons and ammunition

### Material evidence includes:

- ☐ TV and VCD/DVD players
- ☐ Video or still cameras
- ☐ Sex-toys
- ☐ Photographs/videos
- ☐ Surgical instruments

### Digital evidence includes:

- ☐ Computers: desktop, laptop, palm top
  - ☐ Floppies / CDs / pen drives
  - ☐ Mobile phones
  - ☐ Blue films – CD/cassettes
  - ☐ Laptops / Palm-held devices
  - ☐ Email accounts, social networking sites.
7. The seizure list and memo should be prepared on the spot itself in the presence of two independent witnesses. The witnesses should sign the lists and memos giving their full details including temporary and permanent addresses.
  8. All procedures mandated by law should be completed at the site itself and advice taken from the prosecutors where necessary.
  9. All evidence collected at site should be properly packed, sealed and marked. Each packet should be duly labeled with the description of exhibits, case reference, markings and authentication by the forwarding authority. The specimen seal should also be packed and forwarded along with exhibits, along with a detailed forwarding note.
  10. A detailed forwarding note should be written, requesting expert to give his/her specific opinion on points of investigation relevant to a case.
  11. Proper chain of custody should be maintained. Care should be taken while collecting biological evidence and should not be degraded or lying gathering dust. This will have bearing on the forensic report.
  12. There may be other evidence in the form of interrogations, statements of victim(s), medical examination reports, psychological reports, statements of other witnesses, previous cases, cases pending in other jurisdictions etc.
  13. The IO should make a separate record of the statement of each such person whose statement is recorded. The person so questioned shall be bound to answer all questions relating to the case put to him. The answer to these questions would expose his/her involvement in crime..
  14. The IO should record the statements of all witnesses who are acquainted with the facts and circumstances of the case and who may have to be

cited in the court as witnesses.

15. The statements recorded by IO should be in direct form rather than indirect form of speech. The statement should be as narrated by the victim/witnesses without any prejudice and/or further description.
16. The IO should consider the NGO person, social worker, counselor or official accompanying the search team as an independent witness for the purpose of search and seizure. There should be complete compliance to Section 15 (2) with regard to Panchas.
17. The Special Police officer should include two or more respectable inhabitants of the locality, out of which at least one should be a woman.<sup>2</sup>
18. Refusal or neglect without reasonable cause when called upon to witness a search by an order in writing delivered or tendered is an offence.<sup>3</sup>

## REFERENCES

1. If the seizing officer is below the rank of an officer in charge of a police station he/she shall immediately report the seizure to the concerned officer. The seizure shall be reported immediately to the magistrate within whose jurisdiction the property was seized. The court shall give further directions on the disposal of the property. Section 102 IPC, is wide enough to cover offences either in the Indian Penal Code or any penal statute but the key is that the property should be either suspected to be stolen or be found under circumstances which leads suspicion of an offence having being committed. The property that has been sized or frozen should have some nexus with the alleged offence which is under investigation of the police officer concerned. This would cover chance recovery under a special Act such as Immoral Traffic Prevention Act, 1956 provided the procedures are properly followed. This provision would cover seizure of money in the bank or postal account, seizure of vehicle. However Section 102 as per case law cannot be used on immovable property such as House, lands, mountains, rivers, roads, streets similar properties.
2. Locality does not necessarily mean the street in which the house is situated. Whether the panchas belong to the same locality or not has to be decided on the facts of each case (Bachu Lakhman Vs State of Gujarat AIR 1960 Guj 37). Rest assured that improper searches will be challenged by the accused and such searches are liable to be quashed completely if Section 15 (2) is not complied with. A social worker from an NGO can be witness to such a search (Protocols on rescue , Maharashtra Government , Women and Child Department 26.10.2007)
3. Under Section 91 of the Code of Criminal Procedure, whenever any Officer-in-charge of a Police Station considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation under the Code of Criminal Procedure by such officer, he may issue a written order to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it at the time and place stated in the order. The

person receiving such an order is legally bound to produce it unless the document requisitioned comes within the purview of Section 123 or Section 124 of the Indian Evidence Act.

### Section 187 in The Indian Penal Code

“Omission to assist public servant when bound by law to give assistance — Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both”

#### 4. Section 161 of Code of Criminal Procedure

### Examination of witnesses by police

1. Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
  2. Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
  3. The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.
- #### 5. Section 162 of Code of Criminal Procedure

## Statements to police not to be signed:

### Use of statements in evidence.

1. No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter
2. Provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872 ); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross- examination.
3. Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872 ), or to affect the provisions of section 27 of that Act. Explanation.- An omission to state a fact or circumstance in the statement referred to in sub- section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

Sample Format for Witness  
Attendance before IO

POLICE NOTICE/ORDER TO REQUIRE  
THE ATTENDANCE OF A PERSON

u/s 160 OR 175 CrPC

(Name) ..... s/o  
.....residing at  
.....

Whereas the presence of the aforesaid person is necessary for the purpose of investigation/Inquiry into the offence reported to have been committed in Cr.No. .... under section ..... of Police Station .....; Therefore the said person is hereby directed to appear before the Investigating Officer at ..... (place) on .....(date) at .....(time), as the said person appears to be acquainted with the facts and circumstances of the said case. If the said person fails to attend the inquiry at the above place, it amounts to an offence under section 174 IPC.

INVESTIGATING OFFICER (NAME OF PS)



## CHAPTER 13

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# Filing of Charge-Sheet

The journey to justice through the process  
of law should be swift and secure.

- Justice A. Ramalingeshwara Rao (in WP No.7825 of 2007)

## **IMPLEMENTING AGENCY: POLICE AND JUDICIARY (PROSECUTION)**

The Investigating Officer collects material from all sides and prepares a report, which he files in the court as Charge-Sheet or the Final Report.<sup>1</sup> This report is an intimation to the Magistrate that upon investigation into a cognizable offence the Investigation Officer has been able to procure sufficient evidence for the court to inquire into the offence, and the necessary information is being sent to the court. A correct and proper charge-sheet is an essential prerequisite in securing conviction. Delay in filling charge-sheet hampers delivery of justice to victims.

## SOPs for filing of Charge-Sheet

1. The IO should take legal opinion for drafting the charge-sheet.
2. The IO should collect all expert opinions and reports that are admissible under Section 45 IEA. In a trafficking crime, such reports and opinions include:
  - a. Medical report of physical injury to the victim.
  - b. Medical report of sexual abuse perpetrated on the victim.
  - c. Medical report of sexually transmitted diseases.
  - d. Relevant medical history of victim (e.g. medical termination of pregnancies, miscarriages, etc.) to prove earlier violations on her.
  - e. Report of age verification/determination.
  - f. Expert opinion on psychosocial trauma ('the harm factor').
  - g. Report of DNA fingerprinting if there is any issue of establishing identity of the persons.
  - h. Any other relevant forensic reports to prove/ substantiate the crime or the role of the offenders (e.g. viscera report in a case where the victim was drugged before abuse).
  - i. Copies of statements recorded u/s. 164, Cr. PC in the case, or in any other case, which are relevant to this case. For example, rescue in one case led to intelligence on another crime which had already been disposed off from the police records. This intelligence showed the involvement of some traffickers who had not been charged or investigated earlier.
  - j. Copies of statements of accused recorded
  - k. Test Identification Parade report
  - l. Reports and prosecution sanctions, if any
3. The IO should present CD with a Crime Map of the entire scene of the crime from source through transit to destination areas including other places of exploitation.
4. The IO should prepare a matrix of crime–offender–evidence and present it in the CD.
5. In cases when rescued persons include adults and children, the

simultaneous role of the competent court – session court (for adult) and children’s court (for children) – comes into operation. Sometimes the children’s court would also call for the CD. Therefore, it would be appropriate that IO prepares an additional copy of the CD and sends it to the children’s court.

6. In cases when offenders includes major and juvenile, the role of different courts emerges. In the case of juveniles, the Juvenile Justice Board (JJB) is the competent authority to deal with the case. In such matters, the JJB would also require a copy of the CD. Therefore, IO should prepare additional CDs.
7. In the cases of trafficking in persons for commercial sexual exploitation, there would be multiple crimes and multiple offenders. All these have to be included in the documents.
8. While moving the court, the IO should ensure following documentation:
  - a. First Information Report
  - b. Crime details form
  - c. Arrest/court surrender memo
  - d. Property seizure memo
  - e. Final Report Form
9. The above documentation should comprehensively cover following sections:
  - a. Name of the parties,
  - b. Nature of the information,
  - c. Names of the persons who appear to be acquainted with the circumstances of the case,
  - d. Whether any offence appears to have been committed and if so, by whom,
  - e. Whether the accused has been arrested,
  - f. Whether he has been released on his bond and if so, whether with or without sureties,
  - g. Whether he has been forwarded in custody under Section 170, CrPC.
  - h. Whether the report of medical examination of the woman has been attached where investigation relates to an offence under

Sections 370, 376, 376A, 376B, 376C or 376D of the Indian Penal Code; Sections of POCSO and ITPA.

10. The IO should ensure confidentiality of victims' statement. For this IO should use provisions of Section 173 (6) CrPC wherever necessary.
11. Charge sheet should be filed against all exploiters, using special legislations and sections of the Indian Penal Code.
12. The special legislations include ITPA 1956, JJ Act 2000, Goa Children's Act 2003, and POCSO 2012. These laws have comprehensive and stringent provisions to address various issues related to commercial sexual exploitation. In certain situations provisions of the Information Technology Act 2000 may also be included.
13. The IO should make efforts for timely submission of the charge-sheet against an accused person i.e. within the 60 days statutory period.<sup>3</sup>
14. The IO may continue further investigation and file supplementary charge-sheet in case charge-sheet has already been filed in the court.<sup>4</sup>
15. In case of unsatisfactory investigation, the Magistrate can also order for further investigation or fresh investigation.<sup>4</sup>
16. It should be borne in mind that if investigation is observed to be suspicious or illegal, the court can independently scrutinize.<sup>5</sup>
17. The complainant (individual, group or institution, NGO, etc.) are entitled to copy of the final report and an opportunity for hearing. They are also entitled to notice.

## REFERENCES

### 1. Section 173 Code of Criminal Procedure

#### Report of police officer on completion of investigation

- A.** Every investigation under this Chapter shall be completed without unnecessary delay.
- a.** As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-
- i)** the names of the parties;
  - ii)** the nature of the information;
  - iii)** the names of the persons who appear to be acquainted with the circumstances of the case;
  - iv)** whether any offence appears to have been committed and, if so, by whom;
  - v)** whether the accused has been arrested;
  - vi)** whether he has been released on his bond and, if so, whether with or without sureties;
  - vii)** whether he has been forwarded in custody under section 170.
- b.** The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.
- B.** Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,
- C.** Whenever it appears from a report forwarded under this section

that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

- D. When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-
    - i. all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
    - ii. statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.
  - E. If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.
  - F. Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).
  - G. Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).
2. Charge sheet is the final report of the police officer as soon as investigation is completed to the Magistrate. When the investigation is complete, the police officer is required to submit a report under Section 173 of the Code of Criminal Procedure to the Magistrate stating the

name of the parties, the nature of information, etc. This report is known as the 'charge-sheet' or 'challan' if a prima facie case is made out against the accused or 'Final Report' if no such case is made out. Charge-sheet forms the basis of the case in the Court. Under ITPA 1956 the SPO/TPO can search and rescue without warrant, they can act promptly and rescue need not be delayed. The SPO must be present to conduct the search. In (*Delhi Vs Ram Singh AIR 1962 SC 63*), the Supreme Court upheld the lower court's decision to quash the charge-sheet on the basis that neither an SPO nor his qualified subordinate officers were present to lead the investigation, stating that an SPO and his officers were the only persons competent to investigate offences under ITPA.

3. (Section 167 (2) (a) (i) (ii); Ninety days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment term not less than 10 yrs and Sixty days where investigation relates to any other offence.
4. Being a borderless crime with ramifications in different places, it is possible that new linkages of the crime emerge long after the charge-sheet is filed. In such situations, after filing the charge-sheet, it would be appropriate to carry out further investigation to expose the entire linkages of the crime. The IO, on receipt of any further information and fresh material, can initiate further investigation u/s. 173 (8) Cr. PC and file a supplementary charge-sheet.

Power of police to conduct further investigation, even after laying final report, is recognized under Section 173(8) of CrPC (*Sri BSSVVV Maharaj vs. State of UP 1999 Cr.L.J 3661 SC*).

When a power under sub section (8) of Section 173 of CrPC is exercised, the Court ordinarily should not interfere with the statutory powers of the investigating agency. The Court cannot issue directions to investigate the case from a particular angle or by a particular agency (*Popular Muthiah vs. State 2006 (7) SCC 296*).

But in *State of Punjab vs. CBI and others (2011) 11 SCR 281*, where the state local police was unable to carry out investigation due to



involvement of state political leaders and senior police officers, the Supreme Court observed that in a case where charge-sheet has been filed, Section 173(8) of CrPC cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of CrPC for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice.

Rajneesh Kumar Singhal Vs. The State (National Capital Territory of Delhi) 2001 Cri.L.J.1192, wherein, it is held that "The Magistrate is empowered to direct the police to further investigate the matter after the filing of the challan before it and even after taking cognizance of the offence. There is no provision in the Code which bars the Magistrate before whom the report under Sec. 173(2) of the Code is filed to direct further investigation of the offence even in a case where cognizance has already been taken. All procedural laws are meant to do justice and not to stifle the same. In a given situation where a magistrate finds that the matter requires further investigation in view of the partisan attitude of the police there can be no bar to his directing the investigating agency to conduct further investigation in the case. The magistrate by giving such a direction does not trench upon the jurisdiction of the police who are empowered to further investigate in the matter. The magistrate simply by asking the police to further investigate the matter in a sense is directing it to exercise to jurisdiction which has been conferred on the police under Section 173(8) of the Code. Restricting the powers of the Magistrate will adversely affect the administration of justice. Magistracy cannot be made so powerless that it becomes incapable of correcting a wrong and advancing the cause of justice."

5. The Apex Court has held that Criminal Justice should not be allowed to become a casualty for wrongs committed by the Investigation Officers. The conclusion of the court in a criminal trial cannot be allowed to depend solely on the probity of investigation. Even if the investigation is illegal or even suspicious, the court can independently scrutinize the rest of the evidence uninfluenced by ill motivated investigation.

(State of Karnataka Vs Yarappa Reddy JT 1999 (8) SC 10: AIR 2000 SC 185); (Shyamal Ghosh Vs State Of WB AIR 2012 SC 3539); (Babu Vs Chennai AIR 2013 SC 1769); (Dayal Singh and Ors Vs State of Uttaranchal AIR 2012 SC 3046); (Kishanbhai Vs State of Gujarat MANU /SC/0004/2014);

6. To lend support to the contention that the Petitioner/Complainant (first informant) will have to be provided with an opportunity of being heard before taking the case on file by the Learned Judicial Magistrate, the Learned counsel for the Petitioner/Complainant relies on the decision of the Hon'ble Supreme Court in Bhagwant Sing V. Commissioner of Police (1985 Crl.L.J.1521), wherein, in paragraph 4, it is laid as follows:

"Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient

ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the

informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

Where the police after investigation filed Final Report, a copy of Final Report would be given to the informant and an opportunity of Hearing shall also be given to him as per decision in Pramod Behl V. State of Jharkhand reported in 2004 CrL.J. NOC 362 (Jhar).

7. Where a charge-sheet filed within the statutory period is incomplete that is without all papers under Section 173 (5) CrPC the accused is entitled to be released on bail under the default clause (M.C Venkatareddy Vs State of AP 1994 Cr LJ 257).

The Supreme Court in H.N. Rishbud vs. State AIR 1955 SC 196, has viewed the investigation of an offence as generally consisting of-

- i. Proceeding on the spot;
- ii. Ascertainment of the facts and circumstances of the case;
- iii. Discovery and arrest of the suspected offender;
- iv. Collection of evidence relating to the commission of the offence which may consist of –
  - a. The examination of various persons (including the accused) and the reduction of their statements into writing,
  - b. The search of places or seizure of things considered necessary for the investigation or to be produced at the trail; and
- v. Formation of the opinion as to whether on the materials collected there is a case to place the accused before a Magistrate for trail, and if so, taking the necessary steps for the same by the filing of a 'charge-sheet' under Section 173 CrPC.

After the completion of the investigation, it is for the investigating police officer to form an opinion as to whether or not there is a case to place the accused before the Magistrate for trail. He would then follow the procedure laid down in Section 169 or 170 CrPC and submit a report under Section 173 of CrPC. The Magistrate receiving the report has no power to direct the police to submit a

particular kind of report; if he considers the conclusions reached by the police officer as incorrect, he may direct the police officer to make further investigation under Section 156 of CrPC.

The police report under Section 173, CrPC will contain the facts and the conclusions drawn by the police. The Magistrate is expected to apply his judicial mind to the report and he is not bound by the conclusions drawn by the police. He may differ with the police report, be it a 'charge-sheet' (or 'final report'). He may decide to issue process even if the police recommend that there is no sufficient ground for proceeding further (H.S. Bains vs. State 1981 SCR (1) 935).

In *Kaptan Singh & others vs. State of M.P.* (1997) 4 SC 211, the Apex Court observed: it is trite that result of investigation can never be legal evidence. Police report submitted under Section 173 CrPC is the outcome of an investigation. The result of investigation under Chapter xii of the Criminal Procedure Code is a conclusion that an IO draws on the basis of materials collected during investigating and such conclusion can only form the basis of a competent court to take cognizance thereupon under Section 190(1) (b) CrPC and to proceed with the case for trial, where the materials collected during investigation are to be translated in to legal evidence. The trial conclusion solely on the evidence adduced during the trial; and it cannot rely on the investigation or the result thereof.



## CHAPTER 15

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# Deposition before Court

“In cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience, the court could consider issuing a commission to record evidence by way of video-conferencing.”

- Justices S N Variava and B N Agrawal, Supreme Court.

## **IMPLEMENTING AGENCY: POLICE, PROSECUTION AND JUDICIARY**

In our legal system, the victims have very little control over what happens to their cases. This can be partly corrected by exercising their right to representation. It is crucial for sensitive and victim-centric legal aid and support from counselors and social workers to be given to victims throughout the period starting with rescue, during trial and right up to the logical end.



## SOPs for deposition before court

1. The State Government may, by notification in the Official Gazette, and after consultation with the High Court establish one or more courts for providing speedy trial of offences (Under 22A ITPA 1956,) <sup>1</sup>
2. The Committal Court shall commit such cases to the Court of Sessions, preferably within fifteen days after the filing of the charge-sheet.
3. The victim's advocate/public prosecutor should:
  - A. Explain To The Victim About The Nature Of The Proceedings,
  - B. Prepare The Victim For The Case
  - C. Assist Her In The Court
  - D. Provide Her With Guidance As To How She Might Obtain Help Of A Different Nature from other agencies – for example, counseling or medical assistance.
4. The victim can have her own lawyer, nevertheless functioning under the public prosecutor.<sup>3</sup>
5. The public prosecutor or the IO should explain to the victim:
  - A. importance of their deposition,
  - B. reasons why some questions are asked during cross examinations,
  - C. relevance of minor and major contradictions in their statements.
6. The Prosecutor must work in tandem with the social worker to ensure that the depositions go off smoothly.
7. The victim-witness may not recall all that she stated before the police at the time of recording the statement.<sup>4</sup>
8. The presence of social worker/counselor at the crucial stage of deposition is very important because the hostility and indifference towards victims may create hurdle for proper deposition.
9. The witness may be classified into three categories: 1. Wholly reliable, 2. Wholly unreliable, 3. Neither wholly reliable nor wholly unreliable. In situations (1) and (2) the court usually will not have any difficulty either way. In situation (3) the court will be circumspect and will look for corroboration in material particulars by way of direct or circumstantial evidence.

10. The prosecutor should ensure victim-witness protection before court of law during trial.
11. The prosecutor should utilize fast track courts and video conferencing to the extent possible needs to be ensured.
12. In camera trials are mandatory in rape cases. <sup>5</sup>
13. The presence of the SPO/Investigation Officer at the time of trial is a must. It is his duty to keep the witness present. If there is failure on the part of the witness to remain present, it is the duty of the court to take appropriate action. <sup>5</sup>
14. During the examination of the IO before the court no objection can be taken to his referring to the case diary files while answering questions. He is expected to answer questions only with reference to what he has recorded during investigation.
15. If facts are discovered by the IO on interrogation, the IO should depose to the exact words which distinctly led to the fact discovered. The words attributed to the accused must find place in the deposition of the IO. <sup>6</sup>
16. The panchas should depose before the court and verify their signatures on the panchanama. <sup>7</sup>
17. The evidence of witnesses is ordinarily taken down in the form of a narrative.
18. After recording the evidence of each witness it has to be read over to the witness in the presence of the accused.
19. If the witness denies the correctness of any part of the evidence then the correction should not be carried out in the deposition but instead the judge has to make a memorandum incorporating the objection raised by the witness and remarks of the judge.
20. Court should take a participative role to deliver justice to the victim.
21. The courts are empowered to record remarks in trial regarding the demeanor of witness.
22. Deposition through video conference is allowed in trial of crimes and in cases of commercial sexual exploitation <sup>8</sup>
23. In case a victim-witness cannot be examined, it can't be a ground for acquittal of the accused.
24. The Prosecutor can request the court to declare witness as hostile if witnesses deviate from their previous statement made to the police or

when the court considers it necessary to grant permission under Section 154 of the India Evidence Act 1872 noting from the witness's demeanor, attitude, temper, bearing, tenor or tendency of answers

25. An arrest warrant should be issued against an absconding accused if he is not present during trial. In this situation the court may continue with the trial by segregating trial of accused person or stop the trial and issue an arrest warrant. This will disrupt the trial but each situation will vary and decisions taken accordingly.
26. An accomplice may at times given the facts of each case be granted pardon under Section 306 Criminal procedure Code. Such a person becomes approver and testifies on behalf of prosecution. However Courts as a matter of practice should not accept evidence of such a witness without corroboration in material particulars. This corroboration may be ocular or circumstantial.
27. Doctors are termed as “expert witness” by Law. The examining doctor has to prepare a reasoned medical opinion without delay as per the Section 164A, CrPC.9 A medical opinion has to be provided on the following aspects:
  - A. Evidence that survivor was administered drugs, psychotropic substance, alcohol etc;
  - B. Evidence that the survivor has an intellectual, or mental disability;
  - C. Evidence of physical health consequences such as bruises, contusions, contused lacerated; wounds, tenderness, swelling, pain in micturition, pain in defecation, pregnancy etc;
  - D. Age of the survivor if she/he does not have a birth certificate or if mandated by the court.
  - E. Absence of injuries on the survivor has to be interpreted by the examining doctor in the courtroom based on medical knowledge and details of the episode provided by survivor to the doctor. Lack of injuries have to be based on the time lapse between the incident and reporting to hospitals, information pertaining to luring the child or adult survivor, or factors such as fear, shock and surprise or other circumstances that rendered the child or adult survivor unable to resist the perpetrator.
  - F. The examining doctor will also have to provide a medical opinion on

negative findings related to forensic lab analysis. Absence of negative laboratory results may be due to delay in reaching a hospital for examination and treatment; activities undertaken by the survivor after the incident of sexual violence such as urinating, washing, bathing, changing clothes or douching which leads to loss of evidence; use of condom/vasectomy or diseases of the perpetrator, or perpetrator did not emit semen if it was a penile penetrative sexual act.

28. The examining doctor should clarify in the court that normal examination findings neither refute nor confirm whether the sexual offence occurred or not. They must ensure that a medical opinion cannot be given on whether 'rape' occurred because 'rape' is a legal term.
29. Examining doctors must also ensure that comments on past sexual history, status of vaginal introitus must not be made as these are unscientific and the courts too have determined them as biased.
30. In most health centers because of the constant turnover, the doctor appearing in the court room could be different from the one who carried out the medical management of the survivor. In such instances, it is critical that the doctor making the court appearance be thorough with the case file of the survivor, such as, documentation of history examination findings and clinical inference drawn by the examining doctor.<sup>9</sup>

## **Deposition of a child (Child as Witness or Victim)**

1. To create a child-friendly environment, separate rooms be provided within the Court precincts where the statement of the child victim can be recorded.<sup>2</sup>
2. In case of any disability of the victim or witness involving or impaired communication skills, assistance of an independent person who is in a position to relate to and communicate with such disability should be taken.
3. The child witness should be permitted to testify from a place in the courtroom which is other than the one normally reserved for other witnesses.
4. To minimize the trauma of a child victim or witness, the testimony may be recorded through video conferencing or by way of a close circuit television. If this is not possible, a screen or some arrangement be made so that the victims or the child witness do not have to see the body or face of the accused. The screen which should be used for the examination of the child witness or a victim should be effective and installed in such manner that the witness is visible to the trial judge to notice the demeanor of the witness. Single visibility mirrors may be utilized, which, while protecting the sensibilities of the child, shall ensure that the defendant's right to cross-examination is not impaired.
5. The competency of the child witness should be evaluated. The trial court is required to be satisfied and ought to record its satisfaction that the child witness understands the obligation to speak the truth in the witness box. In addition to the above, the court is required to be satisfied about the mental capacity of the child at the time of the occurrence concerning which he or she is to testify as well as an ability to receive an accurate impression thereof.
6. The court must be satisfied that the child witness has sufficient memory to retain an independent recollection of the occurrence and a capacity to express in words or otherwise his or her memory of the same.
7. The court has to be satisfied that the child witness has the capacity to understand simple questions which are put to it about the occurrence.

8. As far as possible avoid disclosing the name of the prosecutrix in the court orders to save further embarrassment to the victim of the crime; anonymity of the victim of the crime must be maintained as far as possible throughout.
9. The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing.
10. The court should be satisfied that the victim is not scared and is able to reveal what has happened to her when she is subjected to examination during the recording of her evidence. The court must ensure that the child is not concealing portions of the evidence for the reason that she has bashful or ashamed of what has happened to her.
11. It should be ensured that the victim who is appearing as a witness is at ease, so as to improve upon the quality of her evidence and enable her to shed hesitancy to depose frankly so that the truth is not camouflaged on account of embarrassment at detailing the occurrence due to shame being felt by the victim.
12. Questions should not be put to a victim or to the child witness which are not connected to case to make him/her comfortable and to depose without any fear or pressure.
13. The trial judge may permit, if deemed desirable, to have a social worker or other friendly, independent or neutral adult in whom the child has confidence to accompany the child who is testifying. This may include an expert supportive of the victim or child witness in whom the witness is able to develop confidence should be permitted to be present and accessible to the child at all times during his/her testimony. Care should be taken that such person does not influence the child's testimony.<sup>12</sup>
14. When child witness is deposing, the persons not necessary for proceedings including extra court staff be excluded from the courtroom during the hearing.
15. Unless absolutely imperative, repeated appearance of the child witness should be prevented. It should be ensured that questions which are put in cross-examination are not designed to embarrass or confuse victims of rape and sexual abuse.<sup>11</sup>

16. Questions to be put in cross-examination on behalf of the accused, in so far as they relate directly to the offence, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing.<sup>11</sup>
17. The examination and cross-examination of a child witness should be carefully monitored by the presiding judge to avoid any attempt to harass or intimidate the child witness.
18. It is the duty of the court to arrive at the truth and subserve the ends of justice. The courts have to take a participatory role in the trial and not act as mere tape recorders to record whatever is being stated by the witnesses. The judge has to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, the court can control the proceedings effectively. The court must be conscious of serious pitfalls and dereliction of duty on the part of the prosecuting agency. Upon the prosecuting agency showing indifference or adopting an attitude of aloofness, the judge must exercise the vast powers conferred under section 165 of the Evidence Act and section 311 of the CrPC to elicit all necessary materials by playing an active role in the evidence collecting process.
19. The judge is expected to actively participate in the trial, elicit necessary materials from the witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. The judge has uninhibited power to put questions to the witness either during chief examination or cross-examination or even during re-examination for this purpose. If a judge feels that a witness has committed an error or slip, it is the duty of the judge to ascertain whether it was so, for the chances of erring may increase due to nervousness during cross-examination.
20. The court should ensure that the embarrassment and reservations of all those concerned with the proceedings, which includes the prosecutrix, witnesses, and counsels, may result in camouflage of the ingredients of the offence. The judge has to be conscious of these factors and rise above any such reservations on account of embarrassment to ensure that they do not cloud the truth and the real actions which are attributable to the accused persons.

21. The court should ascertain the spoken language of the witness as well as range of vocabulary before recording the deposition. In making the record of the evidence court should avoid use of innuendos or such expressions which may be variably construed. For instance, gandi harkatein or badtameeziyan have no definite meaning. Therefore, even if it is necessary to record the words of the prosecutrix, it is essential that what those words mean to her and what is intended to be conveyed are sensitively brought out.
22. The court should ensure that there is no use of aggressive, sarcastic language or a grueling or sexually explicit examination or cross-examination of the victim or child witness. The court should come down with heavily to discourage efforts to promote specifics and/or illustration by any of the offending acts which would traumatize the victim or child witness and affect their testimony.
23. The court has to ensure that no element of vulgarity is introduced into the court room by any person or the record of the proceedings.
24. In order to elicit complete evidence, a child witness may use gestures. The courts must carefully translate such explanation or description into written record.
25. The victim of child abuse or rape or a child witness, while giving testimony in court, should be allowed sufficient breaks as and when required.<sup>11</sup>
26. Cases of sexual assaults on females should be placed before lady judges wherever available. To the extent possible, efforts be made that the staff in the courtroom concerned with such cases is also of the same gender.
27. A case involving a child victim or child witness should be prioritized and appropriate action taken to ensure a speedy trial to minimize the length of the time for which the child must endure the stress of involvement in a court proceeding.
28. While considering any request for an adjournment, it is imperative that the court considers and give weight to any adverse impact which the delay or the adjournment or continuance of the trial would have on the welfare of the child.
29. Effort should be made to ensure that there is continuity of persons who are handling all aspects of the case involving a child victim or witness



including such proceedings which may be out of criminal justice system. This may involve all steps commencing from the investigation to the prosecutor to whom the case is assigned as well as the judge who is to conduct the trial.

30. The judge must ascertain the language with which the child is conversant and make every effort to put questions in such language. If the language is not known to the court, efforts to join an independent translator in the proceedings, especially at the stage of deposition, should be made.
31. The judge should ensure that there is no media reporting of the camera proceedings. In any case, sensationalization of such cases should not be permitted.

## REFERENCES

### 1. ITP Act-Section 22A: Power to establish special courts

- A. If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the Official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the first class, or as the case may be, Metropolitan Magistrates, in such district or metropolitan area. Power to establish special courts.—(1) If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the Official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the first class, or as the case may be, Metropolitan Magistrates, in such district or metropolitan area." (2) Unless otherwise directed by the High Court, a court established under sub-section (1) shall exercise jurisdiction only in respect of cases under this Act.
- B. Subject to the provisions of sub-section (2), the jurisdiction and powers of the presiding officer of a court established under sub-section (1) in any district or metropolitan area shall extend throughout the district or the metropolitan area, as the case may be.
- C. Subject to the foregoing provisions of this section a court established under sub-section (1) in any district or metropolitan area shall be deemed to be a court established under sub-section (1) of section 11, or as the case may be, sub-section (1) of section 16, of the Code of Criminal Procedure, 1973 (2 of 1974), and the provisions of the Code shall apply accordingly in relation to such courts. Explanation.—In this section, "High Court" has the same meaning as in clause (e) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974).

### Section 22AA: Power of Central Government to establish special courts

- a. If the Central Government is satisfied that it is necessary for the

purpose of providing for speedy trial of offences under this Act and committed in more than one State, it may, by notification in the Official Gazette and after consultation with the High Court concerned, establish one or more courts of Judicial Magistrates of the first class or Metropolitan Magistrates for the trial of such offences.

- b. The provisions of section 22A, shall so far as may be, apply to the courts established under sub-section (1) as they apply to courts established under that section.

**2. Court on Its Own Motion vs. State And Anr. on 14 August, 2007.**

- A. It shall be endeavor of the Court to create a child friendly atmosphere while conducting its proceedings in respect of a sexually abused child.
- B. Proceedings shall be conducted in camera and appropriate measures taken to ensure that the child victim is not confronted with the accused and the directions in this regard given by the Supreme Court in 'Sakshi v. Union of India' are enforced.
- C. Wherever possible the Court may resort to the recording of statement through video conferencing.
- D. The Court may, if it so thinks fit, direct that the questions to be put by the accused in cross-examination to the child victim be given in writing to the Presiding Officer of the Court, who may in turn put the same to the victim in a language which is neither embarrassing nor confusing.
- E. The Committal Court shall commit such cases to the Court of Sessions preferably within fifteen days after the filing of the charge-sheet.

**3. Section 301(2) in The Code Of Criminal Procedure, 1973.**

If in any such case, any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission

of the Court, submit written arguments after the evidence is closed in the case.

4. Hon'ble Supreme Court has stated that 'by and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a videotape is replayed on the mental screen'.

Despite what numerous judgments of the highest court says about minor and major contradictions, every little memory lapse or clarity after so many years will be pounced on by the defense during cross examination to show the victims as wholly unreliable. Many times the police, who record the statement, may omit or don't have the patience to record what the victim is stating accurately and creating a situation at trial wherein she will be made out to be a liar. However the courts have time and again clarified that on sole testimony of a 'reliable' witness, it would be sufficient to convict an accused and that orthodox approach of automatically disbelieving the victim is unacceptable.

Courts cannot cling to a fossil formula and insist upon Corroboration even if, taken as a whole, the case spoken of by the victim of Sex crime strikes the judicial mind as probable.

Maharashtra vs. Chandraprakash Kewalchand Jain MANU/SC/0122/1990

Ahmadi, J. (as the Lord Chief Justice then was) speaking for the Bench summarized the position in the following words: "A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person

who is interested in the outcome of the charge levied by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction of her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.”

**Andhra Pradesh vs. Gangula Satya Murthy JT 1996 (10) SCC 550:**

The courts were directed to focus on the broader probabilities of a rape case and not be swayed by minor contradictions or insignificant discrepancies. In this case a woman was raped and throttled to death. The respondent and she knew each other, and on the evening of her death she had visited his house where her body was later discovered. The respondent was brought before the police where he admitted his guilt in an extra-judicial confession and a letter to the respondent from the victim was produced. The Sessions Court found the Respondent guilty on circumstantial evidence and convicted him. However, the High Court upon appeal acquitted the perpetrator. The State thereafter filed an appeal before the Supreme Court. The reasoning given by the High Court was that there was a possibility that the death was due to consumption of poison, and the other injuries had been sustained after death. They found some discrepancies in the details of the confession and the evidence resulting from the inquest. They also assumed that the sexual intercourse was controversial, as there were questions

over physical signs of resistance. The Supreme Court held that the High Court erred in its judgment about the possibility of death being attributed to a means other than by throttling. Further, the High Court wrongly cast a stigma on the victim's character. The High Court had no basis to disturb the findings of fact of the lower court. It is distressing that the High Court chose to advance "fragile" reasons to upset a well-reasoned conclusion by the Trial Court. The Supreme Court held that: "Courts should show great responsibility when trying an accused on a rape charge and deal with such cases with the utmost sensitivity. The Courts should focus on the broader probabilities of a case and not be swayed by minor Contradictions or insignificant discrepancies. This is heightened by the fact that violence against women and rape is on the increase. Finally, evidence must be dealt with in the totality of the background of the entire case and not in isolation.

Vadivelu Thevar Vs State of Madras AIR 1957 SC 614;

State of Punjab Vs Tarlok Singh AIR 1971 SC 121;

Phool Chand Vs State of Rajasthan AIR 1977 SC 315;

Bharwada Bhoginibai Hirjibai Vs State of Gujarat AIR 1983 SC 753;

Abdul Nawaz Vs State of WB AIR 2012 SC 1951;

The Hon'ble SC observed certain characteristics about an ordinary witness, they are as follow:

- i. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a videotape is replayed on the mental screen.
- ii. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.
- iii. The powers of observation differ from person to person. What one may notice another may not. An object or movement might emboss its image on one person's mind whereas it may go unnoticed on the

part of another.

- iv. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.
  - v. In regard to the exact time of an incident or time duration of an occurrence, usually people make their estimates by guess work on spur of the moment at the time of interrogation and one cannot expect people to make very precise or reliable estimates in such matters. Again it depends on the time sense of individuals which varies from person to person.
  - vi. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short span. The witness is liable to get confused or mixed up when interrogated later on.
  - vii. A witness though wholly truthful is liable to be overawed by court atmosphere and piercing cross-question made by counsel and out of nervousness mix up facts , gets confused regarding sequence of events or fills up details from imagination on spur of moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him. Perhaps it's a sort of psychological defense mechanism activated on the spur of the moment.
5. State of Punjab vs. Gurmit Singh 1996 (2) SCC 384.
- Recognised that a delay in filing the FIR is not fatal to the case of the prosecution, given the social context. This is a case where the Supreme Court set aside the acquittal, convicted the accused, and held that holding these trials “in camera” were mandatory in such cases. It was also strongly suggested that hearings should be conducted by lady judges as far as possible. With respect to the treatment of the complainant by defense counsel, the Supreme Court has specifically directed that the courts must not sit as “silent spectators” during cross-examination; rather, they must ensure that cross-examination is not made a means of harassment

or cause humiliation to the victim of a crime. The Supreme Court was careful to take into account the social context of the complainant in dealing with the issue of delay in reporting. It held: “The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honor of her family...The conduct of the prosecutrix ... appears to be most natural. The trial court overlooked that a girl, in a tradition-bound non-permissive society in India, would be extremely reluctant even to admit that the incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down on by the society. Her not informing the teachers or her friends at the examination centre under the circumstances cannot detract from her reliability.” The Supreme Court has advised the lower judiciary that, even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of a loose character.

6. Rameshbhai Hajabhai Chachiya Vs State of Gujarat 2012 (3) GLR 2250.
7. Under Section 15 (1) the special police officer must record her/his reasons for such urgent search. Where the law requires the reasons should be recorded in writing a search made without such record is illegal. The prosecution must adduce evidence of such record during the trial. In view of Section 15 (2), the Special Police officer is required to include two or more respectable inhabitants of the locality out of which at least one has to be a woman. A panchanama is to be made Under Section 15(2) and a contemporaneous document of the search is prepared and the panchas have to sign it after going through it to verify the contents. As far as the woman pancha is concerned she need not be a local inhabitant. Locality does not necessarily mean the street in which the house is situated. Attempt is usually made to extract information to render the search improper and thus to get it quashed. Special care must be taken with witnesses providing such evidence and they must be guided properly by the prosecutor.
8. Delhi High Court in CrI.M. 1467/04 in CrLW 532/1992; The State of Maharashtra vs. Dr. Praful B. Desai on 1 April, 2003(2003) 4 SCC 601.



It will be important to undertake and support video trials between India and Bangladesh./Nepal etc. Strategic litigation should be undertaken so as to make deposition of victims from outside India and within by video conferencing a matter of course.

9. Section-164 A of CrPC.- Medical examination of the victim of rape.
  - i. Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.
  - ii. The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely:
    - a. the name and address of the woman and of the person by whom she was brought;
    - b. the age of the woman;
    - c. the description of material taken from the person of the woman for DNA profiling;
    - d. marks of injury, if any, on the person of the woman;
    - e. general mental condition of the woman; and
    - f. other material particulars in reasonable detail.
  - iii. The report shall state precisely the reasons for each conclusion arrived at.
  - iv. The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.
  - v. The exact time of commencement and completion of the examination shall also be noted in the report.

- vi. The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.
  - vii. Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.
10. 2007 (4) JCC 2680 Court On Its Own Motion vs. State & Anr
  11. Sakshi Vs Union of India 1999 6 SCC5<sup>91</sup>
  12. Smt. Sudesh Jhaku vs K.C.J. And Others on 23 May, 1996.

"There are situations in which it is desirable to have a social worker or other friendly but "neutral" adult visible to the child, or even sitting beside a young child who is testifying. While some judges have permitted this, others have not. There have been cases where the Judge has ordered supportive persons to leave the court room, along with other members of "the public." I am leaving the matter to the good sense of the learned trial Judge. However, one thing is certain. The proceedings have to be in camera.

13. 2007 Crl.L.J. 4704 Radhu vs. State of Madhya Pradesh

"It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a 'rape', if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve

the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”



## CHAPTER 14

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# Witness Protection

Witnesses are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed and it no longer can constitute a fair trial.

**- Jeremy Bentham, Jurist**

## IMPLEMENTING AGENCY: POLICE AND JUDICIARY

One of the many challenges faced by witnesses (including victims who become witnesses in the case) is that they and their families are often subjected to significant harassment and intimidation from traffickers, sometimes escalating to violence, which could be fatal. Therefore, police and judiciary are required to play crucial role in witness protection.

There are three categories of witnesses: (i) person who has been commercially sexually exploited by the trafficker; (ii) person who has witnessed or has information about the crime; (iii) professional or expert who may have information as a result of analysing the crime and its evidence, such as medical officer, police officer, counsellor, forensic expert, etc.

## SOPs for Witness Protection

1. All witnesses should be given full protection by the police and the organization undertaking their care.<sup>9</sup>
2. The IO should assess and find out if there is a need of witness protection.
3. He/she should inform the witness about availability of witness protection program and the procedures and rights of the witness therein.
4. The role of Police in witness protection usually begins immediately at the stage of filling witness protection application by a witness.
5. In case the IO feels that there is threat to witness from the accused, he should object to bail application of the accused.
6. In case IO finds that accused, after getting bail, is threatening/influencing the witness, he should immediately move the court for cancellation of granted bail.<sup>4</sup>
7. The IO should ensure that witness and evidences reaches the court safely.
8. The Law officer should ensure the protection of victim by conducting proceedings in camera (Section 327 CrPC).<sup>2,3</sup>
9. The legal officer should accord camera proceedings under Section 22 of the ITPA 1956.
10. To ensure the protection of the witnesses to record the evidence during the trial a two-way closed-circuit television or video link and two-way audio link should be installed by connecting the two rooms where witness and accused are seated.<sup>6</sup>
11. Witness should be protected at all times including lunch recess where they must be provided with nourishment. It is often during the lunch recess that victims are accosted, made fun of, etc.
12. In all cases of CSE, anonymity of the victims must be maintained so that the name is shielded from the media and public.<sup>7</sup>
13. The court should avoid adjournments and repeatedly summoning witnesses for deposition.<sup>8</sup>
14. In all such situations it is for the Prosecutor, the NGO and the judge to play a pro-active role to ensure that the witness is not intimidated. Prosecutor must make appropriate applications before the Hon'ble Court to ensure protection to the witness.
15. The Human Trafficking being a heinous crime with organized network,

the state should consider following measures for witness protection:

- A.** Transferring the witness from his city of residence to another city
- B.** Provide the witness with a job
- C.** The witness should be given new name, identification, ration card and new passport.
- D.** Accept the responsibility of the witnesses' entire family and provide them with a security cover.



## REFERENCES

1. In “Ms. Neelam Katara vs. Union of India & Ors.” CrI. W. No. 247/2002 (ILR (2003) II Del 377 260 High Court of Delhi) Hon’ble High Court of Delhi has nominated Member Secretary, Delhi State Legal Services Authority as competent Authority to provide protection to the witness for crime is punishable with capital punishment and life imprisonment. In the order dated 14.10.2003 in paragraph 15, Hon’ble Court has stated that “Till a suitable Legislation is brought on the Statute book, we direct that following guidelines shall operate for protection of the witnesses. In paragraph 16, Hon’ble Court has stated that “These guidelines shall be known as “Witness Protection Guidelines”.

“Witness” means a person whose statement has been recorded by the IO under Section 161 CrPC pertaining to a crime punishable with death or life imprisonment.

“Accused” means a person charged with or suspected with the commission of a crime punishable with death or life imprisonment.

“Competent Authority” means the Member Secretary, Delhi Legal Services Authority.

### ADMISSION TO PROTECTION:

The competent Authority, on receipt of a request from a witness shall determine whether the witness requires police protection, to what extent and for what duration.

### FACTOR TO BE CONSIDERED:

In determining whether or not a witness should be provided police protection, Competent Authority shall take into account the following factors:

1. The nature of the risk to the security of the witness which may emanate from the accused or his associates.
2. The nature of the investigation or the criminal case.
3. The importance of the witness in the matter and the value of the information or evidence given or agreed to be given by the witness.
4. The cost of providing police protection to the witness.

### OBLIGATION OF THE POLICE:

While recording statement of the witness Under Section 161 CrPC, it will be the duty of the IO to make the witness aware of the “Witness Protection Guidelines” and also the fact that in case of any threat he can approach the Competent Authority. This the Investigation Officer will inform in writing duly acknowledged by the witness.

It shall be the duty of the Commissioner of Police to provide security to a witness in respect of whom an order has been passed by the Competent Authority directing police protection.

2. Sakshi Vs Union of India and Ors. Order dated 9th August, 1999 2004(6) SCALE 15.
  - A. The provisions of Sub-section (2) of Section 327 CrPC, in addition to the offences mentioned in the sub-section, would also apply in inquiry or trial of offences under Sections 354 and 377 IPC.
  - B. In holding trial of child sex assault or rape:
    - i. A screen or some such arrangements may be made where the victim or Witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
    - ii. the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or Witnesses in a language which is clear and is not embarrassing;
    - iii. the victim of child assault or rape, while giving testimony in

court, should be allowed sufficient breaks as and when required.

3. These directions are in addition to those given in *State of Punjab vs. Gurmit Singh*. In *State of Punjab v. Gurmit Singh* MANU/SC/0366/1996 this Court had highlighted the importance of provisions of Section 327 (2) and (3) CrPC and a direction was issued not to ignore the mandate of the aforesaid provisions and to hold the trial of rape cases in camera. It was also pointed out that such a trial in camera would enable the victim of crime to be a little comfortable and answer the questions with greater ease and thereby improve the quality of evidence of a prosecutrix because there she would not be so hesitant or bashful to depose frankly as she may be in an open court, under the gaze of the public. It was further directed that as far as possible trial of such cases may be conducted by lady Judges wherever available so that the prosecutrix can make a statement with greater ease and assist the court to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities.
4. We may also place on record that the conviction rate in the country has gone down to 39.6% and the trials in most of the sensational cases do not start till the witnesses are won over. “It is therefore of the utmost importance that, in a criminal trial, witnesses should be able to give evidence without inducement or threat either from the prosecution or the defense ....the progress of a criminal trial must not be obstructed by the accused so as to lead to the acquittal of a really guilty offender.... there can be no possible doubt that, if any conduct on the part of an accused person is likely to obstruct a fair trial, there is occasion for the exercise of the inherent power of the High Court to secure the ends of justice .... and it is for the continuance of such a fair trial that the inherent powers of the High Courts, are sought to be invoked by the prosecution in cases where it is alleged that accused person, either by suborning or intimidating witnesses, or obstructing the smooth progress of a fair trial.” The Supreme Court confirmed the order of cancellation and observed that the primary purpose of the Criminal Procedure Code was to ensure a fair trial to an accused person as well as to the prosecution.

The Court observed: The cancellation of bail was justified on the basis of

the conduct of the accused subsequent to release on bail. (In the public interest case, (W.P. CrI. No. 109/2003 and batch) in *National Human Rights Commission v. State of Gujarat* 2003(9) SCALE 329)

The primary purpose of the Criminal Procedure Code is to ensure a fair trial to an accused person as well as to the prosecution. Where it was not safe to allow the accused to be at large, even in a Bail-able matter, the High Court, in exercise of its inherent power, allowed an application by the complainant for cancelling the bail on the ground that “it would not be safe to permit the appellant to be at large”. The Supreme Court confirmed the order of cancellation. (*Talab Haji Hussain vs. Madhukar Purushottam Mondkar* A.I.R. 1958 SC 376.

5. Here a series of orders were passed by the Supreme Court. There, the National Human Rights Commission (NHRC) filed a public interest case seeking retrial on the ground that the witnesses were pressurized by the accused to go back on their earlier statements and the trial was totally vitiated. The Supreme Court observed: “a right to a reasonable and fair trial is protected under Articles 14 and 21 of the Constitution of India, Article 14 of the International Covenant on Civil and Political Rights, to which India is a signatory, as well as Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms. On perusal of the allegations in the special leave petition and number of criminal cases coming to this Court, we are prima facie of the opinion that criminal justice delivery system is not in sound health. The concept of a reasonable and fair trial would suppose justice to the accused as also to the victims. From the allegations made in the special leave petition together with other materials annexed thereto as also from our experience, it appears that there are many faults in the criminal justice delivery system because of apathy on the part of the police officers to record proper report, their general conduct towards the victims, faulty investigation, failure to take recourse to scientific investigation etc.” Then, on the question of protection of witnesses, the Supreme Court referred to the absence of a statute on the subject, as follows: “No law has yet been enacted, not even a scheme has been framed by the Union of

India or by the State Government for giving protection to the witnesses. For successful prosecution of the criminal cases, protection to witnesses is necessary as the criminals have often access to the police and the influential people. We may also place on record that the conviction rate in the country has gone down to 39.6% and the trials in most of the sensational cases do not start till the witnesses are won over. In this view of the matter, we are of opinion that this petition (by NHRC) be treated to be one under Article 32 of the Constitution of India as public interest litigation.” The Court directed that in the counter-affidavit of the Gujarat Government, it should indicate the steps, if any, taken by it for extending protection to the lives of victims, their families and their relations; if not, the same should be done. The Court also wanted to know whether any action had been taken by the Gujarat Government against those who had allegedly extended threats of coercion to the witnesses, as a result whereof the witnesses had changed their statements before the Court. The Court also directed the Union of India to inform the Court about the proposals, if any, “to enact a law for grant of protection to the witnesses as is prevalent in several countries”. By a subsequent order passed on 12th July, 2004, the Supreme Court issued directions to all States and Union Territories to give suggestions for formulation of appropriate guidelines in the matter.

6. Supreme Court in State of Maharashtra Vs. Dr. Praful B Desai, 2003 (4) SCC 601 and Sakshi, 2004 (6) SCALE 15.

When the 172nd report came up before the Supreme Court in Sakshi v. Union of India, 2004 (6) SCALE 15, the Supreme Court referred to the argument of the NGO, (Sakshi) before the Law Commission as stated earlier. The Supreme Court accepted as admissible video-conferencing method for purpose of hearing the victim or witnesses. Recording by way of video-conferencing was accepted in view of the earlier judgment of the Supreme Court in State of Maharashtra v. Dr. Praful B. Desai: 2003 (4) SCC 601 (see para 31). It was stated that this was consistent with sec. 273 of the Code. However, in the final directions, the Supreme Court suggested the method of using a 'screen' or 'some such arrangement'. The Court also referred to the need for in camera proceedings as stated

in sec. 327 of the Code.

7. In the Delhi Domestic Working Women's Forum v. Union of India (1994) 1 S.C.C. 14.

"The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

In all rape trials anonymity of the victim must be maintained, as far as necessary.

It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape”.

8. The Plight of Witnesses in Criminal Cases in relation to expenses payable to witnesses provided in sec. 312 of the Code of Criminal Procedure, 1973 came up for discussion in (Swaran Singh s. State of Punjab AIR 2000 SC 2017) where it was observed “Not only that a witness is threatened; he is maimed; he is done away with; or even bribed. There is no protection for him.” Section 309 of the Code of Criminal Procedure, 1973 requires that the criminal trial must proceed from day to day and should not be adjourned unless ‘special’ reasons are recorded by the Court. “If any Court finds that day to day examination of witnesses mandated by the legislature cannot be complied with due to the non cooperation of the accused or his counsel, the Court can adopt any of the measures indicated in the sub section, i.e. remanding the accused to custody or imposing costs on the party who wants such adjournments (the costs must be commensurate with loss suffered by the witnesses, including the expenses to attend the Court). Another option is, when the accused is absent and the witness is present to be examined, the Court can cancel his bail, if he is on bail.” (State of UP Vs Shambhu Nath Singh 2001 (4) S.C.C. 667).
9. The Supreme Court in (Zahira Habibulla H. Sheikh and Another V. State of Gujarat and Others 2000 (4) S.C.C. 187) was emphatic on the

role of the State to play in protecting the witnesses. It has been observed that as a protector of its citizens, the State has to ensure that during the trial in the Court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed. Supreme Court reminded the State that it has a constitutional obligation and duty to protect the life and liberty of the citizen.



# CHAPTER 16

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## Trial of Case

So long as there is rule of law and independent Judiciary,  
I don't think anyone needs to fear from anything. We  
can ensure protection to all sections of society.

- **Justice T. S. Thakur, Chief Justice of India,**

# IMPLEMENTING AGENCY:

## 1. POLICE

## 2. PROSECUTION AND JUDICIARY

In a criminal trial it is important to ensure fair trial, which is guaranteed under Article 21 of the Constitution of India. India has a well-defined statutory, administrative and judicial system for trials of criminal cases. India largely follows the adversarial system, where generally the onus of proof is on the State (Prosecution) to prove the case against the accused. But since the enactment of POCSO Act, 2012, the onus of proof has been put on the accused person.

### **Key processes involved in trial:**

1. Evidence by prosecution, upon whom onus of proof generally lies
2. Cross-examination by accused/counsel
3. Mandatory examination by the court
4. Evidence by accused, if any, in defence
5. Cross-examination of witnesses by prosecution
6. Conclusion of evidence
7. Oral arguments
8. Submission of memorandum of arguments, if any
9. Judgment by the court
10. Conviction/acquittal
11. If conviction, hearing on quantum of sentence
12. Appeal to higher courts (Sessions/High Court/Supreme Court)

## SOPs to be observed during trial of case

1. The state should ensure establishment of adequate number of courts, especially the special courts designated in specific provisions of law.
2. For the purposes of providing a speedy trial, special court has been designated for each district to try the offences in cases such as ITP Act, 1956 and POCSO Act, 2012.
3. As per the act such Special Court shall, for the purpose of the trial of any offence under ITP Act, 1956, POCSO Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session.
4. The Metropolitan Magistrate or a Judicial Magistrate of the first class or special court shall try any offence under Section 3, Section 4, Section 5, Section 5B, Section 5C, Section 6 or Section 7 of ITPA, 1956.
5. Such special court shall have jurisdiction to try offences under section 67B of Information Technology Act, 2000, in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conductor manner or facilitates abuse of children online.<sup>1</sup>
6. Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and 9 of POCSO Act, the Special Court shall presume that such person has committed the offence, unless the contrary is proved.
7. The trial of the proceedings under ITPA, 1956, shall be conducted in camera.
8. The Magistrate may hold summary trial of offences under ITPA, 1956, provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year.<sup>2</sup>
9. In any prosecution for any offence under POSCO Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. The "culpable

mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe.

10. The Special Public Prosecutor or, as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.
11. The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.
12. A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.
13. The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.
14. The Special Court shall ensure that the child is not called repeatedly to testify in the court.
15. The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.
16. The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial: provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child. For this purposes, the identity of the child shall include the identity of the child's family, school, relatives, neighborhood or any other information by which the identity of the child may be revealed.
17. In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.
18. The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.
19. The Special Court shall complete the trial, as far as possible, within a

period of one year from the date of taking cognizance of the offence.

20. The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.
21. The Special Court may record the statement of a child through video conferencing or by utilizing single visibility mirrors or curtains or any other device.
22. During the trial, it should be ensured by the Court that victims of CSE are not re-victimized through insensitive and adverse questions during cross examination. The cross-examination should not be used as an instrument for harassment or causing humiliation to the victim.<sup>3</sup>
23. As far as possible chief examination and cross examination of the child victim should be conducted on the same day.<sup>4</sup>
24. The Additional Session Judge/District Judge shall maintain a panel of psychiatrists, psychologists and experts in sign language etc. who would assist in recording the statement of witnesses as and when requested by the Sessions Courts.<sup>5</sup>
25. If it is brought to the notice of the Court from a support person/Rape Crisis Cell Advocate/victim, regarding threats received by the victim or her family members to compromise the matter, the judge shall immediately direct the police to look into the matter and provide an action taken report before the Court within 2 days. The Court should ensure that protection is provided to the victim and her family.<sup>5</sup>
26. In cases where the witness is sent back unexamined and is bound down, the Court shall ensure that at least the traveling expenses for coming to and from for attending the Court are paid.<sup>5</sup>
27. The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.
28. Wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.
29. If a child has a mental or physical disability, the Special Court may

take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

30. The two-finger test to ascertain the sexual assault is banned and past sexual history of the victim is irrelevant in the trial. <sup>6</sup>
31. In case Magistrate alters or add a charge, the prosecutor or the accused will be allowed to recall the witnesses connected to the altered charge.
32. If the victim is recalled for re-examination based on revised charges, the prosecutor should ensure that no previously asked and answered question is put to the victim.

## REFERENCES

1. Section 67 Information Technology Act, 2000  
Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form. Whoever,
  - A. publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
  - B. creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner;
  - C. cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
  - D. facilitates abusing children online; or
  - E. records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees
2. Section 22-B of ITPA, 1973.

### Power of court to try cases summarily

- A. “Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government may, if it considers it necessary so to do, direct that offences under this Act shall be tried in a summary way by a Magistrate including the presiding officer of a court established under sub-section (1) of Section 22-A and the provisions of Section 262 to 265 (both inclusive) of the said Code, shall, as far as may be, apply to such trial:
- B. Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of

imprisonment for a term not exceeding one year:

- C. Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties record an order to that effect and thereafter recall any witness, who may have been examined and proceed to hear or re-hear the case in the manner provided by the said Code”

3. The State Of Punjab vs. Gurmit Singh & Ors on 16 January, 1996

In “The State Of Punjab vs. Gurmit Singh & Ors on 16 January, 1996” the Supreme Court observed that “there has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The Court, therefore, should not sit as a silent spectator while the victim of crime being cross-examined by the defence. It must effectively control the recording of evidence in the Court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination. The court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she maybe too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as ‘discrepancies and contradictions’ in her evidence.”



**4. Sheeba Abidi v/s state of Delhi and other, 113(2004) DLT 125.**

The Petitioner approached the Delhi HC praying that the trial case of her 6 year old child who was sexually abused on many occasions on different locations in the school, be heard in child friendly manner and as the child was showing post traumatic stress disorder. The Court held that “ the learned Trial Judge may also consider the feasibility of examining the child witness in his Chamber so that the child is not overawed by the Court atmosphere. The presiding Judge must ensure that child victim is examined in a congenial, cordial and friendly. It would be better if the evidence is recorded in post-lunch session at the end of Board when other cases are over and Court is less crowded. This Court need not say that necessary equipment/ gadgets for compliance of directions have to be arranged by the prosecution”.

**5. High Court of Delhi: W.P.(CRL) 696/2008: Delhi Commission for Women vs. Delhi Police**

The Additional Session Judge/District Judge shall maintain a panel of psychiatrists, psychologists and experts in sign language etc. who would assist in recording the statement of witnesses as and when requested by the Sessions Courts.

If it is brought to the notice of the Court from a support person/ Rape Crisis Cell Advocate/victim, regarding threats received by the victim or her family members to compromise the matter, the judge shall immediately direct the ACP to look into the matter and provide an action taken report before the Court within 2 days. The Court must ensure that protection is provided to the victim and her family.

In cases in which the witness is sent back unexamined and is bound down, the Court shall ensure that at least the traveling expenses for coming to and from for attending the Court are paid.

**6. As for medical examination, other than the Criminal Law amendments of 2013, The Supreme Court in Lillu @ Rajesh & Anr vs. State Of Haryana on 11 April, 2013 in Criminal Appeal No. 1226 of 2011 has held that the two-finger test on a rape victim violates her right to privacy, and asked the government to provide better medical procedures to confirm sexual assault. A bench of Justices B.S. Chauhan and F.M.I. Kalifulla said that even if the report of the two-finger test is affirmative; it cannot give rise**

to presumption of consent on part of a rape victim. “Undoubtedly, the two-finger test and its interpretation violate the right of rape victims to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent,” the bench said. Referring to various international covenants, the judges said rape victims are entitled to legal recourse that does not violate their physical or mental integrity and dignity. “Medical procedures should not be carried out in a manner that constitutes cruel, inhuman or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. “The State is under an obligation to make such services available to victims of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with her privacy,” the bench said. Keeping in mind the International Covenant on Economic, Social, and Cultural Rights 1966 and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, the apex court said, rape victims are entitled to legal recourse that does not re-traumatize them or violate their physical or mental integrity and dignity. “They are also entitled to medical procedures conducted in a manner that respects their right to consent,” it said.

7. Court On Its Own Motion vs State And Anr. on 14 August, 2007.
  - A. It shall be endeavor of the Court to create a child friendly atmosphere while conducting its proceedings in respect of a sexually abused child.
  - B. Proceedings shall be conducted in camera and appropriate measures taken to ensure that the child victim is not confronted with the accused and the directions in this regard given by the Supreme Court in 'Sakshi v. Union of India' are enforced.
  - C. Wherever possible the Court may resort to the recording of statement through video conferencing.
  - D. The Court may, if it so thinks fit, direct that the questions to be put by the accused in cross-examination to the child victim be given in writing to the Presiding Officer of the Court, who may in turn put the same to the victim in a language which is neither embarrassing nor confusing.

- E. The Committal Court shall commit such cases to the Court of Sessions preferably within fifteen days after the filing of the charge-sheet.



## ANNEXURE I:

# Landmark High Court & Supreme Court Cases

## 1. Prerana vs. State of Maharashtra, Decided 18-4-2007

1. The Bombay HC gave the following directions after hearing the Advocate for the Petitioner and the counsel for Maharashtra State:
  - A. “Anti-Trafficking Cell” of the police shall be created and established at the different levels in the police force, and such Cells shall be appropriately staffed.
  - B. In every district at the level of the Local Crime Branch a Senior Police Inspector shall be designated as head of the “Anti-Trafficking Cell” having jurisdiction all over the district.
  - C. At the Commissionerate level, a police officer of the rank of DCP shall be designated as head of the “Anti-Trafficking Cell” having jurisdiction all over the area falling under such Commissionerate.
  - D. Upon a raid under ITPA being conducted by the Special Police Officer, the concerned “Anti-Trafficking Cell” shall be forthwith informed of the same to enable such Cell to supervise the investigation.
  - E. An “Anti-Trafficking Cell” shall be created at the State level under the direct charge of the Deputy Inspector General of Police having jurisdiction all over Maharashtra.
2. The State Government within 2 months of receipt of the aforementioned list shall issue a Notification to associate such persons with the Special Police Officers as a non- official advisory board to advise them on the implementation of ITPA, and the said Notification shall be circulated amongst all police stations in Maharashtra. The State Government shall circulate the said list amongst Magistrates all over Maharashtra to enable them to take the assistance of such persons whilst carrying out their functions under section 17(2) of ITPA as envisaged under section 17(5).
3. The Special Police Officers are directed:
  - A. To seek the association of the persons mentioned in the said list at clause 2(a) from the stage of raid till completion of trial;
  - B. to produce before the Magistrate within 24 hours all those persons found on the brothel premises, including the rescued victims;

- C. To produce upon rescue operations an apparent child victim before the Child Welfare Committee;
- D. To immediately upon rescue operations contact a lawyer nominated by the Maharashtra State Legal Services Authority on the panel constituted to provide free legal-aid to the rescued victims for protecting the interests of the rescued victim;
- E. To record the detailed statements of the rescued victim at the place of safety in the presence of the persons mentioned in the said list and / or the Superintendent / Probation Officer / responsible staff of the institution;
- F. To seize/recover the personal belongings and documents of the rescued victims at the time of rescue operation or soon thereafter, and to hand the same to the concerned rescued victim;
  - i. To recover the child or children of the rescued victim at the time of raid or soon thereafter, and to reunite the child or children with their mother;
  - ii. To separate the child or children from their mother only on a reasoned order being passed on inquiry by the Child Welfare Committee under the JJ Act (a) "Anti-Trafficking Cell" of the police shall be created and established at the different levels in the police force, and such Cells shall be appropriately staffed. (b) In every district at the level of the Local Crime Branch a Senior Police Inspector shall be designated as head of the "Anti-Trafficking Cell" having jurisdiction all over the district. (c) At the Commissionerate level, a police officer of the rank of DCP shall be designated as head of the "Anti-Trafficking Cell" having jurisdiction all over the area falling under such Commissionerate. (d) Upon a raid under ITPA being conducted by the Special Police Officer, the concerned "Anti-Trafficking Cell" shall be forthwith informed of the same to enable such Cell to supervise the investigation. (e) An "Anti-Trafficking Cell" shall be created at the State level under the direct charge of the Deputy Inspector General of Police having jurisdiction all over Maharashtra.
- G. To separate the rescued victims from the offenders immediately upon the rescue operation;

- H. To convey the rescued victims and the offenders in separate vehicles from the brothel to the place of safety / police lock-up or from the place of safety / police lock-up to the court;
  - I. To place the rescued victims in a place of safety immediately upon the rescue operation, and in no event should the rescued victim be kept in the police station;
  - J. Upon raid of a brothel, to immediately inform the District Magistrate or Sub-Divisional Magistrate of the same, with a request to initiate action under section 18(1) of ITPA for closure of the brothel.
4. The State Government is directed:
- A. To take measures to ensure that the institutions housing rescued women and children are equipped with basic amenities, and are clean, pollution free and well ventilated;
  - B. To appoint at least 2 Counsellors for each State- run Protective Home expeditiously, preferably within six months;
  - C. to include the appointment of Counselors as a mandatory condition for granting license to private institutions housing rescued victims;
  - D. To appoint at least 2 Probation Officers for each State- run Protective Home;
  - E. To fill the staff vacancies in each State- run Protective Home;
  - F. To provide the rescued victims with an opportunity to avail of formal education in the institutions, especially literacy programmes;
  - G. To extend the Vocational Training Scheme presently pending approval of cabinet to Protective Homes;
  - H. To frame Rules under section 23 of ITPA, especially for carrying into effect the provisions of section 18;
  - I. To include training on law related to children, including ITPA, on the curriculum of the Judicial Officer's Training Institute, Nagpur;
  - J. To include training on law related to children, including ITPA, on the curriculum of the Police Training Academy;
  - K. To constitute Special Courts as envisaged under section 22A of ITPA within 6 months.
5. The Superintendents of the institutions housing rescued child victims or major victims are directed:



- A. That no person shall be allowed access to a rescued child victim / major victim without permission of the Child Welfare Committee / Magistrate, as the case may be;
  - B. That on the aforementioned permission being granted by the Child Welfare Committee / Magistrate, such person shall be given access in the presence of the Superintendent or Probation Officer or any other responsible staff of the institution;
  - C. That the Superintendent or Probation Officer or any other responsible staff of the institution shall accompany the rescued child victim / major victim in the event of such rescued victim having to go outside the institution premises.
6. The Magistrates and Sessions Judges are instructed:
- A. to ensure the presence of a Counselor in court whilst rescued child victim's testimony is being recorded;
  - B. to provide the rescued child / major victim with the assistance of a lawyer nominated on the panel constituted by the Maharashtra State Legal Services Authority;
  - C. to seek the assistance of lawyers nominated on the panel constituted by the Maharashtra State Legal Services Authority as friend of the court [amicus curie];
  - D. to pass orders under section 18(1) of ITPA when convicting a person of an offence under section 3 and/or Section 7 of ITPA;
  - E. to get verified the rescued victim's documentary evidence of age if the same shows her to be a major by directing the concerned police personnel to ascertain its veracity with the authority that has issued the said document and file are before the court;
  - F. to order a second medical examination to ascertain the age of the victim to be conducted by a medical officer attached to another public hospital, in case the results of the first medical examination are under doubt. Age verification shall be done in (1) Nair Hospital, Mumbai Central, (2) St. Georges Hospital, Mumbai (3) Cama and Albles Hospital, Mumbai and (4) Lokmanya Tilak Medical Hospital, Sion, Mumbai, and all civil hospitals at District Headquarters and rural hospitals in mofussils.

- G.** to record the testimony of the rescued child / major victim within 1 month of the charge- sheet being filed so that the victim's rehabilitation is not hindered;
  - H.** to expedite the trial of cases relating to trafficking and commercial sexual exploitation, and preferably to dispose of such cases within 6 months of the charge- sheet being filed.
7. The Magistrates are directed to follow the following procedure when rescued major victims of trafficking are brought before them:
- A.** The Magistrate shall, after giving an opportunity of being heard to the rescued major victim, cause an inquiry to be made by the Probation Officer as to the correctness of the information received under Section 15 (1) or Section 16 (1) of ITPA, as the case maybe, the age, character, circumstances and antecedents of the person and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home and the prospects of her rehabilitation as stipulated under Section 17 (1) of ITPA;
  - B.** The inquiry by the Probation Officer should be completed as expeditiously as possible and in any case within three weeks of the date of the order;
  - C.** During the period of such inquiry by the Probation Officer, the major victim shall be kept in a place of safe custody and she should not be kept in the custody of any person likely to have a harmful influence over her;
  - D.** The Magistrate shall consider the report of the Probation Officer in consultation with the persons mentioned in the said list under Section 17 (5) of ITPA [item No.2(c) above] and thereafter pass appropriate orders under the Act of rehabilitation, repatriation, or release, as the case maybe.
8. The Magistrates are directed to initiate prompt action when an application under section 16 of ITPA is filed before them so that the victim is rescued from the flesh trade.
9. The Maharashtra State Legal Services Authority are directed:

- A. To provide free legal-aid to the rescued victims immediately upon the rescue operation and till completion of trial;
  - B. to distribute the names and particulars of the lawyers to all Magistrates and Sessions Judges and Child Welfare Committees.
10. The Auditor General shall consider and decide within 1 month the proposal pending before him about providing petty cash to Superintendents of State- run institutions.
11. A. The Public Works Department shall complete the construction of the institution for rescued victims under Swadhar Project in Mumbai expeditiously and preferably within two years;
- B. The Women & Child Development Department, Government of Maharashtra shall make operational the institution for rescued victims under Swadhar Project in Mumbai within 2 months from completion of its construction.
12. Trafficking Police Officer shall investigate cases registered under ITPA as contemplated under Section 13(4) thereof or assist any investigation of any cases under ITPA.
13. A. The State Legal Advisory Committee to formulate an effective rehabilitation programme, including the mode of its implementation, within 4 months of its constitution. SL A C may involve the corporate sector and employment agencies in their rehabilitation project.'
- B. The Women & Child Development Department, Government of Maharashtra shall implement the rehabilitation programme in all its institutions housing victims of trafficking and commercial sexual exploitation.
- The S L A C shall annually evaluate the rehabilitation programme, and submit its evaluation report with its suggestions to the State Level Advisory Committee and the Women and Child Development Department, Government of Maharashtra for appropriate action.
14. A. The Maharashtra State Commission for Women shall research and publish annual reports with regards to the scale and incidence of trafficking of women and children for commercial sexual exploitation.

**B.** The Women and Child Development Department, Government of Maharashtra to make operational within two months the software titled “Victim Trafficking Registry”, and the data so collected to be kept confidential for use of the government departments and police officials to optimize social and legal intervention. The petitioner shall render all active assistance for establishing this Registry.

## **2. Prerana v State of Maharashtra, (2003) 2 BOMLR 562**

In this case, a petition was filed by Prerana, an organization that worked in red light areas of Mumbai and Navi Mumbai with a view to prevent trafficking of women and children and rehabilitate victims of forced prostitution, to pray for directions to protect rescued children from being re-trafficked. Based on reading of Articles 15(3), 23, 39(e) and (f), 48 and 15A, the court observed that women and children need to be protected against trafficking. The court also examined the issues of minors being charged under the ITPA and being produced before the JJB as a juvenile in conflict with law instead of being treated as a child in need of care and protection and legal representation of the minors by the advocate for the traffickers as well. Based on these issues, the Bombay High Court issued the following directions:-

1. No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection, as defined by Sections 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000. At the first possible instance, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be less than 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law or to the Child Welfare Committee if such a person is a child in need of care and protection.
2. A Magistrate before whom persons rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place are produced, should, under Section 17(2) of the said Act, have their ages ascertained the very first time they are produced before him. When such a person

is found to be less than 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a Juvenile in conflict with law or to the Child Welfare Committee if such person is a child in need of care and protection.

3. Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the Probation Officer.
4. The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.
5. If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be followed for the rehabilitation of the rescued child.
6. No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose.
7. An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic (Prevention) Act, 1956.

### **3. W.P.No. 36807 of 2006, order of the Madras High Court dated 31.12. 2006**

With a view to promote the reintegration and rehabilitation of sexually abused children or trafficked children, the High Court issued the following directions to the police, Magistrates, Juvenile Justice Boards, Legal Services Authority, and State Government:

## Directions for Police:

- A. Every victim rescued to be produced within 24 hours before the Magistrate, if it is a minor victim to be produced before the competent authority under the JJ Act and should be treated with compassion and respect for their dignity and have access to mechanisms of justice and prompt redress for the harm that they have suffered, as provided for by law.
- B. Confidentiality of the victim's identity to be protected and to be informed only to people who are legally entitled/competent to know
- C. Victims to be taken place of safety.
- D. Counseling for therapeutic intervention to be made available.
- E. The list of psychological counselors for each district shall be prepared by the Social Welfare Department.
- F. Medical examination of all rescued victims and accused/other persons taken into custody by the police shall be conducted within 48 hours of rescue of a victim or arrest of the accused.
- G. The list of medical personnel for each district shall be prepared by the Social Welfare Department.
- H. The rescued victims shall be freely and unconditionally provided with legal assistance by the Tamil Nadu State Legal Services Authority immediately after the rescue.
- I. The age and other tests of the rescued victims should also be done as far as possible in the presence of child-supporting individuals and preferably within 48 hours from the rescue.
- J. Questioning should be done mostly by women police officers. The mental health aspects of the children have to be kept in mind. There should not be too much pressure on the child to speak all the details of the traumatic incident.
- K. Adopting a multi-disciplinary approach to the crime should be attempted by co-adopting additional members into the investigating team so as to include doctors, social workers, co-opting mental health experts, counselors or anyone who would be useful in the overall rehabilitation of the child.
- L. Investigation should necessarily be conducted into the trafficking

angle in all cases of missing persons, procurement of minor girls, buying and selling, child marriages, and all cases of kidnapping and abduction.

- M.** The State and Police must focus on increasing the number of trafficking victims rescue and number of prosecutions and convictions of traffickers
- N.** Separation of victims from offenders is necessary at the initial stage to avoid the dependency of the victims on offenders.
- O.** Access to victims must be under the supervision of the Child Welfare Committee or the Organization or any other competent authority dealing with the issues of women and/or children. Child victims may be identified by the use of decoy customers. N.G.Os. and social workers must be involved in this regard.
- P.** Rescue operations to be more humanely and sensitively carried out along with a rehabilitation plan, protecting the human rights of the prostitutes.
- Q.** Examination of the victim/witnesses should be in the presence of social workers/women police/parents or others who have the trust or confidence of the child. Examinations should also be done in a victim-friendly atmosphere and not in police stations.

## Directions For Magistrates/Juvenile Justice

### Board/Legal Services Authority:

- A.** The Magistrate/Juvenile Justice Board shall handle all cases involving sexual abuse of children within a stipulated time frame preferably within a period of six months. On production of the rescued traffic victims,
- B.** The concerned Magistrate/Board shall ensure that medical examination is conducted in order to check sexual abuse and/or rape.
- C.** The Magistrate/Board shall issue appropriate directions to conduct enquiry to find out who is the parent or guardian and whether they are responsible for the trafficking of the child and if need be, to

appoint a guardian to protect the interests of the child. The custody of the rescued child should not be handed over to parent/guardian without involving the Probation Officer/Social Worker and if necessary the

- D.** Magistrate/Board may make an order for the child's intermediate custody in a safe place. If the child has objection to go back, the Magistrate/Board should try to determine the reasons for it and take a decision which will serve the best interest of the child rather than giving her custody to the claimers such as parents or relatives.
- E.** Trials of cases of trafficking should generally be In-Camera and the Magistrate/Board should avoid disclosing the name of the prosecutrix and their orders, to save embarrassment to the victim and anonymity of the victim of the crime should be maintained throughout. While holding the trial of a child sex abuse or rape cases, the courts should ensure that -
  - i.** A screen or some such arrangements are made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused.
  - ii.** The victims of child abuse or rape cases, while giving testimony in court, should be allowed sufficient breaks as and when required.
  - iii.** The questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court, who may put them to the victim or witnesses in a language which is clear and is not embarrassing to her.
- F.** Orders sending victims to Homes must be made with their consent after providing them legal representation and counseling.
- G.** Children rescued from streets should be located in a shelter home or in a protected place, away from red light areas in order to facilitate their rehabilitation.
- H.** The State Legal Services Authority shall form a Legal Aid Clinic in every vigilance home/shelter home, so that, if the victims need recourse to law, either under the criminal jurisprudence or under the civil jurisprudence, steps can be taken without delay.



- I. Judicial officers and Juvenile Board Members need to be sensitized on the issue of trafficking and sexual exploitation of children.
- J. To prevent secondary victimization during interrogation/examination by investigating agencies as well as during court procedure, where a child is made to recall minute details of the sexual acts and experience, and is grilled for getting proof, a model code of conduct should be evolved to check what offences have been committed against the trafficked victim, to check who has committed these offences and whether they have been booked under appropriate sections of law; if not, direct the police to do so, to check if the appropriate sections of IPC, ITP Act and Juvenile Justice Act against the traffickers have been stated in the Charge-Sheet and refer the matter to the concerned Court.
- K. Ensure that the evidence of the child is taken in-Camera, as per Section 327 of the CrPC. and arrange for translators, if the child is from another State and does not speak the local language. Ensure that the Special Courts/Boards have a child friendly and supportive atmosphere while taking the child's evidence. Preferably, an elder woman who inspires the confidence of the child may be present.

### Directions for State Government:

- 1. The State is directed to establish more shelter homes in all the districts at the district level. The shelter homes should have all basic amenities and the environment there should be clean, pollution free and well ventilated. Each home shall have facilities for periodical health checkups by the Government approved panel of doctors.
- 2. The needs of trafficked victims who are drug addicts or alcoholics must also be addressed. For this purpose, the help of a de-addiction expert must be obtained. The State Government must prepare a list of de-addiction centers across the State.
- 3. Every victim and their minor dependants shall be helped in every possible way to obtain formal education free of cost, which includes free supply of text books, uniforms, transport and scholarships to victims and

their school going children. Where such education is not possible for certain unavoidable circumstances, as well as in addition to the formal education, life skills education shall be provided. The State Government is directed to frame new schemes for training of the inmates of the Home and traffic victims in computers, languages and related fields. The rescued persons shall be equipped with the knowledge and skills appropriate to their attitude and orientation, so that their economic rehabilitation becomes easier. The rescued person shall have the right to choose her own economic rehabilitation plan.

4. Vocational training and guidance shall also be given to such rescued persons. No rescued victim shall be sent back to the family without adequate assessment and without ensuring social acceptance and family support. State will ensure that rehabilitation is carried out depending on how safe and nurturing the family environment is for the victim. Specialized centers of health shall be set up and maintained to cater to the needs of palliative care for the victims suffering from terminal states of HIV/AIDS. Specialized counseling shall be provided to victims of HIV/AIDS including pre-test, post-test and ongoing support.
5. Psycho-social interventions shall be conducted in a private and confidential setting and shall take into account the recipient's language, culture, age, sex, ethnicity, class and religion. Upon discharge from the Home, each victim shall be provided with her educational records, medical records, legal documents and other means such as savings and personal belongings. Daily allowance which is given for the inmates shall be increased from Rs.17.50 to Rs.20/- so as to facilitate variety in breakfast.
6. Police, B.S.F., B.D.R., Superintendents and Staff of Governments and non-government Home need to be oriented in Juvenile Justice, Rights of the child and on how to handle a child victim. Documentation of each of the cases, developing a database on the individual victims and doing action research on the issues will help in handling these cases more scientifically and developing a policy on how to handle such cases efficiently. Besides, specialists can provide the following assistance to victims: Information about available protections, especially against threats and intimidation, and available remedies; Information about emergency medical and

social services; Information about shelter options; Referrals to public and private programmes available to provide counseling; Information about a victims' rights and his or her role in the criminal justice process; General information about the status of an investigation and notice of important case events; Information about how to apply for crime victim compensation through State compensation programmes; Information about restitution; and Information about the right to individual privacy and confidentiality issues.

7. Creation of public awareness by generating public opinion and social pressure against trafficking and sexual exploitation of women and children A strategy has to be evolved by the Social Defence Department with the help of N.G.Os. The media, both electronic and print, may be deployed to achieve this end.
8. An exercise of sensitization of police, judicial officers and other local bodies shall be undertaken by the Tamil Nadu State Judicial Academy and Police Training Academy.
9. An Accreditation Council shall be constituted, consisting of officers to be nominated by the Social Welfare Department in order to identify the genuine N.G.Os.
10. The Government shall ensure that no birth of a child goes unregistered. There shall be a drive to achieve this goal and public awareness shall also be created to stress the importance of registration of births. Similarly, it should be ensured that all deaths are registered. This is to avoid non-registration of the deaths of girl children which results in the disappearance of women, spoken of by leading economists. Both N.G.Os. and Social Welfare officers may be utilized to achieve this objective. 100% literacy among girl children should be made the immediate object of the State and for that, a program should be evolved. The provisions of the Tamil Nadu Compulsory Elementary Education Act, 1994 may be used to achieve this object. Establishment of Help Booths at Railway Stations and Bus Stands, since these are the vulnerable areas from where women and girl children who abandon their families to towns and cities due to multiple factors are often picked up. Establishment of a Women Help Desk at each police station would help women victims to express their grievance freely.

11. Voluntary or involuntary uprooting from the known community has its inherent dangers and it renders the girl children and women more vulnerable to sexual exploitation. These Help Booths will Help to identify such children and women and prevent them from being abused or exploited. Keep a close vigil on the activities of suspected anti-social elements and prevent their operation.
12. Be run by N.G.Os. with the assistance of the Police Department and function round the clock. The personnel manning these Help Booths should be sensitized before they are put up in charge of the Help Booths. The State shall set up a Criminal Compensation Injuries Board for awarding compensation to the victims.
13. A database may be created on traffickers, brothel owners, decoy customers, which will be kept confidential.
14. Concerted effort should be made to gather data relating to high risk areas, source points, transit centers and destination, since, it is because this data is absent that intervention strategies are not as effective. Community vigilant groups may be formed to help in the rescue and rehabilitation of victims at the community level. It is easier to rehabilitate a woman or a girl child at the initial stage, but once they have engaged themselves in prostitution for some time, rehabilitation becomes more difficult and the issues relating to such women must be dealt with at a different level. Improvement of inter-State coordination and sharing of information among the States may help reduce the incidence.
15. The State should identify the Homes or such places of safe custody, to which victims of trafficking shall be sent, as per the provisions of Section 17 of the I.T.P. Act.
16. The State shall form a panel of five respectable persons in every District for the purpose of Section 17 of the I.T.P. Act. The State shall also draw proper rules for identifying such panel of five respectable persons under Section 17 of the I.T.P. Act. The Special Courts should be constituted to handle all cases involving sexual abuse of children within a stipulated time frame.
17. State Level Co-ordination Committee should also include Member Secretaries of State Legal Services Authority and N.G.Os and District Level Committees should also be formed consisting of Government and

Police Officials, Member Secretaries of District Legal Services Authority, Doctors and N.G.Os to ensure implementation of I.T.P Act and to guarantee protection to the trafficked women and children. Effective prosecution is the fulfillment of an important need of the victim of a crime and of the need to belong to a society that is based on principles of fairness and is devoid of arbitrariness. Each home shall make efforts to facilitate prosecution so that the victim can enjoy a sense of justice. Care shall be taken to ensure that prosecution does not come in the way of or delay rehabilitation. Every technical administrative measure shall be exhausted to ensure that prosecution is speeded up and the presence and travel by the victims is minimized. The rescued persons shall be equipped with the knowledge and skills appropriate to her attitude and orientation so that her economic rehabilitation becomes easier.

18. The members of the professional and (preferably) voluntary sector organizations who have had some helping interaction with the victim shall be represented in the process of rehabilitation. In case where women or child victims are from other States, the Department of Women and Child Development of the concerned States along with N.G.Os. would jointly and collaboratively take action to ensure proper shelter, travel arrangements, medical and psychological treatment and reintegration with humane treatment. Government and local bodies would appropriately facilitate N.G.Os. to locate night shelters and Child Development or Care Centres in or near red light areas.
19. In cases where women and child victims are from foreign countries, a system of co-ordination through the Government of Indian and through inter-country N.G.O. networks would be set up so as to ensure safe passage, rehabilitation and reintegration in their community in their home countries. Women's organization should be involved in monitoring of remand, protective and other homes.
20. Local communities, N.G.Os., and other interested individuals would be mobilized and encouraged to be involved in identification, rescue and rehabilitation of women and child victims. All efforts should be made to persuade and motivate victims of trafficking and other forms of violence to be reintegrated and rehabilitated in society to lead a dignified life. Outreach/support activities shall include counseling support visits to

assist in counseling upon reintegration to the victims/family/relatives and local community people.

21. Every victim shall be gradually, systematically and professionally linked to a variety of support systems and given the skill and confidence to avail herself of these systems.
22. Positive intervention of the State may end with social reintegration. Thereafter the trafficked and rehabilitated person should be able, in case of need, to fall back on a support system established jointly by the government and voluntary sector organizations for that purpose.

#### **4: State of Punjab v. Gurmit Singh, AIR 1996 SC 1393**

The Supreme Court held that:

“The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.”

The apex court also took note of the defence strategy of continuous questioning in rape cases in the hope of inconsistencies and observed that it is the role of the court to ensure that cross-examination “is not made a means of harassment or causing humiliation to the victim of crime.” It directed that the name of the prosecutrix in rape cases should not be disclosed by the courts and the trial should be held in camera as a rule. It also directed that as far as possible, trials must be conducted by women judges.

#### **5: Sakshi vs Union Of India on 26 May, 2004**

1. The provisions of sub-section (2) of section 327 CrPC. shall in addition to the offences mentioned in the sub-section would also apply in inquiry or trial offences under sections 354 and 377 IPC.
2. In holding trial of child sex abuse or rape :

- A. A screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
- B. The questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the President Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
- C. The victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

These directions are in addition to those given in *State of Punjab v. Gurmit Singh*.

## **6: Hori Lal Vs. Commissioner of Police, 2002**

For having effective search of the Kidnapped minor girls, following steps shall be taken by the Investigation Officer in all the States:

1. Publish photographs of the missing persons in the Newspaper, telecast them on Television promptly, and in case not later than one week of the Receipt of the complaint. Photographs of a missing person shall be given wide publicity at all the prominent outlets of the city/town/village concerned that is at the Railway Stations, Inter-state bus Stands, airport, regional passport office and through law enforcement personnel at Border checkpoints. This should be done promptly and in any case not later than one week of the receipt of the complaint. But in case of a minor/major girl such photographs shall not be published without the written consent of the parents /guardians.
2. Make inquiries in the neighborhood, the place of work/study of the missing girl from friends colleagues, acquaintance, relatives etc. immediately. Equally all the clues from the papers and belongings of the missing person should be promptly investigated.
3. Contact the Principal, Class teacher and Students at the missing persons most recent school/educational institutions. If the missing girl or woman is employed somewhere, then to contact the most recent employer and



her colleagues at the place of employment.

4. Conduct an inquiry into the whereabouts from the extended family of relatives, neighbours, school teachers including school friends of the missing girl or woman.
5. Make necessary inquiries whether there have been past incidents or reports of violence in the family.

## **7: Vishal Jeet vs Union Of India And Ors on 2 May, 1990**

1. 1. All the State Governments and the Governments of Union Territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference.
2. 2. The State Governments and the Governments of Union Territories should set up a separate Advisory Committee within their respective zones consisting of the secretary of the Social Welfare Department or Board, the Secretary of the Law Department, sociologists, criminologists, members of the women's organisations, members of Indian Council of Child Welfare and Indian Council of Social Welfare as well the members of various voluntary social organisations and associations etc., the main objects of the Advisory Committee being to make suggestions of:
  - A. the measures to be taken in eradicating the child prostitution, and
  - B. the social welfare programmes to be implemented for care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.
3. All the State Governments and the Governments of Union Territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.
4. The Union Government should set up a committee of its own in the line, we have suggested under direction No.(2) the main object of which is to



evolve welfare programmes to be implemented on the national level for the care, protection, rehabilitation etc. etc. of the young fallen victims namely the children and girls and to make suggestions of amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children.

5. The Central Government and the Governments of States and Union Territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees.
6. The Advisory Committee can also go deep into devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the Government could do in that regard.
7. 7. The copies of the affidavits and the list containing the names of 9 girls are directed to be forwarded to the Commissioner of Police, Delhi for necessary action. We may add that we are not giving an exhaustive list of the members for the constitution of the committee. There- fore, it is open to the concerned Government to include any member or members in the committee as it deems necessary. We hope and trust that he directions given by us will go a long way towards eradicating the malady of child prostitution, devadasi system and Jogin tradition and will also at the same time protect and safeguard the interests of the children by preventing of the sexual abuse and exploitation. So far as the remaining prayer regarding rehabilitation of the children of prostitutes is concerned, we understand that a similar issue is raised in a separate writ petition bearing W.P. No. 824/88 pending before this Court and this Court is seized of the matter and also has given an interim direction on 15.11.1989 for setting up a committee to go into the question from various angles of the problems taking into consideration the different laws relevant to the matter and to submit its report. (Vide *Gaurav Jain v. Union of India and Others*, AIR 1990 SC 292. Therefore, we are not expressing any opinion on this prayer regarding the rehabilitation of the children of prostitutes.

## 8: Lalita Kumari vs Govt. Of U.P. & Ors on 12 November, 2013

1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
  - A. Matrimonial disputes/ family disputes
  - B. Commercial offences
  - C. Medical negligence cases
  - D. Corruption cases
  - E. Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

7. While ensuring and protecting the rights of the accused and the

complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

## **9: Budhadev Karmaskar vs The State Of West Bengal 19 May**

**2022**

Joint Secretary to Govt. of India. Human rights jurisprudence in India has acquired a constitutional status and sweep, owing to the full potential breathed by this Court into Articles 14, 19 and 21 of the Constitution of India since *Maneka Gandhi v. Union of India*<sup>1</sup>. The constitutional regard for human decency and dignity has been explicitly incorporated into Article 21 by this Court. While expounding on the scope of the right to life under Article 21, this Court in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*<sup>2</sup> extended the meaning of the right to life beyond the protection of limb or faculty to include the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and also the right to carry on such functions and activities as constitute the bare minimum expression 1 (1978) 1 SCC 248 2 (1981) 1 SCC 608 of the human-self. Needless to say, this basic protection of human decency and dignity extends to sex workers and their children, who, bearing the brunt of social stigma attached to their work, are removed to the fringes of the society, deprived of their right to live with dignity and opportunities to provide the same to their children.

Pursuant to an order passed by this Court on 19.07.2011, a Panel was constituted with Mr. Pradip Ghosh as the Chairman of the Panel, Mr. Jayant Bhushan, Senior counsel, Usha Multipurpose Co-operative Society through

its Presiden/Secretary, Durbar Mahila Samanwaya Committee through its President/Secretary, and Roshni through Ms. Saima Hasan.

The terms of reference made to the panel are: (1) Prevention of trafficking, (2) Rehabilitation of sex workers who wish to leave sex work, and (3) Conditions conducive for sex workers who wish to continue working as sex workers with dignity.

By an order dt. 26.07.2012, this Court modified the third term of reference to conditions conducive to sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution of India.

After conducting a detailed discussion with all the concerned stakeholders, the Panel submitted a comprehensive report on the terms of reference. When the matter was listed in the year 2016, this Court was informed that the recommendations made by the panel were considered by the Government of India and a draft legislation was published incorporating the recommendations made by the panel. Thereafter, periodically adjournments were taken by the Union of India on the ground that the Bill is on the anvil. As the legislation has not been made till date even though the recommendations were made by the Panel in the year 2016 and the said recommendations have to be implemented, we are exercising our powers conferred under Article 142 of the Constitution of India, to issue the following directions which will hold the field till a legislation is made by the Union of India. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role.

The directions that are issued today relate only to the rehabilitation measures in respect of sex workers and other connected issues. The panel has recommended in respect of the third term of reference in the following terms:

- i. (i) Sex workers are entitled to equal protection of the law. Criminal law must apply equally in all cases, on the basis of 'age' and 'consent'. When it is clear that the sex worker is an adult and is participating with consent, the police must refrain from interfering or taking any criminal action. There have been concerns that police view sex workers differently from others. When a sex worker makes a complaint of criminal/

sexual/any other type of offence, the police must take it seriously and act in accordance with law.

- ii. ii) Any sex worker who is a victim of sexual assault should be provided with all facilities available to a survivor of sexual assault, including immediate medical assistance, in accordance with Section 357C of the Code of Criminal Procedure, 1973 read with “Guidelines and Protocols: Medico-legal care for survivor/victims of sexual violence”, Ministry of Health and Family Welfare (March, 2014).
- iii. iii) Whenever there is a raid on any brothel, since voluntary sex work is not illegal and only running the brothel is unlawful, the sex workers concerned should not be arrested or penalised or harassed or victimised.
- iv. iv) The State Governments may be directed to do a survey of all ITPA Protective Homes so that cases of adult women, who are detained against their will can be reviewed and processed for release in a time-bound manner.
- v. v) It has been noticed that the attitude of the police to sex workers is often brutal and violent. It is as if they are a class whose rights are not recognised. The police and other law enforcement agencies should be sensitised to the rights of sex workers who also enjoy all basic human rights and other rights guaranteed in the Constitution to all citizens. Police should treat all sex workers with dignity and should not abuse them, both verbally and physically, subject them to violence or coerce them into any sexual activity.
- vi. vi) The Press Council of India should be urged to issue appropriate guidelines for the media to take utmost care not to reveal the identities of sex workers, during arrest, raid and rescue operations, whether as victims or accused and not to publish or telecast any photos that would result in disclosure of such identities. Besides, the newly introduced Section 354C, IPC which makes voyeurism a criminal offence, should be strictly enforced against electronic media, in order to prohibit telecasting photos of sex workers with their clients in the garb of capturing the rescue operation.
- vii. Vii) Measures that sex workers employ for their health and safety

(e.g., use of condoms, etc.) must neither be construed as offences nor seen as evidence of commission of an offence.

- viii. Viii) The Central Government and the State Governments must involve the sex workers and/or their representatives in all decision-making processes, including planning, designing and implementing any policy or programme for the sex workers or formulating any change/reform in the laws relating to sex work. This can be done, either by including them in the decision-making authorities/panel and/or by taking their views on any decision affecting them.
- ix. ix) The Central Government and the State Governments, through National Legal Services Authority, State Legal Services Authority and District Legal Services Authority, should carry out workshops for educating the sex workers about their rights vis-a-vis the legality of sex work, rights and obligations of the police and what is permitted/prohibited under the law. Sex workers can also be informed as to how they can get access to the judicial system to enforce their rights and prevent unnecessary harassment at the hands of traffickers or police.
- x. x) As already recommended in the 6th interim Report dated 22.03.2012, no child of a sex worker should be separated from the mother merely on the ground that she is in the sex trade. Further, if a minor is found living in a brothel or with sex workers, it should not be presumed that he/she has been trafficked. In case the sex worker claims that he/she is her son/daughter, tests can be done to determine if the claim is correct and if so, the minor should not be forcibly separated.” We have heard Mr. Jayant Sud, learned ASG who submitted that the Government of India has certain reservations in respect of the recommendations that are made by the panel except those in paras 2,4,5,6,7 and 9. The State Governments/ UTs are directed to act in strict compliance of the recommendations made in paras 2,4,5,6,7,9, in addition to the implementation of the recommendations made by the panel as mentioned above, the competent authorities under the Immoral Traffic (Prevention) Act, 1956 are directed to comply with the provisions of the Act. It need not be gainsaid that notwithstanding the profession, every

individual in this country has a right to a dignified life under Article 21 of the Constitution of India. The Constitutional protection that is given to all individuals in this country shall be kept in mind by the authorities who have a duty under Immoral Traffic (Prevention) Act, 1956. The other recommendations that are made by the panel shall be taken up after summer vacation.

List this matter on 27.07.2022.

In the meanwhile, the Union of India is directed to file its response to the recommendations made by the panel within a period of six weeks from today.

Mr. Anand Grover, learned senior counsel, brought to the notice of this Court that Aadhar Cards are not being issued to sex workers as they were unable to produce proof of their residence. We had issued notice to UIDAI and sought its suggestions in respect of waiving the requirement of proof of residence for the sex workers, to enable them to get an identity by the issuance of Aadhar cards. In the affidavit filed by the UIDAI, it was proposed that sex workers who are on NACO's list and who apply for Aadhar card but cannot submit proof of residence, can be issued Aadhar Cards provided a 'proforma certificate' is submitted by a Gazetted Officer at NACO or the State Health Department certifying the particulars of the applicant. The organisations representing sex workers have made the following suggestions for the procedure to be followed by UIDAI:

- 3.1 The Gazetted Officer of the State Health Department, who is authorized to submit the proforma certificate for a sex worker who applies for an Aadhar Card but is unable to furnish proof of residence should be specifically designated as:- "The Project Director of the State AIDS Control Society, or her/his nominee."
- 3.2 The name and designation of the Gazette Officers who will be authorised to submit the 'proforma certificate' for sex workers desirous of applying for an Aadhar Card on behalf of NACO must be publicized on its website.
- 3.3 NACO and the State AIDS Control Societies should publicize the procedure for sex workers who wish to apply for an Aadhar Card but who cannot furnish proof of residence through their websites as well



as through outreach under the Targetted Intervention Programmes that they implement.

**3.4** The sample 'proforma certificate' submitted by UIDAI in its Additional affidavit dated 09.02.2022 in terms of the order dated 10.01.2022 as "Annexure R-1" on pages 5 and 6 of the said affidavit may be made readily available on the websites of UIDAI, NACO and State Aids Control Societies.

**3.5.** There should be no breach of confidentiality in the process, including assignment of any code in the Aadhar enrolment numbers that identify the applicant/holder of the card as a sex worker. **3.6** The procedure proposed by the UIDAI in its Additional affidavit dated 09.02.2011 may not be restricted to sex workers on the NACO list but also extended to those who are identified by CBOs after verification by the State Legal Services Authority or the State AIDS control Society. This is in line with the Hon'ble Court's directions to State Governments to extend dry ration support and access to ration cards and voter ID cards to sex workers who are not on NACO's list, vide orders dated 10.01.2022 and 28.02.2022.

UIDAI has examined the suggestions and accepted that the procedure as proposed, can be followed.

In view of the aforementioned, Aadhar Cards shall be issued to sex workers on the basis of a proforma certificate which is issued by UIDAI and submitted by the Gazetted Officer at NACO or the Project Director of the State Aids Control Society, along with Aadhar enrolment form/application. There shall be no breach of confidentiality in the process, including assignment of any code in the Aadhar enrolment numbers that identify the card holder as a sex worker.

We appreciate the cooperation of Mr. Zoheb Hossain, learned counsel appearing for the UIDAI, in providing relief to sex workers who will have some identity in the society.



## ANNEXURE II:

# Standards and Formats

## 1. GUIDELINES & PROTOCOLS:

Medico-legal care for victims/victims of sexual violence (Ministry of Health and Family Welfare, Government of India)

The following guidelines are for health professionals when a victim of sexual violence reports to a hospital. The guidelines describe in detail the stepwise approach to be used for a comprehensive response to the sexual violence victim as follows:

- i. Initial resuscitation/ first Aid
- ii. Informed consent for examination, evidence collection, police procedures
- iii. Detailed History taking
- iv. Medical Examination
  - v. Age Estimation (physical/dental/radiological) – if requested by the investigating agency.
- vi. Evidence Collection as per the protocol
- vii. Documentation
- viii. Packing, sealing and handing over the collected evidence to police
- ix. Treatment of Injuries
  - x. Testing/prophylaxis for STIs, HIV, Hepatitis B and Pregnancy
- xi. Psychological support & counseling
- xii. Referral for further help (shelter, legal support)

Record the name of hospital where the victim is being examined followed by the following:

1. Name,
2. Address,
3. Age
4. Sex (male/female/other) of the victim
5. Date
6. Time of receiving the patient in the hospital and commencement of examination
7. (8-11) Name of the person who brought the victim and relationship to accompanying persons.
8. Informed consent: A victim may approach a health facility under

three circumstances: a) on his/her own only for treatment for effects of assault; b) with a police requisition after police complaint; or c) with a court directive.

If a person has come directly to the hospital without the police requisition, the hospital is bound to provide treatment and conduct a medical examination with consent of the victim/parent/guardian (depending on age). A police requisition is not required for this.

If a person has come on his/her own without FIR, s/he may or may not want to lodge a Complaint but requires a medical examination and treatment. Even in such cases the doctor is bound to inform the police as per law. However neither court nor police can force the victim to undergo medical examination. It has to be with the informed consent of the victim/ parent/ guardian (depending on the age). In case the victim does not want to pursue a police case, a MLC should be made and she should be informed that she has the right to refuse to file FIR. An informed refusal should be documented in such cases.

If the person has come with a police requisition or wishes to lodge a complaint later, the information about medico-legal case (MLC) no. & police station should be recorded.

Doctors are legally bound to examine and provide treatment to victims of sexual violence. The timely reporting, documentation and collection of forensic evidence may assist the investigation of this crime. Police personnel should not be present during any part of the examination. In all three circumstances, it is mandatory to seek an Informed Consent/ refusal for examination and evidence collection. Consent should be taken for the following purposes: examination, sample collection for clinical and forensic examination, treatment and police intimation.

Doctors shall inform the person being examined about the nature and purpose of examination and in case of child to the child's parent/ guardian/ or a person in whom the child reposes trust. This information should include:

- a. Doctors shall inform the person being examined about the nature and purpose of examination and in case of child to the child's parent/guardian/ or a person in whom the child reposes trust. This information should include:

- b.** The medico-legal examination is to assist the investigation, arrest and prosecution of those who committed the sexual offence. This may involve an examination of the mouth, breasts, vagina, anus and rectum as necessary depending on the particular circumstances.
- c.** To assist investigation, forensic evidence may be collected with the consent of the victim. This may include removing and isolating clothing, scalp hair, foreign substances from the body, saliva, pubic hair, samples taken from the vagina, anus, rectum, mouth and collecting a blood sample.
- d.** The victim or in case of child, the parent/guardian/or a person in whom the child reposes trust, has the right to refuse either a medico-legal examination or collection of evidence or both, but that refusal will not be used to deny treatment to victim after sexual violence.
- e.** As per the law, the hospital/ examining doctor is required/duty bound to inform the police about the sexual offence. However, if the victim does not wish to participate in the police investigation, it should not result in denial of treatment for sexual violence.

Emphasize that seeking treatment is critical for the victim's well-being.

- » The victim or guardian may refuse to give consent for any part of examination. In this case the doctor should explain the importance of examination and evidence collection, however the refusal should be respected. It should also be explained that refusal for such examination will not affect/compromise treatment. Such informed refusal for examination and evidence collection should be documented.
- » In case there is informed refusal for police intimation, then that should be documented. At the time of MLC intimation being sent to the police, a clear note stating “informed refusal for police intimation” should be made.
- » Only in situations, where it is life threatening the doctor may initiate treatment without consent as per section 92 of IPC.
- » The consent form should be signed by the person him/herself if s/he is above 12 yrs. of age. Consent should be taken from the

guardian/ parent if the victim is under the age of 12 years.

- » In case of persons with mental disability, please refer to section on “Persons with Disabilities”
- » The consent form should be signed by the victim, a witness and the examining doctor.
- » Any major 'disinterested', person may be considered a witness.

**9.** Two marks of identification such as moles, scars, tattoos etc., preferably from the exposed parts of the body should be documented. While describing identification mark emphasis should be on size, site, surface, shape, colour, fixity to underlying structures. Left Thumb impression is to be taken in the space provided.

**10.** Relevant medical/surgical history

- a.** Menstrual history (Cycle length and duration, Date of last menstrual period). If the victim is menstruating at the time of examination then a second examination is required on a later date in order to record the injuries clearly. Some amount of evidence is lost because of menstruation. Hence it is important to record whether the victim was menstruating at the time of assault/examination
- b.** Vaccination history is important with regard to tetanus and hepatitis B, so as to ascertain if prophylaxis is required.

**11.** Sexual violence history

- a.** Be sensitive to the victim as she has experienced a traumatic episode and s/he may not be able to provide all the details. Explain to him/her that the process of history taking is important for further treatment and for filing a case if needed.
- b.** Create an environment of trust so that the victim is able to speak out. Do not pass judgmental remarks.
- c.** A relative could be present with the consent of the victim, if s/he is comfortable.
- d.** Details of the date, time and location of incident of sexual violence should be recorded.
- e.** In case of more than one assailant, their number should be recorded along with the names and relation if known.

- f. One should note who is narrating the incident- victim or an informant. If history is narrated by a person other than the victim herself, his/her name should be noted. Especially if the identity of assailants is revealed it is better to also have a countersignature of the informant.
- g. The doctor should record the complete history of the incident, in victim's own words as it has evidentiary value in the court of law.
- h. Use of any Physical violence during assault should be recorded with detailed description of the type of violence and its location on the body (e.g. Beating on the legs, biting cheeks, pulling hair, kicking the abdomen etc.).
- i. Note history of injury marks that the victim may state to have left on the assailant's body as it can be matched eventually with the findings of the assailant's examination.
- j. If any weapon(s) were used such as sticks, acid burns, gun shots, knife attacks etc.; if the use of drugs/alcohol was involved. Verbal threats should be recorded in victim's words, e.g. harming her or her near and dear ones.
- k. Information regarding attempted or completed penetration by penis/ finger/ object in vagina/ anus/ mouth should be properly recorded. There could also be other acts such as masturbation of the assailant by the victim, masturbation of the victim by the assailant, oral sex by the assailant on the victim or sucking, licking, kissing of body parts. Information about emission of semen, use of condom, sucking or spitting along with the location should be clearly stated. Information about emission of semen outside the orifices should be elicited as swabs taken from such sites can have evidentiary value. Information regarding use of condom during the assault is relevant because in such cases, vaginal swabs and smears would be negative for sperm/semen.
- l. While recording history of sexual violence, it is important to enquire and record in simple language whether these acts occurred or not. A clear differentiation should be made between a 'negative' and 'not sure' history. If the victim does not know if a

particular act occurred, it should be recorded as “did not know”.

- m.** One should not feel awkward in asking for history of the sexual act. If details are not entered it may weaken the victim's testimony. The details of history are what will also guide the examination, treatment and evidence collection and therefore seeking a complete history is critical to the medical examination process, sample collection for clinical & forensic examination, treatment and police intimation.
- n.** In case of children, illustrative books, body charts or a doll can be used if available, to elicit the history of the assault. When it is difficult to elicit history from a child, please call an expert.
- o.** Details of clothing worn at the time of assault should be recorded.
- p.** Post assault Information should be collected on activities like changed clothes, cleaned clothes, bathed/ urinated/ defecated/ showered/ washed genitals (in all cases) and rinsing mouth, drinking, eating (in oral sexual violence)/ had sexual intercourse after the incident of sexual violence. This would have a bearing on the trace evidence collected from these sites.
- q.** If vaginal swabs for detection of semen are being taken then record history of last consensual sexual intercourse in the week preceding the examination. It should be well recorded as detection of sperm/semen could be valuable evidence. While seeking such history, explain to the victim why this information is being sought, because the victim may not want to disclose such history as it may seem invasive.
- r.** Information related to past abuse (physical/sexual/emotional) should be recorded in order to understand if there is any health consequence related to the assault. This information should be kept in mind during examination & interpretation of findings.
- s.** Relevant Medical & Surgical History: Relevant medical history in relation to sexually transmitted infections (gonorrhea, HIV, HBV etc.) can be elicited by asking about discharge per-urethra/per-anus, warts, ulcers, burning micturition, lower abdominal pain etc. Based on this information reexamination/ investigations can be done after incubation period of that disease.

If there is vaginal discharge, record its type, i.e., texture, colour, odour, etc. · Relevant surgical history in relation to treatment of fissures/injuries/scars of ano-genital area should be noted.

**12. General physical examination:**

- a.** Record if the person is oriented in space and time and is able to respond to all the questions asked by the doctor. Any signs of intoxication by ingestion or injection of drug/alcohol should be noted.
- b.** Pulse. B.P., respiration, temperature and state of pupils is recorded.
- c.** A note is made of the state of clothing if it is the same as that worn at the time of assault. If it is freshly torn or has stains of blood/ semen/ mud etc.; the site, size, and colour of stains should be described.

**13. Examination for injuries:**

- a.** Presence of injuries is only observed in one third cases of forced sexual intercourse. Absence of injuries does not mean the victim has consented to sexual activity. As per law, if resistance was not offered that does not mean the person has consented.
- b.** The entire body surface should be inspected carefully for signs of bruises, physical torture injuries, nail abrasions, teeth bite marks, cuts, lacerations, fracture, tenderness, any other injury, boils, lesions, discharge specially on the scalp, face, neck, shoulders, breast, wrists, forearms, medial aspect of upper arms, thighs and buttocks
- c.** Describe all the injuries. Describe the type of injury (abrasion, laceration, incised, contusion etc.), site, size, shape, colour, swelling, signs of healing, simple/grievous, dimensions. Mention possible weapon of infliction such as - hard, blunt, rough, sharp, etc.
- d.** Injuries are best represented when marked on body charts. They should be numbered on the body charts and each should be described in detail.
- e.** Describe any stains seen on the body - the type of stain (blood,



semen, lubricant, etc.) its actual site, size and colour. Mention the number of swabs collected and their sites.

**14. Local examination of genital parts/other orifices**

- a.** External genital area and Perineum is observed carefully for evidence of injury, seminal stains and stray pubic hair. Pubic hair is examined for any seminal deposits/ stray hair. Combing is done to pick up any stray hair or foreign material, and sample of pubic hair, and matted pubic hair is taken and preserved. If pubic hair is shaven, a note is made.
- b.** In case of female victims, the vulva is inspected systematically for any signs of recent injury such as bleeding, tears, bruises, abrasions, swelling, or discharge and infection involving urethral meatus & vestibule, labia majora and minora, fourchette, introitus and hymen.
  - i)** Examination of the vagina of an adult female is done with the help of a sterile speculum lubricated with warm saline/ sterile water. Gentle retraction allows for inspection of the vaginal canal. Look for bruises, redness, bleeding and tears, which may even extend onto the perineum, especially in the case of very young girls. In case injuries are not visible but suspected; look for micro injuries using good light and a magnifying glass/ colposcope whatever is available. If 1% Toluidine blue is available it is sprayed and excess is wiped out. Micro injuries will stand out in blue. Care should be taken that all these tests are done only after swabs for trace evidence are collected.
  - ii)** Per speculum examination is not a must in the case of children/young girls when there is no history of penetration and no visible injuries. The examination and treatment as needed may have to be performed under general anaesthesia in case of minors and when injuries inflicted are severe. If there is vaginal discharge, note its texture, colour, odour.
  - iii)** Per-Vaginum examination commonly referred to by lay persons as 'two-finger test', should not be conducted for

establishing rape/sexual violence and the size of the vaginal introitus has no bearing on a case of sexual violence. Per vaginum examination can be done only in adult women when medically indicated.

- iv) The status of hymen is irrelevant because the hymen can be torn due to several reasons such as cycling, riding or masturbation among other things. An intact hymen does not rule out sexual violence, and a torn hymen does not prove previous sexual intercourse. Hymen should therefore be treated like any other part of the genitals while documenting examination findings in cases of sexual violence. Only those that are relevant to the episode of assault (findings such as fresh tears, bleeding, edema etc.) are to be documented.
  - v) Genital findings should also be marked on body charts and numbered accordingly.
  - c. Bleeding/swelling/tears/discharge/stains/warts around the anus and anal orifice should be documented. Per-rectal examination to detect tears/stains/fissures/hemorrhoids in the anal canal should be carried out and relevant swabs from these sites should be collected.
  - d. Oral cavity should also be examined for any evidence of bleeding, discharge, tear, odema, tenderness.
- 15. Collection of samples for hospital laboratory / clinical laboratory**
- a. If requested by police radiographs of wrist, elbow, shoulders, dental examination etc. can be advised for age estimation.
  - b. For any suspected fracture/injury- appropriate investigation for the relevant part of the body is advised.
  - c. Urine Pregnancy test should be performed by the doctor on duty and the report should be entered.
  - d. Blood is collected for evidence of baseline HIV status, VDRL and HbsAg.
- 16. Collection of samples for central / State forensic science laboratory**
- a. After assessment of the case, determine what evidence needs to be collected. It would depend upon nature of assault, time lapse

between assault and examination and if the person has bathed/ washed herself since the assault.

- b.** If a woman reports within 96 hours (4 days) of the assault, all evidence including swabs should be collected, based on the nature of assault that has occurred. The likelihood of finding evidence after 72 hours (3 days) is greatly reduced; however it is better to collect evidence up to 96 hours in case the victim may be unsure of the number of hours lapsed since the assault.
- c.** The spermatozoa can be identified only for 72 hours after assault. So if a victim has suffered the assault more than three days ago, please refrain from taking swabs for spermatozoa. In such cases swabs should only be sent for tests for identifying semen.
- d.** Evidence on the outside of the body and on materials such as clothing can be collected even after 96 hours.
- e.** The nature of swabs taken is determined to a large extent by the history and nature of assault and time lapse between incident and examination. For example, if the victim is certain that there is no anal intercourse; anal swabs need not be taken.
- f.** Request the victim to stand on a large sheet of paper, so as to collect any specimens of foreign material e.g. grass, mud, pubic or scalp hair etc. which may have been left on her person from the site of assault/ from the accused. This sheet of paper is folded carefully and preserved in a bag to be sent to the FSL for trace evidence detection.
- g.** Clothes that the victim was wearing at the time of the incident of sexual violence are of evidentiary value if there is any stains/ tears/trace evidence on them. Hence they should be preserved. Please describe each piece of clothing separately with proper labeling. Presence of stains - semen, blood, foreign material etc - should be properly noted. Also note if there are any tears or other marks on the clothes. If clothes are already changed then the victim should be asked for the clothes that were worn at the time of assault and these should be preserved.
- h.** Always ensure that the clothes and samples are air dried before storing them in their respective packets. Ensure that clothing is

folded in such a manner that the stained parts are not in contact with unstained parts of the clothing. Pack each piece of clothing in a separate bag, seal and label it duly.

### **Body evidence:**

- a. Swabs are used to collect bloodstains on the body, foreign material on the body surfaces seminal stains on the skin surfaces and other stains. Detection of scalp hair and pubic hair of the accused on the victim's body (and vice-versa) has evidentiary value. Collect loose scalp and pubic hair by combing. Intact scalp and pubic hair is also collected from the victim so that it can be matched with loose hair collected from the accused. All hair should be collected in the catchment paper which is then folded and sealed.
- b. If there is struggle during the sexual violence, with accused and victim scratching each other, then epithelial cells of one may be present under the nails of the other that can be used for DNA detection. Nail clippings and scrapings should be taken for both hands and packed separately. Ensure that there is no underlying tissue contamination while clipping nails.
- c. Blood is collected for grouping and also helps in comparing and matching blood stains at the scene of crime.
- d. Collect blood and urine for detection of drugs/alcohol as the influence of drugs/ alcohol has a bearing on the outcome of the entire investigation. If such substances are found in the blood, the validity of consent is called into question. In a given case, for instance, there may not be any physical or genital injuries. In such a situation, ascertaining the presence of drug/alcohol in the blood or urine is important since this may have affected the victim's ability to offer resistance. Urine sample may be collected in a container to test for drugs and alcohol levels as required.
- e. Venous blood is collected with the sterile syringe and needle provided and transferred to 3 sterile vials/ vacutainers for the following purposes: Plain Vial/Vacutainer - Blood grouping and drug estimation, Sodium Fluoride - Alcohol estimation,

EDTA - DNA Analysis. · Collect oral swab for detection of semen and spermatozoa. Oral swabs should be taken from the posterior parts of the buccal cavity, behind the last molars where the chances of finding any evidence are highest.

### **Genital and anal evidence :**

- a. In the case of any suspected seminal deposits on the pubic hair of the woman, clip matted portion of the pubic hair; allow drying in the shade and placing in an envelope.
- b. Pubic hair of the victim is then combed for specimens of the offender's pubic hair. A comb should be used for this purpose and a catchment paper should be used to collect and preserve the specimens. Cuttings of the pubic hair are also taken for the purpose of comparison or to serve as control samples. If pubic hair has been shaved, do not fail to make a mention of it in the records.
- c. Take two swabs from the vulva, vagina, anal opening for anogenital evidence. Swabs should be collected depending on the history and examination. Swabs from orifices should be collected only if there is a history of penetration. Two vaginal smears are to be prepared on the glass slide provided, air-dried in the shade and sent for seminal fluid/ spermatozoa examination.
- d. Often lubricants are used in penetration with finger or object, so relevant swabs should be taken for detection of lubricant. Other pieces of evidence such as tampons (may be available as well), which should be preserved.
- e. Swab sticks for collecting samples should be moistened with distilled water provided.
- f. Swabs should be air dried, but not dried in direct sunlight. Drying of swabs is absolutely mandatory as there may be decomposition/degradation of evidence which can render it un-usable.
- g. Vaginal washing is collected using a syringe and a small rubber catheter. 2-3 ml of saline is instilled in the vagina and fluid is aspirated. Fluid filled syringe is sent to FSL laboratory after

putting a knot over the rubber catheter.

- h.** While handing over the samples, a requisition letter addressed to the FSL, stating what all samples are being sent and what each sample needs to be tested for should be stated. For example, "Vaginal swab to be tested for semen". This form should be signed by the examining doctor as well as the officer to whom the evidence is handed over.
- i.** Please ensure that the numbering of individual packets is in consonance with the numbering on the requisition form. Specimens sent to the Forensic Science laboratory will not be received unless they are packed separately, sealed, labeled and handed over.

**17. Provisional clinical opinion**

- a.** Drafting of provisional opinion should be done immediately after examination of the victim on the basis of history and findings of detailed clinical examination of the victim.
- b.** The provisional opinion should, in brief, mention relevant aspects of the history of sexual violence, clinical findings and samples which are sent for analysis to FSL.
- c.** An inference should be drawn in the opinion, correlating the history and clinical findings.

The following section offers some scenarios about ways to draft a provisional and final opinion. However, this list is not exhaustive and readers are advised to form provisional opinions based on the examples given below. It should be always kept in mind that normal examination findings neither refute nor confirm the forceful sexual intercourse. Hence circumstantial/other evidence may please be taken into consideration.

Absence of injuries or negative laboratory results may be due to:

- i.** Inability of victim to offer resistance to the assailant because of intoxication or threats.
- ii.** Delay in reporting for examination.
- iii.** Activities such as urinating, washing, bathing, changing clothes or douching which may lead to loss of evidence.
- iv.** Use of condom/vasectomy or diseases of vas.

<b>Genital injuries</b>	<b>Physical injuries</b>	<b>Opinion</b>	<b>Rationale why forced penetrative sex cannot be ruled out</b>	<b>What can FSL detect</b>
Present	Present	There are signs suggestive of recent use of force/forceful penetration of vagina/anus. Sexual violence cannot be ruled out.	Evidence for semen and spermatozoa are yet to be tested in case of penile penetration.	Evidence for semen except when condom was used.
Present	Absent	There are signs suggestive of recent forceful penetration of vagina/anus.	Evidence for semen and spermatozoa are yet to be tested in case of penile penetration. The lack of physical injuries could be because of the victim being unconscious, under the effect of alcohol/drugs, overpowered or threatened. It could be because, there was fingering or penetration by object with or without use of lubricant - which is an offence under Sec 375 IPC.	Evidence of semen or lubricant except when condom was used.
Absent	Present	There are signs of use of force, however vaginal or anal or oral penetration cannot be ruled out.	The lack of injuries could be because of the victim being unconscious, under the effect of alcohol /drugs, overpowered or threatened or use of lubricant.	Evidence of semen or lubricant.
Absent	Absent	There are no signs of use of force; however final opinion is reserved pending availability of FSL reports. Sexual violence cannot be ruled out.	The lack of genital injuries could be because of use of lubricant. The lack of physical injuries could be because of the victim being unconscious, under the effect of alcohol/drugs, overpowered or threatened. It could also be because, there was fingering or penetration by object with use of lubricant- which is an offence under Sec 375 IPC.	Evidence of semen or lubricant and drug/ alcohol.

This reasoning should be mentioned while formulating the opinion.  
Signature and seal:

After the examination the medical practitioner should document the report, formulate opinion, sign the report and handover the report and sealed samples to police under due acknowledgement.

- » On the last sheet, mention how many pages are attached. Each page of the report should be signed to avoid tampering.
- » It is important that one copy of all documents be given to the victim as it is his/her right to have this information. One copy to be given to the police and one copy should be kept for hospital records.
- » All evidence needs to be packed and sealed properly in separate envelopes. The responsibility for this lies with the examining doctor. All blood samples should be refrigerated until handed over to next in chain of custody. The hospital has the responsibility of properly preserving samples till handed over to police.
- » Each envelope should be labelled as follows.

Packet number \_\_\_\_\_  
Name of the hospital & place \_\_\_\_\_  
Hospital number & date \_\_\_\_\_  
Police                  station                  with                  MLC                  number  
\_\_\_\_\_  
Name      of      the      person      with      age      &      sex  
\_\_\_\_\_  
Sample collected \_\_\_\_\_ Examination  
required \_\_\_\_\_

Date & time signature of doctor with seal

- » Chain of custody: The hospital should designate certain staff responsible for handling evidence and no one other than these persons should have access to the samples. This is done to prevent mishandling and tampering. If a fool-proof chain of custody is not maintained, the evidence can be rendered inadmissible in the court of law. A log of handing over of evidence from one



'custodian' to the other should be maintained.

» Miscellaneous information:

If a woman reports with a pregnancy resulting from an assault, she is to be given the option of undergoing an abortion, and protocols for MTP are to be followed. The products of conception may be sent as evidence to the forensic lab (FSL) for establishing paternity / identifying the accused. The examining doctor/AMO/CMO is to contact the respective police station, ask them to collect the DNA Kit from the FSL and bring it to the hospital to coincide with the time of MTP. The DNA Kit is used to collect the blood sample of the victim. The accompanying DNA Kit forms are to be filled by the examining doctor. A photograph of the victim is required for this form, and should be arranged for prior to the MTP. The products of conception are to be rinsed with normal saline (NOT completely soaked in saline) and collected in a wide-mouthed container with a lid. This sample is to be handed over immediately to the police along with the DNA Kit, or preserved at 4 degree Celsius. It is to be transported by the police in an ice-box, maintaining the temperature at around 4 degree Celsius (2 to 8 degree Celsius) at all times.

FINAL OPINION: To be formulated after receiving reports from the FSL

S. No.	Genital	Physical injuries/ diseases	FSL report injuries/ diseases	Final opinion
FOR PENILE PENETRATION				
1.	Present	Present	Positive for presence of semen	There are signs suggestive of forceful vaginal/ anal intercourse.
2.	Present	Absent	Positive for presence of semen	There are signs suggestive of forceful vaginal/ anal intercourse.
3.	Absent	Present	Positive for presence of semen	There are signs suggestive of forceful vaginal/ anal intercourse.
4.	Absent	Absent	Positive for presence of semen	There are signs suggestive of vaginal/anal intercourse.
5.	Absent	Absent	Positive for drug/alcohol and semen	There are signs suggestive of vaginal/anal intercourse under the influence of drugs/alcohol.

FOR NON-PENILE PENETRATION				
6.	Present	Present	FSL report is negative for presence of semen/ alcohol/ drugs/ lubricant.	There are no signs suggestive of vagina/anal intercourse, but there is evidence of physical and genital assault.
7.	Present	Absent	FSL report is negative for presence of semen/ alcohol/ drugs/ lubricant.	There are no signs suggestive of vagina/anal intercourse, but there is evidence of genital assault.
8.	Absent	Present	FSL report is negative for presence of semen/ alcohol/ drugs/ lubricant.	There are no signs suggestive of vagina/anal intercourse, but there is evidence of physical assault.
9.	Absent	Absent	FSL report is negative for presence of semen/ alcohol/ drugs/ lubricant.	There are no signs suggestive of penetration of vagina/anal.
10.	Absent	Absent	FSL report is positive for presence of lubricant only.	There is a possibility of vaginal/anal penetration by lubricated object.

## OPINION FOR NON-PENETRATIVE ASSAULT

1. Bite marks present and /or FSL detects salivary stains.	There are signs suggestive of evidence of bite mark/s on _____ site (time the injury).
2. Sucking marks (discoid, subcutaneous extravasations of blood, with or without bite marks) present and /or FSL detects salivary stains.	There are signs suggestive of sucking mark/s on _____ site (time the injury).
3. Forceful fondling, with presence of bruises or contusions with or without fingernail marks.	There are signs suggestive of forceful physical injuries on _____ site (time the injury) (which may be due to fondling).
4. Only forceful kissing and FSL detects salivary stains.	There are signs suggestive of salivary contact (which may be due to kissing).
5. If the history suggests forced masturbation of the assailant by the victim and if there is evidence of seminal stains detected on the hands.	There are signs suggestive of the victim of seminal fluid contact (which may be due to masturbation).
6. In case there are no signs of sucking, In case there are no signs of sucking, suggests some such form of assault.	It is still important to document a good history because the victim may have had a bath or washed him/herself.

## **2. MINIMUM STANDARDS OF CARE in Homes for Victims of Trafficking.**

Minimum Standards of Care in Homes for victims of trafficking, Government of Andhra Pradesh, Women Development, Child Welfare & Disable Welfare Department 24.4.2010)

### **GOVERNMENT OF ANDHRA PRADESH**

The State of Andhra Pradesh has put in place Minimum Standards of Care in shelter homes of victims of trafficking. These standards for shelters for victims of commercial sexual exploitation/ survivors of sex trafficking are those non-negotiable care components that should be integrated in any home managed either by the government or the civil society to ensure that facilities for rehabilitation is in place as a matter of right of the victim. These standards ensure that the safety, dignity and well being of each victim is ensured.

#### **ORDER**

- a. Government of Andhra Pradesh acknowledges that human trafficking particularly for commercial sexual exploitation is among the worst forms of human rights violation, destroying the lives of thousands of women and children. All available reports and testimonies of trafficked survivors reveal that a victim when trafficked is subjected to inhuman torture, threat and intimidation leaving deep psychological scars. Lack of holistic care and support for rescued victims, can have serious repercussions for the society, as these victims could be further re-trafficked and the crime of trafficking can go on unabated.
- b. Government of Andhra Pradesh is firmly committed to combat trafficking and provide all care and support required for a victim so that she can eventually be re-integrated into the mainstream society to lead a dignified and independent life. PRAJWALA - a voluntary organization committed to the cause of anti-human trafficking has furnished “Minimum Standards of Care”, in consultation with all stake holders including Government

officials concerned, NGOs, victims of trafficking etc.

- c. The Government after due consideration, with a view to ensure holistic care and support for all rescued victims of commercial sexual exploitation/sex trafficking, hereby direct that the minimum standards of care as detailed in Annexure-I shall be adopted and adhered to by all institutions and service providers providing protective and rehabilitative facilities to victims of sex trafficking/ commercial sexual exploitation. Any non-adherence, deviation or violation of the minimum standards of care shall entail cancellation of license/registration/recognition/grant-in-aid as the case may be, apart from other appropriate action.
- d. Further, no institution providing such shelter shall be considered for license/registration/recognition or grant-in-aid unless the Minimum Standards of Care as prescribed are provided and fully adhered to by the institution/service provider.
- e. Finally, all such institutions and service providers shall also adopt and put in place the computerized tracking system with effect from 01-06-2010 as per the software to be made available to them by the Director, W.D. & C.W. Dept.
- f. This order issues with the concurrence of Finance Department vide their UO Note.3253/69/Expr.WD/2010, Dated:19-03-2010.

(By order and in the name of the Governor of Andhra Pradesh)

M. CHAYA RATAN,

PRINCIPAL SECRETARY TO GOVERNMENT.

### **MINIMUM STANDARDS OF CARE in Homes for Victims of Trafficking**

Anti trafficking measures comprises of prevention, protection and prosecution. It has been seen throughout the country that protection

measures is the most important link to effective prevention and successful prosecution. But it is matter of serious concern that protection measures in the form of shelters have not fulfilled their objectives and poor rehabilitation measures have ended up in re-trafficking of victims. With the aim to improve the conditions of shelter homes minimum standards of care is introduced. These standards for shelters for victims of commercial sexual exploitation/survivors of sex trafficking are those non-negotiable care components that should be integrated in any home managed either by the government or the civil society to ensure facilities for rehabilitation is in place as a matter of right of the victim. These standards will ensure that the safety, dignity and the well being of each victim are provided for. The minimum standards of care will be reviewed every two years for relevance and changed according to the contemporary information available about care and protection of victims of trafficking.

**The guiding principles of these standards are:**

**Right based:** All standards will ensure that the basic human rights of the victim is upheld and respected. Additionally, the following rights will be an integral part of each care process:

- » Right to dignity
- » Right not to be re-traumatized and re-victimized
- » Right to informed choices and confidentiality
- » Right to self-determination and participation

**Individualized and Comprehensive:** The care components should be inclusive and be able to address the needs of each individual through a continuum of care opportunities for all life domains of survivors.

**Equitable:** The program should ensure that all services are accessible to all victims. The services are designed in a manner that facilitates people who may be facing more vulnerability or impact to have an equal access to services.

**Gender sensitive:** The program should be child friendly and focused on the psychological recovery of the victim. The programs will recognize the gender based vulnerabilities and risks, will be developmentally appropriate and ensure that the recovery of the victim is paramount.

**Accountable:** All the programs will be accountable and will be subject to mandatory external standardized care process audits.

## STANDARDS OF CARE

### Standard I: Location

1. Any home/shelter meant for victims of commercial sexual exploitation should be located in a residential area and should be maintained and integrated in the local scenario. The name board of the home should not reveal either the purpose or the kind of benefit it provides. The home meant for 50 residents should not be less than 5500 sq ft, which includes, different types of spaces required.
2. The location of the home should minimize risk to the residents and should have a favorable ambience (not close to a red light area, wine shop, slums or shanties and the homes should be far away from auto stands, bus stations, railway stations, road side stalls) with adequate privacy for the residents.
3. The home/shelter should be well connected with other amenities such as water, electricity, sanitation, approach road, etc. Care should be taken to ensure that the physical infra-structure allows no undesirable outside contact.

### Standard II: Security

1. The home should have 24 hrs security arrangements. Without appearing custodial in nature the home should ensure adequate security to the residents. The security persons should be free of any addictions and they need to be trained.
2. All inflammatory or hazardous substances such as kerosene, petrol, pesticide, phenol, medicines, acid, bleaching powder, soaps, rat killers, especially sedatives etc) should be kept securely, out of the reach of the residents. Field security plan should be in place (fire exit marking). There should be a regular fire drill. Basements should not be used for residential purposes. Stock register of all the above

mentioned hazardous substances should be maintained and regular stock taking (monthly) should be monitored.

3. For residents who are suffering from psychological disturbances any task with sharp/hazardous instruments/substances such as knives, screw drivers, ropes and wires should be avoided to extent possible and if unavoidable to be done under proper supervision.
4. All doors (bathroom, toilets, kitchen, storage, bedrooms) should have provisions for opening from outside in cases of emergency.
5. No visitors for residents should be allowed in the home without requisite vetting and permission. The home should have a visitors' policy which should include arrangements to screen and interact with visitors away from residential area within the campus. The best interest of the resident should be the guiding principle. All visits should be documented in a well maintained visitors book that will record all details such name, designation, organization/ institution, address etc Proper check of staff at entry and exit should be done and CCTV cameras may be installed in visitor's room.
6. No resident should have access to mobile phones and any phone call made should be under supervision.

### **Standard III: Legal Custody and Arrangements for Leave from home**

1. Legal custody of residents should be under the supervision of the Child Welfare Committee (if minors) or the Service providing Organization or any other competent authority dealing with the issues of women and/or children of the area as the case may be.
2. A social worker should accompany the residents (who are at risk to coercion and exploitation) whenever she leaves the place of safety. The home should have protocol for different circumstances when the resident may leave the home unaccompanied by staff. Such protocol should be evolved by a risk assessment and risk reduction information.

### **Standard IV: Confidentiality**

1. The resident should not be exposed to the media and complete confidentiality should be maintained about the facial and other



personal identity of the resident. This is valid at all stages from rescue to prosecution and social reintegration and thereafter. All case records especially medical records should be maintained with utmost confidentiality.

2. No information about a resident will be given to any outsider without the permission of the authorized person and the informed consent of the resident.

**Standard V: Basic Infrastructure Facilities:**

1. The home should be well ventilated, with adequate space (approximately @50-60 square feet per resident, toilets and bathrooms at a proportion of 1:5.
2. The home should have well ventilated kitchen, a common hall, counseling room, medical room, dining hall, bedrooms, quarantine room, storage facility and staff quarters and no basements should be used for residential purposes
3. The home should have open space for recreation, washing/drying arrangements which ensure privacy.
4. The residents of the home should have access to public facilities such as garden, playground and recreational
5. facility etc.
6. Each resident should be provided with individual cot, bedding, 2 bed sheets, 1 blanket and pillow, mosquito nets per year.
7. Universal care processes should be established which enables the home to provide for the special care needs of HIV positives, disabled, pregnant and lactating mothers and severely sick residents without any
8. stigmatization or isolation

**Standard VI: Staff recruitment/Training:**

1. Staff should be recruited only after adequate screening about their past record and assessment of their skills and attitude. Special care should be taken to ascertain any indications of past criminal record or association, psychological disorders, addictions (alcohol, tobacco, gutkha, drugs etc.

2. All staff irrespective of the post should be given induction training and adequately sensitized on aspects of trafficking, needs of trafficked residents, trauma care, first aid and counseling.
3. Standardized training module has to be developed with regular updates.
4. One head of the home with a postgraduate degree, Two Trained counselors' one with MSW and other with MA Psychology with special training on trauma care should be recruited on a fulltime basis, and where one counselor is to be a resident and other may be a non-resident for better functioning. The home may also choose to use primary level peer counselors who are present in the home all the time and supported by secondary level professional counselors as mentioned above.
5. The home should have the following human resources for better operations for an average of 50 residents with:
  - a. 1 full time resident Warden/Superintendent who should be at least a graduate.
  - b. 2 resident Cooks
  - c. 4 caretakers with a minimum SSC education d. 1 Accountant cum Documentation personnel.
  - d. 2 Security personnel with a reading and writing skills
  - e. Part time life skill trainer
  - f. A Panel of Medical practitioners (both government and private) should be identified to attend to the needs of the residents at any time of requirement and appropriate budget should be extended for medical kits, transport and honorarium
  - g. For legal assistance it should be converged with existing free legal aid services. If such services are not easily available a budget may be provided for legal support and assistance till such a time mainstream services can be accessed.

### **Standard VII: Home Management**

1. The residents should be directly involved in the day to day management of the home. All residents should be part of the general body in running the home. On democratic lines committees

should be chosen from the general body which will support in the management of the home on different aspects.

2. The committee should be reconstituted every 3 months and every resident in the home should be given a chance to be an active committee member
3. All process of the committee meetings, staff meetings, general body should be well documented.

#### **Standard VIII: Induction of the residents:**

1. As soon as a resident enters a home she should be received with a welcome kit which will consists of two pairs of clothes, towel, toiletry (tooth brush, tooth paste, soap, sanitary napkins, powder, shampoo sachet, hair oil, comb etc.)
2. In the first one hour the new resident should be allowed to take bath and fresh in up. A light snack with water should be provided as the initial formalities are completed.
3. Older residents trained, as barefoot counselors should be given the task of receiving a new resident and introducing her to the other residents. As a part of the reception a tour of the home should be given.
4. If the resident is brought during the night she should be allowed to rest and personal profile and other documentation formalities should be taken only the next day after the resident is feeling rested.
5. Develop and establish moral support with the newcomer

#### **Standard IX: Induction and Orientation**

1. The preliminary assessment report of the new resident should be recorded on the prescribed format. The profile of the resident will be updated periodically. A photograph of the victim should be taken at the earliest suitable time.
2. As a part of the personal profile care should be taken to establish the true identity of the resident such as her real name, whereabouts of family members, community members, relatives, next of kin, address etc. Updating can be done in a phased manner and computerized
3. The resident should be provided all information regarding the

procedures, rules and facilities in the home. She should be also informed about her legal and civic rights. A grievance/redress mechanism should be created

4. The resident should be informed about all the benefits she is entitled from the government such as immediate relief of Rs.10,000/ and all other rehabilitation package such as livelihood skill, livelihood options, education for her children etc as per the GO MS No 1 dated 3-01-2003.
5. The resident should also be informed and counseled about the routine medical tests and examinations she will be asked to undergo and also the tests for which she has to provide informed consent. The resident's consent for HIV test is necessary. The resident should be told why the test is being taken and the importance.
6. Only after the resident is well oriented (may take a minimum of two weeks) an undertaking should be taken by the resident on her choice to rehabilitate/reintegrate.

#### **Standard X: Recording and Documentation**

1. As soon as the resident is admitted her personal profile should be recorded in a specified format. The said profile should be updated regularly. The profile to be recorded only when the resident is mentally prepared for the same. The persons responsible for recording/documenting the profile should be trained mainly on communication and documentation. She/he needs to be patient with the residents and ensure authenticity.
2. There should be separate files maintained for each resident which should include a profile consisting of personal details, informed consent and referral records with a medical file consisting of medical reports, treatment plan and prescriptions. Confidentiality to be well maintained especially in the case of residents being HIV positive.
3. Separate registers should be maintained for attendance, visitors, incoming/outgoing and restoration/reintegration.
4. There should be a victim care plan which should take into consideration the educational background and interests/talents/skills of the victim (to be recorded in a prescribed format for all

residents and kept in the personal profile). Individual care plans should be made based on this and appropriate training to be imparted taking into consideration the emerging areas of human resource requirements. This care plan should be updated from time to time for each resident even after repatriation and follow up.

### **Standard XI: Tracking Systems**

1. Homes should maintain all relevant details on the resident after the rescue process (FIR copy, remand dairy). A complete record of the resident's contact information (names of relatives, address, phone number etc.) should be maintained in the resident's confidential file. Authenticity of the resident's information should be ensured. A recent/latest passport size photo of the resident should also be kept in the confidential folder. Profiles of the close associates to be secured & maintained. All relevant information should be comprehensive and form a part of the initial assessments.

### **Standard XII: Health and Medical Support**

1. Immediately after a resident is admitted she should be provided immediate medical support (check up, treatment for immediate ailment etc). Pediatric support should be given for children accompanied and a check up by a gynecologist if the woman is pregnant
2. Medical Tests for HIV/AIDS should be done only after the resident gives her informed consent.
3. Each home should have facilities for health check-ups by a registered medical practitioner, gynecologist, pediatrician, referral to external medical experts, hospitals, and facilities for hospitalization, on an as-needed basis.
4. Home should have trained caretakers to provide appropriate care and support for HIV positive residents for early management of opportunistic symptoms. All staff in the Home should be trained in HIV care and support.
5. Home should have referral networks with mental health professionals (psychologist, psychiatrist, psychotherapist etc.) and mental health

institutions for immediate and timely support for psychologically disturbed residents

6. Home should have referral network with de-addiction centers for those residents who have a problem of substance abuse/alcohol addiction
7. Each home should have a first aid box with basic medicines and equipments such as thermometer and updated medical record of each resident. It should be replenished on a regular basis and medicines should be checked regularly for their expiry date
8. Home should have arrangement for caretakers who will escort residents during hospitalization and also facilities for transportation of a sick resident
9. Home should maintain proper registration of births and deaths.
10. Home should have a corpus fund for health related emergencies such as special health conditions, funeral rites
11. At each Home, safe drinking water, sufficient number of bathrooms and toilets, fans and proper ventilation, mosquito nets and proper drainage systems should be in place to ensure the health of all residents.
12. Residents should be provided a nutritious diet. Care should be taken to cater to special needs of residents who are HIV positive, lactating mothers as per the diet chart. The menu for the week should be a part of the home committee decisions.

### **Standard XIII: Counseling and Therapeutic Support**

1. There should be both professional and Peer counselors-preferably female- in a home who would provide immediate trauma care and long term counseling for the residents.
2. The ambience of the home should be therapeutic in terms of nonjudgmental attitude of the staff, along with avenues for relaxation, recreation and spiritual growth and activities for executing responsibilities and to gain confidence and control. Illustrated activities include indoor & outdoor sports, physical exercise, cultural activities, workshops, study material, magazines, music, meditation, yoga, gardening etc.

3. There should be both individual and group counseling for the residents. Peer counseling including group discussions should also be promoted.
4. Residents showing symptoms of psychiatric disorders should be immediately referred to professional psychiatrist.

#### **Standard XIV: Life Skills**

1. There should be daily classes for residents on life skills such as grooming, socialization, communication, conflict management, stress management and leadership. Both formal and informal processes, including mentoring and exposure visits should be used.
2. Innovative and creative tools of teaching life skills should be used such as art/craft etc which will restore a sense of well being and dignity.

#### **Standard XV: Education**

1. Residents who have no formal education should be helped to obtain education through Akshara Jyothi, Vidya program or any other adult education program.
2. Residents who have basic literacy and have an aptitude for further education should be helped to enroll in NFE programs including open school/university for continuum of educational process.
3. Take all measure to mainstream minor residents in normal schools on priority basis.
4. Children of residents should be admitted to either residential hostels or in schools. If in private schools, join through sponsorship preferably from Government. If in Government School the government should take care of all the expenses for education.
5. Any decision to send the resident from the shelter to any outside place should be taken only after security concerns are satisfactory.

#### **Standard XVI: Diet & Nutrition**

1. Home committee should prepare weekly diet chart for the home in consultation with the Superintendent/ Warden. Care should be taken to ensure the needs of the residents are incorporated as much

as possible.

2. Special diet chart should be prepared for lactating mothers, infants, and pregnant residents, residents with special conditions such as HIV/AIDS, diabetes etc and sick/bedridden residents

#### **Standard XVII: Livelihood Training**

1. Residents should be admitted to livelihood training within two months after admission to shelter/home.
2. In collaboration with reputed technical training institutes (Mahila Pranganam, SETWIN, ITI, Community Polytechnic) viable, sustainable and job oriented trades should be taught to the residents. The residents should be allowed to appear for certificate exams or diploma by government or reputed certified agencies such Intermediate Board, State Board for Technical Education for better employability.
3. It should be ensured that all livelihood training should lead to job placement after the stay in the home.
4. Corporate tie up should be explored for developing livelihood training which increases the employability of the resident.

#### **Standard XVIII: Livelihood Option/Economic Empowerment**

1. Economic Rehabilitation Plan for each resident should be developed. Formation of SHG should be encouraged to access micro-credit finance, start placement services for open employment, support for starting small businesses etc.

#### **Standard XIX: Legal Aid/ Assistance**

1. The home should have a part time professional legal advisor (reputed advocate) who could provide legal aid/assistance to the residents.
2. Tie up should be made with enforcement agencies to recover all properties of the victim from the place of exploitation.
3. The residents should be provided all assistance if she is a witness in a case and if need be additional protection as a part of victim witness protection. Care should be taken to take complete consent of the resident for her to become a witness.



4. The legal advisor should provide the residents preparation for trial (through mock trials or any other role play/ discussion method). Legal assistance shall be provided unconditionally, that is it shall not be conditional upon the victim/survivor's willingness to serve as a witness. Use existing legal aid/assistance structures fully, and in case of non-availability of Govt. legal aid cell, services of an advocate may be used.

#### **Standard XX: Civic Benefits**

1. A requisition on behalf of the resident in the prescribed format should be submitted to the District Collector through the Project Director, Women Development Child Welfare for allocation of housing, ration card, voters ID and other civic benefits entitled as rehabilitation package for the resident. Care should be taken that these benefits reach the resident within a stipulated period of 6 months after being rescued. It should be further ensured that these benefits do not stigmatize the resident but instead mainstream the benefits with the family/community. It should also provide benefits for the second generation taking care to see that it reaches the male child also.

#### **Standard XXI: Restoration and Repatriation**

1. Any formalities for the restoration/repatriation process should begin only after getting the informed consent of the resident.
2. Restoration/repatriation plan for a resident should be undertaken only after a complete home investigation (format enclosed) is done. The home investigation should include an assessment of the family (are they involved in trafficking), family and community's willingness to accept the girl and the family's environment.
3. Before a resident is repatriated, a detailed discussion should be held with the resident and the restoration team on what explanation should be given to the family on her absence from her village/slum/community. The resident's version should be adopted as the final version.
4. Proper record and documentation (photos, undertaking from

parent/guardian) should be maintained for all restoration undertaken.

5. No rescued victim shall be sent back to the family without adequate assessment and without ensuring social acceptance and family support. State will ensure that repatriation is carried out depending on how safe and nurturing the family environment is for the victim. If and when the victim chooses to return to an abusive family situation, the state would need to intervene and repatriate the victim to an institution which can protect and care for the individual. Repatriation will be done after the stay in a shelter.
6. States shall work out the details of the repatriation procedures and structure and mainstream them in order to facilitate the smooth and efficient repatriation of the victims and their dependent minors.
7. The members of the professional and (preferably) voluntary sector organizations who have had some helping interaction with the victim shall be represented in the process of repatriation.
8. No rescued victim shall be sent back to the family without fully ensuring that the victim shall not be re-trafficked.
9. The victim being repatriated should be counseled and prepared to return to the country of origin after providing her with adequate medical and psycho-social care as well as after empowering her through basic life- skills so that she can be reintegrated in mainstream life.
10. Adequate financial assistance should be provided for meeting the needs of rescued victims during travel while repatriating them to their families or institutions in source areas.
11. Adequate provision for dearness allowance for police escort or any other authorized escort during such travel should be made by the government.
12. It should be ensured that the legal formalities should be completed for the residents before being restored or repatriated.

#### **Standard XXII: Follow Up**

1. For the first six months after the restoration is done monthly follow up should be done. Thereafter the follow up could be done once a

quarter for the next one year.

Follow up program should ensure the following:

- ▶ Protection against re-trafficking and against commercial sexual exploitation.
  - ▶ Protection against Stigma and Discrimination.
  - ▶ Protection against any other exploitation.
  - ▶ Optional link with a variety of professional support systems.
  - ▶ Confidentiality
  - ▶ Reorientation.
  - ▶ Restoration/ensuring/exercising of full citizen ship rights.
  - ▶ Livelihood option.
  - ▶ Mental health
  - ▶ Restoration/ ensuring/exercising of rights over parental, ancestral and community property and entitlements.
  - ▶ Survivor friendly.
2. Monthly follow-up should be provided for the first six-months and thereafter whenever required, to ensure that the victim receives adequate support and does not get re-trafficked. Adequate follow-up of the victim supervised by the Child Welfare Committee or any other competent authority dealing with women / children along with the close cooperation of other recognized organizations should be mandatory for a period of three years after the victim has been repatriated.

### **Standard XXIII: Social Reintegration**

3. Those residents whose families do not accept them and for those whose families are not conducive space for restoration (for example parent's involved in trafficking) special efforts should be made to support the resident to stand on their feet and slowly in a phased manner supported to live in the society independently.
4. It should be ensured that no rescued victim is sent back to the family without ensuring social acceptance and family support to the victim in order to prevent re-trafficking and further commercial sexual exploitation.

5. Collaborations with appropriate government or non- governmental organizations should be made to provide employment services/ entrepreneurship development training, which will include skills, knowledge, and resources, marketing skills and micro-credit at the district where the resident is reintegrated.
6. The Home shall conduct outreach / support activities, or shall oversee the delegation of those activities to other organizations or individuals in accordance with the Reintegration Plan. Outreach / support activities shall be conducted only with the consent of the victims.
7. In trafficking cases where the entry of the victim in the Rescue Home is very late (e.g. the Home is meant for residents/victims up to the age of 18 and the victim enters at the age of 17) there is a need to extend the protective cover of residential services for a longer period. Some protective cover for the rescued person shall continue even after reintegration through Drop-in Centers, and After-Care Homes.

#### **Standard XXIV: Accountability**

1. All homes run for the purposes of trafficked victims should be directly accountable to the Department of Women Development Child Welfare. The minimum standards prescribed should be adopted irrespective of whether it is government funded or private funded. All homes should have certification of implementing standards.

#### **Standard XXV: Monitoring**

1. The convener of the Anti Trafficking District Co-ordination Committee (Assisted by the Empowered Committee including NGO, Government & Civil Society) who is also the Project Director, Women Development Children Welfare with the support of other members should monitor the homes every two months. he monitoring and review report should be submitted to the Secretary, Women Development Child Welfare through the Director, Women Development Child Welfare.
2. Within the home there should be staff meeting fortnightly to

implement the minimum standards. There should also be monthly meetings with the residents to review minimum standards.

3. Feedback on the minimum standards should be used to improve on the management of the home. Once in a month management meeting on the improvement of the standards.
4. Monitoring should be participatory (Survivors, NGO and Govt. Officials) with the aim to strengthen the standards.
5. Half yearly self audits and external social audit should be done annually apart from ensuring total transparency in matters relating to receipt of funds, expenditure.



## ANNEXURE III:

# Prominent Advisories

**1. MHA Advisory on missing children to prevent trafficking and trace the children.**

F.NO.15011/60/2011

GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA  
NORTH BLOCK NEW DELHI/CS DIVISION  
New Delhi, the 31st January 2012  
OFFICE MEMORANDUM

Subject: Advisory on missing children-measures needed to prevent trafficking and trace the children-regarding.

1. The issue of missing and untraced children, based on police records, is a matter of deep concern to the Government of India. It requires a concerted and systematic attention of Central and State Governments. As missing children are exposed to high risk situations, they are vulnerable and fall prey to crimes of exploitation, abuse, including human trafficking. It is, therefore, necessary that effective steps be taken for effective investigation of cases relating to missing children and tracing of these children. This advisory is in continuation of the advisories dated 09.09.2009, 14.7.2010 02.12.2011 and 4.1.2012 issued by this Ministry to all the States / UTs on similar/related issues of crimes against children.
2. A missing child is defined as a person below 18 years of age whose whereabouts are not known to the parents, legal guardians or any other person who may be legally entrusted with the custody of knowing the whereabouts/well being of the child whatever may be the circumstances/causes of disappearance. The child will be considered missing and in need of care and protection, until located and/or his/her safety/well being is established.
3. The legal provisions as existing in the Juvenile Justice (Care and Protection of Children) Act, 2000 and other laws, several rulings of the Hon'ble Hon'ble Supreme Court of India and High Courts and the recommendations of NHRC, inter alia, emphasize the immediacy of prompt action by law enforcement agencies following disappearance of the child, especially minor girls to maximize



chances of tracing/recovery.

4. The guidelines of NHRC which has already been communicated to the States/UTs with respect to missing children should be implemented and their monitoring ensured (refer website [www.nhrc.nic.in/ Reports/misc/MCR Report.doc](http://www.nhrc.nic.in/Reports/misc/MCR%20Report.doc)).
5. The Hon'ble Hon'ble Supreme Court of India has issued guidelines in respect of missing children on 14/11/2002 (WP (Cri) No.610 of 1996) in Hori lal Vs Commissioner of Police, Delhi and Sampurna Behura vs. Union of India & Ors dated 12/10/11(WP (Civil) No.473 of 2005). These instructions should also be complied with and monitoring ensured.
6. An officer not below the rank of a DIG should be declared Nodal Officer for every state/UT for handling the cases of missing children.
7. Supervision of investigation of such cases by senior police officers of the level of Dy.SP/Addl.SP may be ensured.
8. When, any heinous crime or organized crime on missing children, such as, victims of rape, sexual abuse, child pornography, organ trade etc, is reported, and then the investigation of such cases should be taken over by the CID of the States/UTs to expedite the investigation and to ensure prosecution of the offenders.
9. State Crime branch should maintain close links with District Missing Children Unit (DMCU) and ensure that uploading of data and matching of missing children with UIDBs/Children found is carried out effectively.
10. The Missing Persons Squad (MPS) will match the information regarding missing children with the data available with the MPS and if matched it should be communicated to the concerned police station. A monthly report should be sent to DMCU.
11. When the missing person is traced through search or rescue from places of exploitation, the police control room, District Missing Persons Unit (DMPU) and Missing Persons Squad (MPS) should be informed immediately for updating the record and for discontinuing the search.
12. Whether these missing children land up in Begging Rings, Prostitution, Pedophilic Net and Organ Trade or end up getting

exported for Camel Jockeying etc., it is always an Organized Crime. Profile of all traffickers who facilitate such trafficking should be maintained at PS level in Gang Registers.

13. The State CID should use data mining to analyze patterns, gather intelligence and to build profiles which have interstate ramifications, ascertain angles of trafficking, organized crime, number age/sex profile and maintain liaison with other central agencies dealing with the matter.
14. All police officers and men, especially the team of officers handling investigation into these cases need to be trained and sensitized on an ongoing basis to the issues concerned. The issues of missing children, human trafficking along with JJ Act may be made part of syllabus in the state police training colleges to sensitize the police force. The training should focus on imparting knowledge of the substantial and procedural laws, court rulings, administrative procedures, skills in child-friendly investigations, including interviewing, interrogation, scientific data collection, presentation in the court of law, networking with the prosecutors, facilitating victims/witness protection programmes etc.
15. As there is considerable overlap in the problems of missing children and trafficked children, AHTUs should play an active role.
16. The Superintendent of Police in the districts and Commissioners of Police in the metropolitan areas should review each case of missing children/persons during their monthly crime review meetings to find out the actual number of missing children, number of children traced/untraced, children, the reasons for child disappearance/missing and its links to human trafficking and to take stringent action against the perpetrators of the crime. They should also take strong measures for successful prosecution of the offenders in the court of law.
17. In cases where children and women have been smuggled illegally out of the country, the investigation agencies should utilize Interpol channels to communicate with member countries and if need be, have appropriate Interpol Notices issued through CBI/Interpol wing, in order to trace the victims.

18. An exercise to check all the unclaimed and unidentified children who are kept under safe custody in various shelter homes of the government/non-governmental agencies may be undertaken and details may be matched with the available missing children data base in the country as most of the children lodged in these shelter homes are indeed missing children. Missing Persons Bureau in the state should have a centralized data on children lodged in these shelter homes run by the government/nongovernmental agencies in the state with mechanism to update the data on regular basis. This data along with the photographs of the children should be digitized and regularly sent to NCRB and NCRB will upload this data in their website [www.ncrb.gov.in](http://www.ncrb.gov.in) for pan-India search by other state police/ stake holders.
19. A number of children reportedly die after disappearance/missing and their dead bodies remain unidentified. States/UTs should also consider making it mandatory for the IO s and provide the necessary infrastructure to have the DNA profiling of all such unidentified dead bodies for future comparison and identification. DNA profile of the nearest blood relative through informed consent should be done if child is not found for 3 months. Both the DNA data base may be maintained at the state MPS for future comparison and matching.
20. Similarly, in order to curtail offences of child sex abuse, in all cases of pornography, cyber crimes etc. under investigation, efforts should be made to correlate the pictures of the child with the details of missing children and vice-versa.
21. The data available in each missing children file should be uploaded to the computer maintained at the police station for this purpose. It will be the responsibility of each I.O. to ensure that efforts made towards tracing the missing children is also uploaded on the computer, which would be linked to national database and via CCTNS, eventually. CCTNS should update it promptly on the proposed 'Khoya Bachpan' website.
22. The SHO/Inspector of the police station will ensure that the computerized record of missing children is maintained up-to-date and the same is sent to DCRB and from there to SCRB. The State

and District/City police Control Room/local Police net, ZIP NET, [www.trackthemissingchild.gov.in](http://www.trackthemissingchild.gov.in) should be updated immediately. It would be useful to access data on missing children through other websites maintained by [www.childlineindia.org.in](http://www.childlineindia.org.in) and [www.stoptrafficking.in](http://www.stoptrafficking.in) to mention a few.

23. NCRB is mandated to function as a national repository of crime and criminal related data in the country and the States /UTs should evolve a mechanism to share the data on missing children and human trafficking cases to NCRB in the prescribed proforma of NCRB on monthly basis for analysis and study to find the emerging trends in these sensitive issues.
24. NCRB should device methods of uploading the data on a real-time basis not only of missing persons but also with respect to traced and un-traced persons as well as linking the database with those of rescued persons from different places including children rescued from exploitative or forced labour.
25. The universal number 1098 for reporting of missing children 24x7 is being run in some States / UTs, but there is no uniformity. It needs to be made effective and operational if not done earlier. There should be at least one dedicated police personnel at this helpline on 24x7 hours with proper monitoring mechanism. In the meantime BPR&D would explore further possibilities of integrating 1098 with 100 to make it toll free.
26. Responsible and competent NGOs be earmarked as Nodal NGOs in States for assisting the law enforcement agencies in this regard. The NGOs who have done work in this field with commitment be supported by the law enforcement agencies and synergy be established so that they could work in tandem.
27. When training the police, they must be oriented to undertake all preventive steps including steps to identify children in distress, watch of suspicious persons, special attention at transit points viz. border areas, ICPs, railway stations, bus stations, airports, ports etc., identify vulnerable population/places and take steps to address the vulnerability on time.
28. BSF/ITBP/SSB personnel in outposts on borders should be trained

to look-out for trafficked children on the borders. They should be sensitized to question and detect unaccompanied minors/children or accompanying adults with suspicious behavior during pursuant checking of vehicles/public transport.

29. The law enforcement agencies may involve representatives of Panchayati Raj Institutions and the community at large, such as, Village Watch & ward/ Municipal Committees/Neighbourhood Committees/Resident Welfare Associations etc.. This will enable the community to get fully involved along with the administration/ police in identification, tracing & recovery of missing and trafficked children and arrest of accused persons.
30. Community awareness programmes on the issue of missing children and its links with human trafficking may be undertaken by the District administration. Periodic interface with Public and Safety Awareness Campaign should be conducted in schools and vulnerable areas, jointly by the district administration. Schools must be encouraged to issue Identity cards to children.
31. The activities of various departments and agencies in the States / UTs need to be integrated through a nodal agency. These includes Home Department, Police Department, Social Welfare Department, Women and Child Welfare Department, Juvenile Justice Department, Child Welfare Committees, Labour Department, Health Department, Tourism Department as well as other agencies like State Human Rights Commission, State Women's Commission, State Commission for Child Rights, Railways, RPF, BSF, SSB, ITBP etc. State governments may institutionalize a coordinating mechanism among all these agencies through an SOP clearly mandating the roles and responsibilities of each of these agencies.
32. In places, where vulnerable groups of children are found in large numbers, a mechanism should be evolved in partnership with NGOs and social workers, where by apart from rendering counseling to them, awareness-raising activities are also carried out.
33. The protocols and SOPs developed by UNODC in the Joint Project of MHA-UNODC, during 2006-2008, including protocol on interstate transfer of rescued victims may be effectively utilized

([www.unodc.org/india](http://www.unodc.org/india)).

- 34.** The States/UTs may bring out an SOP for guidance of all concerned.

The receipt of this letter may kindly be acknowledged immediately.

Sd/-

(B. Bhamathi)

Additional Secretary to Govt. of India,  
Ministry of Home Affairs,  
North Block,  
New Delhi – 110001  
Tel. No. 23092514

To,

The Chief Secretaries &

The Principal Secretary/Secretary (Home)

All State Governments and Union Territories

Copy also for information and necessary action to:

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

Sd/-

(B. Bhamathi)

Additional Secretary to Govt. of India,  
Ministry of Home Affairs,  
North Block,  
New Delhi – 110001  
Tel. No. 23092514

## 2. MHA Advisory on Preventing and Combating Human Trafficking in India

F.NO.15011/6/2009-ATC (Advisory)

GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA  
NORTH BLOCK NEW DELHI/CS DIVISION

New Delhi, the 09.09.2009

OFFICE MEMORANDUM

Subject: Advisory on Preventing and Combating Human Trafficking in India

### **Introduction:**

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

### **Human Trafficking and Indian Laws:**

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

specific legislations deal with Trafficking in Human Beings (THB)

- » Laws relating to trafficking in women and children being administered by the MWCD ([www.wcd.nic.in](http://www.wcd.nic.in))
  - i) Immoral Traffic (Prevention) Act, 1956,
  - ii) Prohibition of Child Marriage Act (PCMA), 2006.
- » The “Bonded Labour System (Abolition) Act, 1976”, being administered by Ministry of Labour and Employment ([labour.nic.in](http://labour.nic.in)), provides for abolition of the system of bonded labour and the rehabilitation of released labourers. Child Labour (Prohibition and Regulation) Act, 1986 is also being administered by Ministry of Labour.
- » Further, commercial dealing in human organs is a punishable offence under the Transplantation of Human Organs act, 1994,

being administered by Ministry of Health and family Welfare (mohfw.nic.in). The appropriate authorities appointed under the Act are responsible and empowered to check the illegal activities of human organs traffickers.

Specific Sections in the IPC, e.g., Sections 372 and 373 dealing with selling and buying of girls for the purposes of prostitution.

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

A working Group comprising of Directors General of Police of some of the affected States was constituted in 2004 by MHA to study the issues relating to cross border trafficking. The recommendations of this group were sent to the State Governments and they were advised to evolve a comprehensive strategy for effectively dealing with the problem of trafficking. Also an “Integrated National Plan of Action to Prevent and Combat Trafficking in Human Beings Specially Women and Children” (nhrc.nic.in/planofaction.doc), which has been worked out through a consultation process of all related Ministries and other stakeholders, has been adopted by Government of India in the Ministry of Women and Child Development. This plan deals with all aspects of prevention, rescue, registration of cases, investigations, prosecution, conviction, cross border trafficking issues, rehabilitation, repatriation and reintegration of victims etc. Based on these the recommendations of DGPs and the integrated action plan stated above the State Governments may evolve a holistic approach towards combating Trafficking in Human Beings (THB), encompassing all aspects of prevention, rescue and rehabilitation. Convergence should be adopted between various state departments and stakeholders for effective of handling of crime of



## Trafficking in Human Beings (THB).

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

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

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

2. Implementation of Immoral Traffic (Prevention) Act (ITPA), 1956.
  - i. Since ITPA is the main Act that can be used to book trafficking for commercial sexual exploitation, its implementation is essential for counter-trafficking. Under Section 23, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act. Such rules may be formulated, notified and intimated to MWCD with a copy to MHA.
  - ii. Under Section 13, the State Government may appoint 'Special Police Officers (SPOs)' and the 'Nonofficial advisory bodies' to advise the SPOs for dealing with offences under the Act.
  - iii. Under Section 21, the State Governments may set-up 'Protective homes' and 'Corrective institutions' for ensuring proper implementation of the provisions of the Act. The information regarding these homes may be circulated to all Police Stations and officers dealing with the trafficking cases.

- iv. Under Section 22-A, the State Government may, by notification in the Official Gazette, and after consultation with the High Court, establish one or more Courts for providing speedy trial of the offences under the Act.
  - v. It is generally noticed that sections 8 and 20 of ITPA, which focuses on the victims, are more often invoked as a result of which the victim is re-victimized and the exploiters are not punished. It is, therefore, advised that sections 3, 6 and 7 which pertains to pimps, brothel owners, clients who are actual perpetrators of the crimes need to be invoked rather than sections 8 and 20. Law enforcement agencies need to adopt a victim centric approach in the investigations.
3. Implementation of Juvenile Justice Act (JJ Act), 2000: Juvenile Justice Act provides comprehensive mechanism for care and protection of children including rehabilitation and social integration of children. Therefore, its implementation is essential to address trafficking of children. Following provisions of the Act are concerned with the Home Department/ Police and require action by the State Governments:
- i. Under Section 62-A, the State Government shall constitute 'Child Protection Units' for the State and districts to fulfill its responsibilities as stipulated under the Act.
  - ii. Under Section 63, in each police station, at least one police officer may be designated as the 'Juvenile or Child Welfare Officer' to handle a juvenile or child in coordination with the police.
  - iii. Under Section 68, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
4. 4. Implementation of Prohibition of Child Marriage Act (PCMA), 2006: Prohibition of Child Marriage Act (PCMA) was enacted in 2006 repealing Child Marriage Restraint Act, 1929. It is reported that traffickers in some pockets in the country are exploiting evil custom of child marriage to target innocent girls for trafficking. Therefore, it is essential to implement the Act to address this modus

operandi of traffickers.

- i. As per PCMA, State Governments under Section 19 (1), may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
  - ii. Under Section 16, the State Government may appoint 'Child Marriage Prohibition Officers' to fulfill the mandate as stipulated in the Act. State Governments may intimate the MWCD about the status of appointment of Prohibition Officers and Rules.
  - iii. The State Governments are to maintain MIS and send quarterly information on number of cases registered under PCMA and convictions.
  - iv. On receiving a complaint about child marriage, police are required to follow the procedure laid down in the Code of Criminal Procedure, 1973, which include registering an FIR and carrying out investigation.
  - v. The offences under PCMA are cognizable and non-bailable, hence, immediate arrest of offenders is necessary.
  - vi. Extra vigilance should be maintained during festivals such as 'Akshya Tritha' to ensure that no child marriage takes place.
5. Capacity building of the State machinery: Implementation of the legal provisions in relation to applicable Acts- CLPRA, BLSA, IPTA, JJA and IPC involves not only police but many other officials dealing with the Criminal Justice System - notably the executive magistrates, the labour officials, CWC members and incharges of Homes. Therefore, the State government may initiate a time bound action plan to build the required capacity of the state investigation and prosecution machinery in this regard. Some of the key areas identified for capacity building are listed below.
- i. Identification of victims of trafficking for the purpose of commercial sexual exploitation, child/bonded/forced labour and for illegal organ removal.
  - ii. Recognition of all applicable legal provisions of the law to a case of trafficking (not just one Act or two) by law enforcement machinery.

- iii. Understanding of legal and administrative provisions for inter-state and cross border investigation.
- iv. Understanding of legal provisions for closure of places of exploitation.
- v. Understanding of legal provisions for confiscation of proceeds of crime.
- vi. Understanding of the mechanism in place for victim support and assistance.
- vii. Integrated actions on prosecution, prevention and protection by building linkages with other Government departments and agencies, including NGOs.
- viii. For capacity building the Bureau of Police Research and Development (BPR&D) ([www.bprd.gov.in](http://www.bprd.gov.in)), at the behest of MHA, has prepared a training manual on Human Trafficking Handbook for Investigators and this has been circulated to the States for use in the police Training Institutes. All the training materials have also been uploaded on BPR&D website. BPR&D has already translated the training material in Hindi, Telugu and Marathi languages. 12 Resource Books on ‘Training and Investigation on Anti-Human Trafficking’ prepared as a result of pilot project between MHA and UNODC ([www.unodc.org/india/ind\\_s16.html](http://www.unodc.org/india/ind_s16.html)) have also been uploaded on BPR&D website. These resource materials should be used by State Governments for the capacity building of all agencies involved in prevention of human trafficking.
- ix. Also MWCD, in collaboration with National institute of Public Co-operation and Child Development (NIPCCD) and UNICEF, has developed manuals for training of stakeholders such as ‘Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation’, ‘Manual for Medical Officers for dealing with Child Victims of Trafficking and Commercial Sexual Exploitation’, counseling services for Child survivors of trafficking’, Counseling services for Child survivors of trafficking’, Social workers.
- x. States may organize training/workshops/awareness campaign

to sensitize their SHOs/Dy. SP/ACP and other law enforcement agencies towards the crime, safety and security of women and children.

## **6. Prevention of Trafficking:**

- i.** It has been noticed that people, especially women and children are vulnerable to trafficking during ‘distress migration’ and from ‘disaster prone areas’ such as during floods, earthquakes, crop failures, riots, terrorist activities etc. Therefore, it is important to establish extra vigilance in this regard around transit points and at borders- inter-district/inter-state and international.
- ii.** Police should work closely with immigration authorities, Border Security Force (BSF), Railways and other transport authorities, provincial/ territorial and municipal agencies, with Social Services, child welfare authorities and with any NGOs involved in service delivery for spotting and rescuing the victims.
- iii.** Effective patrolling and vigil at locations prone to trafficking such as highways, dhabas, railway stations and bus stations for suspicious movement of traffickers and victims and monitoring, through involvement of village community, the suspicious/ unnecessary movements of strangers in the villages.
- iv.** Pro-active policing through information exchange with representatives from the local Government, community, NGOs with a view to raise awareness and garner active support of the community.
- v.** Periodical checks on transporters to prevent physical transportation of the trafficked persons.
- vi.** Prevention at the demand area by understanding/ addressing new forms of demand. For example, placement agencies providing domestic child labourers.
- vii.** Facilitating inter-State collaboration by sharing data on missing children/ kidnappings and suspected offenders. Development of victim and offender profiles on an interagency basis.
- viii.** Sensitization programmes/workshops for police officers/ railway police force and prosecutors on various legislations

mentioned above in relation to trafficking. State nodal officers may hold periodical meetings to review and monitor the efforts taken to prevent and combat the crime of trafficking.

**ix.** In case of child trafficking, following provisions also need to be kept in view:-

- i)** Identification of children at risk, (e.g. following raids on off-street sites, responding to referrals from other agencies, NGO or members of the public, following up reports of missing children).
- ii)** Report instances of children in need of protection to relevant child protection agencies. For this purpose the Police Stations could be sensitized.
- iii)** The development of victim profiling with other agencies.
- iv)** Undertaking joint interviews with social workers of children identified as victims or potential victims to assess risk and assist in the development of protection plans.
- v)** Carry out checks on sponsors and people who claim to be the relatives of children identified as being at risk of trafficking.
- vi)** Participating in local child protection networks with related organizations (immigration, social services, NGOs, health, education) to develop joint approaches to the issue at local level and contribute to wider forums as appropriate.
- vii)** If children disappear, initiate missing person's procedures, investigate circumstances and circulate information/ undertake investigations, linking with other agencies as required.
- viii)** Ministry of Labour & Employment has developed a detailed protocol for prevention, rescue, repatriation, rehabilitation and reintegration of migrant and trafficked child labour. The protocol has been issued to all State Governments for implementation.

**7. Investigation & Prosecution:**

- i.** Standard operating procedures for Investigation have been

developed under the pilot project between MHA and UNODC as mention in para 5.8 above, which can be used for effective investigation in trafficking related crimes.

- ii. One of the effective means of securing better conviction rates of perpetrators of crime of trafficking is to base the case on documentary, forensic and material evidence. At present, most of the time, the victim is being used as a witness and more often than not, he/she can easily be intimidated. State Governments are advised to encourage the law enforcement agencies to build foolproof investigation against the traffickers, so that, convictions can be guaranteed.
- iii. Use of fast track courts and video conferencing to the extent possible.

## 8. Rescue and Rehabilitation

- i. Police should work with other agencies and stakeholders to ensure that those who are rescued or who choose to return are not re-trafficked; this should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children).
- ii. Identifying support services and referring victims/potential victims to specialist NGO's and safe accommodation, where these are available. The Ministry of Women and Child Development runs short stay homes Swadhar shelter homes for women in difficult circumstances ([wcd.nic.in/Comscheme.doc](http://wcd.nic.in/Comscheme.doc)). These cater to trafficked women/girls rescued or runaway from brothels or victims of sexual crimes who are disowned by family or who do not want to go back to respective family for various reasons. The schemes provide for shelter, food, and clothing for women and children below the age of 18 years, counseling, clinical, medical, legal and other support, training and economic rehabilitation and helpline facilities.
- iii. A new scheme - UJJAWALA ([wcd.nic.in/Comscheme.doc](http://wcd.nic.in/Comscheme.doc)) – a comprehensive scheme for prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of the victims

of commercial sexual exploitation has been launched on 04.12.2007 by the Ministry of women and Child Development which should be effectively used by the State Governments.

9. MHA has already established an Anti Trafficking Cell (ATC) under the Director (SR) which deals with the following major subject matters:
  - i. All matters pertaining to the criminal aspect of trafficking in human beings especially of women and children, which is the fastest growing organized crime and an area of concern.
  - ii. To act as the Nodal cell for dealing with the criminal aspect of Human Trafficking in India, hold regular meetings of all States and UTs, communicating various decisions and follow up on action taken by the State Governments.
  - iii. To interface with other Ministries like MWCD, MSJE, MEA, MOIA, MOLE, MOL, MOT and NCRB regarding the criminal aspect of human trafficking.
  - iv. All matters relating to the UNODC, UNIFEM, their meetings, conferences, conventions, reports etc. in the context of the criminal aspect of Human Trafficking.
10. The Anti Trafficking Nodal Cell of MHA has developed an MIS proforma for the monitoring of the action taken by various State Governments regarding the criminal aspect of human trafficking as well as crime against women. The State Governments are requested to send quarterly information on 1st January, 1st April, 1st July and 1st October of the year in the prescribed proforma.
11. You are requested to issue suitable directions to all concerned under intimation to this Ministry. It is further requested that action taken in this regard may be regularly / periodically reviewed by the State Governments and UT administrations and a report indicating the present status sent to this Ministry within a month. This advisory is being issued in consultation with the Ministry of Women and Child Development and Ministry of Labour and Employment.



The receipt of this letter may kindly be acknowledged immediately.

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

### 3. MHA Advisory on Crime against Children

F.NO.15011/48/2006-SC/ST-W  
GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA  
NORTH BLOCK NEW DELHI /CS DIVISION

Dated the 14th July, 2010

**Subject: ADVISORY ON CRIME AGAINST CHILDREN**

1. 'Police' and 'Public Order' are State subjects under the Seventh Schedule to the Constitution of India. The Union Government, however, attaches the highest importance to the prevention of crime and, therefore, the Union Government has been advising the State Governments/ UT Administrations from time to time to give more focused attention to the administration of the criminal justice system with emphasis on prevention and control of crime.
2. The National Commission for Protection of Child Rights has been undertaking visits to various States and has observed that the level of sensitiveness and care with which crime against children should be handled is not up to the desired level. In its Fifth Report, titled 'Public Order', the Second Administrative Reforms Commission has also emphasized the need to combat crimes against vulnerable sections of the society, particularly women and children.
3. The Government of India is deeply concerned about crime against children and would, therefore, advise the State Governments and UT Administrations to take the following steps for effective prevention, detection, registration, investigation and prosecution of all crimes against children within their jurisdiction:-
  - a. Vigorously enforce all the existing legislations relating to crime against children i.e., Prohibition of Child Labour (Prohibition and Regulation) Act 1986, Juvenile Justice (Care and Protection of Children) Act 2000 (as amended in 2006), Child Marriage Prohibition Act, 2006, Immoral Traffic (Prevention) Act, 1956, Information Technology Act, 2000 (as amended in 2008) and relevant sections of IPC.

- b.** Sensitize the law enforcement machinery, i.e. the police as well as other functionaries of the criminal justice system, towards crime against children by way of well-structured training programmes. Such training programmes, including inputs on Juvenile Justice (JJ) and Human Rights (HR), may also be incorporated in the syllabi of various Police Training Academies at all levels including those for Constables, Sub-Inspectors and Deputy Superintendents of Police. Assistance of Bureau of Police Research and Development (BPR&D) as well as National Institute of Public Cooperation and Child Development (NIPCCD) could be taken for this purpose.
- c.** Set up exclusive 'Crime against Women/Children' desks in each police station. There should be no delay, whatsoever, in registration of FIRs in all cases of crime against children. All out efforts should be made to apprehend all the accused named in the FIR immediately so as to generate confidence in the victims and their family members. The administration and police should play a more proactive role in detection and investigation of crime against children and also ensuring that there is no under reporting.
- d.** Cases of crime against children should be thoroughly investigated and charge-sheets against the accused persons should be filed within three months from the date of occurrence without compromising on the quality of investigation. Proper supervision of such cases should be ensured from recording of FIR to the disposal of the case. Speedy investigation should be conducted in heinous crimes like rape, murder etc. The medical examination of rape victims should be conducted without delay.
- e.** Steps may be taken not only to tackle such crimes but also to deal sensitively with the trauma ensuing the crime. Counseling to the victim as well as to the family may be provided by empanelling professional counselors.
- f.** Ensure all steps for improving the safety conditions in schools/ institutions, public transport used by students, children's parks/ play grounds, residential localities/ roads etc. Crime prone areas

should be identified and a mechanism be put in place to monitor infractions in such areas for ensuring the safety and security of students, especially girls. For this purpose the following steps should be taken:

- i) Increase the number of beat constables;
  - ii) Increase the number of police help booths/ kiosks, especially in remote and lonely stretches;
  - iii) Increase police patrolling, especially during nights;
  - iv) Posting police officers, especially women, fully equipped with policing infrastructure in crime-prone areas in adequate number.
- g.** For improving general awareness about legislations relating to crime against children and mechanisms in place for safety and protection of the children, the following steps may be considered:
- i) Creating awareness through print and electronic media;
  - ii) Involving the community at large in creating and spreading such awareness.
  - iii) Exploring the possibility of associating NGOs working in the area of combating crime against children and other vulnerable sections of the society.
  - iv) Developing a community monitoring system to check cases of violence, abuse and exploitation against children and take necessary steps to curb the same.
- h.** The local police must be advised to collaborate with the 'Childline-1098 Service' (which is an emergency service being operated by the Childline India Foundation (CIF) all over the country catering to the needs of children in emergency situations) and NGOs for mutual help and assistance wherever and whenever required.
- i.** The juvenile offenders should be dealt with only in accordance with law through proper implementation of the Rules under the Juvenile Justice (Care and Protection of Children) Act 2000 (as amended in 2006), as these contain the procedures and requirements in detail for dealing with children in conflict with

law as well as children in need of care and protection.

- j. All efforts must be made to stop child labour and exploitation of children in all its forms and manifestations. Law enforcement agencies must extend all necessary cooperation to the State Labour Department in the cases of violation of Prohibition of Child Labour (Prohibition and Regulation) Act 1986.
- k. To save the children from the abuse/crime of child marriage the State Government must appoint Child Marriage Prohibition Officers as required under the Prohibition of Child Marriages Act, 2006. They should also set up State Commissions for Protection of Child Rights in accordance with the Commissions for Protection of Child Rights Act 2005 (CPCR Act).

The receipt of this letter may kindly be acknowledged.

Yours faithfully,

(Dr. Nirmaljeet Singh Kalsi)

Joint Secretary to the Government of India

Ministry of Home Affairs

North Block, New Delhi-110 001

Tele: 23092630

**4. MHA Advisory on Associating SSB and BSF in crime meetings on Human Trafficking**

No. 15011/35/2013-ATC

Government of India

Ministry of Home Affairs

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New Delhi, the 23<sup>rd</sup> July, 2015

To

The Home Secretaries of West Bengal, Uttar Pradesh, Bihar, Arunachal Pradesh, Assam, Mizoram, Tripura, Sikkim and Meghalaya.

**Subject: Associating SSB and BSF in crime meetings-reg.**

Sir/Madam,

1. Human Trafficking is a transnational organized crime which needs a well coordinated response from various agencies involved in law enforcement as well as rescue and rehabilitation. Strengthening law enforcement response to the problem of human trafficking is a key focus area of the Ministry of Home Affairs, Government of India.
2. Bangladesh and Nepal are considered to be major countries of origin and transit for men, women and children subjected to trafficking in persons, especially forced prostitution. There is internal trafficking within the country, but a large proportion of trafficking is cross border. Many border areas are frequently used as land routes for trafficking.
3. Due to the recent earthquake in Nepal, thousands of people have become homeless and have sought shelter at refugee camps. As per report many have also gone missing. An epidemic follows migration of people from one place to the other in search of better opportunities to lead a suitable life. In such a situation, many people especially women and children from the earthquake affected areas in Nepal would become soft target to the traffickers who are functioning with a network within the country as well as the other.
4. Border Security Forces (BSF) and Sashastra Seema Bal (SSB) have

been mandated to guard various borders of the country. Whereas Border Security force has been deployed to guard Indo-Bangladesh and Indo-Pakistan borders, Sashastra Seema Bal (SSB) has been deployed to guard Indo-Nepal and Indo-Bhutan borders.

5. Various measures are being taken by the border guarding forces to contain illegal crossing from across the borders which inter-alia include domination/surveillance of the border by carrying out round the clock patrolling, laying nakas; identification of Border Out Posts (BOPs) vulnerable to Human Trafficking; sharing of list of touts with counterparts; maintaining record of villagers residing in border areas at BOPs; frequent meetings with village pradhans, Panchayat members and villagers; erection of fencing on the International Border; installation of floodlight along the border and introduction of Hi-tech Surveillance equipments etc.
6. A large number of Anti Human Trafficking Units have been constituted by the State/UTs at district level to tackle the problem of human trafficking. It has emerged from our interaction with nodal officers in charge of human trafficking in States as well as in Border guarding forces that there is need of closer interaction of AHTUs with border guarding forces to share information and also take coordinated action. In view of this it is recommended that
  - a. An officer from operational battalion of BSF and SSB should be associated in the crimes meetings taken by the Superintendent of Police of the district.
  - b. An officer from BSF or SSB should be associated with the AHTU constituted in each district.
7. Appropriate directions may be issued to the field officers accordingly under intimation to Ministry of Home Affairs.

Yours faithfully

(Kumar Alok)

Joint Secretary (CS)

Telefax: 23438100

**Copy to:**

- » Director General, Seema Shashtra Bal, R. K. Puram, New Delhi

- with the request to issue appropriate order to the field units
- » Director General, Border Security Force, CGO Complex, New Delhi with the request to issue appropriate order to the field units.



## 5. MHA Advisory on preventing and combating human trafficking in India – dealing with foreign nationals

**MOST IMMEDIATE**

No. 14051/14/2011-F.VI

Government of India

Ministry of Home Affairs

(Foreigners Division)

Dated 1st May, 2012

### OFFICE MEMORANDUM

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

1. The undersigned is directed to refer to this Ministry's Office Memorandum No. 15011/6/2009-ATC (Advisory) dated 09.09.2009 on the above mentioned subject (copy enclosed). It has come to the notice of this Ministry that foreign nationals are associated in some instances of human trafficking among women and children.
2. Further to the detailed procedure outlined in the above mentioned Office Memorandum, it has been decided with the approval of the competent authority that in cases of foreign nationals who are apprehended in connection with human trafficking, the State Governments / UT Administrations may follow the following procedure : –
  - a. Immediately after a foreign national is apprehended on charges of human trafficking, a detailed interrogation/investigation should be carried out to ascertain whether the person concerned is a victim or a trafficker.
  - b. The victims and the persons actually involved in human trafficking should be treated differently by the police authorities. This is in line with the SAARC Convention which advocates a victim-centric approach.
  - c. Missions/Posts in India may be informed of the arrest/detention

of the foreign national by the concerned state or other authorities through CPV division in the Ministry of External Affairs (MEA) or the concerned territorial Division in MEA.

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

enclosed Advisory dated 9.9.2009.

3. All other instructions contained in this Ministry's Advisory dated 09.09.2009 including reporting to the Anti Human Trafficking Nodal Cell in MHA will be applicable in the case of foreign nationals associated with human trafficking, whether they are women or children(children means both boys and girls upto 18 years of age).
4. You are requested to issue suitable directions to all concerned under intimation to this Ministry.
5. The receipt of this Office Memorandum may kindly be acknowledged.

(G.V.V. Sarma)

Joint Secretary to the Govt. of India

To

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

**Copy for information and necessary action to:-**

- i. The DGs / IGs (In-charge of Prisons) / - All State Governments/ UTs
- ii. Sri Sandeep Goel, Joint Commissioner(Crime), 3rd Floor, Police Station Kamla Market, Delhi.
- iii. Ministry of Women and Child Development(Smt. Aditi Ray, Senior Economic Advisor), Shastri Bhavan, New Delhi.
- iv. Secretary, Ministry of Labour, Shram Shakti Bhavan, New Delhi
- v. Secretary, Ministry of Social Justice & Empowerment, Shastri Bhavan, New Delhi.
- vi. Secretary, Ministry of Overseas Indian Affairs, Akbar Bhavan, New Delhi.
- vii. Ministry of External Affairs: (a) Addl. Secretary(PV) (b) JS(Consular) (c) JS(BSM)
- viii. Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi.
- ix. Chairperson, National Commission for Protection of Child

Rights, 5th Floor, Chandralok Building, Janpath, New Delhi.

- x.** Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- xi.** Director General, NCRB, R.K.Puram, New Delhi.
- xii.** Director General, BPR&D, New Delhi.
- xiii.** Director General, Border Security Force, New Delhi.
- xiv.** Director, CBI, New Delhi..
- xv.** AS(CS) / JS(CS) / JS(UT) / JS(NE) / JS(K), MHA, North Block, New Delhi.

(G.V.V. Sarma)

Joint Secretary to the Govt. of India

**6. MHA Advisory on Human Trafficking as organized crime.**

F.NO.15011/27/2011-ATC  
 GOVERNMENT OF INDIA/BHARAT SARKAR  
 MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA  
 NORTH BLOCK, NEW DELHI  
 CS DIVISION  
 New Delhi, the 30 April, 2012  
**OFFICE MEMORANDUM**

**Subject: Advisory on Human Trafficking as organized crime.**

1. Human Trafficking (HT) is a serious crime and a gross violation of human rights. It is very often linked with organised crime and is considered as one of the most profitable criminal activities worldwide. Combating and preventing HT requires special skills and effort to prevent, investigate and prosecute offenders. Generally a group of offenders in HT crimes ranges from the spotter, recruiter, agents of recruiters, transporter, harbourer, brothel manager, brothel keeper, exploiters, etc at the lower rung and organized crime syndicates above which need to be investigated at source, transit and destination.
2. In May 2011, Government of India ratified the United Nations Convention against Transnational Organized Crime (UNTOC) and one of its three protocols includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children. The UNTOC is the first comprehensive and global legally binding instrument to fight transnational organized crime and as such has provided for a universally accepted definition of “organized criminal group” and also lists the offences which are transnational in nature. Though there is currently no central legislation in India with regard to organized crime, Maharashtra has enacted the MCOCA 2000 and some States have adopted the same and other states can also do likewise. Legal action against trafficking in India is being taken under the IPC and the Immoral Traffic Prevention Act (ITPA), 1986 and MCOCA against those involved in HT.

3. Organised Crime involves any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other persons or promoting insurgency.
4. The present advisory is intended to provide guidelines to law enforcement agencies on the manner and modalities regarding the crime which should be implemented in conjunction with a MHA Advisory dated 09.09.2009. F.No.15011/6/2009-ATC- (Advisory).
5. Central Bureau of Investigation (CBI), Government of India, is the national Nodal Authority to receive and respond to all requests for all inter-state and cross border assistance as a single point of contact and to act as liaison between the Ministry of External Affairs and other State parties on matters relating to the Convention as well as the Protocols. One unit in Special Crime Division of CBI has been designated as AHTU to provide specialized assistance in the area of HT of children and women for the purpose of begging, prostitution, pornography, forced labour in industries & other forms of exploitation. Criminal Intelligence Cell (CIC), CBI which receives data on gangs involved in kidnapping from all States/UTs in India has been subsumed into this Unit. To ensure that all links in a HT chain are identified and prosecuted as per law, the State/UT police agencies can also take assistance of AHTU, CBI for capacity building as well as for investigation of cases having international ramifications. The agency has also activated a helpline number (011-24368638), where any person, having inputs about gangs and syndicates involved in HT can give information
6. The following key action points need to be addressed by States/UTs for effectively dealing with the organized crime aspect of human trafficking.
  - a. Anti Human Trafficking Units (AHTUs): All states are urged to utilize the AHTUs as a key machinery to deal with the crimes of HT in a holistic manner. Police officers in the AHTU should

collect/disseminate/utilize intelligence on offenders; maintain database of offenders as well as their hierarchical structure, place of operation, segments of supply chain and allied places of exploitation; partner with NGOs and local communities to unearth information relating to HT and above all carry out a professional investigation.

- b.** Sensitisation of Law Enforcement Agencies: Police / Border Guards / Railway Police / Immigration officers, Prosecutors and Judiciary may be sensitized through training / seminars and workshops for the effective implementation of the ITPA, the IPC (Sections 3A, 107-117, 120A, 120B, 551), the Prevention of Corruption Act, 1988, (Sections 7-11, 13, 17, 20) and other relevant state legislations. This should be with the specific purpose of dealing with the organized aspect of trafficking.
- c.** Special Police Officers (SPO): U/s 13 of the ITPA, the State Government may appoint SPOs and 'Non-official advisory bodies' to advise the SPOs for dealing with offences under the ITPA.
- d.** Local Intelligence Units (LIU): State Governments may consider setting up LIUs in all districts against organized crime to gather intelligence and ensure that it is disseminated. Priority should be given to the database on traffickers and their networks. Their profiling and surveillance can be an effective tool for intelligence collection and for prevention of trafficking.
- e.** Helplines: State police agencies may set up helplines and special desks in the police stations and control rooms to address this issue on a real time basis.
- f.** SOPs: The protocol on Inter-State rescue and Post-Rescue activities and Standard Operating Procedures for Investigation etc. developed jointly by the MHA and UNODC for conducting joint investigations and operations which also facilitate exchange of information about traffickers and their mode of operation, routes etc. should be implemented. These resource materials should be translated and re-printed by the states into local languages for wider use and dissemination.

7. **Investigation Of Organised Human Trafficking Cases:** Only relentless law enforcement pressure can diminish the possibility of unattached criminal elements forging alliances with big crime figures, constitute criminal networks and thereby spawn the phenomenon of organised crime. Organised crime can only be combated by a deft mix of good intelligence, proper and exhaustive investigation and national and state level coordination.
8. **Summary Of Guidelines For Investigation:** An organized criminal group is structured in a hierarchical manner so that the kingpins are insulated from law enforcement. Conviction of kingpins is difficult because of rules of evidence: witnesses are not willing to depose for fear of their lives and informers fail assist law enforcement agencies as documentary evidence is not available. For counter these difficulties which hinder proper investigation and prosecution of cases, the following measures are beneficial – inter-agency coordination, use of undercover agents, early completion of investigation and speedy trials, access to common databases for enforcement, witness protection, confiscation of crime proceeds, training of investigation officers and use of Mutual Legal Assistance Treaty (MLAT) for assistance in investigation from other countries.
9. **Ingredient of Offence:** Each ingredient of an offence made out in a case must be clearly identified and must be matched against the relevant pieces of available evidence as well as the legal admissibility of each piece of evidence along with linking it with one or more ingredients.
  - a. **Investigation at source, transit and destination:**
    - i) Evidence collection at the source to ascertain the true identity of a victim, identify and whereabouts of the local gang members and their contacts (links), the modus operandi used for recruitment/engagement of a victim, complicity of the family and others (if any).
    - ii) Evidence collection through transit is required to establish transfer of a victim, routes and modes of transportation used, identify accomplices and the methods used to control



a victim through the transfer.

- iii) Evidence collection at the destination to establish the nature of exploitation, methods employed by exploiters to control a victim, impact of exploitation on a victim, places used for exploitation, identification of gang members operating the business, property and assets of a gang and individual members, complicity of officials (if any).
- b. **Corroborative evidence:** Medical reports should be used to establish the nature of exploitation and its impact on victims. Age estimation of a child victim is necessary to book offenders under more stringent provisions; DNA/finger prints and such other test reports may be obtained to establish the identity of a person (victim/accused); call record analysis of gang members to establish contact between relevant persons (victim/accused/others), travel documents/tickets used by traffickers to establish movement of victims/accused and forensic reports of items seized from a scene of crime (SOC) such as blood stains, instruments, weapons, registers, property papers etc. are other forms of evidence which should be used to establish relevant facts for a case.
- c. **Independent reports from other agencies:** An Inquiry report submitted under Section-10A (b(i) or 17(2) or 19(3) ITPA, would be highly relevant and useful in cases involving adult female victims of trafficking for commercial and sexual exploitation. Similarly, inquiry report submitted u/s 33 JJ Act in case of child victim or Income Tax department assessment or any other official agency in relation to the activities/assets of an accused or the gang or a Counsellor's report about the condition of a victim would be of utility.
- d. **Sequence of events:** The sequence of events from 'source to destination' should be reconstructed with all available information to identify the missing links of information and their legal admissibility. Each SOC should also be individually reconstructed to identify the missing links of information/evidence. The role of predators/accomplices such as Procurers/

Spotters, Recruiters, Transporters of the victims, Financiers and other exploiters such as clientele, pimps, brothel owner and managers should be investigated from a conspiracy angle.

**e. Defeating Organized Gangs:**

- i) A clear plan of action should be chalked out to collect relevant evidence to prove existence of a gang, the identities and activities of its gang members, nexus with other gangs and public officials, if any and identify the trail of illegal and ill-gotten money (proceeds of crime).
- ii) Deciphering the communication linkages through link analysis.
- iii) Specific and general 'intelligence' about a gang should be developed to make a prima facie assessment about the lines of investigation with respect to the activities of a gang.
- iv) Relevant 'surveillance' methods may be employed to develop specific information including the identity, the activities and the level of complicity of gang members in the case and otherwise.
- v) The case history of every crime committed by every gang member should be collected from the concerned districts to prepare a dossier of the gang to be used to book a gang under relevant laws such as the UP Gangster Act.

**f. Parallel Financial Investigation into Money Laundering:**

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

- i) Conversion or transfer of crime proceeds for the purpose of concealing their illicit origin;
- ii) Concealment or disguise of crime proceeds;
- iii) Acquisition, possession or use of crime proceeds;

- iv) Contributing indirectly to the commission of the offences outlined above, including participation in and conspiring or attempting to commit the offences in question.
- g. Efforts should be made to identify** each and every moveable and immoveable asset of a gang and each of its members including benami properties by verifying documents and analyzing the source of funds. Each business or establishment run by gang members should be scrutinized to assess the investment made into the business/establishment, its source of funding, profits made and utilization/re-investment of profits, possible tax evasion, violation of financial rules and regulations including the ones relating to foreign exchange.
- h. Confiscation of Proceeds:** It will be essential to deprive the criminal gangs of their ill gotten wealth. The laws relating to confiscation of proceeds of crime are available in several statutes. As per the facts of the case being investigated the relevant law is to be invoked.
  - i) Sections 102, 105 and 452 of CrPC
  - ii) Sections 111 to 121 of the Customs Act, 1962 ;
  - iii) Chapter V A of the Narcotic Drugs and Psychotropic Substances Act, 1985;
  - iv) The Criminal Law [Amendment] Ordinance, 1944 (Ordinance XXXVIII of 1994)
  - v) Foreign Exchange Regulation Act, 1973 (Section 63) ; and
  - vi) Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.
  - vii) Unlawful Activities (Prevention) Act, 1967.
  - viii) Invoke provisions of ITPA along with IPC, ITPA with MCOCA (wherever in force), ITPA with Goa Children's Act, 2003 (applicable in Goa) etc.
  - ix) Action be initiated under the provisions of the Prevention of Money Laundering Act, 2002 for offences committed u/s. 5, 6, 8 and 9 of ITPA; The Enforcement Directorate is to be informed during the investigation of the predicate offences.

- i. **Collection and sharing of criminal intelligence:** As with any other form of organized crime, successful investigation of trafficking in persons requires the need to identify and gather evidence from other jurisdictions in the course of investigations, be it inter-state or cross-border trafficking. Hence, joint proactive operations/serious investigations in the region or transit or destinations sites can exploit evidential opportunities to gather collaborative evidence at recruitment and transportation phases of the crime. It is necessary that while investigating the crime of human trafficking, the following needs to be considered at all stages of human trafficking:
  - i) Sharing criminal intelligence with other police agencies (different police stations, districts, states, CBI etc.) on traffickers and all other accomplices.
  - ii) Sharing crime data with other police agencies and CBI regarding vulnerable places and vulnerable people.
- j. **Transfer of evidence from another country:** For transfer of evidence from another country Letter of Request (LR) u/s 166A CrPC. or invoking MLAT must be resorted to by contacting the IPCC Division of the CBI.
10. The aforementioned measures are only indicative and the States/UTs may consider any additional measures for dealing with the organized crime of human trafficking. This Ministry may also be kept apprised of any special measures/mechanisms introduced in their respective jurisdictions so that the same could be circulated to other State Governments and UT Administrations for consideration / adoption. States/UTs may consider translating this Advisory into regional languages for dissemination.

The receipt of the Advisory may be acknowledged.

Sd/-

(S. Suresh Kumar)

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

To

The Chief Secretaries &

The Principal Secretary/Secretary (Home)

All State Governments and Union Territories

Copy also for information and necessary action to:

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

Sd/-

(S. Suresh Kumar)



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Arz (anyay rahit zindagi) is a development organization working towards combating Human Trafficking for commercial sexual exploitation in INDIA.

Arz (anyay rahit zindagi) was awarded (by the Ministry of Home Affairs, Government of India in 2011) for 'Outstanding work done by an Ngo in the field of anti-human trafficking for the year 2011'. The Ministry of Women & Child Development, Government of India in 2014 awarded the "Stree Shakti Puraskar (Ahilya Bai Holkar)" to Arz for its outstanding contribution towards socio-economic development of women.



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