

***Report of the***  
***National Workshop***  
***To***  
***Review the Implementation of Laws and***  
***Policies Related to Trafficking: Towards an***  
***Effective Rescue and Post-Rescue Strategy***

*Held at:*

**YMCA International House and Programme Centre,  
Conference Hall, Ground Floor  
18, YMCA Road, Mumbai Central,  
Mumbai - 400 008.**

**on 27<sup>th</sup> and 28<sup>th</sup> February, 2004**

*Organised by:*

**PRAYAS (Field Action Project of the Tata Institute of Social Sciences)  
in collaboration with the NATIONAL HUMAN RIGHTS COMMISSION**

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## **ABOUT PRAYAS...**

Prayas is a field action project of the Tata Institute of Social Sciences, working in the field of criminal justice through social work intervention in three districts of Maharashtra and Gujarat, since the past fourteen years. The project focuses on the rehabilitation of persons coming out of crime or prostitution and is based in prisons, police stations, courts, legal aid systems, rescue homes for women/minors in prostitution and in community based rehabilitation centres. It works with above mentioned objectives through placement of full-time social workers and teachers as well as part-time staff, volunteers and students of social work and law.

The intervention of Prayas in the field is aimed at two levels:

- 1) Rehabilitation of persons coming out of crime or prostitution. This is done on a case by case basis, by coming in contact with persons needing help, guidance or assistance at the various contact points where our staff are based, both inside institutions as well as through our community centres in Mumbai, Thane and Bharuch.
- 2) Law and policy change on issues related to custody, detention, trial and rehabilitation. This objective is achieved through two broad areas - research and documentation of issues and advocacy with government departments, judiciary and society.

Developments leading to the National Workshop ...

The initial experience of Prayas at the Government Protective Home for rescued women, led to a realization that post-rescue work should start from the police station itself, as that is the first point of contact with rescued minors and women. The first hand experience in counseling of girls/women rescued or removed by the police, provided the base to understand the barricades and problems in the process of effective rescue and post-rescue work. This included the ground level problems faced by field staff from the police and the protective home.

Out of these experiences, a need emerged to bring all the agencies involved in rescue and post-rescue work on a common platform to discuss problems faced in the implementation of laws related to the rescue and rehabilitation of women and minors in prostitution. It was with this aim that Prayas approached the NHRC with the idea of organising a national workshop on laws related to trafficking to review the rescue and post-rescue strategy with regard to trafficked women and minors in the country.

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## INTRODUCTION TO THE WORKSHOP

The National Human Rights Commission in collaboration with Prayas (A Project of the Tata Institute of Social Sciences, Mumbai) had organized a two-day **National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy** at Mumbai on 27<sup>th</sup> and 28<sup>th</sup> of February, 2004. The main focus of this workshop was on one of the most oppressive and visible forms of trafficking, i.e. trafficking of women and children in prostitution.

The National Workshop was inaugurated by Dr Justice A.S. Anand, Chairperson of the Commission. Justice (Smt.) Sujata V. Manohar, Member, NHRC, Justice Shri C. S. Dharmadhikari (Retd.) Smt. Kasturi Gupta Menon, Secretary, DWCD, GOI, Smt Veena Rao, Joint Secretary, DWCD GOI, Shri S.S. Dodd, Principal Secretary, DWCD, Maharashtra, and Prof. U.S. Nayar, Deputy Director, TISS also graced the inaugural session of the workshop. Justice Manohar, Smt. Gupta Menon and Smt. Veena Rao stayed on for the two days and gave valuable inputs throughout the duration of the workshop. Justice Manohar also gave the valedictory address of the workshop.

The workshop was attended by government officials from the Judiciary, Police and the DWCD of eleven states (Andhra Pradesh, Bihar, Goa, Karnataka, Maharashtra, Meghalaya, Orissa, Tamil Nadu, Uttar Pradesh, West Bengal and NCT of Delhi), NGOs, lawyers and academicians involved in the issue of rescue and rehabilitation of women and minors in prostitution.

The main objectives of the National Workshop were: (i) to review the effectiveness of the provisions of ITA, JJA, IPC and other laws for the rescue and post-rescue work, (ii) to exchange the experience amongst the concerned agencies with regard to rescue and post-rescue work, (iii) to suggest ways to overcome the problems faced by the various government functionaries involved in rescue and post-rescue work, and (iv) to review the policy, schemes and plan for the effective rescue and post-rescue work of trafficked girls/women.

The two-day workshop witnessed a healthy and meaningful series of discussions amongst the participants who shared their own experience and observations.

## BACKGROUND NOTE

1. *Trafficking in human beings is a global phenomenon, which has gained momentum in recent years. The reasons for the increase in this phenomenon are multiple and complex. Trafficking in general seems to have taken advantage of the globalization of the world economy that has led to increased movement of people, money, goods and services to extend its own international reach. It feeds on poverty, despair, war, crises, ignorance and women's unequal status in most societies.*
2. *Trafficking has been defined in varied ways over its history, and in recent years largely to accommodate the specific needs of the organization or body developing the definition. It has thus been variously defined, among others, in terms of human rights, criminal activity, irregular migration, labour exploitation and modern slavery. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the UN Trafficking Protocol) that was opened for signature in December, 2000 brought much-needed and widespread consensus on a working definition of trafficking. This Protocol defines trafficking as ".....the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation" [Article 3(a)]. It further specifies that 'exploitation' shall include at a minimum, "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal or organs."*
3. *The UN Trafficking Protocol is an important step in the growing body of instruments that consolidates understanding of trafficking as the movement and exploitation of human beings for whatever purpose. Ironically, trafficking has often been confused as movement only for commercial sexual purposes, and has thus not been comprehensively dealt within law. Still in many countries, anti-trafficking laws are also the prostitution laws, which seek to criminalize or regulate or control the sex industry and sex trade. There is clearly an urgent need for countries to review laws that do not take account of a comprehensive understanding of trafficking and to ensure that adequate protection in law is provided for both adults and children who are victims of this heinous act. This holds true for India too.*
4. *Trafficking is prohibited by the Indian Constitution. The right against exploitation is a Fundamental Right guaranteed by the Constitution of India Under Article 23, "traffic in human beings and beggary and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."*
5. *In accordance with the Constitution, the Government of India enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956, which criminalizes trafficking. The Act does not prohibit prostitution, but does prohibit prostitution related activities such as keeping a brothel or allowing premises to be used as a brothel, living on the earnings of prostitution and procuring, inducing or taking a woman or a girl for the purpose of prostitution. The Act was amended in 1986 and*

renamed as the Immoral Traffic (Prevention) Act (ITPA). The ITPA introduced several initiatives including setting-up of Protective Homes to provide protection and services to victims and education and vocational training to at-risk groups. The Act also provides for the appointment of Special Police Officers assisted by women police to investigate trafficking offences, and for the setting up of Special Courts.

6. The implementation of the ITPA is hampered by the existence of certain Sections, such as, Sections 8 and 20, which are the most commonly invoked Sections for any enforcement being done under the ITPA. These Sections result in prosecution of the trafficked persons and result in further victimization of the victims/trafficked persons. It has been found that instead of prosecuting the traffickers under Sections 3, 4, 5 and 6, most prosecutions take place under Section 8 of the ITPA. It has also been felt that the ITPA should be amended to focus on the trafficker, to ensure speedy recording of evidence, to enhance penalties against traffickers and deny easy bail to them.
7. The Indian Penal Code 1860 (IPC) prescribes the kidnapping or abduction of a woman with intent to marry her by force, forcing a woman into illicit intercourse, or compelling a woman directly or indirectly to go from a place for this purpose. If a girl is a minor, inducing her by any means to go from place to place is punishable, as is importing a girl below the age of 21 years into India for the purpose of inducing her into illicit sex.
8. The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA) is another law whose provisions are invoked in order to provide care, protection, treatment and rehabilitation to children in need of care and protection as well as those who come in conflict with law. But, there seems to be a wide gap in theory and practice in the implementation of this Act also.
9. One of the reasons usually cited for poor implementation of the aforesaid laws is that the problems faced at the ground level by the field staff or the implementing agencies have never been discussed at length with the policy makers. In spite of the fact that the field staff as well as the implementing agencies by virtue of their experience in the field possess a storehouse of knowledge, skills and abilities. It is high time to reverse this process. For any change to be effective, consultations have to be two-way and wide ranging. It is imperative that all stakeholders including the field staff be taken into confidence.
10. Towards this end, the National Human Rights Commission in collaboration with PRAYAS (A Project of the Tata Institute of Social Sciences, Mumbai) proposes to organize a two-day **National Workshop to Review the Implementation of Laws and Policies Related to Trafficking : Towards an Effective Rescue and Post-Rescue Strategy** at YMCA International House and Programme Centre, Conference Hall (Ground Floor), 18 and Programme Centre, Conference Hall (Ground Floor), 18 YMCA Road, Mumbai Central, Mumbai - 400 008 on 27<sup>th</sup> and 28<sup>th</sup> of February, 2004.

## Objectives

The main objectives of the proposed National Workshop are (i) to review the effectiveness of the provisions of ITPA, JJA, IPC and other laws for the rescue and post-rescue work, (ii) to exchange the experience amongst the concerned agencies with regard to rescue and post-rescue work, (iii) to suggest ways to overcome the problems faced by the various government functionaries involved in rescue and post-rescue work, (iv) to examine the involvement of NGOs, and (v) to work out a uniform policy, scheme and plan for the effective rescue and post-rescue work for the trafficked girls/women.

## Participants

The participants to the two day National Workshop would be **Judicial Officers** (of the rank of District Judge/Additional District Judge/Metropolitan Magistrate having experience of handling cases under the ITPA/other laws related to rescue and rehabilitation of trafficked victims), **Police Officers** (of the rank of Superintendent of Police/Deputy Superintendent of Police/Inspector having experience of handling cases under the ITPA/other laws related to rescue and rehabilitation of trafficked victims), **Government Officials** (of the rank of Superintendent or Probation Officer or any Stat-Home for Women/Protective Home/Rescue Home/Juvenile Home/Nari Niketan having experience of handling cases under the ITPA/other laws related to rescue and rehabilitation of trafficked victims), and representatives of some **Non-Governmental Organizations** working in the field. Representatives from eleven States, namely, Andhra Pradesh, Bihar, Goa, Karnataka, Maharashtra, Meghalaya, Orissa, Tamil Nadu, Uttar Pradesh, West Bengal and NCT of Delhi, where the problem of trafficking is rampant, are being invited for the Workshop.

## Themes

The National Workshop proposes to focus on themes like, 'A Situational Analysis of the Process of Rescue and Post-Rescue Phases', 'Role of Police and Judiciary in the Rescue and Post-Rescue Process', 'Role of Protective Homes/Rescue Homes/Correctional Institutions in Post-Rescue Work', 'Challenges faced in the field of Repatriation and Reintegration', etc. in plenary sessions with the help of papers prepared and presented by the resource persons. The paper presentations will be followed by general discussions and clarifications, if any, on major issues raised in the presentations. It is proposed to adopt the recommendations made in the National Workshop in the form of an Action Plan.

A copy of the detailed guidelines containing discussion points for the Judicial Officers, Police Officers and Government Officials during rescue and post-rescue phases is enclosed as **Annexure**.

## ANNEXURE

### **I. RESCUE**

#### **A. Judiciary**

1. Review of existing judicial mechanisms to effect rescue and post-rescue work.
2. Establishment of Special Courts under the ITPA to try cases related to cheating, luring, kidnapping, sale, confinement and forcing minors and women into the trade in all source and destination districts of the country.
3. Review of Supreme Court and High Court Judgments on effective rescue of minors and women in prostitution.

#### **B. Police**

1. Analysis of existing laws and specific provisions in the laws which address the issue of effective rescue of persons caught in prostitution - ITPA, JJ Act, IPC, Railway Act, Bombay Police Act, Foreigners Act, Passports Act and any other legislation.
2. Review of the adequacy or otherwise of existing state machinery under local police, railway police and special police officers under the provisions of the ITPA to carry out anti-trafficking and rescue work.
3. Possible action against pimps, agents, brothel-keepers and customers to discourage prostitution.
4. Creation of structures to combat inter-state, intra-state and inter-country trafficking and carry out effective rescue work.

#### **C. Government Officials**

1. Review of existing structures under the ITPA and JJ act to house trafficked women.
2. Possible use of Short-Stay Homes and Swadhar Scheme to prevent trafficking of vulnerable minors and women for prostitution.
3. Possible use of existing schemes of the Department such as Swawlamban (earlier known as Women's Economic Programme), STEP, etc. to carry out preventive level work in the source districts.
4. Role of District Women and Child Development Officers in source and destination districts.
5. Posting of Probation Officers and Counsellors in police stations in source and destination districts.

### **II. POST-RESCUE**

#### **A. Judiciary**

1. Analysis of Sections 15, 16 and 17 of ITPA to make the post-rescue work more effective.
2. Role of the Probation Officer and penal of social workers (as per the provisions in the ITPA) in assisting the Court to arrive at a better judgment in deciding cases of rescued persons.

3. Methods to deal with the trauma and fatalistic attitude of rescued persons in the Court to help arrive at correct and appropriate rehabilitation plans.
4. Methods to avoid 'handing over' rescued persons to anti-social or bogus elements.
5. Possible use of Sections 7 and 8 of the ITPA against those committed to prostitution, for the purpose of rehabilitation.
6. Possible use of protective homes for detaining women arrested under the ITPA, from a rehabilitative angle.

#### **B. Police**

1. Review of age-verification process to prevent corrupt practices in police hospitals and plug existing loopholes.
2. Use of existing sections of the ITPA such as Sections 15 and 16 towards better post-rescue operations.
3. Possible use of Sections 7 and 8 of the ITPA against those committed to prostitution (instead of fining them under miscellaneous legislation such as Bombay Police and Railway Acts) from a rehabilitative perspective.
4. Analysis of the results of using fine-sentence measures against persons found soliciting in public places, and its connection with rehabilitation.
5. Confidence-building measures to create trust in the police among trafficked women.
6. Possible action against anti-social elements and bogus guardians attempting to re-prostitute rescued persons into the trade.
7. Analysis of problems faced in the repatriation of rescued minors and women.
8. Need for freer exchange and coordination with judiciary, rescue homes and women and child development authorities, towards a better post-rescue strategy.

#### **C. Government Officials**

1. Review of existing structures such as Protective Homes, Rescue Homes, Nari Niketans and State Homes set up for the rehabilitation of rescued persons - number, location, capacity, staff strength, type of personnel and funds available.
2. Review of services available for the rehabilitation of rescued persons - counselling, training, marriage, job-placement, family-placement, repatriation and follow-up mechanisms.
3. Co-ordination with police, judiciary and NGOs towards a more effective rehabilitation plan.
4. Need and mechanism for networking with government and non-government agencies within and outside the States.
5. Review of existing schemes for the rehabilitation of rescued persons and to deal with community and caste based prostitution forms.
6. Review of the Action Plan Document devised by the Department, in pursuance of the directions given by the Hon'ble Supreme Court in the Vishaljeet Vs. Union of India case.

## I. INAUGURAL SESSION

### Welcome Address

**Speaker: Dr. Usha Nayar, Deputy Director, the Tata Institute of Social Sciences, Mumbai**

Dr. Usha Nayar, Deputy Director of TISS, formally inaugurated the Workshop by extending a warm welcome to all the dignitaries and participants present in the Workshop. She welcomed them on behalf of TISS and regretted the inability of Dr. R.R. Singh, Director of the Institute to be personally present, as he was out of town on some urgent official work.

In her welcome address, she highlighted the commitment and dedication of all the dignitaries, resource persons and participants present, who had found the time to attend and participate in an exercise as important as this.

She further pointed out that Prayas had made a sincere effort in organizing the Workshop. She allured to the alarming figures related to the human trafficking industry world-wide, that it was to the tune of U.S. dollars eight billion each year. The problem of trade or human misery is deep-rooted and very complex. The figures relating to abuse and trafficking of children alone in the world is over two million.

Coming to the objectives of the Workshop, she reinforced that participants needed to learn from each other to understand the complexity of this issue. She also pointed out that it was very important to understand the perspectives, which w.e. as members of society and as professionals in the field have towards the problem - tolerance, abolition, or regulation. She added that *our actions in the field cannot be that strong unless they are supported by strong and clear convictions.*

### Address by Dignitaries

**Speaker: Smt. Kasturi Gupta Menon, Secretary to the Department of Women and Child Development, Ministry of Human Resource Development, GOI.**

*The issue of rescue and rehabilitation is the focal point of this Workshop, which determines the future of the trafficked woman's life and makes that vital difference. In a sense, it is the method and success of rescue and rehabilitation that determines whether our intention to protect the victim has succeeded and whether she receives another opportunity to live life once again with freedom and dignity. Towards this end, it is the duty of the different agencies of government and society to provide for effective and successful rescue and rehabilitation to undo the wrong perpetrated on the victim and to protect her human rights.*

Successful rescue and rehabilitation perhaps is the most difficult process because it must combine judiciously the statutory part of the Court and administration - a human and sensitive approach towards traumatized and vulnerable victims - from government functionaries and social workers, compassion from society and work with a human touch.

*Events during the past decade have been instrumental in bringing issues pertaining to trafficking in the public domain. In India, public debate on trafficking emerged in the 1990s after the landmark decisions of the Supreme Court in the cases of Vishaljeet V/s. Union of India and Gaurav Jain V/s. the Union of India, in which the Supreme Court issued directions to the Union and the State governments to study trafficking in depth and prepare a national plan to address the problem.*

The Government of India formulated the National Plan of Action to Combat Trafficking and Sexual Exploitation of Women and Children in 1998, which lays down an exhaustive set of guidelines to the Central and State governments covering the entire spectrum including prevention, law enforcement, awareness generation, social mobilization, health care, education, child-care services, housing, shelter and civic amenities, economic empowerment, legal reforms, rescue and rehabilitation.

Today in India, there are seven public interest litigations seeking more effective implementation of the Plan by both the Central and State governments. Intense activity in the international scene throughout the 1990s also brought the issue of trafficking into the realm of public debate. International instruments, conventions and human rights movements brought about a high degree of international focus and exerted a very positive pressure on national governments, facilitating commitment to accelerate awareness on the issue and the need to initiate pro-active interventions against the growing scourge of trafficking of women and children. This sustained the international momentum of the 1990s, and has acted as a powerful catalyst for advocacy and for demanding greater accountability from the government to take stringent action against trafficking.

The decade also witnessed the growing anti-trafficking NGO movement and a national recognition of their partnership and services. Rescue and rehabilitation form integral components in our National Plan of Action to combat trafficking and commercial sexual exploitation of the women and children. The Department of Women & Child Development has prepared a new scheme for rescue of trafficked victims keeping in view the directives of the Delhi High Court in the case of Writ Petition No. 532.

The new scheme has been formulated to encourage participation of the non-governmental sector and voluntary organisations in the process of rescue and restoration of the trafficked victims. As these organisations need to spend money to pay informers, for the transportation, housing girls in short-term shelter homes, take care of the medical costs and ultimately restore them to their place of origin, it has been proposed in this scheme that part of this expenditure can be met from out of the new pilot project scheme that we are proposing to introduce from the 1<sup>st</sup> of April this year, called Rescue of Trafficked Women.

An extensive network of Short-stay Homes has been set up under the Juvenile Justice Act for protection of juveniles and victims of prostitution. Medical services and counselling are made available in these Homes. The Central Social Welfare Board also provides financial assistance to NGOs towards running and development of day-care centers of victims of commercial sexual exploitation.

We also have since the last three years, a scheme called SWADHAR for women in difficult circumstances. You will notice that we have deliberately kept the term 'difficult circumstances' so that it gives a kind of flexibility to also cover those who have just not been victims of sexual exploitation. One of the categories – only one of the categories covered under this scheme are trafficked girls, rescued or runaway from brothels or other places, or women and girl victims of sexual crimes or deserted by their families or who do not want to go back to their respective families for various reasons.

The various components under the scheme are creation and running of shelter homes, medical care, counseling, legal help, vocational training and help lines. Many SWADHAR shelter homes for the rehabilitation of trafficked victims have been sanctioned through NGOs in New Delhi, Mumbai, Hyderabad, Chennai, Kolkata and Bangalore.

Finally, our efforts may not yet be commensurate with the dimension of the problem. But we are determined to upscale and expand our activity in cooperation with State governments, NGOs, human rights institutions and community organisations. The process of trafficking is complex and this would imply that any counter trafficking operation would be equally complex, requiring several different agencies to intervene simultaneously. An alliance between the government, the police, the judiciary and the NGOs will generate a determined social and political will to protect the victims of society, restore their human rights and give them a fair opportunity to live their lives with liberty and dignity.

I once again thank the NHRC and Prayas for inviting me here today and I look forward to listening to the deliberations that I am sure will give us a greater insight to address the common objective for which we are meeting here. Thank you.

**Speaker: Hon'ble Justice (Smt.) Sujata Manohar, Member, NHRC**

It is very appropriate that this Workshop is being held in Mumbai, which is one of the major receiving centres of trafficked women and children. Concerned with the increasing magnitude of the problem of trafficking and the increasingly younger age of victims of trafficking, the NHRC, in 2001, established a Focal Point on Trafficking. One of the objectives of the NHRC is to make our non-functional systems functional and to make functional systems function better. I am very happy that all of you who are concerned with making our systems function are here to see how we can make our systems more responsive and effective, as far as the needs of the trafficked victims are concerned.

This Workshop, which is organised with the help of Prayas (TISS) hopes to focus on the implementation of laws and policies relating to trafficking with special emphasis on effective rescue and post-rescue rehabilitation strategies, which should be adopted in the case of trafficked victims.

As far as the NHRC is concerned, we are not so much concerned with definitions as with trying to see in what manner we can help victims of trafficking in all its manifestations – whether it is for sexual exploitation, physical exploitation, bonded labour, forced labour, or children trafficked for begging apart from sexual exploitation. Whatever be the scope of trafficking, most of these victims, as I said, are very young, often as young as eight or ten years.

The second issue, which we would like to emphasize, is that the law must not target the victim. It should target the traffickers who force women and children or induce them under false pretext to migrate from their homes and accompany the traffickers to unknown places where they can be exploited in various ways. It is the traffickers who are the real criminals, often operating as criminal syndicates nationally or internationally. In fact, trafficking in human beings is the fastest growing form of transnational organised crime, involving very high earnings and very low risks. It thrives on the fact that many countries including ours do not have adequate laws against trafficking. The laws when enacted often do not recognize the trafficked person as a victim.

Globalisation has facilitated freer movement of people, goods and services across international borders, unwittingly resulting in camouflaging and clandestine operations such as human trafficking. Trafficking cannot be identified for example, from migration or even with illegal migration. But poverty, social inequalities, restrictions in immigration policies in some countries including gender-based restrictions, increase the vulnerability of migrants, especially migrant women and this contributes to trafficking. Therefore, protection of human rights of the trafficked person and promotion of gender equality must be at the core of any anti-trafficking strategy.



This implies that national legislation, our own legislation dealing with the problem of trafficking should conform to international human rights standards laid down in instruments such as CEDAW - Convention on Elimination of all forms of Discriminations Against Women, CRC - Conventions on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the ILO Convention on the Worst Forms of Child Labour and such other international documents. The major document is the United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons which supplements the UN Convention on Transnational Organized Crime. We have our own SAARC Convention on Trafficking. These are the various international documents, which apart from anything else, show the concern of the international community to trafficking, which is no longer confined to within national borders but has assumed the dimensions of international syndicated crime.

Therefore, trafficking has to be investigated, prosecuted and dealt with in this context as a serious crime committed within the framework of organised crime. Unfortunately, today we deal with this particular law of the Immoral Traffic Prevention Act very casually, and it has absolutely no resemblance to any serious prosecution of internally organised crime. Therefore, so far, the response of the criminal justice system has been far from adequate and we need to have effective prosecution and punishment of criminals so that the victims are not victimized while the real criminals are punished.

This response of the judicial and administrative processes to the needs of the victims can be facilitated for e.g. by taking measures to minimize inconvenience to victims, protect their privacy when necessary and ensure their safety from intimidation and retaliation as well as the safety of their families and witnesses.

Trafficked persons, especially women and girls, face negative consequences as a result of lack of legislation and appropriate procedures aimed at supporting and protecting them. Mainly, victims are not identified as victims. They do not receive appropriate support and protection. They may be criminalized for illegal border crossing, for crimes connected with the condition of being undocumented migrants, because of being prostitutes or for crimes connected with prostitution, for illegal labour and for other reasons.

Often, they are re-trafficked, if they are deported without any kind of assistance. Often victims are afraid of retaliation from traffickers, retaliation either against them or their families. And when trafficking involves illegal border crossing because of their illegal status in the country of destinations, these victims are often afraid of immediate deportation, if they seek help and try to escape from traffickers.

We have a large number of women in India who have been trafficked from across the Nepal border and from Bangladesh. Because they are illegal immigrants, they can be victimized as criminals themselves. So we have to explore the possibilities of dealing with them in a manner that does not involve their being re-trafficked. Therefore, we need to create a suitable referral mechanism based on human rights protection and the need of the victim for immediate help. Foreign victims can be given temporary residence and where safe return is not possible as under international law, then there may be a possibility of their being granted asylum here. This, the legal structures need to provide.

This Commission is very concerned about the exploitation of the vulnerability of trafficked women and children. They have to be empowered socially and economically which is the work in which Prayas is engaged in, and we will profit from their experience.

We have to examine whether we have set up adequate structures for the rescue operations of women and children, whether we can benefit by associating NCOs with the process of rescue, and whether our programmes for rehabilitation are effective or worthwhile.

Thank you very much.

#### Keynote Address

**Speaker: Hon'ble Justice Shri C.S. Dharmadhikari (Retd.)**

Respected Justice Anandji, respected Sujataben, dignitaries sitting on the dias, ladies and gentlemen,

Firstly, I would like to congratulate NHRC and Prayas (TISS) for organising such a Workshop. Earlier too, I have attended similar Workshops. I wish to present a few elementary points before you related to this issue. Since years, questions related to prohibiting and regulating this trade is before me. The government and the police are not in favour of abolition of this trade. My observations are that society too is not in favour of eliminating this trade because all are afraid that if such trafficking is eliminated, anti-social and 'goonda' elements will harm us or enter into our houses. We want our houses to be safe. So there should be a dust-bin in every village: this is everyone's thinking.

NHRC has raised this issue/question, but we have never considered a prostitute as a human being. If we do not consider them human beings, then the question of human rights does not arise at all. The basic question is do we want to consider them as human beings or not? I am very well aware that despite my country being a religious and spiritual country, in our society, the birth of a girl child is not welcomed. But in this profession the birth of the girl child is welcomed. These people want girls: even a prostitute wants a girl.

A question that often arises in my mind is - why have so many laws been formulated in our country? It is rightly said about my country that it is a nation where there is maximum legislation and minimum implementation. Adequate laws have been formulated, for example in the Indian Penal Code, consent of the girl in a rape case does not matter if she is below 16 years. But for marriage, the consent age is 18 years. So I will only say this that if these two are right, then why don't you prohibit a girl less than 16 years from entering into this trade? Why is this not considered as rape? This does not happen in my society: it would have if there was truthfulness in us.

Let us leave aside the people/officials present here who may be doing good work. My complaint is that the adulteration, which was seen in goods in the past, is now observed in the attitude of the government and political parties. Their attitude towards this issue continues to be one of double standards, as girls from our families are not being pulled into this trade. Until we become clear about this issue, we will not be able to do anything in this regard.

First of all, I would like to request you that can't a law be formulated where a girl below 16 years of age can be completely prohibited from entering this trade, and the client who has relations with her is also punished. A girl of 16 years age cannot give her consent for marriage, cannot give her consent for rape, but can give her consent for prostitution? Do think about this. If this provision is introduced in the law of rape, then uniformity will become visible in other laws too.

Another thing I would like to say is that I was in a conference. There, a prostitute stood up and she had her five-year-old son with her. There were as many people present there as there are here now. She raised this question that in my country, motherhood is extolled, and is considered as the highest virtue of a woman's life. She added that this child is hundred percent her son. She further added that she did not know who his father was, and that he too did not know. She questioned us that she, the mother of this child is a prostitute by profession, so what is the value of her motherhood in our eyes, and the eyes of society. This child cannot get admission in school because he is the son of a prostitute.

A prostitute comes with a lot of problems, besides the problems of her own children. We are unable to understand these issues. In my country, there are nine lakh prostitutes, of which nearly one-third are between the age of fourteen to sixteen years. Please do not feel offended, but in the major metropolitan cities, the vast majority of them are child prostitutes and the number ranges nearly up to three lakhs. All of you may be surprised with the fact that there is a rise of nearly 20% every year in this number, and that Delhi is the main destination city in this context.

Everyday, in my country nearly twenty-seven prostitutes come from Nepal, about thirteen come from Bangladesh – these are the statistics. Everyday they come and stay on in this trade. There is Prayas; other NGOs are also doing very good work. They have helped in rescuing or rehabilitating a few prostitutes from the brothels here in Mumbai – they were child prostitutes and were kept here in institutions. The political parties raised an objection that these prostitutes are from Nepal; these girls have come from Bangladesh – so why should the Maharashtra government bear their expenses? Therefore, they were sent back to Nepal and Bangladesh, without any protection, without any facilities. After reaching there, they then came back to the brothels here.

Here too the caste, community and nationality factors come into play. You should reflect upon this. A third thing I want to say to the police and to all of you – no woman who is a prostitute would like to live her life on the basis of your security, and your sympathy. She would want to live her life on her own terms and on the basis of her rights. She too is a citizen of this country. But you do not consider her a citizen; you do not consider her rights.

There is a place near Delhi – I will not mention its name – where people go, buy girls and marry them. The marriage is legal or illegal – that is of no importance, but the marriage takes place. The man tells the police that she is my wife – she is registered as a wife and later she is brought to Delhi and sold in the market. The thing that is sold in the market is called an item/commodity; you cannot call it a human being. A woman, a prostitute is a commodity to be sold in my country. Till today, I have never seen a 'gora bazar', I have seen a 'kaala bazar', sometimes more 'kaala' (black), but only 'kaala'.

There is the law, there are Courts, the judiciary does it own work. But in this field, an equal law and procedure functions that is based on money-power, muscle-power, mafia-power, and sorry, do not feel bad, but also media-power. Will you divert your attention to this or not?

The complaint that I have is with regard to sensitivity. The sensitivity level of the police personnel and the government has diminished. The government feels that all this work will be done by the NGOs. Through Prayas, we have made many attempts, did a lot of work. I would like to emphasize that at every level, it is essential to convince the

government about its role, we need to meet the Chief Minister personally and talk about it. Committees are formed – but the meetings are never held. Why are they formed – I do not understand. Commissions are appointed – do you know what happens to the reports of these Committees and Commissions? Many a times, when you talk to the Secretary of the government, he is not even aware that some report has reached his office. The government wants to move aside by putting all these responsibilities on NGOs. There is no greater falsehood or deceit than this.

One of our Prime Ministers once said that this country is in need of a bypass surgery. It means that by bypassing the insensitive bureaucracy, we must try to find a solution to all the social, national, personal problems through the NGOs. If this process goes on, on such a large scale, you must try to deeply ponder about this from a legal point of view. I would humbly like to tell you that in my country, whichever laws have been formulated for the women, not even one of them is total and complete. There is a fault in our attitude while making these laws. I would be very grateful to you, if you could find out a method of formulating exhaustive laws and a complete women's code.

The police complain that they are not given the equipment of modern investigation. You and me are present here – you will notice video cameras all over the place. But when the panchnama of a place is being conducted, there is no video camera there. While noting the statement of the girl, no tape-recorder is there. Whether the girl has said this, or that, to find this out in the court, days go by and are wasted for cross-examination. What are these modern instruments for? If the investigation is not modern, and there is no truthfulness in the legislation, then what will happen?

Those police personnel who are present here from Maharashtra, I would like to inform them that the dhabas running along the highways are all brothels. Here, you get alcohol and point-to-point prostitution is also going on. You do not want to stop this dhaba system because there is no political will.

I would like to ask you as to how will you be looking at these girls – if the talk is about rehabilitation then it is good. It is necessary, and there is an urgent need of shelter homes. But more than post-mortem, I am interested in prohibition. Post-mortem will go on as it is happening today. Do you know how these shelter homes are run, where no girl is ready to go? These homes are such that a case is going on against the superintendent of one home with regard to the misuse of the girls for prostitution. Please think about all this from the bottom of your heart. The Human Rights Commission has raised this issue as an issue of human rights, so I take it that now you will think only along the lines of human rights, and treat them as human beings.

Globalisation has taken place – you must be aware that in Australia there is legal sanction for prostitution. There, the owner of the biggest brothel by the name of 'Daily Planet' has declared that he proposes to sell shares of the brothel in the share market, register the prostitutes as shareholders and then list the company in the Stock Exchange. This is one profession where one can earn a lot of money.

With globalisation, in India too, this trade will flourish with the formation of bogus companies. Under the threat of globalisation, in our country, I would not like to link this with personal issues alone, which in turn would link it with human rights, but with the hunger of the poor man.

Majority of the women are coming into this trade due to the reasons of poverty, getting sold as commodities in the market. Thus, you cannot think about this issue from a fractional point of view alone.

*I know of an Inspector who had gone to a school and gave his report: 'I saw a fraction of a teacher, teaching a fraction of the students, a fraction of a subject, in a fraction of a time. Nothing was total.*

If you seek the answer to this question of rehabilitation, then I would like to tell you that till a certain age, you will also have to talk about prohibition, you will have to talk about responsibility, you will have to talk about the sensitivity of society, you will also have to talk about the judiciary, and the most important, will have to talk about the sensitivity of the police.

I have seen many police officers/personnel and social workers saying that the prostitute has a right over her body. In Tamil Nadu, a morcha of the prostitutes was taken out saying that do not deprive us of our rights. We have a right over our body; we can do whatever we want as this is our profession. You all have your own rights, so we too should be given our rights. Who has taught them all this? Why did all this happen?

I would like to ask the people of Maharashtra, who are present here, that to stop the practice of the Devadasi cult, how many years have passed since the law has existed? Tell me whether even one case has been registered against those dedicating young girls as devadasis? This practice is going on every year; it is practiced under the name of the Goddess, in the presence of the police. The police participate in all these ceremonies themselves.

The sensitivity level has died in us, despite the feelings of fatherhood and motherhood; we do not have the curiosity and sympathy of looking at the plight of these girls. If you look at this problem from the caste angle, majority of the women in this trade are Dalits. They have come from outside the country or are from other States, therefore we do not want to spend on them – if this is the mentality of the government, then I would like to tell you that like all other reports, our report also will go the same way and we will then be in great difficulty. In all honesty, we have to accept this, if we think only from our own State's perspective, we will destroy our country. I am of the view that there should be complete prohibition, but I fall in the hopeless minority category.

There is all talk about regulation, but they forget that to regulate it at some point, there is a need for prohibition. If we want only a one-way-traffic, then we need to stop the opposite thoroughfare, close it. In regulation, there should be prohibition up to a certain age/stage.

The victim is looked upon as an accused. The man who has been part of the act, who has had relations with a fourteen-year old girl, nothing is done to him at all. This is only one end of the profession, but we need to reach both the ends.

The entire set-up and strategy to deal with this phenomenon of prostitution that is eating into the vitals of our society will have to be addressed with a multi-pronged approach. One end of the problem will have to deal with firmly through effective preventive measures. These measures will have to focus both on arresting and curtailing the criminal-trafficking angle by the police, and on socio-economic support to vulnerable families and girls in the source areas.

With regard to women and girls who have already reached the prostitution network in the demand and supply areas in towns and cities, the approach has to be one of action against traffickers, brothel keepers, managers, pimps and customers, raids and closing down of premises used for commercialized prostitution, a continuous and sustained policy of rescue operations followed by an effective rehabilitation plan, and assistance/support to children of prostitutes to help them receive good education to lead a pro-social life.

The age-verification process at the time of determination of minors is another issue that needs to be reviewed. The overemphasis on medical tests through X-rays conducted on the victim is flawed, often done without the consent of the person. Other ways to determine the age such as getting the birth certificate, school leaving certificate, or any other proof should be relied upon as the medical test is only an approximation and often open to manipulation by vested interest groups, including those in the medical profession.

The role of the Child Welfare Committees under the Juvenile Justice Act and the magistrates handling cases of adult women under the ITPA is extremely important here. Handing over the girls or women to bogus parents or relatives, without a proper home enquiry by Probation Officers and repatriation without ensuring the capability, reliability and capacity of the family to take back the trafficked victim, so as to 'dispose off' the case will not lead us anywhere, beyond 'whitewashing' the problem.

*One of the methods to get better results in the field is to involve responsible and committed NGOs and social agencies at all stages of the anti-trafficking, rescue and rehabilitation strategies.*

The government will have to raise its sensitivity level. I will not be able to say anything about the political parties. You all are government officials – I would humbly like to say to you that you must be aware of an old saying about political parties that "Every political party is a conspiracy against the common man."

Therefore, do not think from the point of view of a politician. Think about it very honestly. If you do not take offence, I would like to request you to reflect from the point of view as if my or your own daughter has got into this profession. Only then will you be able to get some answers to these questions.

I have spoken too much, and a little sarcastically, but that is because I have got spoilt due to the ten years of my life, which I spent in the company of Mahatma Gandhi. I am not at all interested in thinking only at a superficial level. I do not even attend any of these cosmetic meetings/conferences.

I have been associated with Prayas since many years, who are working with released prisoners and victims of prostitution. They have done great work in the field.

I would like to quote an Urdu couplet, written by a prostitute. I shall say this much and then stop. She says:

"Maut hi de de Khudaai, Zindagi ka Bharosa nahin

Mere ankhone pe to parda gira hai,

Tere ankhone pe toh parda nahin."

She is pleading to God to find a solution to her problems. I very well know that all of us will think about this problem in depth, as the messengers of the Lord. Therefore, I would like to request you to pardon me if I have said anything ill and my Namaskar to you all.

## Presidential Address

**Speaker: Hon'ble Justice (Dr.) A.S. Anand, Chairperson, NHRC**

Trafficking - is it only sexual trafficking that we are concerned about or are we concerned about trafficking in all its dimensions and manifestations? Trafficking is not confined only to sexual exploitation. Trafficking has other forms where children are employed as domestic servants, keeping them away from education. They are employed in factories and hazardous industries, despite prohibition. They are used as bonded labour, smuggling, begging and the like. You have to take the composite whole to consider the issue of trafficking.

Yet, trafficking, so far as sexual exploitation is concerned or what we call as for prostitution or commercial sex, is at the forefront. What is it that is new about it? The new is the dimensions it has now achieved. This problem has existed and as it is said that prostitution is the oldest profession. Flesh trade or what you call prostitution has developed into a crime. That crime has further developed into an organised crime. And that organised crime has become an internationally flourishing business.

You were just told in the morning that the annual income from this trafficking internationally is to the tune of U.S.D. eight billion and trafficked children involved to the extent of two million. There are different fallouts from this organised crime, which is a flourishing business, and this can threaten the sustainable development and the rule of law anywhere and everywhere. The illicit profits can be used for corruption, other criminal activities and sometimes even for promoting terrorism.

I congratulate Prayas & TISS to have collaborated with us - the NHRC to organise this Workshop, basically to review the implementation of laws and policies related to trafficking towards an effective rescue and post-rescue strategy. If it was Hussainara Khatoon who drew the attention of the Supreme Court to the appalling conditions of the under trials or Sheila Barse who invited the Supreme Court to look into the plight of the women under trial prisoners, it was Gaurav Jain who made the Supreme Court plead to the legislature and the authorities to please look into this problem. It has become a national problem today. It has international dimensions, and there is a need to chalk out a national action plan.

It is the social activists and concerned citizens who brought these factors to the notice of the Supreme Court to initiate action. On the whole, society today has become totally indifferent; whatever is happening in somebody else's backyard is not society's problem. If it happens in my backyard, only then shall I look at it. This indifference of the society is what encourages the criminals and particularly in flesh trade and other types of exploitation of children.

If the citizens cease to be insensitive, if they become concerned, it would act as a check on the criminal. No amount of legislation can check it as well as a concerned society and a sensitive society. We have been talking about trafficking, commercial sex, children's trafficking and in all this, it boils down to, as Justice Dharmadikari mentioned, how we are treating human beings - as commodity or cattle? That is the worst form of indignity and dehumanization that can be heaped on any individual. It is the worst form of violation of human rights, a form of modern day slavery.

There are other fallouts, but the four areas on which you are going to concentrate primarily, while reviewing the laws for implementation are the four R's - raid, rescue, rehabilitation and reintegration.

Each of one of the R's has a different dimension and component. When a raid is conducted, who is brought to book? Those who have either been led into or misled into the sex trade or prostitution? They are the ones who are hauled up. Then you have the police who has conducted the raid, perhaps involved some locals, but without involving any of the NGOs. So the result is that after the raid is conducted and the victims are produced before the Court, the police say that they would not be able to take it any further. No witness is coming forward to support the raid. We are back to square one. If no witness is coming forward to support you, why did you not look at the type of witnesses who you take with you when you were conducting the raid? Should you not have thought of it then as a malady?

This is something very unfortunate in the country, something which puts a very big question mark on the criminal justice review system - that witness after witness in every case turns hostile.

After the raid, the rescue part is taken care of in a way, but the question I may ask is - what have they been rescued for and why have they been rescued? The rescue is supposedly done so that they are weaned away from what they had been lured into or misled into doing. For that, we have these temporary shelters, or Short-Stay Homes, leaving aside their legal rights and hardly any scope for advocacy. I understand that in the whole of Maharashtra there are two such Homes - one in Nagpur and one in Mumbai. What is the capacity of the Rescue Homes?

I am told that in one of the Rescue Homes, the capacity is for the intake of about 50 inmates. A raid is conducted with the help of the concerned citizens. Say hundred victims are rescued and you can only accommodate only fifty of them in the Shelter Home or the Halfway Home? What do you do with the remaining fifty? I am giving the figures only to point out the type of problem that we are faced with.

The government considers that having provided two Shelter Homes or Rescues Homes, they have done their duty. After you are able to dump all of them there, like sheep and cattle, the facilities exist for only about forty or fifty. The strain on the institution is that of hundred. Those rescued find themselves in a situation where they may well ask the question - what is it that we have to do here? We can't even get a proper meal. The lure in that place (brothel) was that at least, I was able to eat two meals in a day. Here I can't even do that. So that lure would remain and the traffickers are waiting outside - come out we will take you back. Are we in fact, trying to facilitate that process?

Then comes the issue of rehabilitation. How are we rehabilitating them? Well, you take them to the Shelter Homes or Rescue Homes and there they have to stay for a particular period of time. I am told that it is for about three months or six months. Before they can even apply for a ration card for themselves, before they can get themselves enrolled in the voters' list, before they can get any identification card? What do you expect them to do during that period? They are more vulnerable and easier prey for those who are waiting in the bush to take them back into the dens.

Something is wrong somewhere - either our policies are lopsided or as Justice Dharmadikari said, that political will is totally missing! There is either politics or will, not the both combined. But even when the political will is missing, I have come across umpteen numbers of them, many more than I thought dedicated bureaucrats to whom it is irrelevant whether the political will is there or not. If they have the commitment, they will continue to do what they are expected to do.

Coming to the attitude after rehabilitation, I read in yesterday's newspaper in Delhi, a news report, which had reported about the arrest of a Head Constable and his subsequent release on bail. What was the offence? It was the mistreatment of a twelve-year-old girl, working as a domestic help for the past four years or so. It was at the age of about eight that this girl was hired as a domestic help and was continuously being mistreated. Somebody from the neighbourhood, complained to the police while the Head Constable was away. It needs to be noted that the Head Constable is a woman police. That is the type of indifference. The neighbour reported the matter to the Tilak Marg Police Station. She was arrested and of course, the fraternity of the khakis did work. She was arrested under some provision of the Juvenile Justice Act, so that she could get bail straightaway.

We came across at NHRC, a case, where an Inspector of Police in Kashmir - a lady Inspector of Police had a young domestic help - a girl, who was subjected to sexual exploitation in the house of that officer for months on end. It was only when she found that the things were becoming absolutely unbearable that she somehow reported the matter to the press. We asked for a report. The first report was very interesting. It said that the newspaper report was exaggerated - whatever that means - exaggerated, not false. Exaggerated - how and where? Exaggeration - that it was not that bad for this girl. Perhaps what the newspaper report had forgotten to mention in print was that one of the sexual exploiters was the husband of this Inspector of Police, which came out later.

For rehabilitation, it is absolutely essential that the moment a raid is conducted and rescue operation takes place, the victims are taken to a Home, and some type of vocational training or income-generating activity is made available, so that they feel that there is some other avenue also available in life. They have the stigma attached to them - very unfortunately, not of their volition, but because of their vulnerability.

Because of that stigma, they may not get jobs as very easily. They have to be given some vocational training and help to start some business or enterprise, or perhaps placed. I am told, with various NGOs for employment. But that's only dealing with a fraction of the problem. Her problems are of greater magnitude.

We have to think of doing away with this red-tapism of at least three months stay before you get the ration card. Without the ration card, you can't go to the Employment Exchange. Without the Employment Exchange registration, you can't get a job. And without a job, you come back and fall into the hands of the same trafficker or maybe a different one this time. The traffickers are part of an incorporated union. It is a very strong network. This girl has been rescued from my area of operation. It is open for you to take care of it now. The girl from your area of operation - I would bring into my area of operation. It is a vicious cycle, which will go on.

Therefore, you have to think about all these issues at this seminar. You have the opportunity, and you have the commitment to the cause. Think of what better ways of rehabilitation are possible. What are the various things that can be done for them, so that you are able to wean them away from the trade in which they were held.

There is this aspect of how to deal with women beyond forty. The trafficker has lost use for them. For him, they are a spent force. What do you do about them? They may be willing to be rehabilitated. It is not only the new entrants who need to be mobilized for proactive steps. Besides these, those are the ones who are perhaps reluctant to be rehabilitated or would like to go back into their earlier way of life.

But these are the women, and mind you even though they have been treated as cattle and commodities, they are human beings. How are we going to rehabilitate them? What are we doing to rehabilitate them? We don't have any facilities or opportunities available for such women. It is necessary that at the seminar, you consider this aspect in some depth and details.

There is another more serious issue - that of reintegration. For reintegration, the mindset of the society itself shall have to be changed. We do not draw any distinction between the victims of crime and the criminal. As Justice Sujata Manohar mentioned, that even in the prosecution under the ITPA, it is the victims of crime who are at the receiving end, rather than those who trafficked them into this trade. There is nothing that we are able to do for them. And the reason for that is this gender-based discrimination. It is there that the NGOs can play a very constructive and useful role.

Reintegration necessitates a change the mindset of society and also requires looking into the needs of the individual, as well as punishment of the traffickers. It necessarily requires a gender and rights based perspective. You will have an opportunity at the seminar to discuss how you are going to base the whole discussion from a gender and rights based perspective.

There is still one another aspect that needs review, and that is the attitude of the State governments. I have had, in my capacity as the Chairperson of the NHRC, many an occasion to visit the States. You ask them about trafficking and they reply with a straight face, "No, we do not have any such a problem. We just have a few cases of some prostitutes, nothing more than that". Well, every State has no problem and yet the country has a problem. I have difficulty in understanding this logic.

In one particular State, I asked them that if they have no problem of trafficking, could they give me the figures from each police station in the State, of persons reported missing. I was told that should not be difficult. I further asked for a break-up of those figures, in male-female terms. Out of the females, I asked them to give me the break-up of those below sixteen years and those above sixteen. The last figure I wanted was how many were they able to trace back. They could not have vanished into thin air. Then the answer was, "We understand what you are trying to say".

The answers have been startling. From a particular district, the total number of missing persons reported in one year was about 227, out of which about 197 were females. They could not give me the figures of under sixteen and above sixteen. But they told me that out of those 197, only 16 were married women. So obviously, the remaining 181 were the ones who were not married. I asked the how many did they rescue out of these. They replied, "Well, actually, we don't know". They conjectured that some may have gone back home and were not reported. But by and large, about 20 to 25 were rescued. "Shall I take it that there is no knowledge about 150 of those women?" The answer was, "Yes, our records do not have any figures".

"Trafficking is not a problem". We have no trafficking in our state. Yet hundreds of girls are reported missing, not traced. Are we to accept that they have vanished into thin air or drowned themselves in a pond? Well then, we are straining our own intelligence.

These are some of the issues, which you shall have an occasion to deliberate. And as Justice Dharmadhikari said, when we are considering the problem, consider yourself involved in it. It could be my child; it could be your child. Are we going to leave that child only in the hands of the vultures? What would I have done if it was my child? That should be the attitude with which we try to tackle this problem.

We can't brush the problem under the carpet and say there is no problem. The judiciary has a very important role to play. And that is where the sensitization of the judiciary is necessary. No amount of legislations or penal provisions in the Statute can be a substitute to a sensitized Judge. I am told that once the cases are registered against these rescued girls, then they are treated like other criminals and the hearing is in open Court. Even if those who had trafficked them are not present in Court, there are others who are spying. They come to know the history of the girl. And as soon as she goes, they keep a watch on her, so that they can lure her.

It is worth considering whether the cases of such victims should be heard only in camera. In-Camera trial is permitted, as per the Code of Criminal Procedure. How often have we used these provisions? We have used them sparingly, as if they would get exhausted if we used them extensively.

Judiciary has therefore a role to play and that sensitization is a necessity, a must. I suppose I overshot my time. Thank you.

#### **Vote of Thanks**

**Speaker: Dr. Savita Bhakry, Senior Research Officer, NHRC**

Dr. Savita Bhakry proposed the vote of thanks for the inaugural session, on behalf of the organizers of the Workshop. She placed on record her deepest appreciation and gratitude towards the Hon'ble Chairperson of NHRC Justice (Dr.) A.S. Anand for gracing the occasion and giving his presidential address, despite his very demanding schedule. She alluded to the commitment of the Hon'ble Chairperson towards protecting the rights of women. She reiterated the Hon'ble Chairperson's suggestions that the Workshop should focus during the course of the two days, on the four R's i.e. raid, rescue, rehabilitation and reintegration. She also reassured the Hon'ble Chairperson that as suggested by him, the deliberations would take into consideration a gender and rights based perspective.

She expressed her gratefulness to Hon'ble Justice C.S. Dharmadhikari for his presence and for delivering the keynote address. She pointed out that his address gave a very dismal picture of the existing trafficking scenario in the country and the world over. But she added that, in his words, "Har samasya ka samadhan hota hai". She thanked him for his guidance with these words of hope.

She expressed her sincere thanks to Justice (Smt.) Sujata Manohar, Hon'ble Member, NHRC and Chair of the Focal Point on Human Rights of Women, including Trafficking in the Commission. She added that the honourable member had always been a constant source of inspiration and thanked her for guiding all those present and those who had benefited from her support towards the organisation of the Workshop.

She expressed her gratitude to Smt. Kasturi Gupta Menon, Secretary, DWCD, G.O.I. for her valuable views and observations, as well as for apprising the participants about the schemes of the DWCD to prevent and combat trafficking. She also thanked Smt. Veena S. Rao, Joint Secretary, DWCD, G.O.I. and Shri S.S. Dodd, Principal Secretary, DWCD, G.O.M. for their presence in the Workshop.

She thanked Prof. Usha Nayar, Deputy Director, TISS for all her support. She also thanked all the delegates for sparing their time for the Workshop. She thanked the distinguished guests from the legal fraternity, police, various departments of the government, technical institutions, non-governmental organisations and the media present in the Workshop.

She thanked the team of Prayas (TISS), Dr. Sanobar Sahnii, Shri Vijay Raghavan and all other members of Prayas but for whose cooperation, she added, this Workshop would not have been possible.

Last but not the least; she thanked the office of YMCA International House and Programme Center for allowing their premises to be used for the Workshop.

## II. ROLE OF THE POLICE IN THE PROCESS OF RESCUE

### Highlights of the Presentation made by Mumbai Police

**Speaker:** Shri Naval Bajaj, Deputy Commissioner of Police, Zone - II, Mumbai

#### 1. Procedure of rescue:

- The police regularly use Section 8 against women found soliciting, but its effectivity is open to question.
- The police take action under Section 15, 15 (4), 15(5), 4, and 6, and initiate the process of rescue. The three methods that the police adopt:

Regular and routine checks are done by the personnel of the respective police stations, as well as surprise checks are conducted under the direction of some superior police officers. But these are not very effective, because of allegations against the police that they are hand-in-glove with the brothel keepers.

The second type of action is based on specific information where the police make, what is called in their parlance a 'punter' case. The police prepare a pre-track panchnama with the given number of the currency notes and all the details that are required for collecting evidence. They send a man, who acts as a decoy, who goes inside the brothel and when the sexual exchange is about to start, the police party raid the premises. This strategy is usually very effective.

The third method is with the help from the active and committed NGOs or citizens, who come with very specific information, based on which, police go to the brothel with the NGO(s)/citizen(s) and sometimes make them as complainants and/or take their help as.

#### 2. Minors:

- After the rescue, if the victims, from a cursory examination or from physical examination, look like to be under 18 years of age, the police produce them before the Child Welfare Committee and admit them in to Observation Home within 24 hours. From there, they are taken for various medical examinations to determine the age. It is a very long process whereby three X-rays are conducted on them. The result depends on factors such as fusion of the bones of pelvic girdle, wrist, etc. This is a very important piece of evidence, because if the victim is declared as a minor, then the onus of responsibility gets shifted to the brothel keepers to prove that they had not forced her into prostitution. In this regard, Sec. 5 and 6 of ITPA are used against the traffickers.
- At times, due to lack of or low level of trust in the police, a victim may refuse to give her statement before the police. But she may give statement before the Probation Officer or a Member of the Child Welfare Committee.

#### 3. Adults:

- The victims, who are above 18 years of age and have been forced or trafficked into prostitution, are rescued under Sec.15 of ITPA, produced before an appropriate magistrate and then sent for safe custody to the Government Protective Home designated for this purpose. The magistrate hears the matter and grants intermediate custody, which is usually not more than three weeks.

#### 4. Closure of brothels:

- Section 18 of ITPA, which provides for closure of brothels and eviction of offenders from the premises, is rarely used by the police. This is a quasi-judicial process, so police officer has to be a designated officer of the rank of a judicial magistrate. In Mumbai the designated officer is the Commissioner of Police himself. For an officer as senior as the Commissioner, eviction from the premises and sealing of the property gets a very low priority as it requires a lot of paperwork and time.
- Most of these powers are normally delegated to the DCP level officers, so if the government designates or decentralises these powers to the Dy. Commissioner or Addl. Commissioner level, then the police can very effectively take action under Section 18.
- Identifying and fixing the brothel owners is a very difficult area. There is nothing on paper about the ownership of these rooms that are quite old and frequently keep changing hands. The police have recently started making inquiries about who has paid the last electricity bill. They have also roped in the Bombay Municipal Corporation, the Electricity and Fire Services Departments to verify whether the requisite permission have been taken from these authorities before any structural changes were made in the rooms of the brothels. For example, where an entire hall has been converted into small 8x10 feet cubicles, it amounts to a violation of the rules of the BMC Act. Likewise, the Fire Services and Electricity Departments have to clear these changes. If the heat is turned on from many agencies, it may possibly put pressure on the traffickers and brothel keepers to stop such activities and somehow, the nexus may get broken.
- In order to counter this process, the financiers of these buildings have come out with a strategy. The moment an owner purchases a building, he files a writ in the Court saying that the women staying there are his tenants and they are refusing to vacate the premises. When police raid and find out who the owner of the building is, he shows them the Court papers which prove that the persons staying in his premises are not staying with his consent. Irrespective of this, the police have started booking them in cases. But it is obvious that it is not going to stand in any Court of law as they have very well documented proofs that say that they are trying to get the premises vacated.

#### 5. Proof of Brothel-Keepers or Managers Living on the Income of Commercially and Sexually Exploited Women:

This is very, very difficult to establish. The moment the police raid a premises, they try to search for books, or written entries or any written documents which indicate the number of times clients have come and what is the amount earned. They have tried to look into their bank accounts too, but most of the time, it is very difficult to establish.

#### 6. Identity Card:

There are instances of noblest intentions going wrong e.g. the police had started registers in two police stations - V.P. Road and D.B. Marg that had columns having photographs, fingerprints, age and names of the victims. The moment a case was registered of any woman forced into prostitution, or any minor found in prostitution, any complaint registered, or any NGO coming forward with a case, we could immediately find out at least what the real name was. Unfortunately, the whole issue was blown out of proportion without understanding the reasons why this practice was started, by the media, and it was decided to totally scrap the system.

## 7. Preventive actions

### • Sureties:

When the police raid a premises, even the regular brothel keepers might run away for a year or two. But they come back after a gap because the institutionalization of prostitution has taken place. So, there are other preventive actions that we have started apart from conducting mass raids.

The police have started large-scale actions under Sec.107 and 110 Bombay Police Act. Suppose there is a raid and an adult woman is found running the premises, the police take a bond of good behaviour, a simple bond under Sec. 107 of B.P. Act. They process it in one week, ask for simplest of the sureties or cash surety of maybe Rs.100/- or Rs.500/-.

The woman comes up with two regular sureties from her mohalla. The moment the bond is executed, the police raid the premises again irrespective of whether there are minors or majors. On finding that the place is being used for prostitution, the police arrest the woman, call the sureties and cancel the bond. For having caught her for the second time, they ask for specific sureties – the class and type of which can be specified by the police, e.g. the mother and the sister of the victim should stand surety in this case.

The best part about the Cr.P.C. is that the Court in the rarest of the rare cases will interfere with the powers of the Special Executive Magistrate. The ACP who is the S.E.M., asks for sureties of this type which are very, very hard to get and the brothel keepers end up in prison. For the last four months, there are at least three women who are inside prison just on this simple section of 107 B.P. Act and they are unable to get the sureties. This has become a very handy procedure. The police are also slapping Section 110(G), which is defined as a desperate and dangerous act. It is the police's interpretation: the accused are free to challenge this in Courts.

The police have applied all the sections of ITPA starting from 3,4,5,6, and IPC Section 366(A), which is kidnapping of a minor for the purpose of prostitution. IPC Section 366, which is kidnapping, IPC Section 372, which is sale, IPC Section 373, which is purchase of minors, and IPC Section 376, which is rape. Even in the most fool-proof of cases, the police have got not more than a month of judicial custody. After one month, for some or the other reason the person is out on bail. But under Section 107 of B.P. Act, the High Court has refused to interfere with the powers of the SEM. The police are using this section more effectively than conducting a regular raid.

### • Creating awareness among the victims

With regard to the exploitation by brothel keepers and traffickers, the police have started distributing pamphlets and putting up hoardings and used the visual media to create awareness amongst the victims. Pamphlets have been published in three to four languages for the benefit of the girls and women coming from different States. This awareness campaign tries to help the victims identify the targets i.e. who the real offenders are. There are many phone numbers and relevant information published in these pamphlets to help them.

Instead of talking about the victim, these awareness campaigns put every onus on those persons who are living on the income of the girls/women, to the right spirit of the ITP Act. In fact, the pamphlets and hoardings do not refer to anything relating to soliciting in public places, so that the victims are put at ease. Street soliciting may be considered as very minor offences and a symptom of the problem of trafficking and commercialized prostitution.

## 8. Challenges in the Enforcement of the ITPA, 1986.

- There is difficulty in establishing the identity of brothel owners, victims, managers, etc. as one woman accused may be known by five names. So multiple cases get registered against the same person. By the time it is out in the open, all kind of legal complications have been already arisen.
- Non-availability of women staff as required by ITPA and reliable women Panchas – this is a regular problem in all the offences. There should be some provision that entitles the police to take the Panchas from other areas too. But this is very difficult to implement on the ground.
- The biggest problem that is faced by police after submission of the charge sheet is, when at a later date, summons or warrants are issued, they are mostly unable to find who the actual accused are. This happens because the women running this trade, keep travelling from one place to another and sometimes shift their area of operation to some place else.
- Absence of witnesses in most of the cases is a regular problem. The witnesses are almost non-existent, or very hard to come by. Even the ones, who are there, turn hostile during the trial. Witnesses hardly make any worthwhile statements, which in turn make the investigation process difficult.
- Quick and easy bail, even in cases under Sections 5,6 of ITPA and Sections 366, 372, 373, 376 of IPC is another problem area, as the fine sentences imposed on the brothel keepers is not stringent enough. The period of sentence is of very small duration e.g. 2/3 days, and this does not act as a serious deterrent for them.
- Non-availability of Observation/Shelter Homes for the victims, and lock-ups for women accused near the police station, results in difficulties for the police to carry out investigations. The police have to take the rescued victims to Shelter Homes, which are far away from the police station, and this makes it difficult for the police whilst taking the victims for medical examinations and Court visits.
- Margin of error in age determination of victim girls, can be as large as one to two years. This is a very serious problem where the policemen, the brothel keepers and the medical professionals are hand-in-glove. To prevent manipulation, there should be more hospitals whereby a victim's age verification results can be cross-checked by other doctors.
- Long procedure of the medical examination for determining the age takes up to 2 to 3 days. There is shortage of the designated hospitals, resulting in the unwillingness of the police to conduct a rescue as the entire staff becomes busy for next 3-4 days, which in turn hampers their day-to-day operations.



## Highlights of the Open Session

1. **Relevant sections of various laws used for rescue of victims:** Rescue of minors should be done under Section 15(5) of ITPA. There was also an argument in favour of using Section 2D J.J. Act for the rescue of minor victims. To this the response was that the Child Welfare Committee has the necessary power under Section 164 Cr.P.C. to take statements from the minor victims. Use of Section 8 of ITPA to file cases against women found soliciting on the streets, came under severe criticism. This is often done when the police receive complaints from the local residents about 'indecent behaviour' of the women.
2. **Lack of victim protection measures:** The victim does not get to know what is happening to her, as there is absolutely no right to information operating at the ground level. They are often treated as accused even as they are being 'rescued'.
3. **Involvement of law enforcers in the whole organized crime nexus:** This becomes clear when one evaluates what efforts have been taken from the victim's point of view to protect her in the whole process of raid and rescue, and what efforts have been taken to book law enforcers who are part of the whole nexus. Sec. 24 of MCOCA can be used for booking of a public servant who is a part of this syndicate, and the punishment is from three to five years.
4. **Use of OCC Act against traffickers:** Efforts can be made to identify brothel keepers to book them under the MCOCA Act. So far only three States namely Maharashtra, Andhra Pradesh and Karnataka have the Organized Crime and Control Act. This Act is very effective as there is no provision of bail, and hence the brothel keepers have to spend more time in prison custody. It also has the provision of forfeiture of their entire property. Despite having an element of strong deterrence, there is a low rate of conviction that leaves a lot to be desired. In connection to usage of OCCA, a need was felt to have proper co-ordination between the States acting as source, supply and transit zones
5. **Problem of obtaining pancha witnesses:**
  - To deal with the problem of the witnesses turning hostile during the trial, the State of Goa has issued a circular to all the government departments to permit public servants to act as Pancha witnesses as and when required.
  - In Maharashtra, only the Anti-Corruption Bureau takes public servants as Pancha witnesses.
  - For ITPA, NGOs and women's organizations are taken in as witnesses.
6. **Creative use of various sections of law:** Recent trend shows an inclination of the law enforcers towards using a combination of various sections of ITPA and IPC (seen mostly in Maharashtra) or ITPA and J.J. Act (seen mostly in Delhi) in order to strengthen the case.
7. **Use of section 376 IPC:**
  - In case of rescue of minors and subsequent booking of the brothel keeper, Section 376 of IPC is used in place of Section 5 and 6 of ITPA, whereby the onus of proving the offence lies on the brothel keeper. But in most of the cases the accused i.e. the brothel keeper, turns out to be a woman, hence the case often does not lead to conviction.
- Section 376 of IPC is not being used in Mumbai in the cases of adult victims as they tend to turn hostile in court.
- Preventive sections of the Cr.P.C. can be used against the brothel owners when minors are taken into custody, under Section 2 (D) of the J.J. Act.
8. **Use of Section 8 of ITPA:** In most of the States, 93% of the arrests under this section are of women in prostitution and consequently they are being convicted and jailed. There is a gross misuse of minor sections of other laws, e.g. Section 110 of B.P. Act is used to process the victims, especially the women soliciting in public places.
9. **Need for a special law:** Instead of using minor sections of various laws, a need was felt to have a special law to address the issue of rescue and rehabilitation of persons trafficked into prostitution, which will ensure:
  - The necessary linkage between different government agencies, and
  - The co-ordination between the different States for rehabilitation, repatriation and reintegration of the victims.
10. **Steps to deal with trafficking:** Trafficking is an extremely organized crime and hence needs to be viewed thus. To combat this:
  - A proper legislation needs to be formulated.
  - Effective co-ordination between various government agencies e.g. judiciary, police and welfare departments is needed. There is a need to form an inter departmental co-ordination committee.
  - Prevention of use of minor sections of other laws which only results in further victimization of the affected women and children.
  - Involvement of meaningful and genuine NGOs and persons as witnesses during rescue.
  - Appointment of trained social workers at every phase of Criminal Justice System to initiate meaningful intervention.
  - Immediate recovery of property and money of victims after the raids, proper age verification and recording of the statements of the victims immediately after rescue and effective counseling of the victims needs to be done.
  - Appointment of Special Courts to conduct speedy trials in these cases as provided in the ITPA.
  - Delegation of necessary powers to staff at lower ranks of the police under Section 14 of ITPA, which will help expedite the process in both rural and urban areas.

Necessary training should be conducted for the field level personnel of each department involved in the rescue, repatriation and reintegration. The training should have the components like legal knowledge, procedures, attitudinal change, skill and knowledge inputs, etc.

### III. ROLE OF JUDICIARY IN RESCUE AND POST-RESCUE PROCESS

#### Highlights of the Presentation on Legal Issues Related to Rescue and Post-Rescue

**Speaker: Shri Rajeev Awasthi, Advocate, Delhi High Court**

In 1992, an NGO filed a Public Interest Litigation before the Court that a girl named Kanta has been illegally confined in a brothel and is being tortured and harassed. The Court ordered for a police enquiry and the girl was rescued. Then she was brought before the Court and in the chambers on further enquiry with her, she revealed information about the man who abused her and forced her to compromise herself. On realizing the seriousness of this problem, Shri Awasthi was appointed as Officer of the Court to assist the Court in this matter.

Shri Awasthi appeared before the Court several times that these girls should be rescued, that minors were being kept in very deplorable conditions. The Court passed appropriate orders and around 500 girls were rescued.

During this process of rescue, the police complained of financial constraint. But the Court passed suitable orders, to create a separate budget head under the control of Commissioner of Police, Delhi, which had a Contingency Fund of 2 lakhs annually, to be exclusively used for the purpose of rescue operations.

The most difficult task was after rescue. The girls could not be detained for more than a particular period as per the Act. There was also a close bonding between the traffickers and the girls. So after rescue, the girls were kept in the Observation Home. There was a joint and coordinated effort by the police, judiciary, and the social welfare department.

While in the Observation Home, counseling was arranged for the girls. Initially, the girls were very rough, saying that they wanted to go back, that they were happy in the brothels, that they were never forced into the trade, etc. All throughout the staff in the Observation Home maintained their peace and calm.

After repeated counseling, they started giving statements, and FIRs were registered against the brothel owners, pimps, kotha women, etc. It was ensured that while their counseling was on, they would not be allowed to meet any person from the red-light areas to avoid the possibility of getting influenced. In this regard, many petitions, many complaints were filed before NHRC and elsewhere against police officers and Observation Home staff. But these obstacles were overcome with the support of the High Court.

A problem arose regarding the recording of the girls' evidences in the Court. Since the trial was going to take time, how long could the victims be detained in the institution? Nor was it feasible to call them back after their repatriation. Therefore, a judicial order was passed and separate judges were appointed for the day-to-day trial of these cases. During this period, some of the trial judges granted them bail, but due to the alertness of the prosecution, an appeal was made before the High Court for cancellation of bail. The defense lawyers created many hurdles, but the trial continued and the victims' statements were recorded in the Court. Finally, the traffickers were convicted and sentenced for a period of seven years.

For the first time ever, the video-conferencing method was adopted to record the statements of the victims. This was done to avoid calling those girls back in the Court, who had in the meanwhile been repatriated. This was done with the help of the NGOs, who were helping out in the rehabilitation and reintegration of the rescued victims.

After the identification of the source districts of the girls, the District Magistrates of those districts were called and it was made their responsibility to ensure the victim's proper rehabilitation and reintegration with the family. In case the family was available. With the help of the Women and Child Development Department, various schemes were formulated, whereby some financial assistance could be provided to the victims. For example, in A.P., one girl was provided a patta (plot of land), in Rajasthan 60 girls were provided pattas, and thus made financially independent.

Approximately for nineteen of the victims, the Observation Home staff arranged marriages. The other girls were rehabilitated and reintegrated with the help of an NGO. 98% of the rescued victims were fully rehabilitated and reintegrated due to the method adopted in the rehabilitation process. The system was so devised that there was no possibility of any mischief by the traffickers approaching them and bringing them back into prostitution.

For reintegration, the State Welfare Department was not so well equipped. The help of an NGO was taken, which was associated with the process from the beginning. The finances for rehabilitation and reintegration were spent by the NGO with State aid. The victims were transported by air and not by train to rule out any further mischief on the way. All these expenses were later reimbursed to the NGO by the DWCD, G.O.I.

The Secretary, Department of Women & Child Development mentioned when summoned in the Court, that there was a project which was started in 2001 to rescue women from prostitution with the help of NGOs. It consists of provision of costs for transportation, stay in transit camps, Short Stay Homes, litigation expenses, food, medical expenses, etc. The vocational training programme for their rehabilitation consists of courses like typing, beautician, weaving, craftsmanship, etc.

Witness protection is a larger issue, and it is required in all criminal trials. But if the system is clear-headed and the authorities work with honesty and commitment, then there is no need of more or newer laws. One section of the Statute passes through at least 156 hands and many brains. So one simply cannot brush it aside and say that it is totally non-applicable. When it is put to practical use, some deficiencies are bound to be there. We need to find the means and ways to get it properly implemented.

The four R.s that are used today - raid, rescue, rehabilitation and reintegration should be replaced by police, judiciary, welfare department and NGO because they are closely associated with each other. They need to understand each other and the use of their force at an effective place and at an effective time. The organised gangs may be a few thousands, but the law enforcers can be an equal match to them. They are equipped with the laws and judicial processes. But they have to work together in a system with confidence and trust in each other.

Through another Public Interest Litigation, a Central Intelligence Cell within the CBI was created, which is the central body for all types of kidnapping cases all over India. Current information on this is that there are about 26,000 girl children are missing all over India.

The entire endeavour should be not only to rescue the victim at any cost, but to also target the brothel owners and pimps. Section 18 provides for closure of brothels. Once the brothel keeper is convicted, the Court can order the closure of that house, try to identify areas where this trade goes on and target them.

## Highlights of the Open Session

- **Swadhar scheme:** The Swadhar scheme needs to be tightened up and looked into afresh. Though rescue and rehabilitation are the two separate components, today the scheme is a mix of both which at times makes it difficult for the DWCD to monitor the scheme. The first segment is the rescue costs, which include informer cost and transportation. Second component is prosecution costs, which includes legal advice for Court attendance and cost for contingencies including telephone and stationery. The third segment of the scheme is the cost for temporary shelter in any Short-Stay Home which includes the cost for rent, food, non-recurring cost, medical costs, counseling, rehabilitation costs like escorting the victim back home, etc.
- **Closure of brothels:** Forfeiture of property of all persons who have let out their premises to be used, as brothels should be done under Section 18 [closure of brothels]. Along the lines of NDPS Act, the burden of proof should be on the accused to prove that his property is not being used as a brothel. Also, the policing and sensitization of the field-staff towards trafficking needs to be very effective in source areas.
- **National database on traffickers:** All metropolitan cities and source areas should have a national database, which could include photographs, fingerprints and other profiles of the traffickers who are operating in the source areas. There should be a continuous exchange of this data. If done systematically, the traffickers could be identified, booked and their network/nexus could be broken. The problem needs to be combated more effectively, rather than in a piecemeal manner.
- **Need for coordination between systems:** There needs to be teamwork and coordination between the systems i.e. the police, judiciary and the welfare department. Besides this, an Inter-State Coordination structure is essential, so as to be of assistance – either financially or otherwise during the process of rehabilitation and reintegration.  
  
The mechanisms are present as per the various laws, but their effectivity and implementation needs review. Coordination between these mechanisms is also important.
- **Need for victim-friendly approach and victim protection:** The process of rescue and rehabilitation should have a victim-friendly approach to make the victims feel safe. They need to be treated with respect and dignity and not as criminals.  
  
Care should be taken not to detain the victims for a long time in protective custody. The statements of victims should be recorded in time before repatriating them. The issue of victim protection is very important in the post-rescue stage, as she is often, the prime witness in the case. There is also the possibility of her being harassed and tortured by the traffickers, and humiliated by the community if information about her past is leaked in her native place, after she is repatriated. This could, in turn, hamper the process of rehabilitation and reintegration.
- **Statement of the victim:** The statement of the victim is not necessarily the only evidence against the trafficker. It is a case of a crime and it is the State v/s. the accused. Statement of the victim is not mandatory in cases of drug trafficking. If trafficking in human beings is going on at such a massive scale with thousands of people getting into it, it may be open to question as to why the State is being ineffective in handling this problem and why NGOs are being roped into all this.

Police. It is normally observed, do not act unless a complaint is lodged. But according to the ITPA, when an officer has sufficient information to believe that prostitution is being carried on, he can take action. There is no need for the girls coming out and giving their statements.

About 90% of the cases registered are under Sec. 8(B) of ITPA. Only about 5% of cases are against the traffickers, but not registered under Sec. 8(B). They mostly end up either in acquittal or are kept pending, and the conviction rate is very low. About one-third cases in all the States are against women who are under the age group of 18-21 years.

In many States, no age verification is done. In Karnataka & A.P., most cases are filed under Sec. 4(B) of ITPA (living off the earnings of prostitution) against the prostitute woman herself. However, this section was originally meant to be used against the trafficker. There are many convictions based on Section 4(B) ITPA.

In West Bengal, it is observed that 100% of the cases are pending and the traffickers are not to be found. The women are languishing in the Homes and they are mostly from Bangladesh. This is primarily due to a lack of cooperation between the District Intelligence Bureau, the Border Security Force, the Bangladesh Rifles and the NGOs on both sides.

- **Quick disposal of cases against traffickers:** Often traffickers and brothel keepers are acquitted despite all evidence against them. They are arrested, produced before the Court, charge-sheeted and the appropriate statements of the victims are submitted before the Court, and yet it ends in acquittal. This is dissatisfying to the investigating agency especially, when they put in their best efforts. Hence, a need was felt to sensitize Judges, as they have become more disposal-oriented.

• **Need for special training for the investigating agency personnel:** There are certain limitations that a Judge also faces. The Courts decide the cases on the basis of the material produced before them; hence, due to submission of improper material or insufficient material, cases might end in acquittal. For example, often, a routine format is followed by the police in recording the statements of the victims or witnesses in all cases; which raises a doubt in the mind of the Judge. So, there is a need for special training for the investigating agency personnel with regard to the knowledge of each and every aspect of the laws concerned, the procedures, etc. which will help improve the quality of investigation.

- **Non-separation of judicial and executive functions in hilly and tribal districts:** In Meghalaya, bifurcation between the judicial and the executive functions at the administration has not yet been done. This has led to the lack of interest towards the victims shown by the public prosecutors during the trial, whereby most of the cases are acquitted. This issue will have to be dealt at the State level for quick action. The DWCD could take up the matter with the State government, pointing out the problems associated with non-separation.

• **Psychological and legal counseling:** There is a need for qualitative counselors at the police station and at the Rescue Homes to provide psychological and legal counseling to the victims. In a case of Delhi Domestic Working Women's Union v. State of India, the Supreme Court decided that every rape victim should be given a legal counsel. Every police station should have a list of advocates. This is necessary, as many people are not aware of the law and their rights, though they are being victimized. A legal counsel will be helpful in giving them legal counseling.

- **Statistics on missing person's cases:** The women and girls ending up in red light areas may be persons missing or lost from their native place and they may have travelled many cities before ending up in the red-light areas. But due to the lack of intervening structures at the district level, and the anxiety and stigma among the parents and relatives to register missing compliant, cases do not come to the forefront. Hence, there is a need to know how many cases of missing persons are registered and whether this information is further communicated within the police department to all the districts at intra and inter State levels and to Central agencies.
- **Prostitution as a political issue:** No political party has ever taken up the issue of prostitution on its political agenda. It may be due to the prevailing societal attitude, e.g. it is considered to be a shame on the community. The strong presence of vested interests may also be preventing the political class from raising this issue in public.

#### IV. INTERACTION WITH THE RESCUED VICTIMS AND WOMEN/GIRLS VULNERABLE TO PROSTITUTION

##### *Visit to the Prayas Activity-cum-Contact Centre, Gilder Lane Municipal School, Mumbai Central*

As part of the Workshop Programme Schedule, an interaction was arranged between the rescued victims and women/girls vulnerable to prostitution and the participants, at the end of Day One of the National Workshop. The women and girls were the clients of Prayas, who come to the Activity-cum-Contact Centre of Prayas, at Gilder Lane Municipal School, Mumbai Central. The discussion that took place between the women/girls and the participants was lively and led to a healthy exchange of views and experiences. Some of the highlights of the discussion and issues that came out of it, are presented below:

1. Need for speedy trials in cases of trafficking to avoid languishing of victims in Homes.
2. Judiciary is not approachable – police and institutional staff are not encouraging on this issue.
3. Legalisation of prostitution would have a harmful impact. It would be an anti-women move, lead to trafficking on a larger scale and seal all doors to rehabilitation of trafficked women.
4. Why are steps not being taken to stop commercialized prostitution through effective police action, when it is so much out in the open?
5. Trafficked and/or rescued victims face stigma from police, institutions and society
6. Staying in closed institutions and Shelter Homes has a stigmatizing effect on rescued victims. They face ostracism from staff and these institutions are anti-rehabilitation/training/employment.
7. Violence against women force women to leave their homes, violates their right to property and may push them to prostitution or increase their vulnerability.
8. There should be social workers at police stations to counter police apathy, use of abusive language, physical harassment and a non-rescue approach towards 'genuine' cases in connivance with brothel keepers by 'rescuing' known faces.
9. Short Stay Homes / organizations should be there for every five to six villages at the taluka level, to help women in difficult circumstances and to prevent trafficking. These Shelter Homes would also prove useful to women/girls who have been repatriated, in case they need support or shelter, after going back.
10. Preventive measures are needed at the railway stations and bus depots, where pimps and traffickers are on the lookout for girls for duping them into prostitution
11. Family members (parents, brothers, and in-laws) put pressure on women to earn through prostitution.

## V. NATIONAL STUDY ON TRAFFICKING

### Presentation by the NHRC Team

**Speaker: Dr Savita Bhakry, Senior Research Officer, NHRC:**

#### ❖ The genesis of the action-research undertaken by NHRC:

There were several factors instrumental to motivate NHRC to take up this action-research on trafficking in women and children. They were: the existing situation and as well as at the request made by Mrs. Mary Robinson the then U.N's High Commissioner for Human Rights, as well as the recommendations made by the Asia Pacific Forum of the National Human Rights Institutions. In a meeting held in Manila in September, 1999, the former Chairperson of NHRC decided to set up a Focal Point on Human Rights of Women Including Trafficking—and Hon'ble Justice Sujata. V. Manohar was appointed to serve as the Focal Point.

In February 2001, this Focal Point recognized the fact that trafficking in women and children involves violation of fundamental human rights. However, the Focal Point contemplated that it would be difficult indeed to formulate an integrated and multi-sectoral strategy against trafficking without desegregated data on trafficking based on age, gender and other relevant characteristics. Hence, the need was felt for creation of an authentic database in the Commission.

In order, therefore, to engage the government and civil society in a constructive dialogue on a gender and rights responsive paradigm, so as to strengthen the vulnerable groups in the supply zones—both economically and socially, as well as revamp the rescue and rehabilitation programmes and in the process, sensitize the public and the law, the Focal Point decided to undertake the action-research in collaboration with UNIFEM.

Accordingly, the Focal Point organized a one-day technical consultation on 9<sup>th</sup> of October 2001 to evolve a research design of the study in consultation with the different stakeholders. This particular consultation was attended, among others, by the Department of Women and Child Development, the police (including the CID), academicians and the NGOs.

The consultation deliberated that the action research should be based on clearly defined objectives, appropriate and feasible methodology, to get an insight into the problems and while doing so, assessment should also be made whether the Central and the State government programmes for rehabilitation match with the expectations and needs of the victims.

It also felt the need for identifying a nodal agency and suitable research partners for States and Union Territories with high incidence of trafficking in women and children.

Accordingly, the NHRC identified the Institute of Social Sciences as its nodal agency and this particular agency further identified research partners for this action research. States and Union Territories selected were: Andhra Pradesh, Bihar, Goa, Karnataka, Maharashtra, Meghalaya and Assam, Rajasthan, Tamilnadu, Uttar Pradesh, West Bengal, and the N.C.T. of Delhi. It was also reiterated that focus would be on metropolitan cities of Bangalore, Hyderabad, Mumbai, and Kolkata.

#### ❖ Main objectives of the Action Research study

- To study the trends, dimensions and magnitude of the problem.
- To undertake vulnerability mapping of geographical areas prone to trafficking with specific reference to demand, supply and transit points, so as to assess the causes and factors responsible for trafficking.
- To assess the types of existing responses through issues arising from trafficking, including the role of government, law enforcement agencies, NGOs and others in detecting and curbing trafficking.
- To make an attempt to review the existing laws—national as well as international, and on that basis, recommend whether new laws could be enacted and how the old laws could be strengthened.
- To analyse the rehabilitation and repatriation of the trafficked women and children once they are rescued and bring out a comprehensive plan of action for prevention of trafficking, protection of trafficked women and children including their rehabilitation and repatriation back into the society and law enforcement

It was decided that public awareness and sensitization programmes would be simultaneously carried out for the police, judiciary and civil society during the course of the research.

#### ❖ Definition of concepts:

- Action Research would mean the application of fact finding to practical problem solving, in a social situation with a view to improve the quality of action within it, involving the collaboration and cooperation of researchers, practitioners and laymen.
- An attempt would simultaneously be made along with the Action Research to generate awareness through training programmes on matters relating to trafficking among the stakeholders, so as to sensitize them about the problems of trafficking.
- The Action Research would facilitate various activities with respect to prevention of trafficking, investigation into and prosecution of traffickers, protection of trafficked victims including their rescue and rehabilitation and building up a functional network of governmental and non-governmental agencies for preventing and combating trafficking and carry out action programme in furtherance of the base line research.
- The term "women" would mean females of all ages and "children" would mean all persons below the age of 18 years.
- The term "trafficking" was defined as per the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, meaning thereby that "the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"

- Accordingly, the meaning of trafficking in the present research encompasses:

1. Trafficking for sex based purposes, i.e. for prostitution, pornography, pedophilia, sex tourism, mail order bride system, disguise sexual abuse under the garb of massage parlours, friendship clubs, etc.
2. Trafficking for non-sex based purposes i.e. bonded or forced labour, domestic or industrial servitude, drug peddling, begging, camel racing, adoption etc.
3. Trafficking for other exploitative situations i.e. trading in human organs, etc.

#### ♦ Sampling method:

The national study team identified seven units from which data had to be collected:

1. Trafficked non-rescued victims
2. Rescued trafficked victims of sexual exploitation
3. Rescued trafficked child labourers
4. Brothel owners
5. Traffickers
6. Police
7. Clients/Customers

To collect data from the sample units, seven different types of standardized interview schedules were prepared, consisting of fixed alternative questions and open-ended questions by the research partners. It was reinforced that the data generation should rely on combination of both qualitative and quantitative methods so as to include case studies as well as profiles from the field.

After the interview schedules were prepared, they were pre-tested in the field. Orientation training was given to the people who were to collect data from the field, orienting them about the general principles of data collection, such as rapport building, maintaining objectivity, etc.

#### ♦ Data collection:

In all, 4006 people were interviewed. It included 929 trafficked non-rescued victims, 510 rescued trafficked child labourers, 412 brothel owners, 160 traffickers, 852 police and 582 clients.

The data collection started in the month of December 2002 and was completed in April-May, 2003. Members of the national study team continuously monitored the data collection process. Once the data started reaching the Institute of Social Sciences, it was coded and this was followed by data entry and its verification. Thereafter the SPSS package was used for doing the statistical analyses of the data and its interpretation. As of now, the interpretation work is almost over and the data that has been interpreted is being used to write chapters.

The "spin off of the Action Research" was that through this study, we succeeded in creating a permanent network of nodal officers on trafficking, covering every State and Union Territories in the country. There were two nodal officers appointed from each

State, from the Police and the Social Welfare Departments or the Ministry of Labour. A National Conference of all these nodal officers was also held at New Delhi on 29<sup>th</sup> of October 2002. In this Conference, the terms of reference, detailing out of the duties and responsibilities of nodal offices were also discussed and finalized. The Commission is now forwarding these to all the Chief Secretaries of the different States and Union Territories. The nodal officers so appointed, also helped the Commission by sharing data.

The other important aspect was the prevention of cross-border trafficking along the Nepal border with the help of an NGO called "Manav Seva Sansthan" and the D.G.P of U.P. and W.B. Several sensitization programmes of judicial officers, police and government officials were conducted during the course of this Action Research. This apart, we identified the trafficking prone areas, and demand and supply routes within the country.

#### ♦ Challenges faced:

- A lot of hopes were raised, when we were interviewing the trafficked non-rescued as well as rescued victims. On the other hand, there were many people who were reluctant to speak to the interviewers, because they thought that probably again this was a game plan.
- It was difficult to locate the victims who have been repatriated and rehabilitated and interview them, especially, the rescued child labourers.
- During the course of this Action Research, a few of the research partners who were with us in the beginning, collecting data and reviewing literature, for some reason or the other, opted out of the study, but we were compensated with the help of other NGOs like Prajwala in Hyderabad, Sanlaap in Kolkata and other organizations in Delhi, who came to our rescue.

**Speaker: Shri P.M.Nair, I.P.S., Nodal Officer on Trafficking, NHRC:**

The uniqueness of this Action Research is: trafficking has been viewed as the violation of human rights. One of the purposes of the NHRC intervention was to see how the question of difference of data, official data and the data with the NGOs could be reconciled. If one reviews the official data: every year, about 9200 cases are registered under ITPA, whereas the NGO estimation comes to somewhere two million people who have been trafficked.

All the research partners were NGOs. Our criterion for selection was: firstly, it should be a very objective NGO. Secondly, it should be an NGO with a research base. In many places, the NGOs have been supplemented and substituted by other NGOs working in the field, like Prajwala in Hyderabad, Sanlaap in Kolkata, etc.

The research team also facilitated training programmes of about 2500 police officers across ranks, around 100 judicial officers, 350 NGOs in various places. The basic purpose was basically to remove the distance between the government and the voluntary agencies and making them partners in action.

The perspective was developed in consultation with those subjected to trafficking and those involved in trafficking. Simultaneous action programmes are being held at different places that will be facilitated by our sponsors or facilitators.

Referral and the institutional linkages have been strengthened. The approach is guided in the best interest of the trafficked and vulnerable persons. The team was able to get cases getting registered against traffickers e.g. in Meghalaya. After the research, one could see a paradigm shift in the whole country. Convictions of traffickers started happening up. Rescue, rehabilitation, and reintegration was facilitated. Hoteliers and tourism the industry was sensitized on sex tourism and trafficking.

Innovative programmes were facilitated. At the Indo-Nepal border, there are eight main trafficking routes from Nepal to India. Out of these, Sanouli is an important place of historical importance. From there one can go to pilgrimage areas where Lord Buddha was born, Lumbini. But the number of buses from Sanouli to Gorakhpur, a distance of 2 ½ to 3 hours from Sanouli, far outnumber the purely tourist population.

From Sanouli, a population of 2000, there are 64 buses running everyday which are going to Agra, Jaipur, Varanasi, Delhi and various places. These buses are carrying human cargo. The team started the intervention centers there—to find out why people are coming, what are they coming for, and where are they going. Since India and Nepal have a contract of free movement, any intervention programme would be subjected to the condition that it should not be violating the migratory rights of the people. The center that was opened along with the NGO Manav Seva Sansthan, was basically meant for rights awareness. The intervention centre team would approach anybody walking into the country with a brochure written in English, Hindi or Nepali language. They would be counseled about their rights.

During this process, they would ask a few pertinent questions, to gauge what was being trafficked. In a span of nine months, 3534 persons moved into various places of India. Of these 3534, those who were suspected of trafficking were interviewed further. The team would separate the girl from the man, and interview him further. Through these interviews, 65 girls were found to have been trafficked girls and 34 men were traffickers.

A working arrangement was created with the Nepali police and the NGOs. These 35 traffickers and 65 Nepali girls were transported across the border and handed over, to be dealt with by the appropriate law. Rescued victims were to be taken home and reached to their parents. This shows, firstly, the trends of trafficking in the country. Secondly, that prevention is possible. The intervention did not stop migration, but only intervened where crime was involved.

NGOs have a participatory role, ensuring human rights. Under Section 13(b) in ITPA, there is provision for an advisory body to be notified by State governments. The law says States "may" notify, therefore, only six State governments have notified so far. The NGOs could play a proactive role in getting the advisory bodies constituted. Another suggestion in this regard is that instead of notifying such a body at the State level, the District Collector should constitute a committee consisting of the police, shelter home authorities, women and child welfare officer, health officer, local NGO, etc. The law should be changed to "shall notify" instead of "may notify".

The Action Research is not focused on prostitution, but trafficking, i.e. the demand dimensions/trends/patterns. Around 160 traffickers have been interviewed. It was a difficult task to get across to the traffickers. Interestingly only two of these traffickers are in jail. 60% of them have never had any action taken against them by the police.

**Traffickers' perspective:** To understand rescue and post rescue scenario, one needs understand the traffickers' perspective. They have a hierarchy of reference in selecting the target group. They actually capitalize on the vulnerability of the victim, and parameters like colour and body shape. The age factor is a strong under current in child trafficking. The lesser age, the better the price.

**Network amongst traffickers:** 70% of traffickers informed that they networked with other traffickers. 60% of traffickers interviewed have gone abroad, at least to Nepal. It is a formidable network that needs to be broken, but has not yet been touched.

**The clientele:** The customers add an interesting dimension to the whole issue of trafficking. Why do men go to a brothel and purchase sex? It cannot be said that all clients are abusers nor can they be booked under same sections of the law. They basically go to have sex with young victims, and deserve to be prosecuted under Section 376 IPC. Some of the clients too are young, e.g. the youngest one was 16 years of age. There are many children from the schools and colleges, who visit brothels due to various reasons. One needs to segregate clients and deal with them accordingly. For example, the 16-year-old boy found in the study may need counseling along with prosecution.

**Registering F.I.R.s:** When one reviews the existing scenario of rescue and post rescue, the issue of whether F.I.R.s are registered, arises. Out of 952 police officers interviewed, it was revealed that they register F.I.R.s in about 40% cases.

**Conviction pattern:** Most cases registered are under Section 8, ITPA. Out of 9200 cases registered, 93% of are registered under Section 8, i.e. for soliciting. The usual practice seems to be one whereby the police go to a brothel, wrap up about ten to fifteen girls, bring them to police station, charge them under Section 8, and produce them in a Court of law. In one case, we found a fourteen-year-old child, who had 23 customers on one night and she had been suffering for four and half months. If action had to taken against customers, and if justice had to be delivered to the girl, then all those customers should have been booked under the law of rape.

But the ground reality is at variance from this perspective. More than 80% of those arrested when a minor is rescued are the women brothel keepers, who are charged under abetment of rape. Interestingly, the exceptions came from Bihar, Himachal Pradesh, Jammu and Kashmir, Assam and M.P., where males were arrested.

**Investigation pattern:** Investigation is usually confined to the brothel. If police rescues a child in Pune and the child is trafficked from Nellore district of A.P. the investigation should link up Pune and Nellore, which unfortunately, does not happen. At the most, the brothel owners are prosecuted and convicted and the 'kotha' is closed, but the trafficker who brings these girls from A.P. or West Bengal, gets away.

Secondly, the investigation process is painstaking but the mindset is narrow. It is treated as a petty case, which even a constable can handle. In contrast, if there is case of kidnapping or a murder, serious efforts are made by the investigation team, usually headed by senior ranked officer. Trafficking, on the other hand, is viewed as a simple offence, which does not get the necessary priority.

**Presence of other offenders abetting:** The data shows that, apart from the brothel keeper, there are other stakeholders who have their shares in the "income" generated by the victim, such as the moneylenders, the henchmen who provide support to them, etc. They too need to be convicted if the nexus has to be broken. Prosecution should involve a sustained investigation process and prosecution of all those who are involved in it.

One should have an integrated approach, involving the three P's: prevention, protection, and prosecution. Prevention of trafficking, protection of the victims and prosecution of the traffickers - from Nellore to Pune (destination to source), financiers, and the entire paraphernalia that is involved in this network.

**The gender dimension:** Trafficking could be for a range of purposes, from sexual exploitation to labour, fake marriages etc. it could be carried on under the façade of beauty parlours, massage parlours, adoption, camel racing, etc. All these have a component of gender discrimination.

Trafficking includes a whole list of crimes. If one takes the case of a sexually abused person, it includes crimes such as, criminal confinement, criminal restraint, physical and mentally torture, selling and purchase of minors and human beings (Section 372 and 373 of IPC), molestation or outrage of modesty (Section 354 IPC), repeated rape (Section 376 IPC), servitude and debt bondage (Section 377 IPC) and criminal conspiracy.

The basic issue is that of vulnerability of the trafficked victim. Trafficking itself is discrimination in a social context. Within that context, there prevails a culture of silence where families and society permit the crimes to occur.

The victims experience discrimination at three stages: a) before trafficking—vulnerability, gender discrimination, patriarchal mindset, b) during trafficking—the manifestation of abuse that they face, and c) after trafficking—inadequate remedies for victims and survivors.

**Family situation adding to vulnerability:** Apart from factors like demand-supply, vulnerability, and ignorance about one's own rights, there is the family situation that needs to be factored. Most often, the family is in a difficult situation for various reasons, which exaggerates the vulnerability, and eventually could lead to trafficking.

Poverty could be one of the basic factors but poverty by itself is not the cause behind trafficking. That is one of the most important factors to be noted. It is an area of poverty, there could be a vulnerable situation, and lack of law enforcement, where traffickers are on prowl. They are being allowed to get away. At best, action programmes are found at the end stage and not at the starting point.

**Missing children:** There is a strong linkage between missing persons and trafficking. Even a fraction of the data, which was collected, is mind-boggling. Every year, the number of children missing from the six metropolitan cities is 92,000. Out of this, 34,000 do not return. Therefore, 38% remains untraced.

Often, the missing entries lodged by the parents are lost. Nowhere, F.I.R.s are registered, except in Maharashtra. At best, a 'Hue and Cry Notice' is passed on, and the matter is over. There is no verification per se, because of certain deficiencies in the system. India has a National Crime Records Bureau, which has a Missing Persons Bureau, which is totally silent. There may not be a need to create another system, but existing systems need to be embellished and revived.

**Problem in age assessment:** There are at least ten case studies in the study, where the person was shown as 18-19 years old, i.e. adult, but when NGOs objected, a second ossification test was done and the age was reported as 16/17 or 15/16. There is a Supreme Court judgment, which prescribes that, in case of a range in the age verification result, the lower range should be taken as the age of the person. These case studies show the irregularities in the age verification process.

**Lack of asset tracing mechanism:** There is not a single case in India, where the assets amassed by the traffickers have been traced, confiscated and forfeited. In one case, the study found that a trafficker in Delhi had 2 ½ crores worth of property, two houses in South Extension, and a hotel in Nagpur.

**Publicity of women and children:** Section 228 of IPC debars publicity of rape victims. The J.J. Act under Section 21 (a) specifically debars any form of publicity of the child but publicity by the law enforcement machinery and the media goes on unhindered.

**Health hazard:** There is a strong threat of spread of the HIV-AIDS virus too. Many rescued victims did not want to state whether they are suffering from HIV or not, but the study showed 83% of the victims were HIV positive. Today the entire HIV-AIDS campaign strategy is focused on prevention. Sufficient measures are required towards victim care and treatment.

**Violation of rights:** There is the issue of violation of rights of the victims by the law enforcement agencies during the rescue and post-rescue process, particularly during mass rescue operations.

There is a strong need to revamp the entire system. The whole concept is of "raid" and not "rescue". The mindset is stuck at raid, which is meant to arrest criminals under Cr.P.C. In fact Sec. 15 and 16 of ITFA advocates rescue, which is an effort to get the survivor out, not to make her a criminal.

The whole process of conducting a raid is demeaning to the girl, e.g. when the policemen go inside the building and drag the girls out, quite often they are not fully clothed. Most often than not, their dignity as human beings is stripped off. This creates a further exploitative situation.

The accused and victims are huddled together, where they get time and space to brainwash the victims, and to terrorize them. Therefore, nothing comes out of the police investigation. The victims need time and counselling services to get clinching evidence against the traffickers.

Whilst rescuing, the victims' belongings and money are left behind. In the hurry to remove them from the brothel, most of their belongings are lost forever.

There was a case study of Prema, whose one and a half months old infant was left behind in a Delhi brothel. With the help of the Superintendent of the Shelter Home and the police, Prema was able to get her child back after one month.

The redressal of grievances calls for validation—accepting her trauma, hurt and extending a healing touch, providing counselling and legal help. Repatriation, empowerment, livelihood options and compensation—are her rights.

**Problem of re-trafficking:** Conviction of offenders and giving the trafficked victim the assurance of non-repetition are two important components in intervention. Due to the system's inability to ensure these, the victim gets re-trafficked. The study shows many cases of re-trafficking. The Prajwala case study shows that out of 130 victims who were repatriated and rehabilitated, 72 are missing.

**Judicial interventions, government and individual initiatives:** There are some remarkable judicial intervention and individual initiatives of government officials, e.g. the initiative of a State's Director of Social Welfare/Social Defense, the Delhi High Court intervention, individual initiative in Tamil Nadu, etc. NGOs also have taken some positive



initiatives. For example, an NGO along the Indo-Nepal border, which carried out a prevention programme, has helped stop trafficking in twenty villages on each side of the Indo-Nepal border. This was possible because of door-to-door intervention; rights based campaign, empowerment programmes, removal of vulnerable situations, etc. The entire community has been strengthened and enriched to prevent trafficking of their women and children.

There are bad practice models too. The integrity or competency of the person concerned is not being questioned, but one needs to be aware how things can go wrong, in order to rectify them. Following are two examples:

#### Case Study I:

Kamala was a fourteen-year-old child from Nepal. She had a desire to see a 'mela' in India. Her stepmother took advantage of this and sent her to India with a woman, who was a trafficker. This woman brought her to Betia, in Bihar, checked her into a hotel and disappeared. Subsequently, a person came there and had forced sex with her. Kamala screamed and protested, but he had his way and left. While she was screaming, the hotel staff got alerted and called the police.

The police came, took her to police station and booked her under Sec.8 ITPA, for soliciting and also arrested some of the hotel staff. No investigation was carried out to trace the rapist. Eventually, all of them, except Kamala, got out on bail. Kamala was sent to prison. As an under trial, she was in prison for two years.

While her case was pending, she was regularly taken to Court. The prison was in Patna and the trial Court was in Betia. She would be escorted from Patna to Betia overnight in a train and taken back. This pattern was repeated twenty one times during those two years. At the time of her arrest, she was 16 years old.

No lawyer appeared on her behalf. There was a lawyer earlier, but he had disappeared. The NHRC intervened in the matter. It was taken up with the District Judge. He was told by the Commission to provide legal assistance from the District Legal Aid Forum. But the Commission received a reply that if she wanted an advocate, she had to state it in Court and that "ignorance of law was no excuse".

The matter was taken up to the Hon'ble Chief Justice of the High Court. The Chief Justice acted promptly and the next day, Kamla was released. With the help of an NGO, a lawyer and woman police officer, she was taken back to Nepal. It was difficult to convince the community to accept her. Finally, with the efforts of the escorting team, the community got together and signed a "panchnama", acknowledging that the girl was a victim, and that she would be given proper care and protection.

Issues that arise in this case:

- Accountability of the police, for not having registered a case of rape but having charged a fourteen-year old victim under soliciting.
- Accountability of the senior police formation, which supervised or failed to supervise the case.
- Accountability of the judicial magistrate, who did not extend help of the district legal aid forum.
- Accountability of the prison staff and the authorities responsible for visiting the prison, which made no effort to find out why a fourteen-year old was in prison.

#### Case Study II:

Mumbai operation: On 16/5/2002, the Social Service Branch of Mumbai Police raided a brothel at Santa Cruz. Four persons were arrested and twenty-four women were rescued. They were taken into custody under Section 15 and 17 of ITPA. The following day, four of the accused were sent to judicial custody. The police and prosecution sought detention of the girls for age and home verification, required under law (ITPA Section 15). Ossification test was done which showed that fourteen of them were adults and the remaining ten were juveniles.

Later, all the four accused were bailed out and the adult 'rescued' women were released the Court. By the magistrate's order, the juveniles were produced before the Juvenile Justice Board, which is for juveniles in conflict with law (and not the Child Welfare Committee, which deals with children in need of care and protection).

An advocate appeared on behalf of the juveniles and asked for another age verification test, contesting the results of the earlier test. He claimed in court that the girls had committed no offence and they have already been in detention for more than a month and that they should be forthwith released. Mumbai Police along with the NGO objected to this plea, on the grounds that the home verification report was pending. But the presiding Judge issued a release order, and at the same time, passed exterrment orders on the girls, so that they stood exterrment from Mumbai city, in spite of the fact that they were not convicts but victims.

The matter went in appeal to the Mumbai High Court. The Hon'ble High Court expressed displeasure at the manner in which the J.J. Board had handled the case. It pronounced that the minor girls were not involved in any offence and in need of care and protection. The magistrate should have directed production before the CWC and not the J.J. Board. The Court further held that the Board should have followed the procedure under J.J. Act, and should have waited for the home verification by the Probation Officer.

The High Court further said that the Board was harsh, by asking the girls not to enter the city of Mumbai, and had treated them as confirmed prostitutes. The J.J. Board's order was to the detriment of the minor girls, from a human rights point of view. The advocate had appeared for the accused as well as for the minors, which the High Court held as improper, and the matter was referred to the Bar Council for necessary action. The High Court issued guidelines, which are today enforceable in Mumbai and Goa.

A few issues that arise:

- Accountability of the police, who arrested the girls.
- Accountability of the judicial magistrate who referred the case of rescued minors to the JJ Board, instead of the CWC, in violation of the provisions of the JJ Act, 2000.
- Accountability of the judicial magistrate, who released the minors, without waiting for the home enquiry report of the Probation Officer, and passed exterrment orders on them.
- Accountability of the advocate, who appeared both on behalf of the accused and the victims, obviously at the behest of the traffickers.
- Inaction of the High Court in respect of giving suitable directions to the police to locate and produce the girls.

Nine months after this, there was another rescue operation by an NGO called IJM, along with Mumbai Police. They rescued fourteen minors from a building called Simplex. All the girls were sent to the Juvenile Home. During the process of counselling, the Probation Officer found out that one of the girls who was released and externed by the Juvenile Board in the earlier case, had come back with a different name and address.

On further interrogation, she revealed that after getting the release order, the advocate took them outside, put them in a taxi and took them to another brothel where they were confined. The Probation Officer informed the NGO, and with their help, a case was registered against the advocate, under the charge of criminal conspiracy. The police arrested the advocate. He was released the very same day on bail.

#### **The sum and the bone of the entire issue:**

- Need to have a 'Denial of Rights Approach' rather than a 'Criminal and Welfare Approach'.
- Need to strengthen good practices and morals.
- Need to develop a guideline on rescue operation for the police, judiciary and the institutional authorities, with do's and don'ts on rescue and post rescue operations.
- Need to network with agencies in the rescue and transit-demand areas.

#### **Highlights of the Open Session**

##### **1. Action against trafficking/traffickers:**

- To deal with the problem of immoral traffic in all its dimensions, invoking of Organized Crime Control Act could be considered.
- The States can prepare a database of the organized crime syndicate operating in their State and circulate it to other States. This database could be used for a comprehensive investigation that is required under Organised Crime Control Act. Also, under Section 13 to Section 16 of Organised Crime Control Act, properties of these traffickers could be attached and they could be denied bail.
- The trafficker disappears from the scene during the entire process of trafficking. The list of 160 traffickers interviewed by NHRC during their Action Research, is an important list and should be handed over confidentially to high-level officers, so that stringent and speedy action could be taken against them through concerned State, and their dossiers and fingerprints could form a National database.
- NCRB should have separate heads, which indicate the types of actions being taken under the various laws related to trafficking. The database should indicate the sections of ITPA, under which actions have been taken, so that it becomes clear whether the tilt of law is towards the victim or those involved in the running of the trade.
- The traffickers are adopting newer methods of operations, for example in some of the metropolitan cities, they are coming up with the "placement agencies" for domestic help, and under this garb, victims are being trafficked.

- Easy grant of bail to brothel keepers by the Court on some pretext or the other, needs to be reviewed. Sometimes the judiciary grants bail in such cases as the arrested persons are mostly women.
- There is absence of males being arrested or convicted in cases under ITPA, reflecting the sensitivity that society has towards male sexuality.

##### **2. Legal proviso and proposed amendments:**

- The word 'prostitute' should be replaced by the word 'victims of commercial and sexual exploitation'. These women and girls are victims of circumstances who are forced into this trade, through a combination of push and pull factors. The word 'victim' provides the dignity to the trafficked person.
- Sec 8 of ITPA is currently being used against the victims and not against the traffickers or the brothel owners. The status of the victim changes overnight from a person who should actually get legal relief from system, to a person who is turned into an offender.
- The ITPA does not define prostitution per se as a crime; it only criminalizes the commercialization of prostitution. Therefore, using Section 7 & 8 against those arrested for soliciting, Section 10 A, which is rehabilitative in nature, could be used, and the arrested woman could be sent to a Protective Home for rehabilitation purposes.
- Section 7 is the only section in the ITPA, which could be used to arrest the customer, but this is never done. There should be appropriate provisions for prosecuting and penalizing the customers in law.
- The term 'Trafficking Police Officer' should be changed to 'Anti Trafficking Police Officer'.
- The fine amount mentioned in ITPA has not been revised since the Act was enacted. Hence, it does not have any penalizing effect on the traffickers. This needs to be suitably revised to have a deterrent effect.

##### **3. Issues related to Structure:**

- There should be an extensive sensitization of the system, and NHRC being a nodal agency should take the lead in this. The discussion on trafficking and rescue of victims should not revolve around metropolitan cities alone. It should percolate to the districts and to the source areas.
- Proper monitoring of law enforcement, particularly the ITPA is required. Hence, a centralized structure needs to be created, consisting of the C.I.D. chiefs and the nodal officers of the State (appointed by the NHRC), who may meet every three months to discuss issues related to implementation of the Act.
- Database of missing persons could be collected by all State C.I.D. departments, along the line of "cidap.com" in A.P., a website which has pasted photographs of all missing children, women and men in order to trace them. Also, other advanced measures such as Automatic Finger Print Bureaus could be set up, where fingerprints could be compared speedily.
- Committed NGOs at source areas need to be educated and made aware about the trafficking, to help in its prevention.

- There is need to create Short Stay Homes for rescued victims, where they are regularly counseled, and the interaction with the police officials takes place in an informal manner, to get the best results in investigation.
- In cases where faulty application of laws is committed by the law enforcing agencies, there should be appropriate provisions to act against the officials concerned, to make them accountable. The officer concerned should be given proper knowledge and training about the Act and its application.
- In order to identify the trafficking prone areas, one needs to understand the reasons behind the vulnerability of the persons of that area that make them susceptible to trafficking. Poverty is a major cause behind the vulnerability, especially in border areas, where bulk movement of people takes place.
- In most States, missing persons' cases are filed at the police stations and lost in the register. In case of minors or women missing, the case should be dealt by a police officer not below the rank of a sub-inspector. In Maharashtra, the police has a very good practice of writing the case diary. This system is very helpful at times when the case turns into one of kidnapping or some other criminal case.

## VI. INSTITUTIONAL PROGRAMME IN THE REHABILITATION PROCESS

**Highlights of the Presentation by the Department of Women and Child Development, Government of Maharashtra**

**In chair:**

**Shri S.S. Dodd, Secretary, Department of Women and Child Development, Government of Maharashtra**

**Speaker: Ms. Neeru Sharma, Probation Officer, Special Juvenile Home, Mumbai**

**Creation of the Special Juvenile Home:** The Special Juvenile Home for rescued minor girls (from prostitution) was set up as a result of a PIL, filed Suo Moto by the Chief Justice of Mumbai High Court, in 1996. During the course of this petition, around 484 minor girls were rescued from the red-light areas of the city by Mumbai Police and housed in the various child welfare institutions of Mumbai. The final outcome of this petition was that the girls were deported back to their respective States and no follow up of these cases were maintained.

During this process, the High Court passed an order directing the Government of Maharashtra to set up a separate Home for rescued minor girls, leading to the setting up of this structure.

In another PIL filed by Prerana, an NGO, about the condition of the Special Home, the High Court ordered the setting up a Monitoring and Guidance Committee for the functioning of this Home. After several discussions and consultations with this Committee, certain guidelines have been formulated as to how this Home will be managed.

There are many difficulties faced in the running of the institution. To deal with the issue of lack of proper nutrition, special diet has been prescribed and implemented for the girls along with special nutrition for ailing inmates. This is provided with the help of voluntary organisations. There are visiting doctors and full-time nurses in the institution. The institution does not conduct compulsory HIV testing of the inmates, as per the High Court orders and because it is against the human rights of the victims.

**Counseling:** This is carried out by the Probation Officers with the help of NGOs, as the victims are often in an agitated state. They are wrongly informed, and often misguided by the brothel keepers and traffickers about the rescue and rehabilitation process. They are in the habit of using foul language, chewing tobacco, gutka, etc. They do not initially, show any interest in vocational training programmes, or literacy.

**Literacy programme:** Classes are conducted for the victims with the help of an NGO, Pratham. If the girl is interested in further studies, she is transferred to other institutions where she can avail the facilities of open schooling and continue her education.

**Recreational facilities:** These are provided to the girls through a television set with cable connection, bicycles, and indoor and outdoor games. They are taken for picnics and camps. Inter-institutional competition and hobby classes are being regularly conducted for the inmates.

**Vocational training:** Majority of the activities conducted is traditional and hence cannot fetch them any jobs after their release. The raw materials for the trainings are provided by Prayas. In collaboration with MAVIM (Mahila Arthik Vikas Mahamandal), attempts have been made to arrange training in gardening and organic farming, keeping the rural background of the girls. They have also been given training in candle making, making of greeting cards, embroidery and beautician's course, etc. The girls are sent for workshops on arts and theatre. Some have also been sent for para-professional social work and para-medical course at YMCA, Nirmala Niketan, TISS and other places. But since these girls are minors: providing them with escorts is a problem due to low staff strength in the Home.

**Sensitization of individuals:** The girls are admitted into the institution under the J.J. Act. They cannot be handed over to anyone, without the orders of the CWC. They are repatriated to their respective States, as per the orders of the CWC. If parents come to take back their wards, the girls are not handed over directly to them—because of the simple reason that they may have been trafficked by their own family members. On facing resistance from the institution, often parents approach the higher Courts, alleging that the girls are illegally detained in the institution. On being summoned to the Court, the Probation Officers find, much to their dismay that the Public Prosecutor, who is supposed to be supporting their case, is actually hand in glove with the parents and the traffickers.

The institutional staff work, albeit in a very small way, at the individual level too, coordinating with the various departments and agencies - police, CWC, hospitals, NGOs, both Intra State and Inter State, over issues such as recovery of property, age verification, transportation of the girls, escorting them, sending them to institutions, etc.

#### **Challenges faced:**

- Day to day functioning of the institution is very difficult. Quite often there is unrest among the girls over issues like delay in providing escort to the girls to go to their native States or to hospital. Sometimes, they even go on hunger strike, as they want to be released immediately. At such time the staff is at a loss and do not know whom to approach for help and support. The Superintendent has no decision making powers in such matters. There is lack of proper facilities, no communication system and lack of coordination between agencies concerned.
- If girls are not given proper food, they make allegations against the staff. If they run away due to systemic problems, then the institutional staff gets suspended. If they are allowed to go out for training and run away from there, then the staff is questioned. The onus of responsibility always lies on the staff, but since they are not equipped properly, it becomes difficult to handle the crisis situations.
- Petty cash is not being provided to the Superintendent of the institution. It has been said several times and at several platforms, to several people but nothing has happened. If a girl is sick, the staff has to spend from their own pockets. There are many problems in the institution, which the staff solves with a common sense and sometimes, 'human' sense approach. The government has to think about these issues and take necessary steps to deal with the same.
- There is always talk about "minimum standards to be maintained" in the institution. On the contrary, there should be some maximum standards in these institutions for the rehabilitation of the girls.

**Speaker: Shri Hivrale, Superintendent, Protective Home, Mumbai**

The Government Protective Home, Chembur, is an institution for the adult women and girls rescued from prostitution or in moral danger. When the rescued girls come to the institution, they are already brain washed and counseled by the traffickers, who are their owners and have vested interests. These people coach the girls what to say in reply to questions like what her name is and how and where from she has come. They are not ready to listen to the staff, because their orientation has been done before they are brought to the institution.

The Probation Officer and the staff counsel them that staying in the institution may help change their lives or get alternate jobs, but their mindset is already fixed. They forcefully express their wish to go back to their native place/villages. They know that within fifteen days or one month of being 'rescued', they are likely to be released by the Courts. The Probation Officer's report is just sham. They already know all the procedures and methods of release. Their 'parents' come forward with 'proper' identification; ration card, etc., and produce the same before the Court.

There are cases of many girls who have again come back to the institution after they were sent home. At such times, it amounts to a waste of existing structures and resources. It has been observed in the recent past that families are instrumental in pushing their girl children in working as 'bar girls' and dancers in beer bars.

The Courts have expressed an opinion that the institutions where these girls are being sent, should be made responsible if girls return back to the red-light area. However, most of the NGOs, which are working in this field, are only interested in minors. They do not show much interest in the rehabilitation of adult women rescued from prostitution. Civil society should not distinguish between minors and adults, when it comes to the issue of rehabilitation. The aim should be that any person who has suffered pain and exploitation needs to be rescued and rehabilitated, only then something worthwhile could be done in this field.

When it comes to rehabilitation, a concern arises that whatever trades are being taught to the inmates, it should help them to earn more than Rs. 100/- per day. The needs of these women have increased over time, and quite often, they have children to look after and provide for their education. Accordingly, such facilities/trades/training should be imparted, through which they can earn around Rs. 5000/- a month. Then they can live properly. Many girls want to come out and live in society as part of the mainstream.

As per the SWADHAR scheme, a Shelter Home, with a 400 bed-facility is under construction in Mumbai. This may solve the problem of capacity. The plan is to start some business activities or trades, which will help a woman, earn a sufficient income after her release from the institution.

In Mumbai, interactions with the police leads to a conclusion that the issue of rescue gets a very poor focus, because of overload of work and other priorities of the department. If there can be a special police station or special force in Mumbai, it may help in solving this problem.

There are many difficulties, e.g. insufficient budget, lack of staff, problems of existing staff, etc. An attempt is made to keep the seniors in the department informed about these problems. Sometimes the response is positive, and sometimes it is not. The staff has to bear the day-to-day problems and is used to it by now. But things have to change for the better.

The ground level staff possesses little power and there is a lack of cooperation from other concerned departments. Many times, through counseling and building of trust with the rescued women, information relating to trafficking comes into open. For example, how and why she came to Mumbai; who brought her here; she may even give the trafficker's name, address and telephone number. But due to lack of coordination with the police, nothing much comes out of it. If the traffickers are arrested and some action taken against them, it will be really meaningful.

## Highlights of the Presentation by Railway Police, Mumbai

**Speaker: Smt Mulani, Police Constable, Chatrapati Shivaji Railway Terminus, Mumbai**

Women police constables have to face many difficulties while escorting rescued victims to their native places:

- Many problems are encountered at the time of handing over rescued children or women, at the destination point. In one case in Patna, despite an escort order of the CWC, the institutional authorities refused to accept the child and give admission into the institution. Sometimes when the police reach the institution in the night, they refuse to accept the child.
- If the escort team reaches the destination town on public holidays or on Saturdays/Sundays, the children are refused admission into the institution. The police team has to make their own stay arrangements somewhere, along with the children. The children are accepted only when the Courts resume. For those two to three days, staying along with the children and bearing boarding and lodge expenses has to come out of their own pocket, as there are no facilities available for their stay.
- While escorting the child, if the police are travelling by train, they are given only the train ticket. But, some children stay very far away from the railway station. The escort party has to take the child or woman to his village (as per Court or CWC orders) place. They do not get money for all these expenses. Even if the journey is for three days, the food expenses provided for the child is only Rs.30/-, which is not sufficient. Therefore the travelling expenses, police's out of pocket expenses, bus journey expenses as well as the child's expenses – all such expenses should be provided for
- Quite often, the police come across cases of elderly ladies without shelter and security. In such situations, they approach the government institutions for women. But these Shelter Homes have their own age limit up to 35 to 40 years, leading to many difficulties. Therefore, it is essential to have institutions for women in each district where there is no age-bar.

## Concluding Remarks

**Speaker: Shri S.S. Dodd, Secretary, Department of Women and Child Development, Government of Maharashtra**

There are administrative problems in the institutions. There are constraints of finances. There are constraints of staffing and manpower. Every government is going through a budgetary crunch, and so is the Government of Maharashtra. Many of the expense bills e.g. electricity bills, telephone bills, food bills, etc., remain pending. But there is no doubt that the government has to be expeditious in solving these problems.

There is need to review the various Acts in terms of what responsibilities have been cast on the government, and whether the government is capable of coming up to the expectations. Otherwise, these Acts will remain on paper. The government will be unable to deliver and come up to the expectations of the Courts.

The relevant sections in the Juvenile Justice Act 2000 are Section 4, 62 and 29. It would be very interesting to know as to how many States have set up Juvenile Justice Boards under Section 4. Similarly, how many States have set up State Advisory Boards under Section 62? How many States have set up Child Welfare Committees under Section 29? These are the instruments, envisaged under the Statute for taking care of the needs of children who are found to be in conflict with law, or those who are in need of care and protection.

## Highlights of the Open Session

### 1. Difficulties faced by the institutions and police whilst arranging for escorts for the rescued victims:

The problems faced by police escorts should be taken up at higher levels of the administration, so that a tie up could be made with other States or districts from where the rescued girls and women are coming. Through effective networking, a working arrangement can be made to solve the problems faced by escorting teams.

Though the Court may have passed an order to escort the victim back to her native place within a specified time, the police are unable to escort the person to her village till they get advance from their department to do the job. In such circumstances, the police could write an application to the Court and get the date extended by one or two more months. In that case, the institutional authorities have to face the consequences of the delay in escorting. The Court should also inform the victims about the delay in providing the escort, in order to avoid problems in the Shelter Home.

The SWADHAR scheme of the DWCD, GOI, is being divided into a separate scheme for rescued and trafficked women and girls and a standard scheme for women in other difficult circumstances, as the two issues are separate. The rescue scheme covers the costs for escorting, the cost for bringing back, and other issues, which the government normally overlooks while planning for rescue.

In Tamil Nadu, volunteers from the community and the Department of Social Defense have been involved. The government provides the railway or the bus warrant, and the volunteers, who are identified from a panel of suggested names, escort the women and children to their native places. Exception is made in cases of children in conflict with law, where the police escort the juveniles.

### 2. Police protection:

There is an acute need for police protection for rescued girls staying in the Shelter Home. It has been the experience in Mumbai that when the institutional authorities seek protection from the local police station, they refer the issue to the concerned 'rescuing' police station, which in turn shifts the responsibility of providing police protection to JAPU on the pretext that it is a women related issue. The JAPU is unable to provide the necessary protection as they are overburdened with many responsibilities. Hence, the entire effort hardly bears any fruit.

### 3. Non-inclusion of the field level staff by the department while executing rehabilitation plans:

The DWCD, Government of Maharashtra, which is setting up a SWADHAR Home in Mumbai, has not consulted or taken the opinion or experience of the ground level staff of the existing Homes. Though the physical construction of the building is about to be start, the staff who will actually be using the structure in future, have not been involved in making blue print of the plan. The quality of the work done by the PWD leaves much to be desired.

It was suggested that concerned departments which are engaging the PWD to construct buildings for their projects or schemes, should be actively involved in the planning and construction stages of the project, in order to obtain best results from them. The involvement and interest of higher-level officials of the two departments is very important in this regard.

### 4. Gradual shifting of responsibilities of welfare by the government to the non-government sector:

There are many sectors in the government such as the regulatory sector, and the law enforcement sector where only the government has the mandate and can enforce the law very effectively. But there are many sectors, particularly the welfare sector, where the government does not seem to have the necessary commitment or the emotional involvement, which is required to get a job done in an effective manner. The efforts should be aimed at ensuring that the trafficked victim, is rescued, counseled, reached her home (if she is consenting and family is found willing and fit) and ultimately rehabilitated. The NGO sector can play a supportive and complementary role here.

There was no dearth of efficient and committed individuals in the government. At the same time, the spread of committed and effective voluntary organizations is not uniform in the country. Also, it may be unwise to assume that all NGOs are field-oriented and working with commitment and purpose. Therefore, to come to a conclusion that the NGO sector is more effective and committed and make a policy decision on the basis of this conclusion would have a serious repercussion on the rehabilitation of rescued victims.

### 5. Co-management of government Shelter Homes:

In Andhra Pradesh, all Juvenile Homes are co-managed by the government and NGOs. The NGOs are clear that the government should not abdicate its responsibilities. The Secretary, WD & CW, is the Convenor of the Executive Committee. The Director, WD & CW, is a part of the team and the Director, Juvenile Welfare, is the Convenor for the Working Committee. The Superintendent convenes a Home Committee and an NGO partner does the actual running of the Home.

In Tamil Nadu too, co-management of Homes is working well because the powers of the Superintendent are decentralized and the NGOs are involved in value-added services. The NGOs contribute through professional social work inputs like counselling and case study method. Help of other service sectors are also taken as and when necessary.

### 6. Financial difficulties faced by the field level staff in the institutions during repatriation and rehabilitation:

Efforts have been made in some States to overcome financial difficulties faced by institutional staff during the repatriation and rehabilitation process. In Tamil Nadu, a Social Defense Fund has been created which has a multi-faceted use and is not restricted only for providing financial support during rehabilitation and reintegration. This Fund can be utilized for infra-structural build-up e.g. post of a Probation Officer or a Psychologist or in a small ways to reinforce the institutional set up.

The DWCD, NCT of Delhi, has created an imprest account for the institutional staff whereby they are given Rs 5000/- per month, which they can spend for the expenses of any squad. Out of this, they are able to give an advance to the police party, which is escorting the girls, for their travelling expenses.

In Delhi, the Government Shelter Homes faced a resource crunch at the time of mass raids when the number of rescued victims had gone up to 350 whereas the actual strength of the institution was 50. But the institutional authorities approached the department, which in turn wrote to the finance department and got the proper budget sanctioned, which was necessary for a smooth running of services.

#### 7. Effective networking between the police and the institutional staff:

In Delhi, during the phase of continuous rescue operations, the staff of the Shelter Homes was facing difficulties in terms of providing accommodation or other facilities to the increasing number of girls who were being rescued and then brought to the Homes by the police without prior intimation. This point was then raised before the senior police officers in charge of the rescue operations, and they were asked to intimate the staff well in advance about the possible day when the girls would be brought and approximate number of the rescued girls, so that these problems could be handled.

In spite of existence of the ITPA, J.J.ACT and IPC, which are interchangeably used, there are some grey areas, which totally depend on the interpretation of the duty officer and staff involved in the rescue operations. For example, while rescuing minor girls, the police produce them before the adult Courts, simply because the ITPA mentions about appropriate magistrate. They may not be aware of the Child Welfare Committee that exists under the JJ Act. Drawing from these field experiences, there should be a set of guidelines of dos and don'ts regarding rescue and rehabilitation.

#### 8. Allowing the inmates to go out of the institutions for vocational training or as per their rehabilitation plan:

Adult rescued victims should be allowed to go out of the institutions in order to undergo vocational training programme and exposure visits. Many of trainings cannot be arranged within the Shelter Home. As a general rule, the victims are not allowed to go out lest they escape; and in that case, the onus or responsibility falls on the institutional staff. The Government Shelter Homes should be treated as open shelters, so that the women are able to make their own plan of reintegration with an informed and wider choice.

The entire process of rehabilitation takes time and differs from person to person. Hence, there is a need for support from the system. E.g. the Probation Officer or other staff of the Shelter Home can play a very vital role when it comes to referring the girl to other Shelter Homes for her future rehabilitation.

#### 9. Framing the State Rules under the ITPA:

Proper guidelines need to be framed in each State to deal with these impediments of rehabilitation, e.g. whether the women can go out for training purposes, exposure visits, picnics, etc. with the D.M.'s permission.

Though the ITPA came into effect in 1956 and the rules were made in 1958, and the amendments took place in 1978 and 1986; most States have so far not updated the State rules, including the guidelines for the staff. This often leads to difficulty at a functional level, which in turn acts as a serious roadblock in the rehabilitation of the victims. For example, voluntary admission in the Protective Home is possible only when the woman makes an application under Sec. 19(1) to the magistrate. In reality, there is hardly any woman who is informed about this provision and can seek shelter when she is in moral danger. The rule should enable the woman to approach the Protective Home when she is in distress and even re-admission should be possible. Hence, there is an acute need for broadening the horizon of the framework of rules in consonance with the need of the victims.

#### 10. Extending the government welfare schemes meant for the mainstream population to the inmates of the institutions:

The inmates of the institutions are generally, a faceless majority, who has absolutely no access to welfare schemes that are meant for mainstream population. But if these women and girls have to be reintegrated into the mainstream of the society, then they should be enabled to make use of these schemes, as it is one of their rights as citizens of the country.

In order to access these schemes, the women need to present certain documents like their proof of residence, ration card, voter's ID, etc. Here too, they face difficulties in accessing such documents.

There are schemes like Suvarna Jayanti Rozgar Yojana of the Central government where training is given free of cost and there is a loan component. This is available to the persons below the poverty line, in the community. The government officers concerned with this scheme should extend it to such institutions whereby the women, children and youth residing therein can benefit from it.

The Andhra Pradesh Anti-Trafficking Policy has a rehabilitation package consisting of convergence of all the existing schemes. Recognised NGOs prepare the list of victims and produce it in the District Coordination Committee. The DCC then processes the convergence of schemes including patta; ration card, financial loan from DRDA, and education for children and health services etc.

In Tamil Nadu, the Probation Officers act in coordination with the district administration, to access schemes for the rescued victims, and convergence is being done at the district level.

#### 11. Need for effective follow up after the victim is repatriated:

A number of efforts of various agencies are required in the rescue and repatriation process. E.g. the police that rescue the victim, the institution which houses her, the judiciary which orders for home enquiry report in order to repatriate her to her home State/ family, (if the latter is found fit), etc. The Probation Officer prepares the home enquiry report with the help of other Probation Officers or NGOs in the States concerned, and the police provide their escort to reach her to her native State or family. It is clear that there is a huge investment of manpower, finance, time and concerted efforts from all these quarters. Sadly, once a victim is repatriated, there is no follow-up mechanism about what happens to her later, whether she is trying to rehabilitate herself, if so, then in the process what are her difficulties or whether she has been re-trafficked.

To counter this, there is a need for sound and effective networking between the sending as well as the receiving States and their various departments. There has to be a step-up approach which will look and work on each of these issues in a thread bare manner, e.g. after the girl goes back, where she would stay, whom she would approach for moral support, where she would go in case of any difficulty, etc.

In order to perform the above-mentioned tasks there needs to be a sound structure also. It may be the District W&CW Officer, the District Probation Officer, the Collector or the S.D.M. of the district. If there is some structure within the government in one of the States, then that structure could be replicated by other State governments. When the girl is being sent, a letter could be sent to the designated officer, informing him

about the victim's return, and a copy of the letter could be given to the victim. If this practice is set up, she could approach this authority for support in terms of shelter, family counseling or economic sustenance, as a matter of her right.

In the Delhi rescue and repatriation case, after the rescue; the list of rescued victims along with their native States and specific districts therein was made. The High Court then called the concerned District Magistrates and the Chief Secretary of that particular State. The District Magistrate was handed over the list with a direction that he would take measures to ensure that the girl is rehabilitated and not re-trafficked. The District Magistrate, in turn, involved the W & CD Department and/or Social Welfare Department in the process. These authorities had to file reports to the Court about the rehabilitation process, at regular intervals.

The State often seems to have a single agenda - that of repatriating the girl to her native place and thereby disposing off her case. But it is not always possible for a woman to resettle in the same place after going through all these experiences. Quite often, the social stigma and alienation makes resettling difficult for her. Hence, the victim should be given an option to rehabilitate herself anywhere, even if that means settling down in the same State or some other State. The State concerned should then take the responsibility to provide her with all the supports required. Here, the victim's desire should be given prime importance and the plan of rehabilitation should be based on her active participation.

In this context, the Goa Children's Act, 2003, could be reviewed, where, for the first time, trafficking has been defined, and trafficking issues have been attended to, which is missing in ITPA. It also has the provisions of integration to rescue, repatriation and rehabilitation.

## 12. Problem with regard to the repatriation of foreign nationals:

Repatriation of foreign nationals is a complex issue, which calls for immediate attention. The women who are trafficked from Bangladesh and Nepal most often do not possess relevant legal documents and hence, their status is that of illegal immigrants. Therefore, in spite of the fact that they are victims, they are often processed as offenders, causing more distress to an already victimised person. Illegal immigrants from Bangladesh are often just pushed back at the borders. There is violation of human rights of these women.

This issue needs to be dealt at a diplomatic level by the Ministry of Foreign Affairs with the Governments concerned. There should be an attempt to view the problem of trafficking with a bilateral and multi-lateral approach. The nations concerned should devise an effective policy at the source areas and initiate preventive measures to stop trafficking from those areas.

## VII. COMMUNITY BASED REHABILITATION

### Highlights of the Presentation by Prayas (TISS), Mumbai

**Speakers: Ms. Sangeeta Malshe and Ms. Vasanti Jadhav, Social Workers, Prayas**

Prayas is a field action project of the Tata Institute of Social Sciences, working in three districts of Maharashtra and Gujarat within the criminal justice system. It started work in 1990, initially on the issue of social work with under trial prisoners at Mumbai Central Prison. Gradually, the work of Prayas expanded to intervention in police stations, Courts, the legal aid system and Rescue Homes for women and girls coming out of prostitution. It also started work with released prisoners, children of prisoners, women released from Protective Home and women and girls vulnerable to crime or prostitution with the objective of their rehabilitation.

With regard to the rehabilitation of women in prostitution, Prayas has four pick-up points from where the women and girls are received and then either integrated within the family or shifted to Shelter Homes. The pick-up points of Prayas are at:

- CST Railway Police Station in Mumbai, where one woman and one male police constable of the railway police have teamed up with Prayas, on the issue of prevention of women and girls entering or being forced into prostitution.
- Protective Home for adult women rescued from prostitution
- Special Juvenile Home for rescued minors
- Prayas Activity-cum-Contact Centre at Mumbai Central (at Gilder lane Municipal School).

At all these points, Prayas has appointed activity teachers and social workers, who work at these places to motivate clients to consider options other than prostitution.

Initially, at the pick up points, the women's state of mind reflects mixed feelings of confusion, fear, mistrust, aggression and low self-esteem. Gradually, after counseling and discussion with the clients, they are admitted into government-recognized Shelter Homes for temporary shelter, with their consent. Through a systematic discussion of available options, their future plans are worked out, with regard to issues such as return to their families, vocational training, savings, housing and struggles related their lives.

If the woman desires to return to their families or to their native places, Prayas tries to contact local government or non-governmental organizations based in their area. These organizations help in contacting their families, providing shelter, family counseling, training and/or job placement, etc. In case returning to family or the native place is either not possible or desirable (from the woman's point of view) home, Prayas makes arrangements to explore options in Mumbai - terms of shelter, training, savings, placement, etc. During this period, those coming to our Activity Centre are paid a daily stipend of Rs.50/- (apart from arranging their shelter), to take care of their sustenance.

The staff at the Prayas Activity Centre tries to focus on four areas of a client's life i.e discipline, social skills, literacy and information base and talent and vocational skills. The Centre timings are Monday to Friday from 11.00 a.m. to 6.00 p.m. These timings are aimed at developing a regular work pattern and a sense of discipline, an essential requirement to get employment in the formal sector.



It has been observed that many of these women are vulnerable in terms of falling prey to negative and exploitative relationships. They have low self-esteem, have become fatalistic and may get into depression. Some of them are highly sensitive to any type of negative feedback and may take decisions based on the immediate reality. At the Activity Centre, these issues are addressed through group activities, discussions, exposure visits, outings, film shows and basic vocational classes in tailoring, bag making, soft toy making, embroidery, flower making, jewellery designing, etc. These skills, though stereotypical, have been consciously chosen as start-up activities – a base to start the exploration of skills.

The programme emphasizes on group decision-making, learning from one another, a spirit of togetherness, communication skills and problem solving through group discussions. Along with this, there is space for individualized counseling and planning for life. The effort at the Centre is to create an environment of possibilities, to build self-confidence and forward movement towards a pro-social future.

Similarly, on the issue of literacy and information base, the focus is on functionality and general as well as specific information (based on the client's problem situation). The objective behind this is to develop and increase the client's ability to take informed decisions about her problems and life in general. It is also aimed at lifestyle related problems such as addictions, savings, friendships, family relationships, children etc. Information on government schemes, ration card, family laws, housing, voter identity cards, etc. are also part of this package. The objective behind this is to take the person from being a client to a citizen of this country. Towards this end, organisations working on such issues are contacted and an effort is made to link the person with them, either through visits or by calling these organizations to our Centre for group discussions.

Talent and vocational skill development takes place in two phases. During the first phase, the client is given exposure and training in the Centre itself. These are usually short-term courses and include the regular activities at the Centre e.g. flower-making, jewellery-making, and tailoring, etc. the idea is to get the person into a learning mode from an earlier earning mode. During this process, the talents and skills are observed followed by discussions and planning for future training.

Some examples of long-term training are appearing for the National Open School for the tenth standard examination, balwadi teacher's training course, beauty care course, advanced tailoring course, para-professional social work course, home-based care course, etc. These courses have equipped the women with skills that have led to increased self-confidence in the women to look for options, and also resulted in job-openings for them.

As a continuation of this process, two years back, Prayas embarked on a new initiative i.e. NGO Placement Programme. It is an effort to take the person one step closer to reintegration in society – through a job, shelter, medical support, social support, companionship, marriage, etc. for this purpose, NGOs in Mumbai and outside were approached by Prayas with a proposal – Prayas would place one of their clients with them – for shelter, training, medical support, family counselling or emotional support, to aid the process of absorption in society.

During the placement duration, the living costs of the client would be borne by Prayas, through a stipend of Rs. 1500/- p.m. plus travel costs. The overall responsibility of the placement agency would be to impart training in at least one of the areas of work of the organization, mentor the person, provide a supportive environment and supervise the development of the person to assume a proactive role in society.

Selection of NGOs was done with care, keeping in mind the client profile, and the leadership and nature of work of the organization. This initiative was taken in response to the earlier failed experiences of direct placement of clients in the private sector or family/community. It was assumed that the NGO sector would show greater absorption capacity to deal with the ups and downs of any rehabilitation process.

The results of this initiative have so far been encouraging. It has resulted in creation of jobs in the NGO sector, marriage, community support, increased skills and confidence and a resolve in the client group to face the hurdles of life without having to turn back to prostitution.

### **Highlights of the Presentation by Prajwala, Hyderabad**

**Speaker: Dr. Sunitha Krishnan, General Secretary, Prajwala**

In 1996, Mehboob Ki Mehndi, a large red-light area in Hyderabad, was evacuated and around 400 women were bundled up in trucks, arrested and taken to prison, and later shifted to the State Homes. The women faced many human rights violations. The public threw out and burnt all their belongings from the brothels. Overnight, these women had lost their shelter, belongings and life options. Prajwala was born as a response to this situation.

Six months later, many women were released, but they had to go back to the streets as this whole evacuation plan was done without any rehabilitation in mind. About twenty women committed suicide. Thus, Prajwala started work with these women, who were into prostitution and for their children, as per their request. Initially a transition school with five children was started. Today, around 3500 children of women in prostitution, with around 16 transition schools across the State of A.P. (six in Hyderabad and Secunderabad itself, and ten in other districts), are functioning under Prajwala.

Further work was started on rescue, restoration, rehabilitation and reintegration. Prajwala regularly does rescue operations without the help of the police. Its workers themselves go and pull out children from brothels. Over a period of time, after a level of understanding with the State machinery, the organisation has started involving itself with the police and giving information to the law enforcers. It has not only rescued children from brothels, but also from sex tourism, pornography as well as been part of transnational rescue processes. A.P. is the second largest supplier of women and children for the purposes of trafficking for commercial sexual exploitation.

Prajwala has two Shelter Homes, one having around a hundred HIV positive inmates. In these Homes, when there are rescued girls with restoration orders, and coming from outside the State, e.g. Delhi, Mumbai, Goa and Calcutta, they are often in a state of agitation and aggression. This is so because most of these girls have not recovered anything from the brothel houses.

In regard to this, Prajwala has lobbied with the government and State machinery to provide them some immediate relief. The A.P. government has accepted this demand and an amount of Rs.1500/- is given in their hands as immediate relief, so that they do not return back home as paupers. While in the Home, the girls are informed about various options and alternatives available to them, so that they are able to make an informed choice about their futures.

After they are sent back home, tie-ups are made with NGOs in the native places to follow up the cases. If the NGO is dynamic and innovative, and has the time for follow-up, the results are positive. Otherwise, there is little information about what happens to these girls after returning to their homes.

Prajwala believes that mental health intervention is one of the key aspects of psychosocial rehabilitation for any community-based rehabilitation. For this, an ambience is created in the Homes, which are primarily run by the girls, and are managed by only three staff members. The girls decide the time-table, menu for the day, recreational activities, etc. The simple logic behind this is to help the girls believe in themselves, as they have lost control in their lives and have been disempowered.

There is no package-training programme in the Homes, as each victim-survivor is unique with her unique capacity and needs. Therefore, the plan for livelihood options is made in collaboration with the survivor. The girls are running Amul Pizza Parlours, Ice-cream parlours, book-binding units, beauty parlours, thela-bandis, plastic blow-moulding units, etc. 150 such small enterprises are currently being run by the girls. Each of these ideas has emerged from the survivors.

A life that is completely shattered, rebuilding it step-by-step is a huge effort. Prajwala has realized that one cannot work in isolation. Help in a coordinated effort, is needed from all quarters possible.

#### **Highlights of the Presentation by the Department of Women and Child Welfare, Government of Andhra Pradesh**

**Speaker: Smt. J. Pramodini Rani, Deputy Director, Department of Women Development and Child Welfare, Government of Andhra Pradesh**

Plan of Action of the Women Development & Child Welfare, Government of A.P. with regard to anti-trafficking, includes the creation of social awareness among the girls and adults, and mobilization of their action against trafficking. It also includes a comprehensive policy addressing issues like prevention, anti-trafficking measures, rescue, rehabilitation, health care, empowerment of victims, legal reforms, housing, education, etc.

In this regard, under the leadership of the District Collectors, the Department has organised programmes and campaigns at the district levels. These campaigns were to mobilize public opinion against trafficking, make them aware of the problems, economic empowerment and rehabilitation of victims. A film titled 'Datas of Darkness' was screened and posters of 'Say No to Trafficking' were also released.

Project level Workshops were organised covering 1000 adults and girls. Training programmes on what constitutes trafficking, how it occurs, the disasters and dangers in trafficking and how to protect oneself, were highlighted through these Workshops. A concern voiced by the participants was the need to educate parents about trafficking.

The impact of these campaigns was that the knowledge level and sensitization concerning trafficking has increased within the community. The adults and girls realised the extent of the problem, and how to protect themselves through the Vigilance Squads and with the Help Line Numbers.

The Govt. of A.P. has initiated a Swadhar Home at Hyderabad, where women and girls forced into prostitution, immoral danger, victims of rape, cruelty by family members, or deserted by husbands or families, will be provided temporary shelter, medical care, counselling, vocational training, etc.

The Department in coordination with NGOs and International Organisation for Migration (IOM) has set-up Amul Parlours and proposes to start short skill training programmes in the Shelter Homes. These short-term skills training includes team-building, communication skills, counseling, vocational training, extended micro-credit enterprises, marketing support and marketing linkage.

A State-level Coordination Committee has been appointed to look into the education and economic rehabilitation of the victims.

#### **Highlights of the Presentation by the Department of Social Defense, Government of Tamil Nadu**

**Speaker: Shri S. Kanniararam, Field Officer, State Level Monitoring Cell on Juvenile Justice Administration, Department of Social Defense, Government of Tamil Nadu**

With regard to the implementation of the National Plan of Action drafted by Govt. of India, 1998, and the consequent changes in the implementation of the various Acts, a State-level Coordination Committee under the chairmanship of the Chief Secretary has been set-up. There are also district Committees under the chairmanship of the District Collectors, and village-level watchdog Committees to look into the issues of crimes against women.

The Government of Tamil Nadu has approved the State Action Plans of the Department and there is an 18-point programme for the welfare of women and children. A Social Welfare Fund has been operationalized since 1998, which takes into consideration the rehabilitation of the women exploited in sex trade, facilities in the Protective Homes, and counseling with the help of social work academic institutions.

With regard to the implementation of the Juvenile Justice Act, 2000, the Department has notified the rules. There are eight Observation Homes exclusively for children in need of care and children in conflict with the law during their enquiry period. There are Special Homes exclusively for those who have been placed for long-term intervention by the Juvenile Justice Boards. The State Government has up the Juvenile Justice Boards, eighteen Child Welfare Committees, and District Committees; everything is in place except the State-Level Advisory Board.

In every police station, there is one police officer designated as a Child Welfare Officer, and a Juvenile Special Police Unit has been formed at the city-level, headed by the Dy. Superintendent of Police. In addition to this, recently a centralized system of help lines has been formulated in Chennai city - 191, 101, and 100. 1091 has been set up to help women and 1098 for children (under Child line). All these have been centralized in one campus, but are being operated by NGOs. Help booths have been set up in all the major railway stations, involving police and NGOs. One female teacher is given training on counseling, career guidance and other support services, so that the counseling and guidance can be available in every village. The Chief Secretary of the State has approved this agenda. In addition, the Women Development Corporation in partnership with some international bodies has initiated a situation analysis of child trafficking.

## VIII. OPEN HOUSE DISCUSSION

### Highlights of the Issues Raised in the Concluding Session of the Workshop

The final session, proceeding the valedictory session was kept aside for an open house discussion, for the participants and resource persons to raise any issue related to the topic of the National Workshop, and to arrive at a consensus on some of the important areas discussed during the two days. It was decided that this session would be utilized to chalk out the broad recommendations emerging from the Workshop. Some of the issues brought out through this session were as follows:

**1. National Plan of Action:** The National Plan which has been drafted needs to be reviewed, as there have been many developments in the international field, such as the new international protocol, SAARC protocol, the Juvenile Justice Act, 2000, etc.

**2. Available Schemes and Assistance:** There are two schemes within the Department of Women and Child Development – the Swadhar scheme and the scheme of Short-Stay Homes. There is a lot of unspent money in both these schemes and the DWCD is constantly on the lookout for viable and good proposals from the State governments. In each State, there is a State Level Empowerment Committee to recommend proposals submitted to it, to the DWCD, G.O.I., for both these schemes. In Bihar, financial allocations have been made to provide immediate assistance for the police after rescue for transportation, or any other incidental costs.

**3. Deletion of Section 7 and 8 of ITA:** There are pros and cons with regard to the issue of deletion of Section 7 and/or 8 of ITA. Deletion of these sections will not stop the use of other penal sections currently being used against women found soliciting in public e.g. Section 110 of Bombay Police Act or Section 145 of Indian Railway Act.

One of the objections to the proposal to delete Section 7 was that this was the only section in law under which the customer could be prosecuted. Section 7 deals with the person who carries on prostitution and the person with whom such prostitution is carried on. Section 2(F) defines prostitution as the sexual exploitation or abuse of persons for commercial purpose. As per this definition, a person with whom the prostitution is carried implies the women with whom the prostitution is carried on. This could imply that the customer is not punishable under Section 7. Therefore, there must be a specific and separate provision for booking the customer.

On the other hand, under Sec.8 of ITA, the word 'her' is used only in Sub-section (a) and not in sub-section (b). Therefore, Section 8 can also be used against the person who is not a woman, which could mean the customer, who is a male.

Data has emerged that Section 7 and 8 are primarily being used in the country against victims of prostitution, rather than against those who run this trade or customers. There are State laws as well as directions issued by different State governments with regard to the use of preventive sections of the law from time to time. Similarly, the State could issue administrative orders (issued by the Commissioners of Police) discouraging or prohibiting the use of certain sections of the law against victims e.g. in Hyderabad, there is an order that women victims of prostitution should not be prosecuted under Section 8.

In some States, the police use Section 110 of Bombay Police Act or Section 145(B) of the Indian Railway Act. Instead of Section 7 or 8 of ITA, to take action against women found soliciting in public places. These sections usually carry a fine and imprisonment

in lieu of it. The police have immense powers under the Police Act. Provisions under Sec.110 of B.P.Act are to be used in respect of disorderly behaviour in a public place, and that disorderly behaviour can be of any type.

These sections are easier to use than ITA, as using the latter involves getting witnesses, filing charge-sheets, getting panchas and proving intercourse, and that too as defined in the ITA – 'promiscuous behaviour' or 'indecent display of sexual intercourse'. All this is difficult to prove in the Court.

**4. Brothel keepers and traffickers:** Many brothel keepers may also be victims themselves, who were forced into the trade and after their active age is over, have now taken up employment under the brothel owner as a means of survival. One has to distinguish between who is the real owner and who is merely a pawn, forced into working as a manager, due to lack of options. The police investigation should uncover who the real trafficker is, one who is actually surviving on the earnings of the victims, who may be now placed on different slots along the hierarchy.

Brochures or gang files of the traffickers may be prepared and circulated, maybe through the NHRC or the State Governments or any other Central organisation. To begin with, the three States which are worst-affected Tamil Nadu, Andhra Pradesh, & Maharashtra could meet regularly and exchange notes about the traffickers, as they are highly organised.

**5. Need of coordination to prevent trafficking:** A nodal agency could coordinate all this information and prepare a compendium in the form of some document, with the exact details. There should be a feedback mechanism at the grass root level. This could be done by the nodal police officers nominated by the NHRC. A database of missing persons, specially missing children and women has to be created and regularly updated to find out how many have been traced, and how many are missing.

There is a need for the State police to investigate cases from the North-East and have a better coordination mechanism with those States. Today the traffickers are taking advantage of the lack of coordination between these States and the rest of the country and running transnational rackets in trafficking. In a proposed amendment to ITA, there is a provision for the establishment of a nodal agency on the lines of the Narcotics Bureau, but the States have not agreed to this proposal.

**6. Legal structure and other mechanisms:** An Anti-Trafficking law could be passed in other States along the lines of Andhra Pradesh & Goa. A State-level Policy could supplement this, especially as there are State specific factors related to trafficking of women and children. For example, there are about half a dozen States with international borders. The problems and issues in those States could be very different from others. There are two or three States that have high incidence out of migration from source districts.

India is a large country and our Constitution has adopted a federal structure keeping this in mind. The States should, therefore, have some autonomy to decide their own problems in social sector. It is not possible to have a blue-print which can be imposed uniformly on each and every State.

The title of this Act was changed in 1986. The scope was widened and that was the reason why SITA was changed to ITA. In fact, the definition of the victim itself has changed – both sexes have been included. However, nowhere have male victims been rescued under the Act.

**7. Coordinating mechanisms:** No State has reviewed the rules of the ITPA after it was amended in 1986. The Department of Women and Child Development, Govt of India, in consultation with the State Governments, could frame Model Rules, along with the lines of what was done with Juvenile Justice Act, 2000. The issue of coordination - how, what structure should be, mechanisms between police, judiciary and the institutions should be built into the Act itself or at least in the rules. Hence, coordinating mechanisms need to be constituted within the States and they can provide their inputs that are monitored and sufficiently highlighted in the State government.

The ITPA is very clear that Special Courts should be set up. If a Special Court is set up in every district, or at least in the main source and destination districts, it may lead to speedy disposal of cases against traffickers and better handling of rescued victims. These Courts could then play the role of convenor and coordinator between the implementing agencies and departments. It could also involve NGOs working in the field, so that they could bring field issues and relevant inputs from time to time.

**8. Responsibility of the Government and the NGO Sector:** With regard to the responsibility of the government, it is a question of comparative advantage. The government is supposed to represent authority, is supposed to have resources, but cannot give an emotional response to the problem of trafficking. Commitment of the government without the compassion and assistance of the community may not lead anywhere.

Yet, there is no case for government abdicating from its social responsibilities under the Constitution. The government has certain responsibilities, which both the Fundamental Rights and the Directive Principles of State Policy have placed upon that State. The government has to mobilize resources and find the finances to implement the laws. It cannot claim immunity under the excuse of budgetary crunch. It cannot hand over administering the laws and policies to the NGO sector, claiming budgetary constraints.

The Tenth Plan gives a list of very ambitious targets from infant mortality to child protection and development and well-being of women. Having laid down the targets on page one of the document, it goes on to say in the next page, that all these targets can be achieved, only if we achieve the 8% growth of the GDP. The question is - how will NGOs gather resources? The NGOs can only play the role of a meaningful partner in the entire exercise.

The government should have a policy of associating with suitable NGOs, in the functioning of the Shelter Homes. The States should notify under Sec. 13(3) ITPA, NGOs who are working in the anti-trafficking field and constitute the Advisory Body. But the NGOs cannot take over the judicial functions.

**Guidelines of do's and don'ts:** In partnership with NHRC and the UNICEF, the Department of Women and Child Development has embarked upon the documentation of a manual - regarding rescue. It contains a viewpoint of government and NGOs regarding the do's and don'ts at all the stages. The other documents it has come out with, are a manual for the social workers, a set of guidelines for the media, and a manual for the judiciary. Training programmes for self-help groups regarding prevention have already started.

## IX. VALEDICTORY SESSION

The valedictory session began by Shri Vijay Raghavan, Project Director, Prayas, proposing a special vote of thanks to Smt. C.P. Sujaya (Retd. IAS), for her contribution as a facilitator of the two-day National Workshop, without whom, the Workshop may not have achieved its desired objectives. On behalf of Prayas, the NHRC, the participants, the dignitaries and the resource persons, Shri Raghavan expressed his heart-felt thanks to Smt. Sujaya, for agreeing to take on this difficult role and successfully veering the discussions towards a meaningful end.

**Valedictory Address by Hon'ble Justice (Smt.) Sujata Manohar, Member, NHRC**

I am really very happy that those truly involved with various aspects of trafficking in one sense or another are all here. The NHRC really appreciates the efforts that you have put in to make this Workshop really worthwhile. We do not want the findings of this Workshop to end up the same way that some of the other Workshops end up - as library reports. We are looking for practical suggestions which we can take up, and get them implemented either by the Central government or State governments, the NGOs, or other authorities or agencies concerned.

The main purpose of this Workshop was to review the implementation of the laws and policies relating to trafficking, particularly with reference to rescue and rehabilitation. The causes of trafficking are so many that prevention of these causes itself, are a major area for discussion. Also, the strategies for prevention are different from the strategies for rescue and rehabilitation. Therefore, the purpose of this Workshop was to really focus on strategies for rescue and rehabilitation. We wanted to assess how in fact, the benefits of measures which have been devised legally as well as administratively for rescue and rehabilitation, have worked in practice. We also wanted to find out the lacunae in the laws and the system, and how one could make them more effective.

You may be aware that the Commission is in the final stages of completing its research project dealing with various issues connected with trafficking in India. When our Focal Point was first set up, we found that reliable data was lacking. All kinds of figures are floated, as to how many people are trafficked every year and so on. We found that there is no factual basis for the figures, they are all pure guesswork. There was only one survey held in 1991 and that too, was confined to metropolitan cities. We tried to get more reliable data to assess the extent of the problem and how to tackle it. Also, the rescue and rehabilitation is one of the major problem areas.

I hope that this National Workshop will help in the designing of proper laws and programmes in these two areas. I also hope that the discussions, which you have had, will create greater sensitization amongst the various officers - governmental and judicial, relating to the effect of their actions on the victims of trafficking, and how they can help in strengthening the protection systems for these victims.

We enacted the ITPA as far back as 1956, and the law was substantially amended in 1986, and yet there are reasons to believe that the law is treated both by the traffickers as well as by the law enforcement agencies as a 'soft' law, which need not be enforced with any seriousness.

The general attitude of the police and other law enforcing officials is of apathy. They say that such practices are in existence since centuries and they cannot be eradicated. This indifference attitude explains why trafficking does not show any signs of abating. You

may have read the recent news reports on sale of young girls. They relate to a State, which claimed before us that it was free from trafficking. These reports mentioned that young girls from the North-Eastern States of India, are sold as sex slaves in distant Haryana. The reports also referred to Mewath in Haryana, as being one of the biggest markets where thousands of girls are sold, at prices ranging from Rs.4000/- to Rs.20,000/-. The variation in price depends on the physical condition and the degree of abuse inflicted on the girl from the time she was brought from her village in Assam or the North-East, to the time she was sold in Haryana. Obviously, these kinds of markets cannot exist unless the law enforcement agencies and the administration turn a blind eye to them.

It is also obvious that the ITPA is not being implemented, as it should be. Of course, we also have other important Constitutional and legal provisions dealing with prostitution. Article 23 of the Constitution, for example, prohibits trafficking in human beings. There are provisions in the IPC imposing punishments for buying and selling minors. The Penal Code also has provisions for punishment of offences such as kidnapping, abduction and slavery.

We have a new Juvenile Justice Care and Protection Children Act of 2000, where offences targeting children are dealt with in the special provisions for the rescue and rehabilitation of children. There are also some custom-specific laws such as the Devadasi Prohibition Act in Karnataka and A.P. But the major Act, which holds the field, is ITPA. I am very glad that this Workshop has discussed this in length - the ITPA, its weaknesses and what remedial measures can be taken. I hope your suggestions will go a long way in helping all concerned in the proper implementation and reformulation of the law.

While inspecting Protective Homes for rescued women in one of the States, it was found by the Commission that although, the Protective Home has the capacity for sixty to seventy-five women, there were in fact, only ten or twelve, or even less occupants in such Protective Homes. You have been talking about lack of shelter facilities. I feel that the picture is quite often the opposite. There are very few inmates, but the facilities are there for larger numbers.

This indicates that there is no serious attempt by the law-enforcement agencies of the State to rescue victims of trafficking. It does not indicate that the State is free from trafficking or that trafficking has reduced. I will not say anything about the condition of such Protective Homes. It is difficult to generalize because conditions in Rescue Homes spread out over different States range from good, reasonable, to very bad. But it is a matter of serious concern, that although each State government has undertaken an obligation under the Act to provide for rescue and rehabilitation - these Protective Homes do not have any worthwhile programmes for rehabilitation for the rescued victims.

Most of these Protective Homes claim that victims are being rehabilitated, by getting them married. This is an extremely worrying practice. One does not know the men who come forward to marry women in Protective Homes. The paperwork relating to perspective grooms may appear satisfactory. But there is no follow-up of what happens to these women once they are married. Are they being re-trafficked, or are they leading a happy family life? We would like to see some research done in this area, and see some statistics on this issue, since this appears to be such a widespread practice.

Women from these shelter homes are often released by the Court, to family members or 'guardians'. Who are these people? Are they the ones who sold these children or women in the first place? Or are they part of the trafficking network? Quite often, when the Courts make the release orders, we find that no proper enquiries have been made in this regard. Some rehabilitation Homes teach women traditional skills like embroidery, or tailoring. They arrange for the marketing of products produced by these women. How much would a woman earn through pursuing tailoring? Where would she get her job-work from? Would she be able to earn enough to live an independent life? There is very little innovation in this area. It is quite obvious that we need to rethink strategies for rehabilitation.

The need has become even more urgent because increasingly the younger girls (eight or ten years of age) are becoming the victims of trafficking. The same is true of young boys. Children are sold for the purpose of bonded labour. They work from morning till night, in inhuman conditions, in industries such as silk weaving, embroidery-workshops, sweet-shops, etc. They are employed in the making of firecrackers, locks, carpets and so on. Programmes for their rescue and rehabilitation also need to be evolved.

These children need to be educated. Are there any programmes under which rescued children are sent to educational institutions? What kind of programmes do we have to educate older children who do not fit into traditional schools? Are there bridge courses to bring them into the mainstream, and are they effective and accessible? These are some of the issues, which need to be addressed to prevent young victims from being trafficked.

There is the more fundamental question of the kind of education, which these children should receive. Has any thought been given to that? Should it not be occupation-oriented, so that the children could later get employment in the job-market?

Then there are issues relating to the method of conducting rescue operations and the way the so-called rescued women and children are treated in police stations. What kind of treatment is meted out to them? How is the medical examination conducted? How do the police interrogate them? What is not appreciated is that these are all traumatized victims, who need to be questioned with special care. They need counselling, and may need psychiatric and medical care. Do the actions of the law enforcing agencies reflect concern for these victims or are they labeled as fallen women or children, and treated with contempt. Do we apply Juvenile Justice Act for rescued minors? We receive a number of complaints on these issues too.

These are some of the very basic questions that arise and they have to be focused upon and debated. It is necessary that the law enforcement agencies are sensitized to issues concerning rescue and rehabilitation. They need to be sensitized to the sufferings and the violation of human rights of these victims, and taught how to handle these victims. They should be taught how to protect them, how to give them the necessary medical, psychiatric and other care. These issues could be effectively dealt with, with the help of the NGOs working in this area. Their presence during rescue operations often produces dramatic results.

Children hidden in secret rooms in the kotha were liberated in one case by the help of an NGO. The presence of such organisations at the police station can lead to effective counseling of the victim, leading to eliciting of proper information and rendering of proper assistance. I think Prayas has a lot of experience in this area. Similarly, NGOs

associating with the Protective Homes generates transparency, and helps in creation of better rehabilitation programmes. These organisations can create opportunities for the victims, which are currently lacking. They can also play a crucial role in reuniting the victims with their families.

When the rescued victim belongs to another country, the police and the prosecution normally resort to the Foreigners' Act and obtain a simple order of deportation of the victim to his or her home country without anything further. The helpless victim is simply deported by the police across the border, only to be caught by the trafficker as soon as she crosses the Indian borders, and then she is re-trafficked. This is happening to girls as young as twelve years of age. And there is no attempt to give these children proper shelter. There is no attempt to help them in their trauma. There is no attempt to contact any rehabilitation agency in their home country. There is no attempt to contact their families. This is a truly heart-rending situation.

The same happens with Indian children who are thus rescued. In one case, while an NGO was locating the family, the magistrate handed the children back to a person who turned out to be a trafficker. It is very necessary that vital operations of rescue and rehabilitation are not left in the hands of the law enforcement agencies alone. Association of NGOs and committed citizens with this work would lead to a human rights based approach, at all stages of the operation.

We need to examine strategies for recording evidence at the time of the trial. Evidence of the victim is usually recorded several years after the rescue has been carried out. On this pretext, quite often the victim remains in the Rescue Home till the trial is over, which may be a long period of time. On the other hand, it is necessary that we start programmes for the victim's rehabilitation as early as possible. Children are more likely to find the acceptance within their families if the families are contacted early. Therefore, we need to have a better provision for recording the evidence of the victim, which does not require the victim being physically produced in Court. In this context, we have discussed the possibility of using the video-conferencing facility.

Effective prosecution and conviction of traffickers often depends upon this vital testimony of victim. Therefore, we also need to examine changes in the laws of recording evidence of the victim, so that evidence can be recorded as early as possible in the presence of the trafficker or his lawyer, without waiting for a full-fledged trial to commence. And this evidence can then be used during the trial.

We have to work on all these areas, so that victims may not have a sense of hopelessness, so that they may not be re-trafficked, and so that they may not agree to continue to sell their bodies out of this sense of hopelessness, or a feeling that they have really no other alternative. It should be our endeavour to create that hope in them, to create the possibilities for their acceptance in society, and possibilities for their getting adequate counseling and guidance. Creating these possibilities may result in the victims being able to lead a decent life with dignity. This was the major aim of this National Workshop and I hope your suggestions will help us shape our programmes.

Thank you.

## Vote of thanks

Shri Vijay Raghavan from Prayas, proposed the vote of thanks. He began by thanking Justice (Smt.) Manohar, for her inspiring words.

Shri Raghavan summed up the reasons for organizing the National Workshop - to deliberate and find solutions to the roadblocks faced while working on the issue of rescue and rehabilitation. He emphasized that a need was felt to review the laws and policies related to trafficking, rescue and rehabilitation, particularly with reference to the implementation of the ITPA. He added that any amendment to existing laws should be undertaken only after gaps in implementation were first identified, and field issues related to problems of the police, judiciary, the institutional staff and NGOs are taken to the policy makers.

To do the above, he stated the need to have a systematic review process and creation of structures where such issues could be discussed and taken up in a systematic manner. Prayas approached the NHRC a couple of years ago with this idea in mind. It took two years for the process to reach this point. Shri Raghavan profusely thanked Justice Manohar, Member, Smt. S. Jalaja, Joint Secretary, Shri P.M. Nair, Nodal Officer on Trafficking and Dr. Bhakry, Senior Research Officer of the NHRC, for turning the idea into a reality.

He expressed his gratitude towards the dignitaries who graced the Inaugural Session: Justice Manohar, Justice Anand, Justice Dharmadhikari, Smt. Kasturi Gupta Menon, Smt. Veena Rao, Shri S.S. Dodd and Dr. Usha Nayar. He thanked Justice Anand and Justice Dharmadhikari, for the Presidential and the Keynote addresses.

He then specially thanked Smt. Kasturi Gupta Menon and Smt. Veena Rao of the DWCD for gracing the inaugural session of the Workshop and staying on for the full two days and through all the sessions. He expressed the hope that with their support, the recommendations from this Workshop could be taken forward. He also thanked Shri S.S. Dodd, Principal Secretary, DWCD, G.O.M., for his participation and for agreeing to chair the session on the post-rescue phase.

Shri Raghavan thanked the participants for their participation and the State governments and also the Hon'ble High Courts for nominating the participants for the Workshop. He thanked the resource persons, Shri Naval Bajaj, Shri Rajeev Awasthi, Ms. Neeru Sharma, Shri Hivrale, Smt. Mulani, Dr. Sunitha Krishnan, Ms. Sarasu Thomas and Ms. Sangeeta Punekar. He once again thanked Smt. Sujaya, whose role in this Workshop could not be underestimated.

He also thanked the press and the media, particularly Zee News and DD News, who covered this Workshop. In terms of the organization of the Workshop, he thanked the YMCA for the excellent facilities and the manner in which they took care of the participants during the two days, and in particular, Shri Gaikwad and Shri Kandawalla. He thanked Sahil Hotel and in particular, Ms. Kiran Vij for giving a discount of about 25% in the hotel bill.

Shri Raghavan ended by thanking and expressing solidarity, on behalf of Prayas, with Dr. Sanobar Sahni, who, he added, had shaped Prayas in the field.

## X. RECOMMENDATIONS

A two-day **National Workshop to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy** at YMCA International House and Programme Centre, Mumbai on 27<sup>th</sup> and 28<sup>th</sup> of February, 2004 was organized by PRAYAS in collaboration with the National Human Rights Commission.

In an attempt to identify and understand the specific field problems in the implementation of the ITPA and other legal provisions, the officers from the departments of judiciary, police, women and child development and selected NGOs across eleven states were invited.

The main objectives of the proposed National Workshop were (i) to review the effectiveness of the provisions of ITPA, JJA, IPC and other laws for the rescue and post-rescue work, (ii) to exchange the experience amongst the concerned agencies with regard to rescue and post-rescue work, (iii) to suggest ways to overcome the problems faced by the various government functionaries involved in rescue and post-rescue work, (iv) to examine the involvement of NGOs, and (v) to work out a uniform policy, scheme and plan for the effective rescue and post-rescue work for the trafficked girls/women.

There were two major areas of emphasis in the Workshop. The first area was the situation and needs of the victim. A close look at the trafficking scenario indicates a continuum, and a process where one finds the vulnerable presence of the victim at every stage, from her hapless situation at the time of being trafficked, to the actual process of trafficking, the exploitative situation s/he has been put through, the time when s/he is rescued, difficulties faced by her during post-rescue and ultimately when she is received back into the community.

Another major area of focus was that of trafficking. The lack of clear-cut structures within the system, neglect of source districts, and lack of a multi-prolonged strategy to counter the menace of trafficking, both intra and inter-district/State as well as cross-border and trans-national.

Keeping in mind these two foci, following is an attempt to categorize the recommendations that emerged from the Workshop, under two heads: recommendations related to (i) victims where again a sub-categorization has been made based on the various phases she goes through e.g. pre-rescue, rescue, post rescue etc. and (ii) trafficking. These are as follows:

### Recommendations Related to Law and Structures:

**Problem:** Effective and meaningful prevention, rescue, rehabilitation and reintegration are the four major areas based on which the menace of trafficking can be successfully combated. In all these four areas issue of shelter remains an all-pervasive aspect. Lack of availability of shelters at taluka and district places, so that any woman in need of assistance and/or vulnerable to being trafficked or re-trafficked could access help and/or guidance.

**Recommendation:** Sufficient number of Short-Stay Homes/Protective Homes or Shelter Homes should be started at taluka and district places, whereby any woman who is in moral danger, rescued, in a situation to be trafficked or re-trafficked in prostitution, can approach these Homes for a safe and secure shelter. The government Shelter Homes should also be open to facilitate the mobility of the women and girls required in order to obtain vocational training outside.

**Problem:** Lack of trained personnel to attend to psycho-social and rehabilitative needs of women and girls rescued from prostitution. Currently, there is dependence on adhoc and non-standardised measures such as Mahila Thanas, counseling by police, volunteers, involvement of NGOs (wherever available), with no legal mandate. There is no continuity in this approach and half-hearted attempts leading to half-hearted results.

**Recommendation:** The Government should appoint trained social workers at police stations, courts and rehabilitation Homes for counseling, information and guidance and rehabilitation purposes.

**Problem:** Increasing dependence of the State on the voluntary sector accompanied by a gradual process of withdrawal from the welfare sector. The commitment of the State to aid the voluntary sector in the long run, in this scenario is not clear.

**Recommendation:** State Departments and agencies cannot be replaced by NGOs as the major intervention agency when it comes to Rescue and Rehabilitation.

**Problem:** Lack of co-ordination between the police, judiciary and government institutions with regard to rescue and rehabilitation process at the district level and absence of monitoring system of the problem at the State and Central levels.

**Recommendation:** There should be Inter-Departmental Coordination structure set up to facilitate and monitor the process of rescue and rehabilitation at the district level, and Advisory Bodies at Central and State levels to monitor trafficking, blocks in implementation of ITPA and other provisions, rescue, rehabilitation and reintegration of victims.

**Problem:** Lack of informed and sensitized officials to deal with the subject of proper implementation of law and procedure.

**Recommendation:** Training organizations at Central and State level should focus on sensitization, dissemination of knowledge and training of ground level staff from the police, judiciary and women and child welfare departments. The objective behind this should be to develop personnel who know the correct legal framework and are aware of issues related to rescue, rehabilitation and reintegration. The training institutions could take the help of field-based organizations to achieve this purpose.

**Problem:** There is danger of deletion of Sections 7 and 8 in a hurry, as a response to the problem of harassment and penalizing of adult women in prostitution by the police.

**Recommendation:** The issue of deletion of Sections 7 and 8 of ITPA needs further debate and discussion, as there is lack of consensus on the same. One view was that these Sections lead to harassment and penalizing of women in prostitution by the police, while the other view was that these Sections have a proviso under which the woman, who has been prosecuted, could be treated as a victim and rehabilitated with the help of corresponding Section 10-A of ITPA. In addition, it was pointed out that under Section 7, customers could be booked and prosecuted.

**Problem:** There are concerted attempts being made to bring in legislation or amend existing laws to legalize prostitution by certain Sections and lobbies in society.

**Recommendation:** Legalization of prostitution would be an anti-women and anti-rehabilitation measure, leading to violation of human rights of the trafficked persons.

The following sections relate to implementation gaps or problems in the law:

1. **Section 4 and 6 of ITPA**, which can be used against traffickers, brothel keepers, landlords, pimps, etc.
2. **Section 7 of ITPA and Section 145(b) of Indian Railway Act** to bring the customers to book.
3. **Sec 14 (ii) of ITPA**, which pertains to delegation of powers of the special police officer to an officer of subordinate rank through a written order, as special police officer are not available in rural and mofussil areas.
4. **Sections 22-A and 22-AA of ITPA** with regard to establishment of Special Courts and appointment of panel of social workers to assist the police under **Section 13(3)(b)** and the judiciary under **Section 17(5) in deciding cases**.
5. With regard to the problem of **finding reliable panchas** (who do not later turn hostile in court), especially women panchas in ITPA cases, a suggestion was made to involve government officers who can be used as panchas, as their chances of turning hostile are less.

The following Sections may be suitably amended or new Sections introduced:

1. **Need to revise/amend State rules of ITPA**, since they have not been revised (in most States) since the Act was first passed in 1956. An exercise needs to be undertaken to formulate Model Rules in this connection, along the lines of the JJ Act Model Rules, in consultation with the State governments.
2. **Section 18 of ITPA**, which deals with complete closure of brothels and eviction of offenders from the premises where prostitution is being carried out. This Section may be amended to include a clause regarding forfeiture of property along the lines of Chapter V A of NDPS Act. Along with order for closure of brothel, magistrate may be empowered to pass orders for forfeiting such property especially in cases of repeated offenders under **Section 3, 4, 7 (2) of ITPA**. Burden of proof should be on accused to prove that such property has not been acquired through living off the proceeds of prostitution or that such property being used as a brothel does not belong to him or was without his knowledge or consent. Also if this power, which currently vests with the Commissioner of Police, is conferred on DCP or suitable officer of lower rank, then follow-up will become easier.
3. **Section 20 of ITPA**, which is currently being used against the woman in prostitution, to remove her from the area, may be amended to instead apply to brothel keepers, pimps, managers, etc where s/he can be asked by the magistrate to remove her/himself from the area and be prohibited from re-entering the same. Also the fine amount imposed under **Section 20(4)(b)** may be suitably raised to act as a deterrent measure against the above mentioned persons.
4. Suitable amendment in the ITPA to allow for **voluntary admission** or referral by any citizen or NGO of women into any shelter, be it Protective Home, State Home, Reception Centre or Short-Stay Home, who is in need of temporary shelter or feels vulnerable to being trafficked. Such admission should be allowed at any hour of the day/night and may be ratified before the appropriate magistrate within 24 hours by the Superintendent of the institution.

## Recommendations related to the Victims:

### **Phase I: Prevention**

**Problem:** Lack of systematic data and focus on trafficking prone areas and analysis of reasons behind trafficking at those places, leading to large-scale trafficking and re-trafficking of women and children from certain districts to the supply areas.

### **Recommendations:**

1. Trafficking prone areas and districts should be identified in the States with the twin objectives of awareness generation and generation of viable economic options, extending the various government welfare services and anti poverty schemes to even remotest areas.
2. National database and a quick-response tracing mechanism and coordinating structure for missing children and women – intra and inter State, within the police system to prevent the trafficking.
3. Necessary structure for Inter-Departmental Coordination between the police, judiciary and government institutions for rescued victims with regard to rescue and rehabilitation process at the district level and State and Central level Advisory Bodies to monitor inter-State and cross-border trafficking.
4. Proper follow up mechanism should be established through the proposed district level coordinating structure for women and children after they have been repatriated to prevent re-trafficking. Similarly, a coordinating structure should be established between the respective governments of those countries which act as supply, demand or transit zones for proper follow up.

### **Phase II: Rescue**

**Problem:** Unplanned raids/rescue operations result in logistics problems at the ground level with respect to accommodation, recovery of personal belongings or money, rescue of children, food, health problems, vocational training, repatriation, etc., whereby the whole objective of rehabilitation gets defeated.

**Recommendations:** The police should plan rescue operations in co-ordination with the institutional authorities, towards a humanistic and rehabilitation-oriented approach with the rescued women and children. The proposed Inter-Departmental Coordination structure suggested in Point No.3 under the head 'Prevention' should be used for this purpose.

**Problem:** Adult women in prostitution are often treated as offenders (arrested and fined/imprisoned) by the police and the judiciary and not as victims. Also, women trafficked from across the borders/foreign countries are booked by the police under the Passports Act and the Foreigners Act and then prosecuted as illegal immigrants.

**Recommendations:** The policy of the State of penalizing the adult woman in prostitution (e.g. Section 110 of Bombay Police Act, or Section 145(b) of Indian Railway Act, Section 294 of IPC) should be stopped. A procedure may be set up whereby victims of cross-border and trans-national trafficking are given assistance, with the help of the Ministry of Foreign Affairs and the Embassy concerned, to repatriate them in a humane and prompt manner. All women in prostitution should be presumed to be victims in need of assistance to get out of prostitution, as is the case with minors.



**Problem:** Rescue operations and raids on premises where organized prostitution is carried on, is done in an ad-hoc manner and not as a part of mainstream policing. Quite often, the priority given to this work depends on the personal interest of the officer on the job. The focus of raids with the objective of rescuing girls and women from prostitution primarily happens in big cities and that too limited to red-light areas. Rehabilitative and anti-trafficking sections of the law and acts do not get properly implemented. E.g. in small towns and semi-urban areas, the focus of raids continues to be penalizing the women under sections such as 110 of BP Act and hardly anyone is seen as in need of rescue and rehabilitation. Also, when raids are conducted in lodges, massage parlours, etc., they are termed as 'busting of rackets' and the women found in these premises are arrested for soliciting or indecent exposure.

**Recommendations:** A specialized anti-trafficking structure within the police at the Central, State, district and taluka levels should be established in order to deal with the issue of trafficking (including cross-border and inter-State), rescue, recovery of personal belongings, repatriation, etc., along the lines of structures set up within the police to deal with trafficking of drugs, smuggling of antiques, wild life poaching, etc.

This recommendation is supported by **Sec 13 of ITPA**, which lays down proviso whereby the Central government may appoint Central Trafficking Officers in various States to prevent inter-State trafficking.

### **Phase III: Rehabilitation and Reintegration**

**Problem:** There seems to be an invisibility of institutional population, when it comes to accessing the government schemes available for the mainstream populations coming from poverty-stricken or socio-economically weaker sections.

**Recommendation:** Government socio-economic-educational and welfare schemes meant for the mainstream population should be made available to the rescued persons both in the institutional and reintegration phase, including efforts to access citizenship rights e.g. voting rights, application of schemes for welfare of women and children, SC/ST/OBC, opening of bank account, etc.

**Problem:** Lack of protection for the victim in order to avoid the harassment from the traffickers and brothel keepers, while she is in the institution and/or in the process of being re-integrated in the community especially, when she appears as a witness. Also, there is over dependence on the statement of the victim to secure conviction of the offender in court, leading to increased vulnerability of an already vulnerable person.

**Recommendation:** Suitable legislation for victim protection and support should be introduced in the law. Efforts should be made by the police to obtain evidence other than the victim's statement.

**Problem:** In most of the institutions, vocational training given to the inmates are elementary in nature that may not be of much use in the rapidly changing economic scenario outside.

**Recommendation:** In order to be successfully reintegrated, every woman rescued from prostitution requires an alternative source of income, which again is dependant on effective skills and training. Hence, the effectiveness of traditional skills that is being taught to the women in the government institutions needs to be re-examined, keeping in mind the changing economic scenario. The government Shelter Homes should also be open to facilitate the mobility of the women and girls required in order to obtain vocational training outside.

### **Recommendations related to the Anti-trafficking Measures:**

**Problem:** There seems to be indifference on part of the law enforcing agencies towards viewing trafficking as a social menace, rather than as hard core crime and law and order problem. The priority that this work receives is in accordance with this perspective. Much confusion prevails when it comes to using relevant sections of the laws related to trafficking. The work of anti-trafficking and rescue is marked by tokenism and adhocism, often depending on media reports about sex-rackets, pressure from NGOs, judicial activism and the individual interest shown by some committed officers.

#### **Recommendation:**

1. Trafficking should be considered as an organized crime and tackled through an equally organized and systematic approach e.g. the Organized Crime Control Act.
2. There should be a nation-wide database on traffickers containing their profile, fingerprints, photographs, previous conviction record etc by central agencies like the NCRB and the CBI.
3. Appropriate legal measures to be introduced in order to take action against customers, especially when the victim is an adult.
4. The IPC sections related to rape, kidnapping, abduction, wrongful confinement, etc against customers, (by the police) should be implemented especially when the victim is a minor.

Use of the JJ Act for rescue of minors and acting against offenders, including customers, whereby persons involved could be charged under statutory rape.

## ANNEXURE I

### Prayas Social Work in Criminal Justice

#### National Workshop to Review the Implementation of Laws And Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy

##### A Concept Note

##### **Introduction**

Prayas, a field action project of the Tata Institute of Social Sciences, has been working in the field of prostitution towards the rescue and rehabilitation of women and girls pushed into the trade, through social work intervention, research and policy inputs, since the last ten years. It started this journey with the placement of student social workers of the Masters Programme in Social Work (specializing in Criminology and Correctional Administration) at the Government Protective Home in Mumbai. Since then it has placed student social workers, full time social workers and teachers in the Protective Home, Special Juvenile Home (for rescued minors), and police stations of Zone II and CST Railway Police Station in Mumbai, at various points in time.

Prayas' focus has been at all three levels: prevention, offering attempted to help in the rehabilitation of current involvement includes placement full-time / student social intervention based in the Protective Home, Special Juvenile Home, CST Railway Police Station and an Activity-cum-Contact Centre for women at Mumbai.

In our attempt to understand the situation at the national level, we have visited other districts in Maharashtra as well as visited organisations and government departments in other states. Prayas has also intervened in the PIL filed suo moto by the Chief Justice of Mumbai High Court in 1996, when Mumbai Police rescued 486 women and minors. It has been a member of the State Advisory Committee on Rescue and Rehabilitation of Women and Minors in Prostitution, formed as a result of the Vishaljeet V/s. Union of India Case.

The entire intervention and experience of Prayas in this field is based on a basic premise - that the role of the State is central to the rescue and rehabilitation of trafficked victims in the prostitution trade. Our laws and policies, that aim to protect the rights and guarantee freedom from exploitative situations of the weaker, marginalized and vulnerable sections of our society, draw its source from the Constitution of India. We are also signatories to international covenants and conventions that vow to fight and remove persons from exploitative situations and guarantee right to live with human dignity.

The basis for the removal and rehabilitation of trafficked victims is the Immoral Trafficking Prevention Act. The Act provides the mandate and basic structure for creation of mechanisms to address the issue of rescue and rehabilitation. Even though the Act was passed in 1958, we find that at ground zero, law and policy have not been transformed into action, at least not to the extent that would address the ground situation. Prayas has made an attempt to study this situation by working with field staff from departments of police, women and child development and judiciary. The attempt has been to understand the gaps in implementation of law and policy, find practical suggestions to plug these gaps and feed them back into policy and law reform.

One of our major findings in this regard is that there has been a systematic downgrading neglect of field staff implementing the law over the years. The downgrading and neglect has been both quantitative and qualitative resulting in the demoralization of the system. A simultaneous development in the field has been the growth of voluntary and NGO initiatives, often as a response to the systemic gaps in the field. Many of these initiatives have been born out of the zeal and missionary efforts of committed citizens and their efforts have been lauded both by the community and the State.

However, in our view, such efforts can in no way substitute the role of the State. The trafficking of persons into prostitution is an issue that cannot be separated from State sponsored intervention and all efforts should be made to strengthen the hands of the State in this regard. There is an urgent need to consolidate the efforts of State agencies and boost the morale of field staff implementing the law.

The organization of this two-day workshop is a small attempt in this direction. The timing of the workshop coincides with the current efforts to amend the law, both by activists in the field and by the government. The suggestions and recommendations from this workshop could feed into the proposed amendments of the ITPA pending with the DWCD, GOI as also the ITPA State Rules, which are in urgent need of revision. It could also feed into a rehabilitation policy for trafficked victims, for which there is an urgent need.

The workshop has been divided into four sessions - **rescue, post-rescue, institutional phase and re-integration in the community**. This division is based on the process of rescue and rehabilitation, as per the provisions of the ITPA. In each of the sessions, we wish to raise some pertinent questions and issues, which we are listing below. However they are merely suggestive in nature.

## Rescue Phase

### Role of Police

#### Rescue Phase:

- What is the existing infrastructure to conduct rescue operation in the state?
- Which are the districts that act as source, transit and destination points?
- What triggers off a raid? When does a raid take place? During day or at night?
- Who are the main sources of information - residents of that area, customers, and police's own network (khabris), intelligence agencies or any other?
- Who conducts a raid? Are special police officers or trafficking police officers needed? How many police officials generally are there in a rescue operation? Is there a WPC accompanying the police official during the rescue operation?
- Is there a need for the presence of social workers/women representatives/ respectable citizens of the area during a raid?
- What are the different steps in rescue operation: e.g. starting from entering the premise to ultimately rescuing the girl?
- Is there a general idea about the age group of the women and girls who get rescued? Is it possible to carry out the Rescue/Removal Process with each and every girl in prostitution?
- Can the rescue/removal of women and girls be done at a mass level or should they be done based on sub-categories or individual basis?
- What happens to the elderly/ aged women in prostitution? Are they also rescued?
- Has there been any instance where the police vacated the whole brothel/ area? What happens after that? What does police do when the brothel shifts to some other area and re-starts the activities there? Possible role of police in this context?
- Which are the points from where the police 'rescue' the girls and the women: is it only red light areas or they conduct rescue operations at bus depot, check points ('nakas'), railway stations, beer bars, massage parlours, resorts and hotels of dubious distinction, or public places of similar nature that are known to carry on this type of activity?
- Which acts are used to register cases? What are commonly used provisions?

- Under what circumstances do the police 'rescue' women and girls and when do they book them as 'offenders'?
- During Rescue, does recovery of the personal belonging such as clothes, jewellery, and money of the girls take place?
- Is there a need for the role of a Rescue Officer, as existing in the state of U.P.?
- What can be the role of other agencies in Rescue other than the Police? Should social workers role be there at the police stations or railway stations?
- Is there a need for an Advisory Committee at police station level?
- Should there be a separate structure for processing this group? Or is the existing structure enough?

#### Post Rescue Phase:

- Do the police feel the need to have a lady constable around when the girl is brought to police station to explain the situation? If at that moment the Women Police Constable (WPC) is not available, does the police seek help of any social worker/NGO?
- Is the rescued person produced before the magistrate or juvenile board (in case of minors)? How long does it take generally to produce a woman/girl before the judge after any raid or rescue takes place?
- Is there any need for a social worker posted at the police station that conducts raid or rescue? If yes, for what?
- When does the age verification test and medical test take place?
- Where do the police shift her in order to provide her with a safe shelter? In case where no government protective home or correctional home is situated nearby, what do the police do?
- Whilst bringing the girl to Protective Home, is name of the Police Officer concerned mentioned in the memo, to facilitate information flow about the case between the Protective Home authorities and the police?
- In the absence of the Police Officer concerned, who could be made the responsible officer (for information or help) regarding cases of rescued women and girls?
- Should Police be the only escorting agency? What is the current procedure of providing police escorts? What should be the ideal process? What are the possible circumstances in which the police can be requested to provide escort? Should there be a central agency for providing escorts?

- Is there any specific division in police force, which provides the escort in order to reach the girl to her native place or any other place where she would like to go and rehabilitate her self, or the rescuing police station takes the responsibility? Does it bring any pressure on their existing workload?
- If an adult woman wants to leave Protective Home or go to her home on her own, should she allowed to go by the Protective Home after informing the rescuing Police Station concerned about the same? In case she does not have the money to buy her ticket, should the concerned Police Station / Protective Home authorities provide necessary assistance?
- Does the police escort the girl/woman home or hands her over to the local police station or any local NGO?
- Is there a list of NGOs available with the police station?
- Is there a woman police constable escorting the woman/girl? Do the police officials go in civil dresses?
- What is the amount of T.A. that they get? What is the T.A. and food allowance when they go to remote areas? Usually, how much time does it take for reimbursement of expenses?
- If the rescued person is required to give evidence in the case in court, how does the police make the arrangements (especially, when she goes back to her native place)?
- What are the problems and challenges faced by the police at the field whilst implementing the Act?
- Positive experiences, if any.

## Post-Rescue Phase

### Role of Judiciary

- Is there any judicial order prior to a rescue operation?
- On an average, how many cases registered under ITPA are brought before the magistrate in a month (where rescues take place)?
- Whether cases registered under ITPA are being produced in the cities/towns/district places before the judiciary? Approx no in a month?
- Which sections of ITPA are currently being used?
- Any other acts like IPC, J.J. ACT, BPA, which are used for meaningful rescue and post rescue operation/rehabilitation?
- What judicial procedures are currently being followed in respect to minors and majors?
- What are possibilities of extending ITPA beyond red light areas, and reaching out to beer bars, massage parlors, highway prostitution, etc?
- Does the magistrate summon any welfare organization or social workers to assist him?
- Can in-camera trials be conducted?
- What is the possibility of setting up of a Special Court for hearing of cases of women in and removed out of prostitution, irrespective of the fact whether she is a major or minor?
- Are the reports of the Probation Officers called to decide cases of rescued persons?
- Who provides legal aid? Does the State Legal Aid Board play any role in taking up these cases?
- Is there any State Advisory Board in the state, as per the provisions of the ITPA?
- What judicial steps should be laid down to facilitate the rehabilitation process in each case brought before a magistrate?
- Which government agency or structure should be entrusted the responsibility legally to socially integrate the rescued victims?
- What are the factors to be considered during Home Enquiry, i.e. before deciding on her repatriation?

- Does the judiciary ask for a report from the probation officer or the escorting police staff, after the rescued person goes back to her native place or a place of her choice which the magistrate thinks fit?
- Positive experiences, if any.
- Problems in the field while implementing ITPA and landmark Judgements in this regard, if any.

### **Role of Institutional Authorities and Staff**

#### **Institutional Programme**

- Is it possible to carry out a Rehabilitation Process with each and every girl?
- Can there be a uniform rehabilitation package for all rescued persons or is there a need to develop programmes based on sub-categories?
- What should constitute the basic components of an Ideal Rehabilitation Package?
- What should be the different components in the shelter facility provided for in ITPA - Protective Homes, Rescue Homes and Corrective Institutions?
- Where should shelter/protective/correctional homes be located and how many should be there in the state? What should be the ideal Capacity of the various homes to accommodate the rescued women?
- Role of Protective Home: to what extent should it be custodial? To what extent is rehabilitation work possible through the Home?
- What should be the Minimum Basic Infrastructure in the Government Homes - Facilities to be provided in the Homes: counseling/medical treatment/vocational training/non formal education/legal aid etc?
- What should be Staff structure in the homes? How should be the Monitoring System?
- What should be the Procedure of admission of women and girls?
- What can be the possible role of the State Advisory Committee?
- How many of the rescued women/girls are local and how many are coming from out station? What is the economic condition of the families?
- How can citizenship rights and existing schemes for women and/or children be extended to rescued women and children while they are in the institutions e.g. voter I.D. card, caste certificate, Suvarna Jayanti Shahari Rozgaar Yojana etc?

#### **➤ How is rehabilitation of the girl/woman possible when:**

- She wants to go back to the native place - how does the repatriation take place? How does the Home authority get the necessary information about the willingness and capacity of the family to accept her back?
- When the family is not there or is unwilling to take her back, and the girl wants to go back to the native place, what do the Home authorities do?
- When she expresses the desire to stay anywhere else and settle down in life, what facilities/arrangements are there to fulfill this objective?
- When women/girls who originally hailed from the state are repatriated back to a government home of the state, (after being rescued from another state), what procedures are followed to rehabilitate her?

#### **➤ How can the existing role of a Probation Officer be more effective?**

- Current procedure followed by POs when the police bring a rescued person to the Protective Home/Rescue Home/State Home?
- Average Caseload of the POs?
- Frequency of reports to be given to courts?
- Content of the reports?
- Problems faced in interdepartmental co-ordination with the police, judiciary, and health departments or any other?
- Challenges faced in the course of work?
- Positive experience, if any.

#### **Repatriation and Rehabilitation:**

- Process of repatriation - how is it done? Which are the agencies involved?
- Is going back to the area possible for each and every person? If not then what can be the alternatives?
- Can the police play a role in tracing the family at an early stage of rescue?
- Response of various states towards repatriation---role of State and NGOs---positive and negative practices.
- Is repatriation the only/major initiative in rehabilitation? If so, then what preparations are they being sent with?
- Should Police be the only escorting agency? What should be the ideal process?
- Challenges /problems faced in the due course of work? Positive experience, if any.
- What kinds of skills are to be imparted to the girls/women on the eve of their repatriation or rehabilitation, keeping in mind with the changing face of village or the community, where age-old occupations are being forced to reshape or change themselves?

- Can there be a procedure whereby a periodic and regular follow up can be maintained after repatriation to ensure the girl is rehabilitating herself in the mainstream? How can networking be done within the sending and the receiving state in this regard? What can be the possible role of the Department of Women and Child Welfare in providing necessary assistance to her at this stage?
- In what circumstances can a girl/woman be readmitted in the State Home?
- Which are the agencies that play or can play a vital role in meaningful rehabilitation?
- Are any existing schemes or welfare services being used to rehabilitate this group? What are the problems in accessing these schemes?
- Can the SWADHAR Scheme be useful in the rehabilitation process?
- What should be the status of NGOs working with the system? (E.g. In J.J. Act, the role of the NGOs has been given legal prominence).
- Should there be a procedure whilst allowing NGOs in the SYSTEM?

### Reintegration in Community

- Can there be a uniform rehabilitation package for all rescued persons or is there a need to develop programmes based on sub-categories?
- Can there be a common minimum programme for rehabilitation?
- What should be the government machinery with regard to reintegration of the women and girls in community? What can be the role of District Administration, the existing government structure at district level in this regard?
- Is there a possible role of the District Probation Officer in the reintegration process?
- Who should be the nearest Shelter Giving/Social Reintegration Agent - State or NGO? What should constitute the role of a rehabilitating/reintegrating agency?
- What can be the possible role of Police (in cases where the repatriated girl is now living in the family):
  - Settlement of disputes in the family,
  - Keeping a watch on the family to prevent re-trafficking,
  - Any other?
- Is it possible to use existing Schemes for women/weaker sections towards re-integration: to what extent is it happening? Is there any extension of Housing Schemes to this group?

- Is there any Role of SC/ST Commission as majority of trafficked women and girls are from SC/ST/OBC background?
- Possible role of District Administration in identifying the anti-poverty and welfare schemes and reaching out to the vulnerable families and persons.
- Is it required to bring procedural changes to dovetail existing schemes so that they reach this section?
- Possible role of other departments e.g. Health, PWD, Education, Employment, Labour, Housing etc in rehabilitation?
- Roles and responsibilities of Government and NGOs in welfare - their boundaries and possible areas of collaboration.

### Conclusion

At the end, while procedural issues that are arising through this workshop, are of prime importance to the issue of rescue and rehabilitation, there are some basic questions / issues in our view, on the issue of rescue and rehabilitation. Through the following section, we are making an attempt to share these issues with a larger audience present here in the workshop. In our view, addressing these issues can help bring clarity in the field and create a climate favourable to rescue and rehabilitation.

1. Do we as a society accept that every person, whether child or adult, should be given an opportunity to be rescued/rehabilitated?

There is an increasing trend which focuses on anti-trafficking measures with respect to minors in prostitution and an assumption that adult women are in this trade on their own consent and/or their rehabilitation is not possible. This results in a distinction being created between Minor/Major regarding their rescue and rehabilitation, in which adult women get further neglected and victimized. Their right to justice is grossly overlooked. The question we are raising here is: do we as a society accept that every person, whether child or adult, should be given an opportunity to be rescued/rehabilitated?

2. Is there a need to introduce new sections in ITPA which are supportive to Rehabilitation?

The present provisions of ITPA focus mostly on punishment of traffickers and less on rehabilitation. There is a need to introduce sections in the act, which are supportive to rehabilitation and its various elements.

3. Should there be a common minimum package for rehabilitation?

There is a need to come up with a common minimum package of rehabilitation, as there are gaps in current rehabilitation process, i.e. from rescue to repatriation and beyond. The programme has to include issues such as the lack of shelters for the women and girls in district places, and the development of alternatives to repatriation as a method of rehabilitation.

4. Is there a need to review the operation of ITPA vis-à-vis women found in brothels, beer bars, massage parlours, etc?

There exists a tendency to view women and girls from brothels/red-light areas as victims and hence dealt with sympathy but those found in Beer Bars/ Massage Parlours/Hotels viewed as 'Call Girls' or involved in "income generating activity" and therefore frequently being 'rounded up' and fined. Why is there this dual policy? There is a need to review the operation of ITPA vis-à-vis women found in brothels, beer bars, massage parlours, etc.

5. Should fine/sentence provisions be used against the victim women and girls?

There exists a tendency on the part of the police and judiciary to use to Fine/ Sentence provisions of the Bombay Police Act and Indian Railway Act (indecent behaviour in public places) rather than ITPA sections, which are more rescues oriented (section 15 to 17). Why is there a tendency to process women in prostitution more as 'offenders' (lilowali) rather than as persons in need of rescue or assistance to get out of prostitution? This behaviour of the authorities goes against the spirit of the law, which sees them as victims of exploitation.

We hope that this paper and the workshop being organized can play the role of opening of issues and a process of constructive debate and discussion within government departments concerned, social activists and organisations working in this field towards law and policy reform. We are also hopeful that the NHRC will take a lead in this direction to carry forward the impetus created through this initiative.

## ANNEXURE II

### Prayas Social Work in Criminal Justice

#### National Workshop to Review the Implementation of Laws And Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy

#### LAWS AND PROCEDURES RELATED TO PROSTITUTION

##### Introduction

The Indian State has drafted many laws and procedures to deal with the issue of commercial sexual exploitation of women and minors in prostitution. The basis of these laws find expression in the Indian Constitution, and in enactments such as the Immoral Traffic Prevention Act, 1956, The Juvenile Justice (Care and Protection Act), 2000, Indian Penal Code and other laws. In the word of Justice M.B.Shah, former Chief Justice of the Mumbai High Court, who said while disposing off a Suo Moto Writ Petition in the Mumbai High Court in 1996, concerning rescue and rehabilitation of minor girls in prostitution, "if these young girls are also daughters or sisters of someone and that they are also required to be treated as human beings, then the State authorities can easily find a solution to the problem".

##### Indian Constitution

Article 21 of the Indian Constitution provides that no person shall be deprived of his life of personal liberty except according to procedure established by law. In the case of Francis Coralie Mullin V/S the Union Territory of Delhi, the Supreme Court held that this right includes the right to live with human dignity. Whereas, in the case of Upendra Bakshi V/S State of Uttar Pradesh, the Supreme Court held that Article 21 includes providing human conditions in Protective Homes. In another landmark judgement (Chandrabhan V/S State of Maharashtra), the Supreme Court observed that the right to life enshrined in Article 21 implies something more than survival or animal existence. It emphasized the right of women and girls in prostitution to rescue and rehabilitation. In the case of Nirja Choudhary V/S State of Madhya Pradesh, the Supreme Court upheld the right of bonded labourers to rehabilitation.

Article 23 (1) provides that trafficking in human beings is prohibited and any contravention of these provisions shall be an offence. Article 23 is enforceable not only against the States but also against private persons indulging in trafficking, as held by the Supreme Court in Sanjit Roy V/S the State of Rajasthan. In the landmark judgements of Vishaljeet, Upendra Baxi and Gourav Jain, the Supreme Court has repeatedly passed orders and directions to the State Governments to ensure the proper rehabilitation of victims of prostitution.

Besides the Fundamental Rights, the following Directive Principles also have relevance:

Article 39 (a) provides that the States shall in particular direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood

Article 39 (e) states that the health and strength of workers, men and women and children of tender age are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength.

Article 39 (f) provides that children be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. In the case of Bandua Mukti Morcha V/S the Union of India, the Supreme Court confirmed that right to live with human dignity, free from exploitation in the light of the directive principles contained Article 39 (e) & (f).

Article 42 provides that the States shall make provisions for securing just and human conditions of work.

Article 46 provides that the States shall promote the special care, education and economic interests of weaker sections of the people and in particular of the SCs and STs and shall protect them from social injustice and all forms of exploitation.

Article 47 provides that the States shall work towards raising the level of nutrition and the standard of living of its people and the improvement of public health, as among its primary duties.

### Immoral Traffic Prevention Act, 1956

As per this Act, prostitution per se is not an offence but the sexual exploitation of persons for commercial purposes is an offence, except under Sections 7 and 8, which define soliciting in public and carrying on prostitution in public places as offences. The Act has not specifically defined trafficking. There are two provisions, Section 5 and Section 13 dealing with the issue of trafficking.

#### Penal Provisions:

Section 3, 4, 5, 6 and 9 deal with offences against the victims of prostitution. The punishment provided under these sections for the offences committed becomes serious when committed against the child or minor. For example, Section 4 provides for a punishment of up to two years or fine up to rupees 1000/- in case of adult victims but punishment of up to life imprisonment if the victim is a minor.

Section 5 is the only section in the Act that punishes the traffickers, who procure, induce or bring victims into prostitution with or without their consent. In case it is without consent, the punishment is up to fourteen years. Section 13 provides for the appointment of trafficking police officers by the Central Government. This provision has not yet been implemented in its spirit. Recently, the CBI has been entrusted with the role of investigating cases of large-scale trafficking.

Section 6 provides for punishment for detaining a person in a brothel or in premises where prostitution is carried on.

Section 6 (3) provides for recovery of property (jewellery, wearing apparel, money or other property) of the victim from the brothel keeper and provide for her immunity from any legal proceedings by the offender. This provision gives her protection against any legal proceeding and civil suits by the pimps or 'gharwalis'.

Section 7 provides for punishment for an offence to carry on prostitution in or in the vicinity of public place and Section 8 punishes the victim for seducing or soliciting for the purpose of prostitution in a public place. According to Section 7, any person who carries on prostitution and the persons with whom such prostitution is carried on in any public place shall be punishable up to three months imprisonment. It needs to be highlighted here that under this section, action can be taken against the customers.

Section 7 (1) (a) provides severe punishment of up to life, when the offence committed in respect of a child or a minor. In order to prove this offence, it has to be proved that the offence was committed in a public place. A public place has been defined as (a) within the area notified or (b) 200 meters of any place of religion worship, educational institution, hotel, hospital or such other public place of any kind notified by the Commissioner of Police.

Section 7 (2) (a) provides for punishment for the keepers of public places who knowingly permit prostitution in that place. If the public place is a hotel, then its license may be suspended for 3 months to a year. If the offence is committed in respect of a child or minor, such license shall also be liable to be cancelled.

Section 7 (2) (b) provides for punishment for the tenant, lessee or person in charge, who allows the premises to be used for prostitution.



Section 7 (2) (c) provides for punishment for the owner, lessor or landlord or the agent of the above parties upto 3 months or with fine of upto Rs. 200/- or with both and on second conviction imprisonment upto 6 months and also fine.

The above sections can be used positively, if simultaneously applied with Section 10(a), which is rehabilitative in nature. Section 10(a) provides detention in a Corrective Institution after conviction under Section 7 or 8. This is very important section of the Act which has a rehabilitation purpose, whereby instead of imprisonment, the Court may send the person to the Protective Home for the period of 2 to 5 years, after considering the report of the Probation Officer about the character, state of health and mental condition of the offender and the other circumstances of the case.

But proving the offence under Section 7 is very difficult. The essential ingredient here is to prove promiscuous sexual intercourse under Section 1(b), whereby the person concerned has indulged in indiscriminate sexual intercourse with several persons.

In practice, the police also resort to using sections relating to indecent behaviour in public places, such as Section 110 of the Bombay Police Act or Section 145 (b) of the Indian Railway Act. Such sections provide for fine or imprisonment in lieu of fine, and the Court summarily tries these cases. There is no rehabilitative purpose behind these sections, beyond temporarily 'clearing' a public place. The police instead of using Section 110 or 145 (b) could use Section 7 or 8 along with the corresponding Section of 10(a) of the ITPA, as these sections do not carry any fines or sentence in default of payment of fine, and have a scope to rehabilitate the victim by detaining her in a Protective Home.

Section 9 provides punishment for seduction of a person in custody. Any person who having the custody, charge or care of or in a position of authority over any person causes or aids or abets the seduction for prostitution shall be punishable upto life.

Section 11 provides notification of address of previously convicted offenders. This is a preventive section and requires the offender to notify his address so as to prevent him from committing further offences or to arrest him if required.

In practice this provision is rarely applicable because very rarely does an offender of this type get convicted twice (either under ITPA or under IPC Sections such as 363, 365, 366, 366(A), 366(B), 367, 368, 370, 371, 372 and 373).

Section 13 provides for the appointments of Special Police Officers and Advisory Board.

Section 13 (2) now provides that the Special Police Officer shall not be below the rank of an Inspector of Police. This was done by an Amendment in 1978. However, in many states, the officers designated as Special Police Officers under the Act continue to be of the rank of Assistant Commissioner of Police in cities which have a Commissionerate and Deputy Superintendent of Police elsewhere. This leads to practical difficulties in the field, as there are very few officers who are empowered to investigate and take action in such offences.

However, Section 14 provides for the delegation of powers by the Special Police Officer to his subordinate officers. The Special Police Officer can give orders in writing to his subordinate officers to arrest the offenders under the act or to remove any girl / women from a brothel.

But Section 14 (i) clearly lays down that arrest without warrant may be made only by the Special Police Officer or under his directions or guidance or subject to his prior approval by his subordinate officers. It also states that the subordinate officers have to report to the Special Police Officer immediately after the arrest. Section 14(iii) provides that a sub-inspector in emergency situation can arrest the person without the order of the special police officer under certain conditions.

Section 15 provides provision for search without warrant.

The Cr.P.C. has entrusted the police with wide powers through Sections 94 and 165 for search. Section 94 provides that the District Magistrate or Sub Divisional Magistrate of first class may authorize a police constable to search any place. Section 165 gives power to the police in charge of a police station to search even without the warrant of a Court in emergency situations. Along the same lines, powers have been given under Section 15 (4) to the Special Police Officer to conduct raids on brothels and remove all persons from brothel without warrant. This section gives wide power to the Special Police Officer or to the trafficking police officer when they have reasonable grounds for believing that an offence under this Act has been or is being committed in respect of a person living in any premises. The police usually use this section to raid brothels or premises being used for prostitution.

Section 15 (2) provides that before making a search, the Special Police Officer or the trafficking police officer shall call two or more respectable local people to witness the search. The requirement of a woman witness from the area is now not required after the amendment to the ITPA in 1978.

Section 15 (5) provides that after removal of the victims under Sub-section 15 (4), they shall be produced before the appropriate magistrate.

Section 15 (6) (a) provides that any woman, removed under Sub-section (4), is required to be interrogated by woman police officer. If no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognized welfare organization.

Section 13 (3) (b) provides that the State may associate with the Special Police Officer a non-official advisory body to advise him, consisting of five leading social workers.

Section 15 is not self-contained. Sections 15 and 16 have to be read alongwith Section 17.

Section 15 only confers powers of search without warrant on a Special Police Officer (to be appointed by the State government under the Act), which he otherwise has not got as held in the case of Jammu V/s Superintendent, Protective Home, Meerut by the Allahabad High Court.

In practice, existing officers above a certain rank have been designated as Special Police Officers by the State Government in most States. These officers are not only dealing with the cases under ITPA Act but this work is an additional duty bestowed on them. There is no separate or specialized squad for this purpose, which may be necessary if effective action is to be taken towards rescuing persons. Secondly, the provision of associating of 5 leading social workers is not being used effectively. Section 15 (2) requires the presence of one or more respectable local persons during the raid or search. But the Supreme Court in the case of Bai Radha V/s State of Gujarat held that the non-inclusion of at least one respectable woman of the locality in the search party is not mandatory and failure to comply with Section 15 does not vitiate the entire proceedings. In the light of this, this is an area that requires further debate and discussion.

Section 16(1) deals with rescue of persons. This section empowers the magistrate to direct the Special Police Officer to enter a brothel if he has a reason to believe that any person is living or is carrying on or is being made to carry on prostitution in the said premises. This provision is not mandatory but directory.

Section 16(2) provides that the police officer after removing the person shall forthwith produce her before the magistrate issuing the order.

Under Section 65 of Cr.P.C., a magistrate can make an arrest of any person by himself. Under Section 16 of ITPA, the magistrate has the powers to order the rescue of any person from an area, if it comes to his knowledge about a person being made to forcefully carry on prostitution. Under this section, any citizen or NGO can give such information to the magistrate for him to take suitable action under this section. However, this section has hardly been used.

An issue that needs to be noted in the context of Sections 15 and 16, is when any person is rescued/removed from an area under the above sections, whether she should be asked by the police or magistrate she has any complaint to make against any person in connection with her reaching the brothel or her stay in the premises.

Section 17(1) provides for the intermediate custody of persons removed under Section 15 or rescued under Section 16. The person removed or rescued under Section 15 and 16 they shall be produced before the nearest magistrate or any class who shall pass such orders as he deems proper for her safe custody until produced before the appropriate magistrate.

Section 17(2) provides that when the person is produced before the appropriate magistrate under the Section 15(5) or 16(2), he shall after giving opportunity of being heard, cause an enquiry to be made as to the correctness of the information perceived under Section 16(1), the age, character and antecedents of the person and the suitability of her parents, guardians or husband for taking charge and the nature of influence which the condition of her home are likely to have on her if she is sent home. He may direct the Probation Officer's report to enquire into the above circumstances and into the personality of the person and the prospect of her rehabilitation.

Section 17(3) provides that the magistrate may while an enquiry is made into a case under the above section, pass such orders as he deems proper for the safe custody of the person. When the person rescued under Section 16 is a child or a minor, it shall be open to the magistrate to place such child or minor in any institution established or recognized under any Children's Act for the safe custody of children provided that no person shall be kept in custody for this purpose for more than 3 weeks and in a custody of a person likely to have a harmful influence over her.

Section 17(4) provides that when the magistrate is satisfied after making an enquiry required under Section 17(2), a) that the information received is correct and b) that the person is in need of care and protection, he may, subject to the provision of Section 17(5), make an order that such person be detained for such period not less than one year, but upto three years 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 should not be with a religious organisation or a religious person different from the victim's.

Those interested in the custody of the person including the Superintendent of Protective Home may be required to enter into a bond which may contain an undertaking, 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 a court.

Section 17(5) provides that in discharging his function under Sub-section (2), the magistrate may summon a panel of five respectable persons, three of whom shall be women to assist him. The magistrate under this section whenever practicable, be women to assist him. The magistrate under this section passes two possible orders - either a detention in the Protective Home or in the protective custody of 'fit person'. The ancillary and final powers with respect to interim or final custody is not confined to her detention only in Protective Homes and it is quite open to the magistrate to consider other options of protective custody, as held by the Allahabad High Court. A closer look at Section 17(2) shows, that every function of the magistrate is subject to the provision of Sub-section (5) of Section 17. The Allahabad High Court observed in Smt. Ramdevi V/s. State (1963) that the word "may" occurring in Section 17(3) has been used in the sense of "shall", and while discharging the functions under Section 17(2), the magistrate has to summon a panel of social workers.

Section 17(A) provides for conditions to be observed before placing persons rescued under Section 16 to parents or guardians. The magistrate making an enquiry under Section 17, may before passing an order for handing over any person to the parent or guardian or husband, satisfy himself about the capacity or genuineness of them by causing an investigation to be made by recognized welfare institution or organization. In this context, if the magistrate operating at Tehsil/Taluka level does not find any NGO or organization working in his area, he may call the report of or enquiry to be done by an officer from the Women & Child Department or a Probation Officer from district.

Section 10(A) and Section 17 are the main sections in the Act which pertain to the issue of rehabilitation. Section 17 provides intermediate custody even of a minor and may take into account, the age, and character, antecedents of a person brought before the Court either under Section 15(4) or Section 16(2). The Court can ask for the report of a Probation Officer in order to understand the problems of the rescued person and present a plan of rehabilitation of the person. The Court may detain the person in a Protective Home for a period of one to three years with the objective of rehabilitation.

This section is being undermined due to the shortage of Probation Officers attached to Protective Homes, the number of Protective Homes in the State (only two in Maharashtra) and the lack of a detailed rehabilitation programme in Protective Homes.

The magistrate may hand over the person in the custody of parents, guardians/husbands by seeing the suitability of their ability to support her. The operative word here is what in the opinion of the magistrate constitutes 'safe custody'. Under this concept, an NGO, accredited citizen, or the Protective Home can be included in this definition. The agency has to sign a bond in the Court that they will take care of her education, training, medical and psychiatric treatment.

Section 17(5) provides the appointment of a panel of five social workers to assist the magistrate in discharging his functions, specially the role of rehabilitation. Although the word used in the Act is 'may' appoint a panel, the Division Bench of the Allahabad High Court, in the case of Smt. Ramadevi V/s State, 1963, held that the word 'May' should be understood as 'Shall'.

Section 18 provides for closure of brothel and eviction of offenders from the premises. The magistrate may on receipt of information from the police that any house, room, place or any portion within distance of 200 metres of any public place is being run or used as a brothel by any person or is being used by a prostitute for carrying on their trade, issue notice on the owner, leaser, or landlord or agent of these people or the tenant, lessee, occupier or in charge of such premises, to show cause within seven days, stating why the same should not be attached, as it is allegedly being put to improper use. After hearing the person concerned, and if the magistrate is satisfied that the above premises is being used as brothel, he may pass an order (a) directing eviction of the occupier within seven days and (b) directing that before letting it out during the period of one year or in a case where a child or minor has been found during a search under Section 15 a period of three years, they shall obtain the previous approval of the magistrate.

Section 18(2) provides that a Court convicting a person of any offence under Section 3 or 7, may pass an order under Section 18(1) without further notice.

Section 18(5) provides that when the above persons fail to comply with a direction under Clause (B), they shall be punished with fine upto Rs.500/- and shall be deemed to have committed an offence under Section 3 (2)(b) or Section 7(2)(c).

The Supreme Court in the case of Chitan J. Vaswani V/s. State of West Bengal (1975), has made the difference between Section 18(1) and (2) as follows:

Section 18(1) is a summary procedure for closing down dens of prostitution without going through the detailed process of criminal prosecution.

Section 18(2) is operative only when the offenders have been convicted under Section 3 or 7 and applies to any place. Section 18(1) operates only when the brothel is situated 200 metres from any public place.

As per Section 18(1)(a), which talks of evicting the offender within seven days of the passing of the order of eviction, the question here is whether it is possible for the Courts to do all this in such a short time, given their existing workload. The orders passed under Section 18(2) are final and cannot be appealed against in a higher court. The order ceases after the expiry of the specified period.

Section 19 deals with application for being kept in a Protective Home or provided care and protection by the Court.

Section 19(1) provides that a person who is carrying on or is being made to carry on, prostitution, may make an application to the magistrate within the local limits of whose jurisdiction she is carrying on or is being made to carry on prostitution, for an order that she may be (a) kept in Protective Home or (b) provided care and protection by the Court in the manner specified in Sub-section (4).

While the objective behind such a provision may be laudable, the issue here is how anyone could expect a woman, who has been tortured, caged, and socially and economically handicapped, to make an application before the court for requesting for her care. An additional sub-section needs to be introduced whereby it is possible for any woman in prostitution or in moral danger to directly seek admission in the Protective Home or re-admission if required, provided the Court later ratifies it. Suitable amendments need to be made in the State Rules for this purpose.

Section 20 talks about removal of a prostitute from any place. This section is akin to externment proceedings against offenders under Bombay Police Act. There is hardly any rehabilitative element in this section and it can be applied to any victim in a manner, which uproots her without providing her an alternative. In such a context, other rehabilitative Sections such as 10A, 17(2) or 19(3), could be used instead of this section, which is punitive against the victim. This section may be deleted as it works against the victim of prostitution.

Section 21 deals with the establishment of Protective Homes and corrective institutions. The establishment of such Homes has been left to the discretion of the State governments whether or not to set up such structures and how many numbers. This strikes at the heart of the Act, as without the necessary infrastructure, rehabilitation is not possible. Half hearted attempts will result in half-hearted results. While Protective Homes have been set up - one or two in each State, corrective homes have hardly been set up.

One suggestion which could be discussed is - whether the existing State Homes and Reception Centers could also be used as Protective Homes, since they are more in number and present in most districts.

Another question we would like to raise is whether rehabilitation programmes to be carried out in such Homes needs to be specified; at least their basic components in the State Rules, and rehabilitation should be included in the definition of Protective Homes.

Section 22(A) specifies the powers of the State government to set up Special Courts for speedy trials of cases under the Act and Section 22(A)(a) confers the same powers to the Central government. This section has not been used by any State or Central government till now. Setting up of such Courts will result in better disposal of cases, conviction of offenders and assist the rehabilitation process. The Special Court should be presided by a judicial officer of the rank of district magistrate. The Judge should be trained and possess special knowledge about the subject and should have a panel of social workers attached to the Court, along the lines of the JJ Board (under the JJ Act, 2000)

#### State Rules under the ITPA

After going through the ITPA Rules of some of the States, one gets an impression that most of the rules are similar in nature. The major areas pertain to maintenance of discipline, diet, training, education, arranging marriages, punishments, powers of the Superintendent, etc. It seems from the rules that rehabilitation consists of giving some basic educational/literacy inputs, basic vocational skills, handing over to family and arranging for marriages. There is no rehabilitation scheme with components such as job-oriented training programmes, loan for self-employment, and housing, enhanced access to certain types of jobs, etc. The Maharashtra State Rules under ITPA have not been framed after the Act was amended from SITA, 1956 to ITPA, 1986. Such rules, which specify the rehabilitation process, have to be immediately framed.

Some of the rules, which have progressive outlook, are reproduced below (taken from various State Rules):

1. Bihar - Definition of Medical Officer: Should ordinarily be a lady doctor.
2. A.P. - Inmates of Protective Home may be sent, whenever advisable to other Institutes for similar educational or vocational training with prior approval of the Chief Inspector.

3. A.P. - Inmates may be taken to places of interest under the supervision of the Superintendent.
4. Delhi - Suitable inmates may be sent to Aftercare Homes from Protective Home for their further rehabilitation.
5. Himachal Pradesh - Adequate number of trained teachers and qualified instructors shall be appointed.
6. Karnataka - Provision for aftercare programmes.

#### Section 145, Indian Railways Act, 1989:

Section 145 provides for punishment for the acts of drunkenness or nuisance - if any person in any railway carriage or upon any part of the railways

- a) is in a state of intoxication; or
- b) commits any nuisance or act of indecency or uses abusive or obscene language; would be punishable with a fine of upto Rs. 100/- (now Rs. 500/-) on conviction and on second or subsequent conviction, imprisonment of one month and a fine.

It has been found that in practice, this section is being used regularly by the GRP against street prostitutes found soliciting in railway premises. Using such section against women victims of prostitution does not serve any purpose beyond penalizing an already victimized group. If action is to be taken by the GRP, they may use sections of ITPA for this purpose.

#### Section 110, Bombay Police Act:

This section provides for punishment for behaving indecently in public places or indecently exposing persons in any street, of fine upto Rs.1200/- or imprisonment in lieu of it.

This is a widely used section by the police against a wide variety of persons who are taken charge of in law and order situations, including for picking up victims of prostitution. In fact, the usage of this section is far wider than the usage of the ITPA. The impact of this section on the victims does not go beyond temporarily driving them away, and in fact, add to their financial burdens. The use of this section against women found soliciting in public places should be stopped and Section 7 and 8 of ITPA may be used, if necessary.

In the case of A.G. Narvel V/s B.I. Nthinglavha and others (1999), the Mumbai High Court observed that conviction under Section 110 of the BP Act, ipso facto does not mean that a person arrested is a prostitute. For the control of prostitution, the High Court suggested the use of ITP Act.

#### Section 294 IPC:

Whoever to the annoyance of others,

- a) does any obscene act in any public place, or
- b) sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment upto 3 months or with fine or with both.

This is also a section being used randomly against victims of prostitution and the logic of using this as against the ITPA is questionable.

#### Use of IPC Sections

There are many sections in the IPC, which could be used against traffickers, pimps, brothel keepers, and those involved in commercializing prostitution and living off the earnings of victims of prostitution:

339	Wrongful restraint
342 to 347	Wrongful confinement
357	Assault or criminal force to unlawfully confine a person
359	Kidnapping
360	Kidnapping from India
361	Kidnapping from lawful guardianship
362	Abduction
363	Punishment for kidnapping
364A	Kidnapping for ransom
365	Kidnapping or abducting with intent to secretly and wrongfully confine a person
366	Kidnapping or abducting for illicit intercourse
366A	Procreation of a minor girl
366B	Importation of girl below 21 years of age from foreign country
367	Kidnapping or abduction in order to subject a person to grievous hurt, slavery or unnatural lust
368	Wrongfully concealing or keeping in confinement, kidnapping or abducting person
369	Kidnapping or abducting child under 10 years with intent to steal from its person
370	Buying or disposing any person as a slave
371	Habitually dealing in slaves
372	Selling minor for purposes of prostitution
373	Buying minor for purposes of prostitution
375 & 376	Rape and punishment
377	Unnatural sex

#### Juvenile Justice Act, 2000:

2(D) - Child in need of care and protection

Minor girls rescued from red-light areas, beer bars, massage parlours, hotels, lodges or such other places are being produced before the legally constituted (under the said Act) Child Welfare Committees, as children in need of care and protection.

The issue of the age verification process assumes significance here. Whether a rescued person will be dealt with under this Act entirely depends on the findings of the age verification process ordered by the CWC. Often, allegations are made about how this process gets vitiated through exchange of money at the police / government hospital. Also the issue of the accuracy of a process where a person's age is calculated on the basis of X-Rays of bones and teeth count comes into question. There is also the question of whether such tests should be carried out without the consent of the persons concerned i.e. the alleged minors in question.

Section 49 makes it clear that age verification does not only rest on medical examination, as is currently being interpreted. It states that the CWC shall collect whatever information or evidence they deem fit to arrive at a finding on this issue and that their decision on this matter would be final. This implies that other processes such as getting the birth certificates, any other documents, photographs, home visit, etc. could be taken recourse to by the CWC.

# ANNEXURE III

## List of Participants and Resource Persons

### ADDRESS LIST OF PARTICIPANTS WHO ATTENDED THE NATIONAL WORKSHOP

#### JUDICIARY

STATE	NAME	ADDRESS
Delhi	Smt. Sunita Gupta Addl. District & Session Judge, High Court of Delhi	30/22, Shakti Nagar Delhi - 110007 Tel 011-23956736 011-27245305 (R) 09899559553 (M)
Goa	Smt. Anuja Prabhudesai Addl. District & Session Judge, Margao, Goa	Judicial Quarters, E-1 - Monte Hill, Margao, Goa 0832-2730602 (O) 0832-2734949 (R)
Maharashtra	1. Shri Vinayak B. Deshmukh, Judge, Family Court, Mumbai  2. Shri Padmakar R. Deshpande, District & Sessions Judge, Parbhani	Judge's Quarters, No 902, Mazgaon Court Premises, Mazgaon, Mumbai - 400 010. 022-26592252 (O) 022-23781614 (R)  District And Sessions Court Parbhani, Maharashtra 02452-222294 02452-223471
Orissa	Shri Raghunath Biswal, Presiding Officer, Bhubaneswar	Cooperative Tribunal, Bhubaneswar 0674-2531925 (O) 0674-2565665 (R)
Tamil Nadu	Selvi. K.B.K. Vasuki, District Judge, Namakkal	District Court Bldg., Trichy Road, Namakkal - 637001 04286-225911 (O) 04286-226008 (R)
Uttar Pradesh	Shri Pundir Jay Singh, Civil Judge, (Junior Division) Kanpur Nagar	T-IV / J-4, D.M. Compound, Civil Lines, Kanpur Nagar, Uttar Pradesh 0512-2306591 (O) 0512-2306233 (R)

# POLICE

STATE	NAME	ADDRESS
Andhra Pradesh	Shri. M.L. Kumawath Addl. DGP, CID, Hyderabad	DGP Office Complex, 3rd Floor, Lakdiwala Pool, Safabad, Hyderabad - 500 004 040-23232872 (O) 23358340 (R) 040-23232872 (F) Email: mahendrakumawathadj@re difmail.com
Delhi	Shri O.P. Mishra, Addl. DCP, Licensing, Delhi	1st Floor, Police Station Defence Colony, New Delhi - 16 011-26262273 (O) 011-26968589 / 26852588 Ext. 4540 (R) 011-26262260 (F) Email: opmarti@yahoo.com
Goa	Shri V. U. Borkar Addl. Superintendent of Police, Goa	D-Type Quarters, Chicalim, Goa 0832-2456688 (O) 2542213 (R)
Maharashtra	Dr. (Mrs.) P.N. Sarvade DCP Enforcement, Crime Branch, Mumbai  Shri Naval Bajaj DCP Zone II, Mumbai  Smt. A. S. Bandgar ACP, JAPU, Crime Branch, Mumbai  Smt. Mulani Women Police Head Constable, GRP, Mumbai  Shri Gaikwad Police Naik C.S.T. Railway Police Station	Opp. Crawford Market, Commissioner of Police's Compound, Crime Branch, Mumbai 022-22620569 (O) 28980615 (R)  Traffic Institute, Sir J. J. Marg, Byculla, Mumbai  Office of the Commissioner of Police, Mumbai  C.S.T. Railway Police Station (022) 22620173  C.S.T. Railway Police Station (022) 22620173
Meghalaya	Smt. C.D. Shira, Dy. Sp. CID, Office of IG CID, Shillong  Smt. Restina Pathaw, Inspector of CID Shillong	Golf Link Main Road, Shillong 0364-2222001 (O) Ext. 5225 0364-2590426 (R)  Office of DGP, HQ Meghalaya Shillong 0364-2222001 (O) Ext. 519 0364-2210868 (R)

STATE	NAME	ADDRESS
Orissa	Shri D. P. Majumdar, O.P.S. Dy. Supdt. of Police Cuttack	CID, Crime Branch, Buxi Bazaar, Cuttack, Orissa 0671-2304314 (O) 0671-2620302 (R) 0671-2304950 (F)
Uttar Pradesh	Smt. Sriparna Gangulee Addl. S.P., I/C. Women's Cell, CBCID Lucknow	U.P. Police, 2-Vikramadiya Marg, Lucknow, Uttar Pradesh 0522-2223318 (O) Ext. 215 0522-2323094 (R)
West Bengal	Shri Raj Kanojia DIG, CID, Kolkata	Criminal Investigation Dept. Bhawani Bhavan, Alipore. Kolkata - 27 033-24791586 (O) 033-24792504 (R) 033-24791586 (F) Email: rajkanojia@hotmail.com
	Shri Malay Majumdar, Inspector of Police, Kolkata	CID, West Bengal, Bhawani Bhavan, Alipore, Kolkata - 27. 033-24791901 (O) (F) 033-25616264 (R)
	Shri. Afsaruddin Ahmed, Inspector of Police, Kolkata	CID, West Bengal, Bhawani Bhavan, Alipore, Kolkata - 27. 033-24791901 (O) (F) 033-24137104 (R)

# DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT

STATE	NAME	ADDRESS
Dept. of Women and Child Development Government of India	Smt. Kasturi Gupta Menon Secretary, DWCD, GOI New Delhi	Ministry of Human Resource Development, Shastri Bhavan, New Delhi
Andhra Pradesh	Smt. Veena Rao Joint Secretary, DWCD, GOI New Delhi	Ministry of Human Resource Development, Shastri Bhavan, New Delhi
	Smt. J. Promodini Rani Dy. Director Office of the Commissionerate WD&CW, Hyderabad	Dy. Director, Women Development & Child Welfare Behind Saradhi Studios, Yusuf Guda, Vengal Rao Nagar, Hyderabad 040-23732587 (O) 55635179 (R)
Bihar	Smt. Surinder Sidhoo Patna	Managing Director, Women Development Corporation 2nd Floor, Indira Bhawan, R.C. Singh Path, Patna - 800 001, Bihar 0612-2234096 / 2207675 Email: ssidhoo@yahoo.com
Delhi	Smt. Pamela Chibber Welfare Officer New Delhi	Social Welfare, NCT, Delhi Nirmal Chhaya Complex, Observation Home for Girls, Jail Road, New Delhi - 64 011-25552699 / 25699221
	Smt. Manju Varshney Supdt. OHG, Dept. of Social Welfare New Delhi	Nirmal Chhaya Complex, Jail Road, New Delhi - 64 011-25552699 (O) 011-25545003 (R) 011-25546806 (F)
Maharashtra	Shri S. S. Dodd, Principal Secretary, DWCD, Maharashtra	Government of Maharashtra, Mantralaya, Mumbai
	Shri P.V. Kerkar, Deputy Secretary, DWCD, Maharashtra	DWCD, Mantralaya 3rd Floor, New Admn. Bldg opposite Mantralaya Mumbai
	Shri Dashrath Panmand DWCD Officer, Mumbai	117, B.D.D. Chawls 1st Floor, Near Ambedkar Hostel Shankar Mohite Marg, Kurne Chowk Worli, Mumbai-400 018

STATE	NAME	ADDRESS
	Shri D. V. Hivrale Superintendent, Mumbai	Women & Child Welfare (Maharashtra) Navjeevan Mahila Vastigruha, R.C. Marg, Chembur, Mumbai - 400 071 022-25231197 (O) 25284405 (R)
	Smt. Neeru Sharma Probation Officer, Mumbai	Women & Child Development Govt. Special Rehabilitation Centre for the Girls, Sion - Trombay Road, Deonar, Mumbai 400 088 022-25565286 (O) 25234660 (R) Email: surami@vsnl.net
Meghalaya	Shri I. Talang Child Welfare Probation Officer Shillong	Child Welfare & Probation Officer Dept. of Social Welfare, Govt. of Meghalaya Bawri Mansion Shillong 0364-2227760 / 2211079 (O) 0364-2229709 (R) 0364-2225187 (F)
Orissa	Smt. Priyambada Patanaik Superintendent, Central Home for Women Bhubaneswar	Central Home for Women, Berhampur, Ganjam District, Bhubaneswar, Orissa 0680-2290242 / 2262116 (O) 0680-2263115 (R)
Tamil Nadu	Shri S. Kannayiram Field Officer, State Level Monitoring Cell on Juvenile Justice Admn. Chennai	Dept. of Social Defence, Govt. of Tamil Nadu, No. 300, Purasawalkam High Road, Kellys, Chennai - 600 010. 044-26427022 / 26426421 (O) 26612989 (F) Email: skannayiramfo@yahoo.com dod@vsnl.net
Uttar Pradesh	Smt. Pramila Nag Superintendent - In charge, Lucknow	Nirashrit Mahila Karmshala Near Telco Road No. 2, Dewa Road, Chinhut, Lucknow 0522-818390 (O) 2379540 (R) 0522-3116211 (M)
	Smt. Shobha Tripathy Superintendent, Lucknow	Govt. Special Home (Juvenile), Etawah, U.P. 05688-256391 (O) 9415004920 (M)

# **NGO / ACADEMIC INSTITUTIONS / RESOURCE PERSONS**

NAME	ADDRESS
Prof. Usha Nayar Dy. Director, TISS, Mumbai	Tata Institute of Social Sciences S.T. Road, Deonar, Mumbai 400 088 022-25563290-96
Smt. Sarasu Thomas Lecturer, National Law School of India University, Bangalore	National Law School of India University Post Box No. 7201, Nagarabhavi, Bangalore - 560 072 080-23213160 / 23211303 Email: sarasu_thomas@hotmail.com
Rajeev Awasthi Advocate, Delhi High Court	3046, Sector-A, Pocket B&C, Vasant Kunj, New Delhi 011-26125190 09810558550
Smt. Sunita Krishnan General Secretary, Prajwala, Hyderabad	20-4-54, III Floor, Behind Charninar Bus Stand, Hyderabad 040-55704048 (O) 040-24510947 (R) 040-24410813 (F) Email: praj-2010@eth.net sunitha_2002@yahoo.com
Dr. Aparna Srivastava Researcher, Joint Women's Programme New Delhi	14, Jangpura B, New Delhi - 14 011-24329821 (O) 98996-43245 (M) Email: apranasrivastava@yahoo.com
Smt. Sangeeta Puneekar Member, Advait Foundation Mumbai	C/o. Seva Niketan, Sir J.J. Marg Byculla, Mumbai 400 008. 022-23009047 (O) 022-25581341 (R) Email: ppuneekar@vsnl.net

## **SPECIAL GUESTS**

NAME	ADDRESS
Justice C. Dharmadhikari Retd. Justice Mumbai	Samata Bldg. 8 <sup>th</sup> Floor, Gen. Jagannath Bhosale Marg, Opp. Yashwantrao Chavan Pratishthan Mumbai
Smt. Sujaya C. P. Retd. IAS New Delhi	A-2, Diwan Shree Apartments, 30, Feroze Shah Road, New Delhi - 110 001 011-32719434 (R) Email: anjali@del3.vsnl.net.in

<b>Session on Post Rescue:</b>	
2.30 p.m. to 3.30 p.m.	Post Rescue Phase: A Situational Analysis by Shri Rajeev Avasthi, Advocate, Delhi High Court.
3.30 p.m. to 3.45 p.m.	Tea Break
3.45 p.m. to 5.15 p.m.	Open Session: Discussion on current JUDICIAL procedure followed in the Post Rescue Phase as per the provisions of ITPA, challenges faced in the field & suggestions for better implementation of ITPA  In Chair: Justice (Smt.) Usha Mehra (Retd.)
5.30 p.m. to 6.30 p.m.	Visit to Prayas Rehabilitation Centre (Workshop for Training and Income Generation)

2<sup>nd</sup> Day, 28<sup>th</sup> February 2004 (Saturday)

<b>NHRC Presentation:</b>	
9.00 a.m. to 10.30 a.m.	Presentation of the NHRC Study on Trafficking by : • Dr. Savita Bhakry, Sr. Research Officer, NHRC • Shri. P.M. Nair, Nodal Officer Trafficking, NHRC
10.30 a.m. to 10.45 a.m.	Tea Break
10.45 a.m. to 11.00 a.m.	Recapitulation of the first day and plan for the next day by PRAYAS
<b>Session on Rehabilitation and Repatriation</b>	
11.00 a.m. to 12.00 noon	Presentation on role of State Homes/Correctional Institutions by : Shri. Hivrale, Superintendent, State Protective Home, Mumbai. Smt. Neeru Sharma, Probation Officer, Special Juvenile Home, Mumbai
12.00 noon to 1.15 p.m.	Open Session on Challenges faced in the field of Repatriation and Reintegration and suggestions for better implementation of ITPA  In Chair: Shri. S.S. Dodd, Principal Secretary, Department of Women and Child Development, Government of Maharashtra
1.15 p.m. to 2.00 p.m.	Lunch
2.00 p.m. to 3.30 p.m.	Post Institutional Rehabilitation : A few Presentations
3.30 p.m. to 3.45 p.m.	Tea Break
3.45 p.m. to 4.45 p.m.	Discussion of Government of India's Plan of Action on rescue and rehabilitation : Challenges faced in the field and suggestions for better implementation  Presentation by Smt. Veena Rao, Joint Secretary (in Charge of Trafficking), Department of Women and Child Development, Government of India
4.45 p.m. to 5.15 p.m.	Summing up of the workshop and setting the future plan of action by Smt. Sujaya C.P., Retd. IAS
<b>Valedictory Session:</b>	
5.15 p.m. to 6.00 p.m.	Valedictory Address by Justice (Smt. Sujata Manohar)
6.00 p.m. to 6.15 p.m.	Vote of Thanks by Shri Vijay Raghavan, Director PRAYAS