

Identifying Actionable Strategies to Minimize Vulnerabilities of Nepali Girls Trafficked to India and Repatriated as Survivors of Trafficking

*Seeking Solutions for Improved Rescue, Recovery, Repatriation and
Integration (RRRI) of Nepali Girls Victims of Trafficking*

— A Report of a Research Study

2013

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Acknowledgements

The research study on identification of Actionable Strategies to Minimize Vulnerabilities of Nepali Girls Trafficked to India and Repatriated as Survivors of Trafficking is the milestone study which was undertaken to seek solutions for Improved Rescue, Recovery, Repatriation and Integration (RRRI) of Nepali Girls Victims of Trafficking. The study covered 7 states including both smaller towns and metro cities in India and six districts of Nepal. The research was jointly supported by Tdh Foundation and Geneva Global.

A team of researchers at IMPACT PSD Private Limited, New Delhi collected the information from Government and Non-Government organizations and stakeholders. IMPACT team undertook field visits and conducted the face-to-face interviews and stakeholders' consultation in order to gather information. The collected information was synthesized and analyzed on the basis of outline to present the findings in its current shape.

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IMPACT Team

Abbreviations

AATWIN	Alliance Against Trafficking in Women and Children in Nepal
AG	Attorney General
AHT	Anti Human Trafficking
AHTU	Anti Human Trafficking Unit
ATSEC	Action against Trafficking and Sexual Exploitation of Children
BDR	Bangladesh Rifles
BSF	Border Security Force
C&P	Care and Protection
CAC	Central Advisory Committee
CBATN	Cross Border Anti Trafficking Network
CBI	Central Bureau of Investigation
CDO	Chief District Officer
CEDAW	Convention to Eliminate All forms of Discrimination Against Women
CID	Crime Investigation Department
CNCP	Child in Need of Care and Protection
Cr PC	Criminal Penal Code
CVC	Community Vigilance Committee
CWC	Child Welfare Committee
DCWB	District Child Welfare Board
FIR	First Intimation Report
GG	Geneva Global
GO	Government Organisation
GoI	Government of India
GoN	Government of Nepal
HDI	Human Development Index
IACG	International Agencies Coordination Group
ICPS	Integrated Child Protection Scheme
IDP	Internally Displaced Persons
IJM	International Justice Mission
ILO	International Labour Organisation
INGOs	International Non-Government Organisation
IPC	Indian Penal Code
ITPA	Immoral Trafficking Prevention Act
JJA	Juvenile Justice Act
MEA	Ministry of External Affairs
MHA	Ministry of Home Affairs
MoFA	Ministry of Foreign Affairs
MoWCSW	Ministry of Women, Children and Social Welfare
MWCD	Ministry of Women and Child Development

NCPCR	National Commission for Prevention of Child Rights
NCW	National Commission for Women
NGO	Non Government Organisation
NHRC	National Human Rights Commission
NPA	National Plan of Action against Trafficking in Children
NWDP	National Women Development Policy
OSRT	Office of Special Rapporteur on Trafficking
PAQCA	Prevention And Quality of Care Anti Trafficking Action
POCSO	Prevention of Children from Sexual Offences
SAARC	South Asia Association for Regional Cooperation
SAC	State Advisory Committee
SAFAHT	South Asian Forum Against Human Trafficking
SAIVEC	South Asian Initiative to End Violence against Children
SCPCR	State Commission for Prevention of Child Rights
SJPU	State Juvenile Protection Unit
SLSA	State Legal Services Authority
SOPs	Standard Operating Procedures
Tdh	Terre des hommes
UNCRC	United Nations Convention on Rights of a Child
UNICEF	United Nations Children Education Fund
UNODC	United Nations Office for Drug and Crime
UT	Union Territory
VDC	Village Development Committee
VVC	Village Vigilance Committee
WCSC	Women and Children Service Centre

I. INTRODUCTION TO THE RESEARCH

Research has been an integral component of anti-trafficking interventions in South Asia and numerous researches have been conducted in the last decade that have identified issues associated with cross border trafficking, plight of victims, capacity of service providers and judiciary and environmental constraints and facilitating factors. Also, there have been several projects implemented to address issues in isolation as well as package of services. Many of these projects have been successful and have provided recommendations on replication and scale up. In addition, organizations have been attempting innovative pilots in capacity development and service provisioning, many of which have demonstrated successes.

However, some of the recent studies still conclude that the overall status of victims of trafficking has not improved and the issues still remain unaddressed at large. While there are several factors for the current state, some of the crucial factors responsible are:

- No major breakthrough in changes in laws and policies for children from foreign countries being trafficked to India
- Capacities and attitudes of law enforcement agencies and other service providers engaged in providing justice to children and other services
- Additional layer of complications in cross border repatriation of children due to different laws and political situations between source and destination countries
- Coordination at different levels between service providers and government agencies, particularly across countries of destination and source for trafficking.

Considering all of the above, a need for a research has been identified to synthesize the existing legal environment in India and Nepal, document current practices of delivering (juvenile) justice to Nepali children trafficked to India including identification of good practices, stakeholder capacities and perceptions and recommendations of stakeholders in improving the current status of justice delivery and rights based service delivery to vulnerable and children survivor of trafficking.

The current research was therefore jointly supported by Terre des hommes, Lausanne, Terre des hommes, Netherlands and Geneva Global. All the three organizations have an active presence in India and Nepal and have been supporting anti-human trafficking interventions and research either directly or through their civil society partners. Interestingly, some of these organizations are shortly initiating the process of developing their long term strategy and hence evidences and recommendations from the proposed research is expected to inform their planning processes. In addition, the three organizations work very closely with the governments and line departments and therefore would need evidences to support their overall advocacy efforts with the government.

Objectives of the Study

Therefore, following were the two main objectives of the study:

- To give continuity to some of the earlier cross-border initiative between India and Nepal undertaken by Tdh Foundation of making repatriation process of trafficked Nepali children both timely and safe
- To identify the gaps and/or leverage points for lobbying and advocacy to make the legal processes in India and Nepal more efficient from both a juvenile justice and care and protection perspective

In line with the stated objectives, it was expected that the study will:

- Sequentially map the legislative and Indian State's process and practice of a child trafficking victim from the point of identification in the exploitative environment, the process and practice of emancipation, their traversal of the court system as a 'witness' for the prosecution, their care and protection under the CWC mandate, and the repatriation practice and process to Nepal or Indian states.
- Critically assess and examine the process of drafting and developing the Indo-Bangladesh repatriation model, particularly the Standard Operating Procedures (SOPs) agreed to and applied by the Governments of India and Bangladesh.
- Specifically look at the capacity of CWCs and how it can be empowered in ensuring Juvenile Justice.
- Identify/map the role of actors with whom partnerships can be forged for coordination and/or lobbying and advocacy activities during project development can be taken up

Target Groups

The study identified and interacted with the following group of stakeholders both in India and Nepal, through individual discussions and group consultations:

- Government departments (Women and Child Development, Home, Foreign Affairs)
- Law enforcement agencies (judiciary, police, border police, prosecutors, Child Welfare Committees in India, Chief District Officers in Nepal)
- Government and NGO managed Shelter Homes
- NGOs
- UN Agencies
- Foreign offices, Embassies, Consulates and High Commissions
- Academicians and Activists

Geographic Coverage

In India, the geographic focus was on states and districts where many Nepali children are reported to live in exploitative situations and are being rescued. In Nepal, the focus was Kathmandu and other districts reporting high level of trafficking/missing cases of children. Following was the final coverage by the study:

India		Nepal
<i>States</i>	<i>Districts</i>	<i>Districts</i>
Bihar	East Champaran and Sitamarhi	Kathmandu
Goa		Jhapa
Maharashtra	Pune and Yavatmal	Rupandehi
Tamil Nadu		Parsa
West Bengal	Silligurhi	Udaipur
Uttar Pradesh	Agra, Meerut and Varanasi	Morang

II. Methodology Adopted For Information Collection

The required information for the research was gathered through the following four steps:

Step 1: Desk Review

The Desk Review included the entire spectrum of delivery of juvenile justice at various stages of human trafficking that begin from rescue of the child from an abusive situation and culminate with a successful integration of the child ensuring that she is not vulnerable to re-trafficking; with recovery from trauma and repatriation to home country being the two most important intermediary steps. The review of literature included:

- Existing provisions in laws and policies for juvenile justice both in India and Nepal. This part also included:
 - Landmark judgments from high courts and supreme courts of India and Nepal that can be used as case laws
 - Legal protection and provisions for victims and how these impact on their return and reintegration
 - Prosecution of perpetrators
- Current status of implementation of these laws, policies and programmes including the bottlenecks in implementation
- Advocacy efforts made by civil society to either change laws/policies or better implementation of current laws, policies and programmes
- Other efforts of service providers (government and civil society) to improve the current socio legal environment to either reduce the vulnerabilities of victims or provide them with needed services under the human rights framework

Step 2: In-depth Interviews with Stakeholders

It was realized that the focus of trafficking is increasingly shifting from big metropolitan cities like Delhi, Mumbai and Kolkata to smaller towns, as there is increased pressure of law enforcement agencies in big cities. This has led to new “hot spots” for trafficking that include towns like Agra and Meerut in UP, Pune and Yavatmal in Maharashtra. Recently several Nepali children have been rescued from these towns.

Hence, efforts were made to explore the situation in these smaller towns by meeting the stakeholders and service providers. Visits were conducted to these cities and different set of stakeholders were met in person to explore their perception about their roles, responsibilities and their existing capacities to handle trafficking situations. Stakeholders contacted included district level officials from the Department of Social

Welfare, Child Welfare Committees (India), Child Welfare Board and Child Rights Officer (Nepal), police (including Anti Human Trafficking Units in India) and NGO functionaries.

Step 3: Stakeholder Consultations

Consultations at following locations were organized where findings from Step 1 and 2 were presented and comments and feedback were sought from the stakeholders including their recommendations on certain issues identified during the first two steps.

1. India

- Kolkata (West Bengal)
- Mumbai (Maharashtra)
- Goa
- Chennai (Tamil Nadu)
- Delhi
- Patna (Bihar)
- Lucknow (Uttar Pradesh)

2. Kathmandu, Nepal

Step 4: Multi Stakeholder Round Table Consultations for Dissemination

After completion of the consultation and finalization of the Action Strategy, two Round Table consultations were organized in Delhi (India) and Kathmandu (Nepal). Government officials from the line ministries (Social Welfare and Labour), government institutions like women and child commissions, Consulates and High Commissions of India and Nepal as well as bilateral agencies were invited to these consultations. Specific discussion points were worked out in advance and discussions were facilitated, specifically to ascertain their view, opinions and suggestions on the priorities for strengthening RRRI procedures in India and Nepal.

Structure of the Report

All the data gathered through the four steps was synthesized and has been presented into the following chapters in this report:

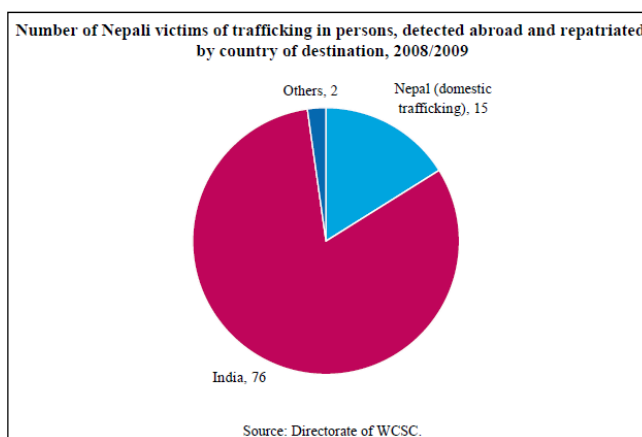
Chapter Number	Title
3	Stakeholder Analysis
4	Anti-Trafficking Legal Framework
5	Findings from Stakeholder Consultations
6	Summary of Landmark Judgments on human trafficking from Apex Courts in India and Nepal (since 2005)
7	Challenges and Recommendations
Annexure	Process Mapping—from source to destination and back to source for a survivor of human trafficking

PART I—INDIA

Country Scenario

India is a country of origin, transit and destination for trafficked persons. It has been indicated that India remains, above all, a destination for trafficked women and girls (both internally and externally) because of the demands of the local sex industry. India shares porous borders with some of its neighbors. There is a high incidence of migration from the neighboring countries of Bangladesh and Nepal, and a portion of this number, especially of women and children, end up being trafficked into India.¹ According to oft quoted estimates, most of the trafficking, however, takes place within the country with almost 90% of India's sex trafficking being internal.² Trafficking from neighboring countries accounts for 10% of the coerced migration in India with approximately 2.6% being from Nepal.³ However the clandestine nature of the crime and the stigma associated with trafficking, make it very difficult to estimate the actual numbers of victims of trafficking. What is clear is that there are reportedly a large number of women and girls from the neighboring countries of Nepal and Bangladesh forced into sexual exploitation in the brothels in India.⁴ According to one report,⁵ establishments of sex trafficking are moving from more traditional locations to locations that are harder to

find, and are also shifting from urban areas to rural areas, where there is less detection. Although studies on human trafficking primarily focus on trafficking for sexual exploitation and to some extent on forced labour, there have also been reports of trafficking from Nepal to India for the purpose of organ removal. These new dimensions of trafficking will need alternate forms of redress for the victims, e.g. in terms of the medical and psychological care. According to one estimate, nearly 300 persons from just eight VDCs in Nepal had their kidneys removed in India over a period of time. The



¹ See the India presentation in, Regional Study on Violence Against Children in South Asia/ Report of the Regional Consultation on Violence Against Children in South Asia (Islamabad, Pakistan, May 2005), 2005, p. 215.

² 2006 Trafficking in Persons Report, United States Department of State, 2006, p. 136.

³ 2.17% from Bangladesh Trafficking in Women and Children in India, 2002-2003, National Human Rights Commission (NHRC)/ Institute of Social Sciences (ISS)/ UNIFEM, 2005, p. 17.

⁴ See the Nepal section for an estimate of numbers quoted in various reports.

⁵ 2012 Trafficking in Persons Report, United States Department of State, 2012, p.184.

victims included young children, women and men.⁶ A 2012 report by UNDOC indicated that a majority of the Nepali victims of trafficking, who were detected abroad and repatriated, were from India (see figure). Reports which have focused on girls returned from India, indicate that the exit from trafficking was through rescue, escape or release; although the majority of girls (80%) were rescued in police raids on Indian brothels.⁷ However, another report qualifies that this high figure represents only the situation of the rescued women/girls who have been placed in the rehabilitation center.⁸

Similar to the experience of trafficking, returning home from the trafficked cities is equally complex and challenging for the women and girls, as pointed out by a number of reports. Based on the reports of NGOs and INGOs, there are at least four major ways through which the trafficked women are rescued and returned home: (a) return directly from brothels voluntarily or involuntarily, (b) rescue and put into an Indian rehabilitation centre before returning to Nepal, (c) rescue from brothel and put into an Indian rehabilitation centre and then shifted to a Nepalese rehabilitation centre before returning to family, and (d) rescue and put into a Nepalese rehabilitation centre before returning to family. In one report⁹, almost all women and girls who were interviewed stated that they did not pass through a transit home in India or a rehabilitation centre in Nepal. The study also pointed out that survivors have encountered discrimination and violence even on their way back home. These included sexual and verbal abuse by police and other concerned authorities, reluctance of families and communities in accepting them back and being a victim of re-trafficking.

Promoting cooperation to tackle trafficking has been a part of political statements in SAARC and other forums in the region, but reports point out that this is not reflected in domestic laws, and inter-country trafficking often sees women and children languishing in state run homes for long periods of time. Lack of comprehensive and consolidated data on trafficking makes it difficult to assess not only the overall situation but also the umbrella needs as well as the efficacy of the responses, in a systematized manner. However, for a comprehensive change at the national level, policies need to be supplemented with adequate financial, infrastructure and capacity building support. Another area which needs to be focused on is that of extra-territorial jurisdiction (i.e. the legal authority of a government to exercise authority beyond its borders) and repatriation of victims, which, as pointed out by most report, is usually a long and complicated process weighed down with bottlenecks.

⁶ Trafficking In Persons, Especially In Women and Children in Nepal, National Report 2009-2010, Office of the Special Rapporteur on Trafficking in Women and Children (OSRT), National Human Rights Commission (NHRC), Nepal, November 2011.

⁷ 'Sex Trafficking In Nepal: Process and Context', Reproductive Health Research, Opportunities and Choices, University of Southampton, Fact Sheet 22.

⁸ Reintegration Of The Nepalese Girls Trafficking Returnees Into Society - An Empirical Study of Reconstruction of the Self Identity: "A Matter of Pride or Shame or Both?", University of Nordland, Norway, May 2011, p. 46.

⁹ Reintegration of the Nepalese Girls Trafficking Returnees Into Society, p. 49.

Summary of Stakeholder Roles and Responsibilities

Stakeholder Group	Mandate	Existing Capacity
Government Departments		
Ministry of Women and Child Development	Nodal agency for managing human trafficking and coordinate activities and processes at all levels	Presence at national, state and district level Strong at national and state level but district level District officials too burdened to prioritize trafficking issues
Ministry of Home Affairs	Approvals of repatriation of survivors of foreign origin but no apparent role in case of repatriation in Nepal	
Ministry of External Affairs	Approvals of repatriation of survivors of foreign origin but no apparent role in case of repatriation in Nepal	
Ministry of Labor	Protection of child labor and coordination	
Law Enforcement Agencies		
Police and Crime Branch	Coordinate with NGOs in search and rescue operations, arrest traffickers, brothel owners and exploiters and process cases against perpetrators	
Anti-Human Trafficking Units	Coordinate with all stakeholders at district level for prevention, protection and prosecution of human trafficking	Currently only in about one third districts of the country Housed at police stations, does not coordinate with other stakeholders Only engaged in rescue operations
Child Welfare Committees	The only agency for protecting the interest of children in need of care and protection. All children in need of care and protection necessary go through them	Separate paper on the capacity and recommendations, as this is one of the most crucial unit in managing survivors of human trafficking
Judiciary	Deal with cases of trafficking	Judiciary at district level does not fully understand trafficking issues Lacks capacity on key laws and

Stakeholder Group	Mandate	Existing Capacity
		provisions and sensitivity toward survivors of human trafficking
Statutory Bodies		
National and state Commission for Protection of Child Rights (NCPCR)	Monitor the violation of child rights at all levels	Does not exist beyond state level and expected to coordinate with other agencies at district level Does not have cordial relations with other stakeholders in most states
National Commission for Women	Monitor the women issues particularly violence of any form including trafficking	
National Human Rights Commission		
State and District Legal Services Authorities	Provide free legal aid to those who need Coordinating agency for providing victim compensation	Not adequately resourced in most states and districts No coordination with stakeholders No many evidences of their engagement in trafficking cases
Committees and Units		
Central Advisory Committee	Consider all aspects of human trafficking including issues of enforcement and legislation and provide recommendations to the government	Recently reconstituted (23.09.2013)
District Child Protection Unit		
District Missing Child Unit	Keep a track of reported missing children and coordinate with investigating agencies to find these children	Does not exist in many districts and states (statistics not available) Other stakeholders not aware of their existence Lack basic resources and capacity to coordinate with strong agencies like CID
Anti-Trafficking Task Force	Mandated to manage repatriation of Bangladeshi girls	Only exist for Maharashtra and West Bengal

Stakeholder Group	Mandate	Existing Capacity
	from Maharashtra and West Bengal	Only manages cases of Bangladeshi children rescued in India
District Women and Child Advisory Committee	Review of cases of human trafficking, dowry, domestic violence and missing children, the progress, initiates preventive measures and intervene, if required.	Only exist in Maharashtra Almost same structure exists in Bihar named as “Astitva” Committee Not able to meet regularly as District Collector being the chair, is not considered a priority
Non-Government Agencies		
Civil Society	Engage with survivors of human trafficking at all stages to safeguard their interest, ensure their access to government services and support government agencies in implementing their responsibilities	Active at national and state level, with district presence Small scale NGOs only operating at district level or below lack necessary technical capacity and struggle for resources In many cases governments view them as opponents and not supporters There is mutual lack of trust between government and civil society on human trafficking
Funding Agencies	Provide financial and technical support to government and civil society for better implementation of interventions Facilitate cross learning across countries, thematic groups Develop technical resources	Active in most states of India and understand the issue of trafficking Have prioritized their agenda and attempt to work around that Many a times act as a coordinating agency between government and civil society Brings in financial resources

Government Stakeholders

India has made efforts to protect and assist trafficked victims through various policies and programmes. The Ministry of Home Affairs (MHA), through a 2009 directive, advised state government officials to use standard operating procedures (SOPs) developed in partnership with UNODC to proactively identify trafficking victims and refer them to protection services; however, the implementation of these procedures is unknown. In addition, since these are overall umbrella policies and programmes, the

information on whether Nepali victims per se were impacted and to what extent, are impossible to ascertain through reports due to lack of evaluation and hence lack of data and information.. Nevertheless it is assumed that these policies and programmes would have an impact on the victims from Nepal as much as on survivors of trafficking from India or other nations.

According to an Indian anti-human trafficking (AHT) legal and policy review report, in India there are some laws dealing with cross-border trafficking, but there is nothing comprehensive.¹⁰ The same document indicates that there is also cooperation with governmental and non-governmental organizations in repatriating victims, at least with respect to Nepal.

It has also been indicated that in terms of cooperation, an area where India has been trying to work is that of border measures. However, due to porous borders, implementation is proving very difficult. For the same reason of porous borders, provisions on travel documents and identity documents have become difficult to enforce.

The Indian Ministry for Women and Child Development (MWCD) supports agencies which provide after-care through shelter homes, short stay homes, and Swadhar homes for women in difficult circumstances such as victims of violence and sex trafficking. In 2011-12, the Government of India (GoI) initiated 58¹¹ new Swadhar projects. GoI also continued to fund over 100 NGO-run hotlines that help assist vulnerable people, including trafficking victims. During this period, MWCD also allocated the equivalent of \$118 million to fund 153 projects in 17 states under the Ujjwala program, which seeks to protect and rehabilitate female sex trafficking victims.¹² One of the objectives of the Ujjwala scheme is **'to facilitate repatriation of cross-border victims to their country of origin'**.¹³ Under this area of cross-border repatriation, the scheme is supposed to provide support to organizations for –

- repatriation procedures e.g. to cover expenses incurred in fulfilling various formalities for obtaining repatriation order for the victim;
- repatriation to country of origin e.g. to cover travel of the cross-border victim and an escort from destination area to her country of origin or border, expenses incurred towards her food during her travel and incidental expenses.
- setting-up of transit centres e.g. to provide funds for setting-up of transit camp, food and other incidentals at the border-check points.¹⁴

¹⁰ Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka: Legal and Policy Review, UNODC, UNWOMEN, UN.GIFT, 2011.

¹¹ 2012 Trafficking in Persons Report, p.185.

¹² 2012 Trafficking in Persons Report, United States Department of State, 2012, p.185.

¹³ Ujjwala: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation', Ministry of Women and Child Development, Government of India, December 2007, p.2.

¹⁴ 'Ujjwala', p.7.

National/State Commission for Protection of Child Rights

The National/State Commission for Protection of Child Rights (NCPCR/SCPCR) has been set up under the Commission for Protection of Child Rights Act, 2005. The Commission's mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group. The functions of the Commission have been laid out in the Act¹⁵.

State Legal Services Authorities

Pursuant to the Article 39 A of the Constitution of India, free and competent Legal Services are being provided in the State to the eligible persons. Accordingly the Legal Services Authorities Act, 1987 (Act No.39 of 1987) came into force on 9th September 1995. As per Section 12 (b and g), the following categories of persons are entitled for free and competent legal services from the legal services institutions:

1. A victim of trafficking in human being or beggar as referred to in Article 23 of the Constitution;

-
- ¹⁵
- a. Examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation
 - b. Present to the Central Government, annually and at such other intervals, as the Commission may deem fit, Reports upon the working of those safeguards
 - c. Inquire into violation of child rights and recommend initiation of proceedings in such cases
 - d. Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disasters, domestic violence, HIV/ AIDS, trafficking, maltreatment, torture and exploitation, pornography, and prostitution and recommend appropriate remedial measures
 - e. Look into matters relating to children in need of special care and protection, including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures
 - f. Study treaties and other international instruments and undertake periodic review of existing policies, programmes, and other activities on child rights and make recommendations for their effective implementation in the best interest of children
 - g. Undertake and promote research in the field of child rights
 - h. Spread child rights literacy among various sections of society and promote awareness of the safeguards available for protection of these rights through publications, media, seminars and other available means
 - i. Inspect or cause to be inspected any juvenile custodial home or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority including any institution run by a social organization, where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary
 - j. Inquire into complaints and take suo motto notice of matters related to:
 - i. Deprivation and violation of child rights
 - ii. Non implementation of laws providing for protection and development of children
 - iii. Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children or take up the issues arising out of such matters with appropriate authorities
 - k. Such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions
-

2. In custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987

Rule 27 Clause 9 of Juvenile Justice (Care and Protection of Children) Rules, 2007 (Central) also provide for legal aid to Child in need of care and protection¹⁶.

Current status of State Legal Services Authorities (SLSA) in States of India

Following table summarizes the existence of SLSA in different states, with specific reference to availability of data on services being provided by them.

Status of SLSAs in India

State	SLAC Exists	Website	Statistical Information		
			Overall	On Section 12 (g) ¹⁷	On Sec 12 (c)
Andhra Pradesh	Yes	http://apslsa.ap.nic.in/	Yes	None	None
Arunachal Pradesh	No	-	-	-	-
Assam	No	-	-	-	-
Bihar	Yes	http://bslsa.bih.nic.in/	No	None	None
Chhattisgarh	Yes	http://cgslsa.gov.in/	Yes	Yes	Yes
Goa	Yes	http://slsagoa.nic.in/	No	None	None
Gujarat	Yes	http://gujarathighcourt.nic.in/gslsa/functionalties.asp	No	None	None
Haryana	Yes	http://hslsa.nic.in/	Yes	None	None
Himachal Pradesh	No	-	-	-	-
Jammu & Kashmir	No	-	-	-	-
Jharkhand	Yes	http://jhalsa.nic.in/	No	None	None
Karnataka	Yes	http://www.kslsa.kar.nic.in/	Yes	None	Yes
Kerala	Yes	http://kelsa.nic.in/	No	None	None

¹⁶ Production of a Child before the Committee—(9) The Committee shall facilitate the filing of a police complaint and First Information Report in cases of missing children as well as matters of violence, exploitation and abuse of children and arrange for required legal aid through the Legal Officer in the District Child Protection Unit or District or State Legal Aid Services Authority or voluntary organizations.

¹⁷ Sec 12 (g): in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987

State	SLAC Exists	Website	Statistical Information		
Madhya Pradesh	Yes	http://www.mpslsa.nic.in/	Yes	None	None
Maharashtra	Yes	http://legalservices.maharashtra.gov.in/	Yes	None	None
Manipur	No	-	-	-	-
Meghalaya	Yes	http://mslsa.gov.in/	Yes	None	Yes
Mizoram	No	-	-	-	-
Nagaland	No	-	-	-	-
Odisha	Yes	http://www.oslsa.in/	Yes	Yes	Yes
Punjab	Yes	http://puls.gov.in/	Yes	Yes	Yes
Rajasthan	Yes	http://rlsa.gov.in/	Yes	Yes	Yes
Sikkim	No	-	-	-	-
Tamil Nadu	Yes	http://www.tnlegalservices.tn.gov.in/	Yes	None	None
Tripura	Yes	http://www.slsatripura.in/	No	None	None
Uttar Pradesh	Yes	http://upslsa.up.nic.in/	No	None	None
Uttarakhand	Yes	http://slsa.uk.gov.in/	Yes	None	None
West Bengal	Yes	http://www.wbslsa.org/	Yes	Yes	Yes
Andaman and Nicobar Islands	Yes	http://www.and.nic.in	No	None	None
Chandigarh	Yes	http://chdslsa.gov.in/	Yes	Yes	Yes
Dadra and Nagar Haveli	No	-	-	-	-
Daman and Diu	No	-	-	-	-
Lakshadweep	No	-	-	-	-
NCT of Delhi	Yes	http://dlsa.nic.in/	Yes	Yes	Yes
Pondicherry	Yes	http://utpsla.puducherry.gov.in/	Yes	None	None

Therefore based on the above table it is clear though statistical data has been provided, however limited data are available on beneficiaries under Sec 12 (g) and (c). There is also no information available as to whether any women/girl/children from Nepal (or any other nationalities) have been provided legal aid by any of the SLSAs.

Civil Society

The Indian civil society establishment that works on anti-trafficking issues in India is widely regarded as being extremely vibrant, and is very visible in awareness campaigns and protection for the victims/survivors of trafficking. The Government relies heavily on

NGOs to provide many services to assist victims.¹⁸ Wide range of NGOs across the country works on anti-human trafficking issues, providing services for rescue, repatriation, rehabilitation and reintegration of trafficked victims.

NGOs in India frequently work with the State governments, on a variety of projects designed to address the trafficking of girls and women. The projects involve advocacy for changes in policies/laws, awareness-raising among various strata including community and police, income generation support and activities for prevention as well as rehabilitation of survivors, provision of medical and other assistance and also the training of law enforcement officials.¹⁹ In addition, specialist NGOs work in coordination with the police on rescue operations with AHTUs. However documents and online information does not qualify that these activities are carried out with a focus on just the girls from Nepal, as vulnerable women and girls are targeted in general.

NGOs working in the areas bordering Nepal also work on interception of the girls at the border and subsequent return of the girls to Nepal. Similarly NGOs in major cities work on rescue operations and subsequent support to the girls (registration of FIRs, legal support, shelter, etc.)

A research report from 2009²⁰ interviewed some of the girl survivors who had been rescued from India and returned to Nepal. On the actual 'process' of return, they received positive information from some of the girls. Considering the overall situation the report indicated continued collaboration between various agencies. According to the report, NGOs working to combat trafficking in Nepal and India help the police and other agencies in the rescue of trafficked girls/women from brothels. The police raid the brothel after getting information on sexual exploitation or deceptions of girls and women from NGOs. NGOs and police then work in co-operation with each other in both countries. There is a general process followed for handing over the rescued trafficking victims. First, Indian police and NGOs rescue the victims and after making all official documents, they hand over the women to Nepal police. Nepal police also get support of NGOs working on combating trafficking. For immediate support of rescued trafficking victims, local administration also helps through provision of food and temporary accommodation. The concerned NGOs then take the rescued women to the rehabilitation centre for their settlement, where shelter and support is provided. Some case studies from this report are included at the end of this document.

¹⁸ In fact, the NGOs have taken the lead in requesting (and often providing) anti-trafficking training for state and federal police officials.

¹⁹ Preventing and Combating the Trafficking of Girls in India Using Legal Empowerment Strategies - A Rights Awareness and Legal Assistance Program in Four Districts of West Bengal (June 2010–March 2011), International Development Law Organization (IDLO) and Sanlaap, 2011.

²⁰ Trafficking Survivors In Nepal: An Exploratory Study of Trafficked Women's Experiences And Perceptions Of Their Reintegration, G.P. Chaulagai, University of Bergensis, 2009.

In another report,²¹ research done with repatriated girls and women highlighted that upon their return to Nepal, or their rescue in India, almost half of the women were sent to shelter homes. Some emphasized that it was like being sent to prison and talked about the 'jail' they stayed in, especially talking about the Indian shelters. They said that they stayed in Indian shelters for some months to a year where they were treated very badly. In Nepal they were sent to the shelters of Shakti Samuha, Maiti Nepal, and CWIN etc.

There were numerous reports that sex trafficking victims were rescued, most often in partnership between police and NGOs. There were increased reports of inter-state coordination among the anti-human trafficking units (AHTUs)²² primarily for rescues, which seems a good practice fit to be replicated in all the states of the country. Interestingly, some units are said to focus on only child trafficking,²³ and perhaps more exploration of this is needed in order to evaluate the effectiveness of these units in managing child trafficking.

Other lacunae pointed out in various studies include, non-registration of trafficking cases by the police, registration under incorrect sections and laws, insensitive behavior during the rescue, and raid operations, non-registration of the first information reports (FIRs) of missing persons, lack of awareness about the changes in the legislation or about new legislation, lack of provision for protection of victims witnesses and so on.

Although there are government funding schemes in place (mentioned previously), some NGOs have cited difficulty in receiving timely disbursements of national government funding for their shelters under these programmes²⁴, others have mentioned that the distribution of rehabilitation funds was very uneven across states. NGOs also reported delays in obtaining release certificates.

Both the government and various NGOs run different types of shelters for women and girls in distress including victims of trafficking. Conditions of the government shelter homes under the MWCD vary from state to state. Although some NGOs reported that foreign victims had the same access to care as domestic victims.²⁵ However, most reports mention that a majority of the shelters are grossly inadequate, whether in terms of funding, infrastructure, trained staff or even to look after the basic requirements of the victims in a humane and rights-based manner. Often reports cite concerns that

²¹ Looking Towards Tomorrow: A Study on the Reintegration of Trafficking Survivors : A partnership project between Asha Nepal, Shakti Samuha and Terre des hommes Foundation, p 27.

²² The government continued to implement its three-year nationwide anti-trafficking effort by disbursing funds to state governments to establish at least 107 new Anti-Human Trafficking Units in police departments during the reporting period, for a total of at least 194 AHTUs.

²³ 2012 Trafficking in Persons Report, United States Department of State, 2012, p.185.

²⁴ 2012 Trafficking in Persons Report, p.185.

²⁵ 2012 Trafficking in Persons Report, p.185.

shelters are overcrowded and unhygienic, offer poor food and provide limited - if any, services. There were also reports that some shelters did not permit victims to leave the shelter (purportedly for security reasons), which violates international principles on the protection of victims. In some cases, traffickers continued to re-traffic victims by approaching shelter managers and pretending to be family members to get the victims released to them –although it was indicated that this practice is declining. In addition, reports focusing on India also indicate that the women placed in shelter homes in the country, often experience physical, psychological and social problems during their stay.²⁶ Hence, they do not have the capacity or necessary inputs to understand the psycho-social needs and concerns of the victims. This adds to the woes of women in vulnerable situations and affects their overall recovery.

Among the services provided, NGOs are reported to often assist rescued victims in providing evidence to prosecute suspected traffickers. However, many victims declined to testify against traffickers due to the fear of retribution, especially against those who were related or were acquaintances. This is a particular dilemma in the case of Nepal to India trafficking as many reports²⁷ indicate that the traffickers from Nepal were often related to the victim. Hence collaboration on victim-witness protection is necessary on both sides of the border, for such victims who are rescued and repatriated back. Cross-border victims face a number of other issues not faced by victims of internal trafficking, e.g. reports also indicated some victims being punished for being undocumented migrants or for document fraud. Foreign trafficking victims were not offered special immigration benefits such as temporary or permanent residency status, as there is no law to provide temporary residence permit. Not all women return to Nepal as result of a rescue missions, therefore some women remain outside the direct influence of the NGO rescue missions.²⁸ Options are very limited for girls who do not return home and most remain in shelter homes for long durations.

In the same way, safe recovery and repatriation of the victims i.e. physically bringing them back to Nepal is a major challenge as there are no formal agreements or procedures between the two countries. At the most, based on the work conducted by United Nations Children’s Fund (UNICEF) between the governments of India and Bangladesh, Terre des hommes (TDH) Nepal, in particular, has developed repatriation protocols between Nepali NGOs (primarily Shakti Samuha) and Indian NGOs (Prerana, Sanlaap and Rescue Foundation, among others) in collaboration with the Gol’s Social Welfare Council. While this initiative has proven to be effective, the Nepali government

²⁶ Psychosocial Care For Women in Shelter Homes, UNODC and National Institute of Mental and Neuro Sciences (NIMHANS), 2011.

²⁷ For example, see, Trafficking In Persons, Especially In Women And Children In Nepal, National Report 2009-2010, p.18.

²⁸ Sexual trafficking, poverty, marginalization and citizenship in Nepal (draft paper), N.Laurie, M.Poudel, G.Richarson and J.G.Townsend, Newcastle University, 2010, p.11.

is yet to endorse such an effort.²⁹ In the absence of formal structures, the NGOs on both side of the border collaborate through ad hoc processes, e.g. as part of a donor funded programme. Most reports on the issue of trafficking of women and girls from Nepal to India, point out the lengthy and complex process of recovery. In one case mentioned in a paper, it took almost two years to repatriate fifteen minor girls rescued from India to bring back to Nepal, and only one girl's home was found safe for reintegration.

In general, reintegration is in itself a major challenge because of the social stigma attached to trafficked victims. To further complicate matters, in the absence of documents, the Government of Nepal has also, at times, refused to take back women rescued in India. Despite these numerous challenges, repatriation and reintegration interventions have not been reviewed or studied critically to analyse their impact.

According to the latest OSRT report, Nepal Ministry of Foreign Affairs (MoFA) has arranged rescue of trafficking victims from the foreign land by actively mobilizing its Embassies and Missions in some of the primary destination countries, including India. According to the report, all the rescue and repatriation carried out by GOs or NGOs in Nepal come through this Ministry. However, it is unclear whether the situation on the ground reflects this. Also, the Ministry has yet to institutionally develop recording and reporting system to provide overall situation of rescue status.

Even for the girls who are repatriated back, more research and follow-up is required to determine the situation of the returned girls and to develop effective support and care strategies. Two organizations have begun to develop alternative ways of supporting trafficking survivors that emphasize building self-esteem and fostering independent living, but no evaluation of this approach has been carried out.

The need for adequate sustainable livelihood opportunities in the source areas in order to prevent trafficking, as well as such opportunities for the survivors, in order to reduce the chances of re-trafficking, and to give them adequate support for rehabilitation, has been pointed out in reports.

Action against Trafficking and Sexual Exploitation of Children (ATSEC): ATSEC is the first network in South Asia to come up exclusively against trafficking. It is made up of several NGOs supported by various international agencies that fight human trafficking. The network works in five countries in the region, including India and Nepal. ATSEC India was formed in 2001, followed by various state chapters. ATSEC member NGOs conduct a number of activities, which also include rescue, and 'restoration' of victims to home countries in cases of cross-border trafficking. Other activities are awareness, sensitization and advocacy at different levels; training of prosecutors; trauma counseling of victims; maintenance of homes for victims; and liaison with media

²⁹ Trafficking And Forced Labour In Nepal: A Review Of Literature, B.Siapati, A.Limbu and M.Kadka, Centre for the Study of Labour and Mobility, 2011, p.9.

through different sensitization programmes to reduce stigma for survivors. ATSEC Bihar has also trained and oriented lawyers on the issue of child trafficking. It has established vigilance cells in 8 Bihar districts that lie across Indo-Nepal border to check trafficking. It also rescued 265 children and repatriated 125 children (through various partners).

Manav Seva Sansthan (MSS-SEVA), India: MSS-SEVA works in Uttar Pradesh which shared the border with Nepal. Along this stretch there are 7 legal entry points and numerous unmanned routes. A study by the National Human Rights Commission in 2003-04 revealed that Uttar Pradesh is the main state through which victims are sourced from across the Nepal border. MSS-SEVA has organized workshops in Sonauli at the Indo-Nepal Border to highlight the issue. Among its many strategies are the Seva Satarkta Prakosht, known also as the 'Life Guard Centres'. The centres are units from which volunteers identify and apprehend traffickers and counsel victims. Since instant action is required, close collaboration with the police is ensured, thus turning this into a NGO-Police collaboration of a unique kind. Corresponding units run by **Maiti Nepal** and the Nepal police keep vigil on the other side of the border. Once the team of Police - NGO is convinced that the victim is vulnerable to trafficking from Nepal to India, she is handed over to the Nepal NGO for safe care and return. The accompanying persons, if suspected to be involved in trafficking are brought to the notice of the Nepal Police. Besides handing over the victim to the NGO and handing over the suspected person to the Nepal police, the details of the victims and accompanying persons, including their names and address are recorded in a register meant for this purpose and these are also handed over to the respective official/centre across the border. At the time of the publication of the UNODC report³⁰, there were Life Guard Centres in 10 cross-border transit points along the Indo-Nepal border of U.P., Uttaranchal and Bihar. The centres had counseled over 72,000 cross border migrants and repatriated 1,434 women and girls with the help of the Government of Nepal. A corresponding initiative is the Community Based Vigilance Group that the NGO developed to prevent trafficking at source. This is aimed at tracking movements along the 100 unmanned routes covering five border districts. This began with a participatory learning and action approach and micro-planning exercises in 400 villages along the unmanned routes is employed. Rights intervention cells started by SEVA at Sunauli, Gorakhpur and Bahraich involving NGO workers & police officials. MSS SEVA is also a secretariat for Cross Border Anti Trafficking Network (CBATN) that engages NGOs across the border areas of UP, Bihar and West Bengal and corresponding borders of Nepal as partners in combating trafficking across these routes. CBATN once managed a helpline for assistance of victims and those in distress and also initiated "postcards" for migrants to report back their wellbeing in India. It is not clear whether these interventions were evaluated and to what extent these were successful.

³⁰ Compendium Of Best Practices By NGOs, UNODC and Government of India, 2008.

PRAYAS, India: As a member of anti-trafficking network in Delhi, Prayas, has made active contributions on various programmes and policies on AHT. It is also a proactive member of **South Asia Forum Against Human Trafficking (SAFAHT)**, a network organization from India, Pakistan, Nepal, Sri Lanka and Bangladesh, initiated and supported by **UNIFEM** and **ATSEC** in Delhi and is jointly addressing the issues along with member organizations on national and cross border trafficking. Prayas also undertakes preventive Action at transit points. It has set up Child Assistance Booths at the New Delhi, Patna and Samastipur Railway Stations under its Railway Children Project to save a large number of children who are trafficked through railways. These children most of them illiterate were lured by job opportunities and the prospects of a better life and belonged to remote villages of Indian states, as well as from Nepal and Bangladesh. Prayas also runs homes for the children.

STOP, New Delhi, India: STOP undertakes rescue operations as well as has facilities for care and rehabilitation of the girls, including shelter, counselling as well as legal aid. In the past STOP has worked with NGOs from Nepal to deal with cases of cross-border trafficking. It has often partnered with **Maiti Nepal** in case of girl victims from Nepal. STOP undertakes rescue operations of girls in brothels in partnership with other NGOs (e.g. **Rescue Foundation**) and police. There have been specific cases of minor girls from Nepal being rescued from Delhi in such coordinated operations. (However details of collaboration with NGOs from Nepal were not detailed in the report and more information will have to be gathered from the NGO directly.)

Bachpan Bachao Andolan (BBA), India: Focusing its attention on the entertainment industry, BBA initiated efforts in 2002 to end child labour in circuses. The organization had received a number of complaints by parents in Nepal who had been duped into sending their children across the border to work in circuses and had no idea of their children's whereabouts. In 2002, BBA undertook an undercover survey in circuses in India to find out more about the magnitude of the problem. The survey revealed that thousands of girls are being lured into India with the enticement of a small advance payment to parents and promises of greater income. The girls are brought via the Gorakhpur-Sonauli border into India. An advocacy campaign was subsequently launched in the source areas – significantly Hetauda, Makwanpur in Nepal as well as Bihar and West Bengal in India. In addition, large-scale awareness in the source areas on the problem led to a lot of complaints being registered by parents, with the BBA. BBA also began serious negotiations with the circus industry. After negotiations, the Indian Circus Federation (ICF) agreed to have the first conference in August 2003, to discuss and solve the problem of child trafficking for circus industry. This led to a declaration between ICF and BBA on the phasing out of the use of children in circuses. Subsequently, more than 80 children and young women were liberated from circuses either through voluntary releases or raids by BBA. The rescued girls were repatriated to

Nepal where other organizations took up the responsibility of their rehabilitation. (Details on the actual process of repatriation were not available online).

International Justice Mission (IJM): According to a document³¹ by IJM Kolkata, girls who were trafficked from Nepal to Kolkata had been rescued through various operations with the help of state police. 18 Nepali girls were rescued in 2008. After spending two years in an aftercare home in Kolkata where counseling and support was provided, IJM helped the girls to get repatriated to Nepal. Subsequently the girls were taken care of in aftercare homes in Nepal. No details about the process were available.

Grass Roots Organizations Engaged in Anti Human Trafficking Initiatives

In India, civil society works at different levels. There are state and national level players that engage in policy advocacy, technical capacity building and other initiatives. Also, there are scores of agencies that work at the grass roots engaging directly with the target groups and communities. In this section, information is provided about select NGOs that are implementing hard core anti human trafficking projects which could be in the fields of prevention, protection and prosecution. The information is gathered through different sources including phone interviews with the functionaries.

Centre DIRECT

The primary focus of Centre DIRECT is prevention of trafficking. They are also engage in advocacy and capacity building of various stakeholders. For prevention, Centre DIRECT works through mass mobilization and awareness generation among people in identified geographical areas, particularly those with extreme poverty, poor socio-economic and educational conditions (as they believe that these are the issues which force people to migrate to the cities in search of better opportunities of work and hence are prone to trafficking). Certain activities are also carried out to connect youth and women through Youth Group and SHGs respectively that helps them in their confidence building through peer support. Within these groups ‘Vigilance Committees’ have also being set up which act as watch dog and with the help of the registers and records keep an account of the people coming in and out of the village. If anyone is migrating, proper scrutiny is done where he is/she is going, for what period and with what purpose. Unnoticed cases are also checked by the Vigilance Committees. Capacity building of these groups through periodic trainings is another key activity of Centre DIRECT.

Advocacy is also a very important aspect of the work the organization is undertaking. They engage with government officials who are responsible for managing trafficking issues, law enforcement agencies including police personnel and other agencies like CWCs, DSWD etc. ‘Centre DIRECT’ tries to meet them, sensitize them and build their

³¹ ‘The Justice Briefing’, IJM UK, Summer 2012, p.1.

capacity by organizing workshops and trainings so that they put trafficking issues up in the priorities.

Duncan Hospital

Duncan Hospital is working on trafficking issues since 2011. Their primary geographic area of operation is four blocks of East Champaran in Bihar. They work exclusively on prevention of human trafficking through social mobilization and have a separate department that runs a project named “Chetna. Their main agenda are prevention (awareness and confidence building), mass mobilization, adult literacy program and economic strengthening by providing the local people the options of livelihood such as linking them with SHGs and other groups.

Currently Duncan Hospital has about 60 centers within these four blocks (43 Gram Panchayat) and in each center there are on an average 20 women getting training for about 4-6 months under the name “Badhte Qadam”. During the training these women along with one Community Mobilizer from the organization forms a VVC (Village Vigilance committee). These VVCs keep a track of movement in the village for migration. Though this organization is not directly involves in the rescue operation but helps in the tracking of the victim and thus coordinate with the other organizations working exclusively in rescue and rehabilitation. They also provide counseling to the victims and regularly follow up with them rescue. They intend to open a Migration Resource Centre (in each block) for better support to local community. They also engage with police, PRI, BDO and Media persons, sensitizing them on trafficking issues.

Lakshya

According to Lakshya, children from their target areas are trafficked for child labor; women and adolescent girls are trafficked for sex trade and youths and adolescent boys are trafficked for the kidney trade. Lakshya operates directly in the districts of Araria, Purniya, Gaya, Vaishali and Hajipur of Bihar state and in some other districts in coordination with other agencies. Laskhya works at three levels. At grass root it engages in awareness generation for human trafficking prevention adopting activities like street plays, documentary screening, mobilizing youth groups and sensitizing PRI. At districts level, advocacy is done with various government departments, media persons and other law enforcement agencies. They also undertake rescue operation at various transit location mainly Railway Station. They managed airing a radio program every Tuesday and Friday on government radio channel “*Vividh Bharati*”. The success of this radio programme is marked by the fact that numerous calls have been received seeking more information on the subject. These calls included that of a trafficked child who was scared of taking the name of the traders (the child was later rescued by Lakshya).

As a process, Lakshya informed that any child that is rescued from a potential trafficking situation is either sent to a shelter home or handed back to the family (with a compensation of INR 1500 to the family by the Labour department). The case is then followed up by the labour department and Lakshya.

Tatvasi Samaj Nyas (TSN)

TSN prefers to follow a holistic approach towards the rescue of the victim. They generally come to know about the victim being trafficked either through local community or through the network and then work in coordination with other agencies. They would inform the police about victim and then be part of the rescue team that also includes Lawyer and representative of labor department, from where the victim is managed as per the law. Coordination is maintained with the shelter home to ensure quality of services to the victim including family counseling TSN also works on prevention programmes like formation of Community Vigilance Committee. These CVCs are trained every two months so that their confidence level remained high and can feel the sense of belongingness and power. They particularly focus on vulnerable and risk prone areas like flood affected areas and where large scale migration takes place due to other reasons. Usual issues of coordination with lower level police officials and service providers are faced by the organization and they try to deal with it using local contacts and rapport.

Integrated Development Foundation (IDF)

IDF's main initiative on human trafficking is through Geneva Global funded India-Nepal Human Liberty Initiatives. Main focus of this project is on social mobilization, networking and prevention. The organization is involved in the prevention and primarily mobilizes the community, particularly adolescents and youth, promoting youth groups. Schools were their major target area, making children aware of trafficking issues, and their contributing in minimizing trafficking in their area, keeping track of migration within their respective villages. Street plays and short movies were used as a communication medium at schools. Major issue in their communities is parents sending their children to cities to earn money. As a result population vulnerable to trafficking are now connected to groups seeking and getting peer support. Other initiatives include monthly meeting with these groups (in every Gram Panchayat). IDF is currently building stronger relations with other stakeholders, NGOs and networks.

Mahila Development Council (MDC)

MDC has been successful in mass mobilization and prevention of trafficking engaging second line population in Red light Areas, working since 2007. The idea is to make the second line population aware and empowered so that they do not become the victim of sex trade and are not trafficked to other places. The organization has a strong network with the local population in the red light area. They also work at transit points (e.g.

railway station) keeping a vigil with gate keepers like local vendors. MDC has lost its faith in police due to several past experiences and now rely more on forming youth group in every red light area, who with support from local lawyers and MDC staff have become a force to prevent the trafficking. MDC currently has about 50 staff members most of which are people from the red light areas. MDC also organizes quarterly trainings on safer and trafficking free environment. Youths are encouraged to pursue higher education and MDC helps them in getting scholarships. As a result, children of these red light areas no more face exclusion or marginalization and are availing government services.

PART II—NEPAL

Country Scenario

In spite of impressive gains in human development, Nepal remains **one of the poorest countries in South Asia**. Nepal has a population of 31.0³² million and an annual population growth rate of 1.7%. Although Nepal's human development index rating has steadily improved over the past decade, progress has been fragile due to factors such as high population growth and the impact of political instability and internal conflict. Between 1980 and 2012 Nepal's human development index rose by 3.8% annually from 0.234 to 0.463, and the 2012 rating gave the country a rank of 157³³ out of 187 countries. At the same time, the HDI of South Asia as a region increased from 0.357 in 1980 to 0.558 in 2012, placing Nepal below the regional average.

In Nepal, the **rural poverty rate** remains higher than in urban areas³⁴. Many moved in search of better economic opportunities or for security reasons. The internal conflict in Nepal has predictably had an adverse impact on the socio-economic situation in the country. Though accurate numbers are not available, estimates at one point were as high as 100,000-200,000 **internally displaced persons (IDPs)** in Nepal.³⁵ At the end of 2011, the UN and international agencies believed that about 50,000³⁶ people were still displaced by the conflict and remained unable or unwilling to return to their homes. The

³² The State of World Population 2008, United Nations Population Fund (UNFPA), 2012, p. 113.

³³ Human Development Report - 2012, United Nations Development Programme (UNDP) (Accessed at: <http://hdrstats.undp.org/en/countries/profiles/NPL.html>)

³⁴ 'Poverty in Nepal, The World Bank (<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/EXTSAREGTOPPOVRED/0,,contentMDK:20574069~menuPK:493447~pagePK:34004173~piPK:34003707~theSitePK:493441,00.html>).

³⁵ 'Nepal: IDP return still a trickle despite ceasefire', Internal Displacement Monitoring Centre (Accessed at: [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/E545F30B5618B71D802570A7004BD25C?opendocument&count=10000&expand=2&link=31.2&count=10000#31.2](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/E545F30B5618B71D802570A7004BD25C?opendocument&count=10000&expand=2&link=31.2&count=10000#31.2)).

³⁶ 'Nepal: Around 50,000 People Remain Displaced', Internal Displacement Monitoring Centre, April 2012 (Accessed at: [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/1949E98C81942B55C12571FE004D8821?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/1949E98C81942B55C12571FE004D8821?OpenDocument))

scale of internal displacement remained limited as the open Indian border allowed an estimated 2 million people to cross into India.³⁷ The involuntary movement of people, away from traditional family structures, the frustration due to the internal conflict and the lack of economic opportunities, has adversely affected the overall security environment of the people, especially of the **vulnerable sections, including women and girls**.

Gender inequality is deeply rooted in the culture of Nepal with women being observed to occupy a markedly lower social status than men. This has led to the **feminization of poverty**, impacting unfavourably on women's access to services like health, education and employment. While progress has been made in girls' enrolment in education, significant measures are needed to address the economic empowerment of women. In addition, the family laws in Nepal reinforce the **patriarchal system** and put limits on women's control over economic resources. Nepal is one of the countries with the highest rates of **child marriage**, estimated at 41% of all marriages.³⁸

In the South Asia region, Nepal is a significant **source country of girls and women trafficked into India and other countries** for sex work and domestic labour. Female migrants and female-headed households³⁹ have been particularly vulnerable to exploitation through trafficking and similar scenarios. However, women themselves have increasingly come forward with organized efforts and campaigns, and the issue of their rights has emerged as a strong political as well as human rights agenda at the national level.

There has been a rapid rise in the concentrated **HIV/AIDS** epidemic in Nepal, with female sex workers, migrant and mobile populations, being some of the most at-risk populations.⁴⁰ According to UNAIDS, the number of people living with HIV in Nepal is 70,000.⁴¹ Since 1997, HIV infection has increased alarmingly among such groups.⁴² Nepal's vulnerability to the disease is exacerbated due to factors like poverty, high mobility and the low status of women. The **open and porous borders with India**, and the trafficking of women for sex work, when juxtaposed with the high HIV/AIDS prevalence among sex workers in India, increase the vulnerability for the country.

³⁷ This estimate includes both economic migrants and conflict-IDPs.

³⁸ By Choice, Not By Chance – Family Planning, Human Rights and Development, State of World Population Report, November 2012, UNFPA, p. 66.

(Accessed at: http://www.unfpa.org/webdav/site/global/shared/swp/2012/EN_SWOP2012_Report.pdf)

³⁹ With men having migrated in search of economic opportunities, there have been increasing numbers of female-headed households.

⁴⁰ It is important to mention that these groups are classified as 'most-at-risk', largely due to their marginalized status in the society, due to little access to information and services related to HIV/AIDS.

⁴¹ The low and high estimate range for the number of people living with HIV in Nepal is from 50,000 – 99,000. 2008 Report on the Global AIDS Epidemic, UNAIDS, 2008, p.219 (Accessed at: http://data.unaids.org/pub/GlobalReport/2008/jc1510_2008_global_report_pp211_234_en.pdf).

⁴² 'Nepal', UNAIDS website (Accessed at: http://www.unaids.org/en/Regions_Countries/Countries/nepal.asp).

According to the 2012 estimates by Transparency International, out of a total of 176 countries, Nepal was placed at 129 in the **corruption** perceptions index.⁴³ According to the Worldwide Governance Indicators published by the World Bank, the governance indicators for South Asia for the category ‘control of corruption’⁴⁴ placed Nepal in the 25-50 percentile.

According to (the last available) information from the International Centre for Prison Studies (ICPS), the number of **prisons** in Nepal in 2012 was 74⁴⁵ (74 prisons and 1 correction home for juveniles). The capacity of the prisons in Nepal was given as 6,700 with an occupancy level of 209%. Most of the prison inmates are male, with 7.2% female prisoners in the establishments.

Crime in Nepal: It is estimated that 9,000–10,000 crimes are committed in Nepal every year. The bulk of these are made up of murder, homicide and other life-related crimes, suicide and traffic related crimes. Over the past few years, there has been a steady increase in the number of crimes committed in Nepal. As compared with the preceding reporting period, data for the period 2005-2006, indicated an increase in the crimes against women and children (up 16%), social crimes (up 14%), traffic related crimes (up 12%) and suicides (up 2%). On the other hand, there was a slight decrease in the crimes related to life (murder, homicide, etc.) (down 7%), and organized and financial crimes (down 4%).⁴⁶ During the past few years there has been an **increase in various forms of crimes and violence against children and women** in Nepal. These include death and other physical harm, trafficking for the purposes of sexual exploitation and other forms of forced labour, abductions and torture.

Child sex tourism is also an emerging issue in Nepal. It is estimated that there are about 5,000 street children in Nepal and among them at least 5% have been sexually abused by foreign paedophiles. It has been discovered that some pedophiles are visiting and often living permanently in Nepal. For cover-up some of them have opened ‘orphanages’ and ‘street shelter’ for poor and neglected children.

Background, Trends and Patterns

Trafficking in women and girls remains a serious problem in Nepal. Nepal is a primary source country in South Asia, with the main destination being India. However,

⁴³ ‘Corruption Perception Index 2012’, Transparency International (Accessed at: <http://www.transparency.org/cpi2012/results>).

⁴⁴ The country percentile rank (0-100) indicates rank of country among all countries in the world, with 0 corresponding to the lowest rank and 100 to the highest rank. See, ‘One indicator for selected countries’, Worldwide Governance Indicators, 1996-2006, Governance Matters 2007, The World Bank (Accessed at: http://info.worldbank.org/governance/wgi2007/mc_countries.asp).

⁴⁵ ‘Prison brief for Nepal’, International Centre for Prison Studies (ICPS), Kings College London (Accessed at: <http://www.prisonstudies.org/info/worldbrief/wpbcountry.php?country=106>).

⁴⁶ Nepal police website (Accessed at: <http://www.nepalpolice.gov.np/index.php>). For latest information the Nepal Police needs to be contacted.

increasingly, it is serving also as a source country for trafficking to other countries in South Asia and the Middle East. Within the country, Kathmandu and other district centres are used as destinations for trafficking. Given the large movements of population across the open borders between India and Nepal, traffickers operate within the general flow of migrations, thus making human trafficking a difficult crime to detect. Although for this report focuses primarily on women and girls who continue to be the main victims of trafficking, it needs to be kept in mind that there are also indications of boys and men also being trafficked to work forcibly in factories, households and agriculture, and even for the purpose of organ transplants.

According to estimates shared by Nepal with the UN,⁴⁷ trafficking for sexual exploitation was the most frequent form of trafficking, although trafficking for forced labour or other forms of trafficking were also relatively frequent, and cases of trafficking for organ removal were also reported by the authorities.

Estimated statistics according to various sources: Due to the clandestine nature of the crime, there is inevitably a lack of reliable data on the issue. This especially so with regard to the actual numbers of women involved in sex work or trafficked across borders. There has also been no scientific, household based survey or similar exercise conducted in the country to examine the magnitude of trafficking in persons in Nepal.

According to some estimates between 100,000 to 200,000⁴⁸ Nepalese women and girls are currently being held against their will in Indian brothels. Of these, approximately 25% are under the age of 18 years. According to UNFPA, an estimated 12,000⁴⁹ Nepali women and children are trafficked every year for sexual exploitation to Indian brothels, and an unspecified number are victims of internal trafficking for the purpose of sexual exploitation. In a yet another estimate, cited in a survey organized by the Central Social Welfare Board of Nepal, it is estimated that about 12,000 children are trafficked every year out of Nepal.⁵⁰

The Nepal Human Rights Commission and Office of National Rapporteur on Trafficking in Nepal have mainly highlighted estimates based on the Nepal Police records and from the estimates of non-governmental organizations (NGOs). According to the latest report⁵¹, during 2009-10, a total of 1,606 women and children were intercepted from different border points; **112 women were repatriated from India and the Gulf countries; 365 women and children were provided rehabilitation services; 207 women**

⁴⁷ Global Report on Trafficking in Persons, UNODC, 2012, p.71.

⁴⁸ Combating Trafficking of Women and Children in South Asia: Regional Synthesis paper for Bangladesh, India and Nepal, The Asian Development Bank, April 2003, p. 35.

⁴⁹ 2006 State of the World Population Report, United Nations Population Fund (UNFPA), 2006, p. 50.

⁵⁰ 'Child Labour: Nepal', Global March Against Child Labour (Accessed at: <http://www.globalmarch.org/resource/centre/world/nepal.pdf>).

⁵¹ November 2011

and children were rescued from sexual and labor exploitation within the country; and 2,917 applications were received for the missing women and children in Nepal. Roughly 5,550 women and children were trafficked or attempts were made to traffick them in 2009-10. Other estimates of women and girls trafficked to India annually from Nepal, based on previous ONRT reports, range from between 5,000 to 15,000.⁵²

The data on the number of people brought into contact with the criminal justice system, in relation to human trafficking is primarily available with the Police⁵³, the Attorney General's Office (AGO) and the ONRT. The data is not available in consolidated form. The most comprehensive information is according to the cases registered. According to the Police, 110 persons were arrested in 2004, 109 in 2005 and 135 in 2006. The numbers of cases registered per year were as follows: 2002-3: 55, 2003-4: 56, 2004-5: 72, 2005-6: 97 and 2006-7: 112.⁵⁴ Detailed information on the number of persons suspected, investigated, prosecuted and convicted was not available with any of the government departments which were contacted. The information that was available, dealt with the number of cases registered in the various types of courts in Nepal. A five-year average of the conviction rate of HT cases in the district courts was about 61%, the average for appellate courts was 40%, and for the Supreme Court was 50%. Information on the types of exploitation was not officially available, but it was informally indicated that most were cases of commercial sexual exploitation.

According to the **UN Global Report on Trafficking in Persons**, there were 29⁵⁵ cases of trafficking in persons in 2002-3, 11 in 2004-5 and 9 in 2005-6. Convictions of cases of trafficking in the Supreme Court numbered 11 in 2002-3, 17 in 2003-4, 16 in 2004-5 and 4 in 2005-6. Another estimate from the UN Report for 2012 indicates that almost 90% of the detected victims of trafficking in the country are girls and women (see figure). Nepal also reported the proportion of victims who were children was about 50 %.

An assessment of trafficking in girls conducted in Nepal found that 38% of rescued victims suffered from HIV/AIDS, as well as sexually transmitted infections and tuberculosis.⁵⁶ Girls trafficked to India tend to be returning to Nepal when they are found to be HIV positive. Another report notes that in the absence of other livelihood opportunities, such victims are likely to continue the sex trade upon return to Nepal.⁵⁷ A

⁵² 2005 National Report: Trafficking in Person Especially on Women and Children in Nepal, Office of the National Rapporteur on Trafficking in Women and Children (ONRT), National Human Rights Commission (NHRC), Lalitpur, Nepal, September 2006, p. xiv-xv.

⁵³ Women and Children Service Centre.

⁵⁴ This data was collected directly from the police nodal officer during field trips in 2008.

⁵⁵ Global Report on Trafficking in Persons, UNODC, February 2009, p.201.

⁵⁶ Trafficking in Persons Report 2006, United States Department of State, July 2006, p. 11. These figures are reported in a number of documents. The original research piece was published in The Journal of The American Medical Association.

⁵⁷ Nepal Country Report (January 2003 – December 2005): Status of the 2005 National Response to the UNGASS Declaration of Commitment on HIV/AIDS, The Government of Nepal, Ministry of Health, National Centre for AIDS and STD Control (NCASC), 2006, p. 9.

more recent report⁵⁸ posited that, repatriated Nepalese trafficked girls (who were trafficked for sexual exploitation), had a high prevalence of HIV infection, with increased risk among those trafficked prior to age 15 years. The findings also pointed towards the need for greater attention to reducing and intervening in sex trafficking in South Asia, particularly among the young.

Economic and social conditions such as landlessness (especially amongst women), un/under-employment, poverty, gender discrimination and religious and cultural sanctions against prostitution are among the **push factors for trafficking** from Nepal.

In parts of Asia, various factors are also fuelling the demand for potential brides. Villagers in India also approach brokers to procure Nepali women and girls as brides. The Government of Nepal has identified 26 districts (see map) in Nepal as trafficking-prone areas from which women and girls have disappeared.⁵⁹ These districts are: Nuwakot, Dhading, Sindhupalchok, Kailali, Kaverpalanchok, Makawanpur, Gorkha, Banke, Sindhuli, Udayapur, Rasuwa, Nawalparasi, Jhapa, Ramechhap, Sarlahi, Mahottari, Dhanusa, Chitawan, Lalitpur, Kaski, Morang, Sunsari, Rupandehi, Parsa, Kathmandu, and Dang.



In addition to this, the sex-worker population tends to be comprised disproportionately of women from lower castes and ethnic minorities. The reality of political and military conflict inevitably and dramatically affects those at the bottom of the social and economic spectrum. On top of this, trafficking is also driven by traditional practices. For example, the experience of exploitation among the Badi caste has tended to drive women and girls to move out in search of better conditions and thus become vulnerable to trafficking. Similarly, the selling of young daughters as 'kamlaris' (young female

⁵⁸ J.G. Silverman, M.R. Decker, et al, 'HIV prevalence and predictors of infection in sex-trafficked Nepalese girls and women', in *The Journal of the American Medical Association (JAMA)*, 1 August 2007, Vol. 298: No. 5 (Accessed at: <http://jama.ama-assn.org/cgi/content/short/298/5/536>).

⁵⁹ 2006-7 National Report: Trafficking in Person Especially on Women and Children in Nepal, Office of the National Rapporteur on Trafficking in Women and Children (ONRT), National Human Rights Commission (NHRC), Lalitpur, Nepal, June 2008, p. 18.

indentured labourers) is widespread in the Tharu community of Dang, Kailali, Kanchanpur, Banke and Bardiya districts of Western Nepal.⁶⁰

The internal security situation in Nepal also caused deterioration in the trafficking situation.⁶¹ In many cases, women and children who had been internally displaced, left the conflict-afflicted zones to find security as well as employment, and subsequently were trapped in trafficking net.⁶² NGOs and other human rights bodies have also been hampered in their efforts to combat trafficking due to the adverse situation arising out of the internal security situation in the country. However, with the improvement in the political environment and movement towards political stability, things have improved and it is expected that there will be an improvement in the situation.

When examining the changing trends it needs to be kept in mind that with the exception of major cities, the destination sites in India are as yet not fully mapped, because girls and women are trafficked across the India-Nepal border at informal border crossings rather than customs checkpoints. Numbers collected at customs checkpoints are unreliable; community surveillance and recording of missing persons are inadequate in mountainous Nepal.

⁶⁰ 'Selling Daughters Into Bondage May End', Suman Pradhan, Inter Press Service News Agency, 2006. (<http://ipsnews.net/news.asp?idnews=34755>).

⁶¹ Available data on interception by Maiti Nepal during 1997-2000 showed that there had been an increase in cross-border trafficking to India. From, 2005 National Report: Trafficking in Person Especially on Women and Children in Nepal, Office of the National Rapporteur on Trafficking in Women and Children (ONRT), National Human Rights Commission (NHRC), Lalitpur, Nepal, September 2006, p. 12.

⁶² G. Ekberg and M.D. Manandhar, Review of the Office of the National Rapporteur at the National Human Rights Commission, Kathmandu, Nepal, August 2005.

Summary of Stakeholder Roles and Responsibilities

Stakeholder Group	Mandate	Existing Capacity
Government Agencies		
Ministry of Women, Children and Social Welfare	Focal point for the purposes of coordinating, supervising and monitoring anti-trafficking programs. Also responsible for implementing anti-trafficking initiatives	Presence at district level through Women and Child Officer and District Child Rights Officer Lack technical capacity and resources for effective implementation of their responsibilities
Women and Child Service Centre	A unit of Police, responsible for investigating crimes against women and children, in close cooperation with various government agencies, nongovernment organizations (NGOs), and civil society	Only 27 WCSCs, mostly in Kathmandu Valley and in border districts, where the focus is on trafficking. Face lack of recognition of their status as an independent department within the police, other stakeholders and community No separate allocation of a budget and human resources and hence lack technical and financial capacity to implement their responsibilities No coordination with other stakeholders
National and District Welfare Board		
Statutory Bodies		
National Human Rights Commission		
National Women Commission		
Office of Special Rapporteur on Trafficking		

Stakeholder Group	Mandate	Existing Capacity
Non-Government Agencies		
Civil Society	Engage with survivors of human trafficking at all stages to safeguard their interest, ensure their access to government services and support government agencies in implementing their responsibilities Run shelter home and coordinate with Indian NGOs for repatriation	Active at national and district level. Small scale NGOs only operating at district level or below lack necessary technical capacity and struggle for resources In many cases governments view them as opponents and not supporters There is mutual lack of trust between government and civil society on human trafficking issues
Funding Agencies	Provide financial and technical support to government and civil society for better implementation of interventions Facilitate cross learning across countries, thematic groups Develop technical resources	Understand the issue of trafficking in context of Nepal Operate under self-defined framework Many a times act as a coordinating agency between government and civil society Brings in financial resources

Government Stakeholders

Ministry of Women Children and Social Welfare (MoWCSW)

The ministry has been identified as the focal point for the purposes of coordinating, supervising and monitoring anti-trafficking programs. This ministry is also responsible for implementation of various programs on anti-trafficking. In addition to acknowledging before the international fraternity for the growing menace and the inability to deal with the problem, the Nepal Government has also taken some positive action.

In the year 1980, in its sixth plan, a *National Women Development Policy* was included. In the next plan, trafficking received further attention with the enactment of the *Human Trafficking (Control) Act 2043* in 1986. During the eighth plan period, the GoN ratified UN Convention on Elimination of All Forms of Violence against Women (CEDAW) and the Ministry of Women and Social Welfare was established in 1995. The Ministry was renamed as the Ministry of Women, Children and Social Welfare in 2000.

In the next plan, the government made further improvements by amending the Country Code and changing the laws relating to right to property, abortion and marriage. In 2002, the National Commission for Women was set up.

The Three Year Interim Plan (2006/07-2009/10) adopted the following policies for gender mainstreaming, women's empowerment and gender equality (NPC, 2007):

- Reform the legal, policy and institutional arrangements to grant the 33% women in the state apparatus considering the caste/ethnic composition of the country;
- Remove all discriminatory laws against women in line with the state's international commitments;
- Adopt gender management system to integrate gender related policies and programs;
- Increase access to and control over natural resources to women;
- Provide autonomous status to NWC and strengthen it;
- Establish and strengthen rehabilitation centers for conflict affected people, displaced citizens, victims of violence, single women and disabled in order to protect women and provide social security;
- Remove all social and traditional gender stereotyping and
- Run skill oriented training to improve women's economic condition.

In addition to the above, the Government has also formulated *National Plans of Action for Children*⁶³, against trafficking in children and women and Labor exploitation⁶⁴, for gender equality and women's empowerment and a plan for the implementation of the CEDAW. The *National Plan of Action against Trafficking in Children and their Commercial Sexual Exploitation* looks at the following broad areas:

- Policy, research, and institutional development;
- Legislation and enforcement;
- Awareness raising, advocacy, networking, and social mobilization;
- Health and education;
- Income and employment generation;
- Rescue and reintegration;
- Trans-border, regional and international issues and
- Monitoring and evaluation.

The NPA was reviewed in 2001⁶⁵ and it has not been reviewed since then. The NPA for trafficking makes the provision for the formation of National Task Force, District level Task Forces and Municipality Task Force under the direct supervision of Ministry of

⁶³ Period of operation 2004/5 to 2014/15

⁶⁴ In 1998, revised in 2001 as per the NHRC. However, the Global Monitoring report on status of action against commercial sexual exploitation of children, ECPAT mentions it was reviewed in 2003

⁶⁵ *ibid*

Women and Children to combat trafficking from the grass-root level to the national level.

The National task force comprises of 16 members representing Ministries of Foreign Affairs; Home; Labor and Transport Management; Health; Education and Sports; Law, Justice and Parliamentary Management including Nepal Police, NGOs, ILO, UNICEF/Nepal and Women Development Section of MoWCSW. This is the primary body at the National level for anti-trafficking initiatives in the country.

In a similar pattern, the district task forces are also set up which are headed by the District Development Committee. The Chief-District Officer is the Vice-president of the committee. The Women and Development Officer (WDO) is the member secretary of the DTC. Other members of the DTF include representatives from different district level government line agencies including representatives from District Government Advocate, Chief/Mayor of VDC/Municipality of the district headquarter, District Chamber of Commerce and Industry, Women's Association/Organization, Principle of Girls High School, NGOs and TU Campus Chief in the district.

The Municipality task force is a 13 member committee headed by the Chairperson or the Mayor.

The Ministry of Women, children and social Welfare has also created the Central Child Welfare Board and District Child Welfare Boards which have the overall responsibility to ensure realization of the rights of children, look after children's issues and work towards promotion and protection of the children's rights. It is expected to work in complete co-ordination with the Government bodies as well as the civil society. The District level board performs at the districts.

The Ministry has also set up an autonomous body, Social Welfare Council. The following are listed as the mandate of the social welfare board:

- Provide approval to the INGOs to implement anti-trafficking programs;
- Play as a bridging organization between the GoN and I/NGOs to carry out anti-trafficking programs effectively;
- Collect information and data about trafficking situation and maintain records at the national level;
- Carry out research related to trafficking in persons;
- Seek national and international financial support for anti-trafficking programs;
- Provide approval of visa to foreign citizens who want to work in Nepal in relation to anti-trafficking programs;
- Provide approval of custom's rebate of goods brought by the organizations involved against trafficking.

The National Human Rights Commission created under the Human Right Commission Act, 1997 is the key institution monitoring the implementation of human rights instruments at a domestic level in Nepal. The Commission is active in areas relating to combating trafficking and is one of the key bodies in monitoring trafficking. Besides publishing data and reports, the Commission also is empowered to investigate into cases relating to human rights violations. The office of the National Rapporteur on trafficking (ONRT) is located at the NHRC. ONRT-NHRC is an independent body to monitor the trafficking situation.

Women and Child Service Centers

The central Women and Child Service Center (WCSC) was established in 1996 at police headquarters and a district WCSC was established in Kathmandu with the main task of investigating crimes against women and children, in close cooperation with various government agencies, nongovernment organizations (NGOs), and civil society. The central WCSC is under the direct command of the crime investigation department of the Nepal Police. Its objective is to create a conducive environment in which women and child victims of crimes feel safe in filing complaints against offenders. It formulates policy and programs for all service centers. Prior to the establishment of WCSCs, the victims of such crimes were reluctant to lodge their complaints against offenders, in particular to male investigating officers, because of privacy and sensitivity issues and the risk of further verbal and/or physical attacks. This situation highlighted the need for a special investigative team composed of female police officers.

To date, there are 27 WCSCs, mostly in Kathmandu Valley and in border districts, where the focus is on trafficking. Major issues faced by the existing central and district WCSCs are the lack of (i) recognition of their status as an independent department within the police; (ii) separate allocation of a budget and human resources; (iii) systematic staff training to help WCSCs assist women and child victims of highly sensitive crimes; (iv) systematic, institutionalized coordination with NGOs, communities, and civil society, and of a clear understanding by all stakeholders of the different roles and responsibilities of police and civil society; and (v) awareness by the public at large of their existence and role. The project is intended to address these issues and establish new WCSCs.

International and Non-Governmental Agencies (I/NGOs)

General Information

The civil society organizations and networks are very active in Nepal in the field of anti-human trafficking. The Government runs shelter homes in coordination with some of the larger NGOs. There are a number of informal mechanisms by which various agencies collaborate. During a field trip for data collection in 2008 (for another study) where a number of NGOs were contacted, most agencies agreed that 99% of the victims were

from Nepal and sexual exploitation was faced by most of the trafficked victims. Consolidated information on the number of victims housed in the various shelters in Nepal was not available with the ministry, although some NGOs shared information on the victims sheltered by them. In the latter case, there was not much clarity on the length of stay of the victims, repeat victims, etc.

In the absence of consolidated information in reports, it is difficult to estimate the total annual amount spent in combating trafficking in Nepal. Similarly, several programmes benefit survivors who have been repatriated from India as well as from other countries, and also within Nepal. Details of the programmes which target specifically the girls repatriated from India, are possible only through contacting the individual NGOs.

According to OSRT, Many organizations provided technical assistance based on international standards, such as, policy advocacy, campaign, safe migration messages, and awareness among the key stakeholders, including the line agencies from the central to the district level through talk programmes, interactions, workshops and trainings. This has contributed to increase in commitment of government agencies to assess the magnitude of unsafe migration, trafficking and vulnerability of exploitation in the process of migration. During the latest report from Nepal, only 10 out of 30 organizations shared information with OSRT on the activities, so the information is partial even with government sources. In 2009-10, 365⁶⁶ girls, boys and women were provided rehabilitation services by various NGOs. It is interesting to note that although the OSRT report gives a consolidated number garnered through data from various NGOs on the number of victims provided protection from the trafficking process, the specific data boxes under 'rescue' and 'repatriation' are blank, indicating a lack of break-up of information in this area.⁶⁷

The OSRT report also indicated that a perusal of the media reporting of news, through browsing 215-news in the nine leading national dailies during the study period, showed that only about 8% of the news was related to trafficking in persons.⁶⁸

Anti-trafficking International Agencies Coordination Group (IACG): IACG has members from international organizations, UN agencies, bilateral donors and I/NGOs. It acts as the mechanism for coordination and communication on trafficking-related matters. It meets on a quarterly basis to provide updates on ongoing efforts, avoid duplication and make proper use of resources in combating trafficking. It is indicated that the issue of repatriation of Nepali

⁶⁶ Trafficking In Persons, Especially In Women And Children In Nepal, National Report 2009-2010, p.10.

⁶⁷ See Table 5.2 on p.78 of the OSRT 2012 report.

⁶⁸ More than half of the news (52%) is related to violence against women, followed by foreign labor migration (23%), violence against children (17%) and Trafficking in Persons (8%).

children from India has received attention in each of the meetings and discussions were also made in the context of current repatriation practice.⁶⁹

Alliance Against Trafficking in Women and Children in Nepal (AATWIN):⁷⁰ Although not directly involved in rescue or repatriation, AATWIN, formed in 1997, is a network⁷¹ of a number of AHT NGOs in Nepal, which is involved in policy and awareness raising on trafficking. AATWIN has carried out massive advocacy campaigns for conceptual clarity from local to international level through different programmes, as well as lobbied and created pressure for ratification of relevant policies, protocols and laws, e.g. for the ratification of the SAARC Convention in relation to trafficking from the perspective of human rights. It is also involved in conceptual clarity on human trafficking associated issues in various forums. In addition AATWIN has provided inputs to a number of relevant reports including the reports by the OSRT.

Maiti Nepal:⁷² Documents indicate that Maiti Nepal is one of the primary recipient organization of rescued trafficked persons. Following a large input of rescued girls in the late 1990s, the input of rescued girls (from brothels) has averaged 15-20 per year.⁷³ Maiti Nepal provides a gamut of services to women and girls who are vulnerable to trafficking, as well as to trafficking victims and survivors. Maiti-Nepal website indicates a number of activities under advocacy and awareness-raising under the 'prevention' aspect of trafficking, and in 2009-10, more than 18,000 persons were made aware about human trafficking, safe migration and gender issues. As part of its prevention strategy, Maiti Nepal also reaches out to the community, particularly adolescent girls, student, teachers, and community leaders. Maiti also provided protection to trafficking victims and survivors. During the period 2009-10, under law and policy interventions, more than 40 organizations, including district line agencies, were made aware on legal issues of trafficking and safe migration. In addition legal support was provided to victims through FIR registration, assistions for investigation and court proceedings. Maiti Nepal has deployed surveillance groups in eight border points between India and Nepal with a total 1,322 girls under 18 intercepted in 2009-10.

⁶⁹ From Wikileaks

⁷⁰ Information from AATWIN website (<http://www.aatwin.org.np>) and OSRT reports.

⁷¹ AATWIN member organisations are: Women Acting Together for change (Watch), Rural Reconstruction Nepal (RRN), Centre for Victims of Torture (CVICT), Informal Sector Service Centre (INSEC), Himalayan Human Rights Monitors (Himrights), Child Women in Social Service and Human Rights (CWISH), Navajyoti Women Training Centre, Women Development Self Employment Training Centre (WDSETC), Women Welfare Society (WWS), Asian Women Human Rights Council (AWHRC), Mahila Atma Nirvarta Kendra (MANK), Women Rehabilitation Centre (WOREC), Shakti Samuha, Child Workers in Nepal Concerned Centre (CWIN), Women Skill Creation Centre (WOSCC), Gramin Mahila Sirjansheel Pariwar (GMSP), TeKa Samuha Nepal, Jagaran Nepal, Makawanpur Mahila Samuha, Aawaj, Nari Utthan Kendra, Child Protection Centre – Bara, Women Progress Centre – Kanchanpur, Woman Awareness Forum for Social Change (WAFS), Education training and Service for Community Nepal (ETSC-N), and Child Society Nepal.

⁷² Information gathered from the latest OSRT report; Maiti Nepal website (<http://www.maitinepal.org>); Trafficking Survivors In Nepal: An Exploratory Study of Trafficked Women's Experiences And Perceptions Of Their Reintegration, G.P.Chaulagai, University of Bergensis, 2009; Compendium Of Best Practices By NGOs, UNODC and Government of India, 2008; and, Global Eye on Human Trafficking, IOM Bulletin.

⁷³ Frederick, J. and The Asia Foundation. (2005).

Rescue and Repatriation: Maiti Nepal also intervenes at the rescue and rehabilitation levels and works with various Indian agencies including Police and NGOs to improve rescue and repatriation operations and create more effective ways of getting children and women to return home. Maiti Nepal is mentioned in various reports as a partner organization in Nepal of various Indian NGOs and mentioned by various NGOs in India such as Manav Seva Sansthan, Bhoomika Vihar and STOP, in relation to border vigilance committees and the cross-border partner for rescue and repatriation, as well as providing rehabilitation services to survivors. Maiti has a number of transit and shelter homes aimed at children and women vulnerable to and released from, various exploitative situations. In 2009-10 Maiti Nepal rescued 17 girls and 46 women from different brothels in India and brought them back to Nepal.⁷⁴ Maiti Nepal provides both temporary shelter as well as long-term rehabilitation. Under both, food, shelter, health treatment, skill development and income generating programmes and seed money to help the victims start up small businesses, psychosocial counselling and legal counselling and aid, are provided. In 2009- rehabilitation services were provided to 106 girls and 149 women and reintegration services were provided to 120 girls and 62 women.

One report quoted a representative of Maiti Nepal, indicating that that they have many successful cases of reintegration but have **some failures** too. In some cases, reintegration of survivors failed due to lack of family and community support. Examples were given of the family kicking the girl out of home due to social stigma and also instances of community hostility including a case of stone throwing on the victims as well as Maiti Nepal representative who went to support the victims. It was mentioned that in some cases, families maintain good relations with the survivors till they have money and once the money is over they are ill-treated. Examples of re-trafficking were also mentioned when the survivors could not bear the stigma and ill-treatment by family and community and went back to the places where they came from (it was not mentioned whether these were cases of cross-border rehabilitation).

Women Rehabilitation Centre (WOREC):⁷⁵ The OSRT 2009-10 report indicates that WOREC, along with other NGOs, had rescued and repatriated 3 women trafficking survivors from the Gulf. No specific mention was made of repatriation of victims from India. WOREC programmes also include awareness-raising on trafficking and mobilizing local groups to combat trafficking through workshops/trainings. Awareness is also aimed at sensitizing government and other stakeholders about issues of trafficking from a human rights perspective, and for the development and implementation of policies and programmes to prevent trafficking as well as support trafficked persons. In addition, WOREC also runs a transit home/safe house to facilitate the recovery and

⁷⁴ In addition, 40 women were also rescued from the Gulf countries by Maiti Nepal.

⁷⁵ Information from OSRT report, Chaulagai research study; and, WOREC website (<http://www.worecnepal.org>).

support of trafficked persons, and undertakes cross-border advocacy and networking with NGOs and government departments.

Rehabilitation and reintegration: WOREC provides food, shelter, health treatment, skill development and income generating programme, psychosocial counselling, and legal aid such as for FIR registration. It provides referral services to other NGOs such as Maiti Nepal, CWIN, and also about 30 girls and women were referred to WOREC by other organisations. Various reports have mentioned WOREC's work on reintegration of survivors through empowerment programmes. In 2009-10 WOREC reintegrated 223 with the family and 48 with the community, while 395 were provided skill training for businesses. In total, the number of trafficking survivors provided reintegration services were 124 girls and 666 women.

Gramin Mahila Srijanshil Pariwar (GMSP)⁷⁶: GMSP is a village-based women's anti-trafficking movement in Nepal and is one of the NGOs involved with rescue and repatriation of victims. GMSP was formed in 1992 when four village girls being trafficked to India were intercepted at the Nepal-India border. The NGO provides rehabilitation services to rescued victims such as shelter, food, skill development, counselling, etc. In 2009-10 there were no victims repatriated from India, although the OSRT report mentioned 14 trafficking survivors being repatriated from the Gulf region. In addition, GMSP intercepted girls and women from Sindhupalchowk, Bhaktapur and Kathmandu, as well as from border areas of India, in total during 2009-10, 12 girls and 11 women were intercepted. In addition, 20 girls and 18 women were rescued (although it is not indicated whether all the rescues were within Nepal). GMSP also acts as a referral agency as well as provides legal help with issues such as FIR registrations and help with investigations. **Rehabilitation and reintegration** also form a major part of GMSP's work at the home/village level. GMSP challenges the stigma faced by returned survivors and helps them rebuild their lives. GMSP's preventive activities include awareness-raising at village level and village vigilance groups against trafficking.

Shakti Samuha:⁷⁷ Shakti Samuha, established in 1996, is the first trafficking survivor driven organization in Nepal. For the purpose of this research, the formation process of Shakti Samuha is interesting as it was set up by girls from Nepal who were rescued from Indian brothels. The 148 women rescued at that time through various police raids were then locked away in remand homes in India, where conditions were stipulated to be the same as prisons. The Nepalese government was also reluctant to bring the women back to Nepal, claiming they would bring HIV into the country. In the absence of government support, several NGOs took the lead in returning and rehabilitating the girls. According

⁷⁶ Information from OSRT report; and, Free The Slaves page on GMSP (<https://www.freetheslaves.net/SSLPage.aspx?pid=290>).

⁷⁷ Information from the Shakti Samuha website (<http://www.shaktisamuha.org.np>); OSRT report; TDH-Nepal website; and, 'The Protection and Quality of Care – Anti-trafficking Action (PAQCA)', Interim programme report by TDH and Shakti Samuha.

to Shakti Samuha, at that time the conditions in the rehabilitation centres were not right-centric, and victims were often blamed. It was only after a long and difficult process that the women realized that the blame for trafficking was not on the victim.

Some of the Shakti Samuha programmes specifically deal with the **repatriation, rehabilitation and reintegration** of survivors. These include a safe house (Shakti Kendra) and emergency support like counselling, medical treatment and legal support. In addition, its Surakshit Aawas in Kathmandu also focuses on facilitation of repatriation from the border areas and escorting the girls following the guidelines for protection and security during transportation, (see the guideline document), providing basic necessities, individual and Group Psychosocial counselling, medical check-ups as well as therapies such as dance movement therapy. The support extends to the community reintegration of the girls. According to the 2009-10 OSRT report, out of the total 188 girls reintegrated by Shakti Samuha, 38 went back to the family, 99 to the community and 51 were provided skills training and were self-employed. Shakti Samuha also acts as a referral agency. During 2009-10 48 survivor girls were provided rehab services by, and reintegration support was provided to 188 girls. Shakti Samuha carries out thorough family risks assessments of each of the survivors in their care and assess safety and security (material, emotional, physical etc.) before reintegration. Shakti Samuha also conducts advocacy and awareness raising activities. They have also set up Adolescent Girls Groups based in the poorest communities in order to pass on the message about the dangers of trafficking and also reached out to the wider community with awareness and advocacy messages on trafficking. In addition Shakti Samuha also manages data on trafficking survivors after trainings on case management, provided by TDH.

From 2009-2012, Shakti Samuha from Nepal and Sanlaap from India, worked on a TDH-supported project - *Protection and Quality of Care Anti-trafficking Action (PAQCA)*, with the aims of improving protection, quality of care and integration services for trafficked children and young adults in Nepal. Under this project, a safe and voluntary repatriation protocol was been drafted and shared in India and in Nepal, and continuity of care procedures were developed and shared with partners. The Protection and Quality of Care Anti-trafficking Action is being piloted by TDH in India and Nepal. During the project, a strong partnership developed between Shakti Samuha and Sanlaap and coordination extended to different NGOs in Mumbai, Delhi and Pune. Between February 2009 to the end of 2011, 23 children were repatriated to Nepal. Based on the experiences garnered by both organizations in relation to the repatriation of trafficked Nepali children, a MoU was drafted between the two NGOs, incorporating their respective roles and responsibilities. The programme was later extended to other parts of India and minors trafficked for CSE were rescued and repatriated from Goa, through coordination developed between Shakti Samuha and ARZ, in Goa.

Under the TDH project, a qualitative study on the integration of trafficking survivors in the community was conducted by interviewing fifty-six survivors. The study has tried to identify the gaps in services provided to the survivors. Some of the interim points highlighted were that the repatriation is a long and drawn-out process mainly due to legal processes. The conventional practice in South Asia seems of believing that reintegration simply is reunification with family which is not ideal and thorough family assessments need to be carried out.

Agro-forestry, Basic health and Cooperative (ABC) Nepal:⁷⁸ ABC Nepal was set up in 1987 and has since implemented programmes at local and district levels, aimed at awareness and advocacy. In addition ABC Nepal has also conducted programmes for the economic empowerment of the survivors under the broader framework of rescue, repatriation and reintegration. As part of its cross-border programme, ABC Nepal is strengthening surveillance in border areas, creating information networks, generating awareness in villages against trafficking, empowering women representatives and rehabilitating rescued girls. The organization has been working with vigilance networks⁷⁹ in major exits of border to India to rescue women from being trafficking. These rescued women along with those rescued/returned from brothels are provided different services through 1 rehabilitation centre and 3 transit homes for women. These shelters deliver psycho-social support, provide vocational training to survivors, and prepare returnee and rescued women for a dignified life. At present ABC/N has three transit homes in Biratnagar, Kathmandu and Bhairahawa. According to the ABC Nepal website, since 1987 it has rescued, rehabilitated and reintegrated of 1600 girls. However information on how many of the girls were repatriated survivors from India, is not available online.

The Indian NGO Bhoomika Vihar has mentioned ABC Nepal as a partner organisation for return of vulnerable girls. Bhoomika Vihar, along with its partner organization, also runs joint interception operations at the Indo-Nepal border in Jobani in Bihar.

Easter Benjamin Trust (EBT), Nepal, is an NGO working to combat trafficking in children for the purpose of circus performance. It works in Makwanpur, Bara and Rautahat districts in Nepal, which are impacted by trafficking of children for circus performance. The key NGO activities in this area include rescuing children and trafficking survivors from different border points and India, and rehabilitating and reintegrating them back in society. In 2009-10, EBT received five complaints that four boys and one girl were

⁷⁸ Information from OSRT report; ABC Nepal website (<http://abcnepal.org.np>); UNODC NGO Best Practice Compendium; and, A Report On Causes And Consequence Of Girls Trafficking In Selected Rescue Centers Of Nepal, H.Kandel, Tribhuvan University.

⁷⁹ Network set up to keep an eye on vulnerable women who might be in the process of being trafficked across the border.

trafficked for circus performance in India from Makwanpur district in India. Overall during this period EBT rescued other 12 children from different circuses in India. (Detailed information on the actual processes is not available).

Others NGOs: A number of other NGOs come up in reports as having worked on rescue and repatriation. The INGO, **Planete Enfant**, along with Maiti Nepal and ABC Nepal, opened transit homes for trafficking victims and border check-posts to intercept potential victims in 14 districts. The NGO **Saathi** employs trafficking survivors to work with law enforcement agencies along the border to intercept and screen suspected trafficking victims. **Plan Nepal** works on prevention and protection, community surveillance, skill and vocational training, psycho-social counseling, as well as on rescue, rehabilitation and reintegration. The Esther Benjamin Trust also works on children's rescue and retrieval. **Save the Children** undertakes community-based protection, and capacity building of rehabilitation centers. UN agencies such as **UN Women, UNODC** and **UNICEF** have also worked on anti-trafficking, in partnership with various Nepal government departments as well as NGOs.

III. Anti-Trafficking Legal Framework

PART I—INDIA

India's Adherence to International Conventions

The Government of India signed the Trafficking Protocol on 12 December 2002. This is a huge step forward in advancing the human rights of trafficked people as it not only prevents and protects the victims of trafficking but also punishes the traffickers. It encompasses the 1949 Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), all of which have been ratified by the Government of India. It would be pertinent to mention here that the Government of India has also ratified the two Optional Protocols to the Convention on the Rights of the Child – (i) on the Involvement of Children in Armed Conflicts and (ii) on the Sale of Children, Child Prostitution and Child Pornography.

The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution devised by the South Asian Association for Regional Cooperation (SAARC) in 2002, has also defined the term 'trafficking' as 'the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking'. The Government of India has also ratified this Convention.

The Indian legal system is derived from the British Common law system. The basic structure of the legal system is from the Indian Constitution, which is the foundation of the executive, legislature and the judiciary in the Country. All executive and administrative actions have to meet the standards set out in the Constitution.

There are broadly three tiers in the legal system. The original complaint for all preliminary purposes comes up before the sub-ordinate judiciary. The High Court and the Supreme Court are created by the Constitution of India and are Constitutional Courts. These courts have both original and appellate jurisdiction.

All criminal cases are first registered by the police and tried at the subordinate courts. Within the subordinate courts, there are certain tiers. For the criminal justice system, they can be broadly classified as magistrates and sessions judges. The cases are heard and tried by the magistrates and the session's judges depending on the nature of the offence and the punishment that would follow. The session's judges try crimes, which are identified as major crimes, and the magistrates try the other cases. Trafficking cases, which are registered under the Immoral Traffic (Prevention) Act, 1956 are tried in the

court of the Magistrate. The Criminal Procedure Code and the Indian Evidence Act govern the trial systems.

At every stage of the hearing, appeals can be preferred to the High Court and thereafter to the Supreme Court. This means that appeals can be preferred against a grant of bail or its rejection; they can be filed against an improper framing of charges, to include or exclude a witness, and the final judgment. The manners in which appeals can be preferred are also laid down in the Criminal Procedure Code.

Once the trial concludes, depending on its outcome, both the State and the accused have a right to file an appeal before the High Court or the sessions court as the case may be. The appeal to the High Court against an acquittal has certain conditions.

The appeals before the High Court are heard on the basis of the record available, and it does not record evidence. After hearing the appeal, the High Court can set aside the sentence, dismiss the appeal, or remand the matter back to the subordinate court to hear the case again on some aspects. The judgments of the High Court can be made reportable by the concerned judge. These judgments function as precedents in the jurisdiction in which they operate, and have a persuasive value in other jurisdictions. Appeals from the High Courts can be filed before the Supreme Court.

Cases can also be brought before the High Court and Supreme Court directly, when it can be demonstrated that there was a violation of any fundamental right guaranteed under Part III of the Constitution. Part III of the Indian Constitution guarantees rights to the citizens of India. These are called fundamental rights, and the States have an obligation to uphold and protect these rights. Any violation of these rights can be enforced against the State by way of a Writ Petition in the Supreme Court and the High Court. These courts have powers to issue writs of habeas corpus, mandamus, certiorari and quo warranto. If a writ petition is filed in the High Court, that judgment can be challenged in the Supreme Court.

The Indian judicial system started a unique concept called the *Public Interest Litigation*, popularly known as PIL in the early eighties. This allows any person, group(s) of persons, or public-spirited organizations to take up cases on behalf of those who cannot access the judicial system. It is also not necessary for a person approaching the Court to have an authorization from these groups of persons.

In the last 25 years, the Supreme Court and the High Court have passed several impressive judgments, which impacted, on a wide range of issues via the mechanism of PIL.

Laws Related to Human Trafficking

Till date there has been no single comprehensive Central Legislation, which deals with the issue of trafficking specially with respect to women and children. Further Indian statutes fail to provide sufficient protection to those forced into bonded labour. Children, who are trafficked for hard domestic labour, with no legal right find no protection in Indian Legislation. As a result victims of trafficking either children or women are unable to avail themselves of the legal protection, which they are entitled to. The traffickers are let free because of lack of effective prosecution, thus explaining the reason for substantial increase in the number of cases of trafficking in Delhi as well as in other parts of the country.

Given below are the lists of Central Legislations, which can be resorted to deal with the offence of trafficking either for prostitution or other form of forced servitude:

General

- The Constitution of India, 1950
- The Indian Penal Code, 1860

Special

- The Immoral Traffic (Prevention) Act, 1956;
- The Prohibition of Child Marriages Act, 2006;
- The Indecent Representation of Women (Prohibition) Act, 1986;
- The Juvenile Justice (Care and Protection of Children) Act, 2000;
- Information Technology Act, 2000;

Procedural

- The Code of Criminal Procedure,
- The Indian Evidence Act, 1897

Constitution of India

The Constitution of India, the fundamental law of the land, forbids trafficking in persons. **Article 23** of the Constitution specifically prohibits “trafficking in human beings and beggar and other similar forms of forced labour”. **Article 24** further prohibits employment of children below 14 years of age in factories, mines or other hazardous employment. Other fundamental rights enshrined in the Constitution relevant to trafficking are **Article 14** relating to equality before law, **Article 15** that deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, **Article 21** pertaining to protection of life and personal liberty and **Article 22** concerning protection from arrest and detention except under certain conditions.

The Directive Principles of State Policy articulated in the Constitution are also significant, particularly **Article 39** which categorically states that men and women should have the right to an adequate means of livelihood and equal pay for equal work; that men, women and children should not be forced by economic necessity to enter unsuitable avocations; and that children and youth should be protected against exploitation. Further, **Article 39A** directs that the legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. In addition to this, **Article 43** states that all workers should have a living wage and there should be appropriate conditions of work so as to ensure a decent standard of life.

Domestic Legislation

The **Indian Penal Code, 1860** contains more than 20 provisions that are relevant to trafficking and impose criminal penalties for offences like kidnapping, abduction, buying or selling a person for slavery/labour, buying or selling a minor for prostitution, importing/procuring a minor girl, rape, etc. Very recently through the Criminal Law Amendment Act of 2013 w.e.f. 2nd April 2013, two new sections **Sec 370 Trafficking of person and Sec 370 A Exploitation of a trafficked person respectively**⁸⁰ have been

⁸⁰ "(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbors, (d) transfers, or (e) receives, a person or persons, by—

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practicing fraud, or deception, or

Fifthly.— by abuse of power, or

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

Explanation 1.— The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

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

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine".

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

incorporated substituting the older section 370. Similarly various amendments have also been made to the Criminal Procedure Code, 1973 and Indian Evidence Act, 1972

As per the Criminal Law Amendment Act of 2013 **new sections have been incorporated related to Law on Rape, Custodial Rape, Gang Rape etc.**

The **Immoral Traffic (Prevention) Act, 1956 (ITPA)**, initially enacted as the ‘Suppression of Immoral Traffic in Women and Girls Act, 1956, is the main legislative tool for preventing and combating trafficking in human beings in India. However, till date, its prime objective has been to inhibit/abolish traffic in women and girls for the purpose of prostitution as an organized means of living. The Act criminalizes the procurers, traffickers and profiteers of the trade but in no way does it define ‘trafficking’ *per se* in human beings.

The other relevant Acts which address the issue of trafficking in India are the Karnataka *Devdasi* (Prohibition of Dedication) Act, 1982; Child Labour (Prohibition and Regulation) Act, 1986; Andhra Pradesh *Devdasi* (Prohibiting Dedication) Act, 1989; Information Technology Act, 2000; the Goa Children’s Act, 2003; and the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Beside these, there are also certain other collateral laws having relevance to trafficking. These are the Indian Evidence Act, 1872; Child Marriage Restraint Act, 1929; Young Persons (Harmful Publications) Act, 1956; Probation of Offenders Act, 1958; Criminal Procedure Code, 1973; Bonded Labour System (Abolition) Act, 1976; Indecent Representation of Women (Prohibition) Act, 1986; and the Transplantation of Human Organs Act, 1994

Juvenile Justice

The Government of India enacted the Juvenile Justice Act in 1986. In 1989 the General Assembly of the United Nations adopted the Convention on the Rights of a Child (UNCRC). India ratified the UNCRC in 1992. The convention outlines the right of the child to reintegration into the society without judicial proceedings, where avoidable. Hence in 2000, in order to adhere to the CRC, the old law was replaced by the Juvenile Justice (Care and Protection of Children) Act. The JJ (C&P) Act, 2000 was amended on 23rd August’2006 replacing certain existing provisions and adding some new provisions in the Act. The Ministry of Women and Child Development, Government of India notified the Model Rules, 2007 framed under the amended Juvenile Justice Act in the Gazette on 26th October, 2007. The State Governments/UTs have to frame their own State Rules as

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

outlined under the Model Rules and effectively implement the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006. Various State Governments have framed their own State Rules thereafter.

The Juvenile Justice System recognizes every human being below the age of 18 years of age as a child. The various categories of Children in Need of Care and Protection have been mentioned under Chapter 1, Section 2 (d) of the JJ (C&P) Act.

The Child Welfare Committee (CWC) is an autonomous body declared as the competent authority to deal with CNCP. It is mandatory to form a CWC in every district under section 29 (1) of the JJ (C&P) Act. This statutory body has to ensure the rights and address the needs of the children in need of care and protection. CWCs have been empowered as the competent authority to take reasoned decisions in the matter of children in need of care and protection in their concerned districts. The appointment of the Chairperson and the members of the committee will be done based on the recommendations of the State Selection Committee

CWC constitutes of a Chairperson and four other members, one of whom at least should be a woman and another, an expert on matters concerning children.

Functions of the CWC have been laid down in the JJ (C&P) Act and have been elaborated in the Model/State Rules. The JJ (C&P) Act states that the CWCs shall function as Bench of magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973(2of1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class (Section 29 (5) of the JJ (C&P) Act). Section 31 of the JJ (C&P) Act clearly states that the CWC shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

JJ (C&P) Act provides comprehensive mechanism for care and protection of children including rehabilitation and social integration of children. Therefore, its implementation is essential to address trafficking of children. Following provisions of the Act are concerned with the Home Department/ Police and require action by the State Governments:

- Under Section 62-A, the State Government shall constitute 'Child Protection Units' for the State and districts to fulfil its responsibilities as stipulated under the Act.
- Under Section 63, in each police station, at least one police officer may be designated as the 'Juvenile or Child Welfare Officer' to handle a juvenile or child in coordination with the police.
- Under Section 68, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act

The Protection of Children from Sexual Offences Act, 2012 and Rules 2012 (POCSO Act)

Another important piece of legislation is **The Protection of Children from Sexual Offences Act, 2012 and Rules 2012 (POCSO Act)** which came into effect from 14th Nov 2012. This law prescribes five sexual offences against children - penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, and using a child for pornographic purposes. Abetment of or an attempt to commit these offences is also punishable under the Act. These offences are gender neutral vis-à-vis the perpetrator as well as the victim. The Act also requires the State Governments to designate the Sessions Court in each district as a Special Court to try offences under the Act. If, however, a Children's Court under the Commissions for Protection of Child Rights Act, 2005 or Special Court for a similar purpose has been notified in a district, then that court will try offences under this Act.

The Act and Rules, 2012 lay down the processes for recording of complaints and trial of sexual offences against children:

i. Medical Examination of the Child

The medical examination must be conducted in the presence of the parent or any other person in whom the child reposes trust or confidence. If a parent or such other person cannot be present, for any reason, the medical examination must be conducted in the presence of a woman nominated by the head of the medical institution.

ii. Reporting of Cases

Any person (including the child) who has an apprehension that an offence under the POCSO Act is likely to be committed or has knowledge that an offence has been committed has a mandatory obligation to report the matter. An express obligation has also been vested upon media personnel, staffs of hotels, lodges, hospitals, clubs, studios, or photographic facilities, to report a case if they come across materials or objects that are sexually exploitative of children.

Failure to report is punishable with imprisonment of upto six months or fine or both. This penalty is, however, not applicable to a child.

iii. A case must be reported to the Special Juvenile Police Unit (SJPU) or the local police.

iv. Language of the report

If the case is being recorded in a language that the child does not understand, a qualified translator or interpreter must be provided to the child.

v. Ensuring Care and Protection of the Child

The police or the SJPU must produce the child before the CWC if the child is found to be in need of care and protection or has no parental support. The police or the SJPU must report the matter to the Special Court and also indicate the steps taken to extend care and protection to the child. If a Special Court has not been designated the matter must then be reported to the Sessions Court.

vi. Role of the CWC**vii. Information that must be provided to the Child**

The police or the SJPU must inform the child and his or her parent, guardian, support person, or other person whom the child trusts about the following:

- Availability of support services including counseling. If required, they must also assist in connecting the child and his or her family to persons providing support services.
- Child's right to legal aid and legal representation.
- Developments, including the arrest of the accused, applications filed, and court proceedings.
- Availability of public and private emergency and crisis services.
- Procedural steps involved in a criminal prosecution.
- Availability of victims' compensation benefits.
- Status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation.
- Filing of charges against a suspected offender.
- Schedule of court proceedings that the child is either required to attend or is entitled to attend.
- Bail, release or detention status of an offender or suspected offender.
- Rendering of a verdict after trial.
- Sentence imposed on an offender

viii. Recording Statement of the Child

- a. Recording of statement by the police
- b. Recording of Statement by the Magistrate

ix. Trial before the Special Court

- a. Recording of Evidence
- b. Responsibilities of the Special Court
- c. Award of compensation

The compensation awarded is payable by the State Government from the Victims Compensation Fund or other schemes or funds established for the purpose of compensating and rehabilitating victims under Section 357A of the CrPC.

x. Role of Commissions for Protection of Child Rights

“ASTITVA- BIHAR”

On 31st December 2008, Department of Social Welfare, Government of Bihar through Gazette Notified the historical State Plan of Action called “ASTITVA- BIHAR” to combat with human trafficking in the state. It is an integrated approach with the participation of all the important stakeholders such as Government line departments (Education, Rural Development, Social Welfare, Labour, Human Resources, Health, ICDS, Police, District administration, judiciary etc.), CSOs and media to fight against the social evil of human trafficking.

Government of Bihar, through ASTITVA has acknowledged that:

- ◆ Human trafficking in Bihar is a critical problem
- ◆ Human trafficking directly affected to weaker sections of the society
- ◆ Human trafficking straight related to HIV/ AIDS

Acknowledging that the existing system is not working satisfactorily to minimize the volume of human trafficking state wide, therefore there was a need of complete and integrated mechanism to combat human trafficking so that all stakeholders could work and coordinate the activities to minimize the vulnerability of trafficking, rescue rehabilitation and repatriation state-wide.

The basic objectives of ASTITVA- Bihar are as follows:

- ◆ For the prevention and removal of human trafficking, ensure qualitative actions in source, transit and destination areas for trafficking.
- ◆ Ensure and prioritize proper rescue, rehabilitation and sustainable repatriation with special emphasis on livelihood and socio- economical empowerment.
- ◆ Human trafficking is an organized crime, therefore, ensuring legal actions/provisions against pimps, traffickers etc.
- ◆ Ensuring Sensitization, mobilization and capacity building of judiciary, Government/ Non Government authorities on minimizing the vulnerabilities of human trafficking state wide.

The ASTITVA-Bihar has the provision of Administrative/ management Structure in following manner:

- ◆ State level Anti Human Trafficking Coordination Committee under the chair of Chief Secretary

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- ◆ District level Anti Human Trafficking Committee under the chair of District Magistrate
 - ◆ Anti Human Trafficking Task Force under the chair of Director General of Police.
 - ◆ District level Anti Human Trafficking Unit under supervision of Superintendent of Police
 - ◆ Anti Human Trafficking Prosecution Monitoring Committee under the chair of Director General, Prosecution
 - ◆ District Anti Human Trafficking Prosecution Monitoring Committee under the chair of District Magistrate
 - ◆ Village level Anti Human Trafficking Bodies; and
 - ◆ Cross Border Anti Human Trafficking Prevention

Nodal Officers

As per the ASTITVA State Plan of Action, the government has earmarked two Nodal Officers on Anti Human Trafficking, one representing the Police Department and the other representing the Departments of Social Welfare. They are the Deputy Superintendent of Police-Headquarter (DSP-HQ) called as the 'Police Nodal Officer' (PNO) and the Assistant Director-Social Security (ADSS) as the 'Government Nodal Officer' (GNO). The PNO and GNO have been directed to make efforts to give wide publicity regarding their name, telephone no., email id and contact address and ensure accessibility to public. The Police Stations and Police officers are supposed to display these details on their display board. PNO will be the key contact person for all rescue activities and GNO for all post rescue activities. Both should associate, in their activities, all responders including Government Departments and NGOs. Trafficking being a borderless crime, in order to prevent and combat trafficking, the responders will have to function beyond their limited jurisdictions. This should be facilitated by PNO and GNO.

Database

One of the major challenges today in activities on preventing and combating trafficking, is the lack of database of traffickers and victims trafficked across the state. More often the local police, despite having intelligence, are unable / do not share it with their counterparts. The PNOs of the source, transit and destination areas must take initiative in developing intelligence and creating a database. The database should be updated at least on a monthly basis and disseminated among all concerned PNOs.

Directory of services

The GNO and PNO should bring out a comprehensive directory of all services available to address issues of Human Trafficking. This should include the details of the responders like Police officials, Prosecutors, Welfare officers etc. and all referral services including

health care and all NGOs working in this field. This Directory should be widely disseminated.

THE INTEGRATED CHILD PROTECTION SCHEME

It is based on the principles of “protection of child rights” and “best interests of the child”.

The Principles of ICPS

Child protection is considered to be a responsibility which has to be shared by the stakeholders consisting of the government, family, community, professionals and the civil society. The focus has to be on systematic protection measures and not just programmes, wherein the strengthening of family ties will be the main focus in order to provide community and family based alternatives for child protection. There is also a provision for the linkages of this programme with other government programmes on livelihood, health and child welfare. Under ICPS it has also been proposed to define minimum standards for the provision of services and strict adherence to these standards, capacity building of the working staff has to be done in line with these services, the protection has to reach all the levels in the society including the instances of rural poverty.

The Approach of ICPS

Ministry of women and Child Welfare has integrated all its previous schemes of child welfare to form ICPS, to be implemented on a Government-Civil Society partnership. The roles assigned to the different stakeholders are:

Government will be the major facilitator of the funds and other logistics. It will also provide the structural environment required for the provision of services mentioned in the programme.

CSO's will provide counseling, rehabilitation and technical assistance which would be funded by the government. It has to conduct researches and provide trainings for the provision of the services and it would have to promote child protection and create awareness about it.

Community has to provide the right environment for protection and has to keep a vigil on both the CSO's and the government.

The scheme builds on the definition of Child in Need of Care and Protection as defined by the Juvenile Justice Act 2000. It includes other children like those of potentially vulnerable families and families at risk, from socially excluded groups like migrant families, families living in extreme poverty, lower caste families, families subjected to or affected by discrimination, minorities, children infected and/or affected by HIV/AIDS,

orphans, child drug abusers, children of substance abusers, child beggars, trafficked or sexually exploited children, children of prisoners, and street and working children, are also covered under the scheme

Some of the specific protection measures promoted by the scheme include:

- Special attention to certain categories of children requiring greater focus particularly children in need of care and protection and children in conflict with law as covered by the juvenile justice act, trafficked children, child victims of sexual abuse and exploitation, children affected by natural and manmade disasters, children of sex workers and prisoners, children affected by armed conflict and civil disorders.
- Promoting community based care and rehabilitation for all children in difficult circumstances
- Childline & other necessary support service, infrastructure, referral for children in emergency situations
- Promotion of quality institutional and alternative care
- Up-gradation of standards of existing services
- Infrastructural support to NGOs for destitute, orphan children through in- country adoption
- Drop-in-shelters which encourage children's voluntary attendance and participation in activities such as music, theater, yoga & meditation, computers, games and other creative activities so as to ensure their overall development, care and protection and to reduce social deviance

The scheme also takes ownership and initiatives for:

- Implementation of juvenile justice law
- Creation of child-friendly judicial and administrative procedures for dealing with children
- Free legal aid and advice for children in conflict with law
- Assistance to child victims of abuse and exploitation for their full physical and psychological recovery, development and social reintegration
- Institution of a rights based uniform definition of child labour and bonded labour
- Elimination of all forms of child labour by linking it with ensuring right to education for all children
- Convergence with related Ministries / Department at Central & State levels
- Enlisting support from the private sector.

Restoration /Repatriation of the child to her Country

ARTICLE IX of the **SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution** deals **with Care, Treatment, Rehabilitation and Repatriation of the Victims. It lays down the following:**

Identifying Actionable Strategies to Minimize Vulnerabilities of Nepali Girls Trafficked to India and Repatriated as Survivors of Trafficking — A Report

1. State Parties shall *work out modalities for repatriation of the victims to the country of origin.*
2. Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, State Parties shall *make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims.*
3. State Parties to the Convention shall *establish protective homes or shelters for rehabilitation of victims of trafficking.* Suitable provisions shall also be made for granting legal advice, counseling, job training and health care facilities for the victims.
4. State Parties may also authorize the recognized non-governmental organizations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.
5. State Parties shall encourage recognized NGO's in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

Chapter II of Juvenile Justice (Care and Protection of Children) Rules, 2007 (Central), lays down the Fundamental Principles of Juvenile Justice and Protection of Children. These fundamental principles correspond with the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and for the purpose of this research the relevant principles are listed as below:

(1) The State Government, the Juvenile Justice Board, the Child Welfare Committee or other competent authorities or agencies, as the case may be, while implementing the provisions of these rules shall abide and be guided by the principles, specified in sub-rule (2).

(2) The following principles shall, inter alia, be fundamental to the application, interpretation and implementation of the Act and the rules made hereunder:

IV. Principle of Best Interest:

(a) In all decisions taken within the context of administration of juvenile justice, the principle of best interest of the ...oror child shall be the primary consideration.

(b) The principle of best interest of the ...oror or child shall mean for instance that the traditional objectives of criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice

(c) This principle seeks to ensure physical, emotional, intellectual, social and moral development of a juvenile in conflict with law or child so as to ensure the safety, wellbeing and permanence for each child and thus enable each child to survive and reach his or her full potential.

V. Principle of family responsibility:

(b) All decision making for the child should involve the family of origin unless it is not in the best interest of the child to do so.

XIII. Principle of repatriation and restoration:

(a) Every ... or child or has the right to be re-united with his family and restored back to the same socio-economic and cultural status that such or child enjoyed before coming within the purview of the Act or becoming vulnerable to any form of neglect, abuse or exploitation

(b) Any or child, who has lost contact with his family, shall be eligible for protection under the Act and shall be repatriated and restored, at the earliest, to his family, unless such repatriation and restoration is likely to be against the best interest ofor the child.

Section 50 of the JJ (C&P) Act deals with “**sending a juvenile or child outside jurisdiction**”⁸¹ and Central Model Rules of 2007 through Rule 79 lays down the procedure. The following clauses of Rule 79 are of particular importance for this study as it says:

- Clause 4: any or a child, who is a foreign national and who has lost contact with his family shall also be entitled for protection
- Clause 5: any or a child, who is a foreign national, shall be repatriated, at the earliest, to the country of his origin in coordination with the respective Embassy or High Commission.
- Clause 6: the or Committee shall keep the Ministry of External Affairs informed about repatriation of every juvenile or child of foreign nationality carried out on the orders of the or Committee

Therefore it follows that if the child’s residence is in a different country, CWC should immediately contact the State’s Department of Women and Child Development for his/her repatriation to the concerned country with the active involvement of the

⁸¹ In the case of a juvenile or the child, whose ordinary place of residence lies outside the jurisdiction of the competent authority before which he is brought, the competent authority may, if satisfied after due inquiry that it is expedient so to do, send the juvenile or the child back to a relative or other person who is fit and willing to receive him at his ordinary place of residence and exercise proper care and control over him, notwithstanding that such place of residence is outside the jurisdiction of the competent authority; and the competent authority exercising jurisdiction over the place to which the juvenile or the child is sent shall in respect of any matter arising subsequently have the same powers in relation to the juvenile or the child as if the original order had been passed by itself.

Diplomatic Mission and High Commissions of both sending and receiving countries. The procedures for Inter country Transfer should be followed.

Central Government Notifications

1. Management of Foreign Survivors of Trafficking

Ministry of Home Affairs (Foreigners Division) Government of India issued a notification No. 14051/14/2011-F.VI, dated 1st May, 2012 detailing out that in cases of foreign nationals who are apprehended in connection with human trafficking, the State Governments / UT Administrations may follow the following procedure :

(i) Immediately after a foreign national is apprehended on charges of human trafficking, a detailed interrogation/investigation should be carried out to ascertain whether the person concerned is a victim or a trafficker.

(ii) The victims and the persons actually involved in human trafficking should be treated differently by the police authorities. This is in line with the SAARC Convention which advocates a victim-centric approach.

(iii) Missions/Posts in India may be informed of the arrest/detention of the foreign national by the concerned state or other authorities through CPV division in the Ministry of External Affairs (MEA) or the concerned territorial Division in MEA

(iv) It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the charge sheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned. Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels.

(v) During the interim period, pending repatriation, the victim may be taken care of in an appropriate children's home, or "Ujjawala" home or appropriate shelter home either of the State Government concerned or of any NGO aided by the Government of India / State Government.

(vii) In order to ensure better conviction rates of perpetrators of the crime of trafficking, prosecution should be based on documentary, forensic and material evidence. State Governments are advised to encourage the law enforcement agencies to investigate the

cases in a manner that they are able to build fool proof cases against the traffickers, so that convictions can be guaranteed. Use of fast-track courts and video conferencing to the extent possible also need to be ensured.

It is the responsibility of the State Governments / UT Administrations to report to the Anti Human Trafficking Nodal Cell in Ministry of Home Affairs in the cases of foreign nationals associated with human trafficking, whether they are women or children (children means both boys and girls upto 18 years of age).

The above notification is in continuation of the previous instructions contained in the Ministry of Home Affairs Advisory dated 09.09.2009.

2. Comprehensive Management of Human Trafficking

Ministry of Women and Child Development Government of India has also issued a notification F. No. 3-1/2010-CP dated 12th Oct 2012 detailing out Advisory on measures to be taken by States/UTs for combating trafficking of women and children for commercial sexual exploitation.

- i. The Government of India has set up a Central Advisory Committee (CAC) to advice on issues relating to trafficking for commercial sexual exploitation. This committee functions under the chairpersonship of Secretary, department of Women and Child Development, Government of India with members from Central Ministries like Ministry of Home Affairs, Ministry of External Affairs, Ministry of Tourism, Ministry of Health, Ministry of Social Justice and Empowerment, Ministry of Information Technology, Ministry of Law and Justice, State Governments which are important source, transit or destination, prominent NGOs working in this area, international organizations working in this field, NCW, CSWB and NIPCCD. Director, NCRB; Director General, BSF; Director, IB; Director, CBI, Director General, SSB etc. and some of the Director Generals of Police of important states where the magnitude of the problem is stated to be acute, are being nominated on the Advisory Committee as special invitees.
- ii. The State Governments/UT Administrations should establish State Advisory Committees (SAC) if not done already, for preventing and combating trafficking of women and children for commercial sexual exploitation. The SAC must hold meetings regularly and should meet at least twice a year. The nodal officers of AHTUs should be members of SAC.
- iii. The State Governments/UT Administrations have already been requested to nominate an officer of the Women and Child/Social Welfare Department as well as an NGO on these AHTUs. This may be done expeditiously and report sent to MHA and MWCD

3. Standard Operating Procedures for Handling Trafficking of Children for Child Labour

The advisory⁸² was issued by the Ministry of Home Affairs to supplement their earlier advisory issued on September 9, 2009. The advisory includes the following:

- Management of missing child as per guidelines of Supreme Court of India
- Role of AHTUs in managing human trafficking cases
- Composition of rescue team
- Legal provisions applicable in child trafficking cases

4. Advisory on Human Trafficking as Organized Crime

This advisory⁸³ provides guidelines to law enforcement agencies on the manner and modalities regarding the crime which should be implemented in conjunction with a Ministry of Home Affairs Advisory dated September 9, 2009, F.No.15011/6/2009-ATC. Through this advisory, following has been established:

Central Bureau of Investigation (CBI), through its unit in Special Crime Division named AHTU will be the coordinating agency and single point of contact for liaison with Ministry of External Affairs and other state parties

Separately the Ministry of Women and Child Development has requested the Ministry of External Affairs to set up a an internal Task Force with representatives from the concerned Ministries/Departments to prepare an Action Plan for operationalising the provisions of the Convention and also ensure the enabling legislation, enforcement mechanism, policies etc are in place. The MEA has set up a task force for this purpose.

5. Advisory on Missing Children

This advisory⁸⁴ issues by the Ministry of Home Affairs provided guidelines for related officials on implementation of guidelines issued by the National Human Rights Commission⁸⁵ and Supreme Court of India⁸⁶ on management of missing children.

⁸² F. No. 15011/20/2012-ATC (CF-145675) Dated August 12, 2013, Government of India, Ministry of Home Affairs

⁸³ F. No. 15011/27/2011-ATC Dated April 30, 2012, Government of India, Ministry of Home Affairs

⁸⁴ F. No. 15011/60/2011-ATC Dated January 31, 2012, Government of India, Ministry of Home Affairs

⁸⁵ Sharma PC: Report of the NHRC Committee on Missing Children

⁸⁶ (WP (Cri) No.610 of 1996) in Horilal Vs Commissioner of Police, Delhi and Sampurna Behura vs. Union of India & ORS dated 12/10/11(WP (Civil) No.473 of 2005)

6. Waiving Off the Penalty for Bangladeshi Victims of Trafficking

This advisory⁸⁷ issued by the Ministry of Home Affairs to waive off the penalty to the Bangladeshi girls victim of human trafficking that normally illegal Bangladeshi migrants would be liable to pay in India.

7. Establishment of Task Force for Management of Repatriation of Bangladeshi Girls from West Bengal

This advisory⁸⁸ was issued by the Department of Women and Child Development, Government of West Bengal to establish a Task Force for management of the repatriation of Bangladeshi girls from West Bengal.

Central Government Schemes

Ministry of Women and Child Development has formulated a National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children in 1998, with the objective to mainstream and to reintegrate the women and child victims of commercial sexual exploitation in society. The Ministry has issued guidelines to the States for the implementation of National Plan of Action.

Ministry of Women and Child Development Government of India has also framed *Protocol for Pre-Rescue, Rescue and Post-Rescue Operations of Child Victim of Trafficking for Commercial Sexual Exploitation*. As per this Protocol Clause 7 under **STRATEGY FOR REHABILITATION (for functionaries in the Protective/Children Home)** says that:

“Prepare the Child for his/her repatriation/integration with his/her family. No rescued child should be sent back to his/her family without ensuring social acceptance, family support, to prevent re-trafficking and further exploitation”.

The scheme — UJJAWALA is a comprehensive scheme for prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of the victims of commercial sexual exploitation was launched on 04.12.2007 by the Ministry of women and Child Development. This scheme has to be effectively used by the State Governments.

There may be a situation where a victim other than the one being searched for, is also identified. All identified victims, whether Indian nationals or foreigners, adults or children, MUST be rescued (*for detail please refer the Advisory issued by MoH-Gol dated 01st May, 2012*).

⁸⁷ F. No. 14051/10/2010 FVI Dated May 17, 2013, Government of India, Ministry of Home Affairs

⁸⁸ No. 4257-SW JJA-18/2007 Dated December 14, 2007, Government of West Bengal, Department of Women and Child Development

Ministry of Women and Child Development also runs Shelter based homes Short Stay Homes, Swadhar Homes for women in difficult circumstances. These cater to trafficked women/girls rescued or runaway from brothels or other places, for women/girls victims of sexual crimes who are disowned by family or who do not want to go back to respective family for various reasons. The Schemes provides for shelter, food, and clothing for women and children below the age of 18 years, counseling, clinical, medical, and legal and other support, training and economic rehabilitation and helpline facilities. At present, over 146 Swadhar Homes and more than 342 Short Stay Homes are being run in different parts of the country

The Ministry has also issued detailed Guidelines for NGOs on Data Management tool for Protective and Rehabilitation Homes (P&R) under Ujjawala Scheme.

Victim Compensation Scheme

Salient Features of the Scheme

In all, 12 Indian states have victim compensation schemes. Except for the amount of compensation to be paid, most of the other aspects including definition of victim, mandate of the scheme and management of scheme and funds are almost similar in these states. Discussed below are some of the salient features of these policies:

State government needs to create a Victim compensation fund for providing compensation. This fund will be managed by State Legal Services Authority and shall receive money from following sources:

- Budgetary allocation by the state government
- Amount deposited in court as fine under Section 357 of Cr Pc
- Amount recovered from the accused
- Any donations

Presented below is state wise brief description of victim identification and compensations:

State	Definition of Victim	Compensation Awarded
Arunachal Pradesh	Such injuries or the loss sustained must have caused substantial loss to the family income and which cannot be overcome except by such reimbursement.	Compensation could be reviewed by the courts with a higher amount as allowed under sub-section 4 of sec 357A.
Bihar	A person who himself has suffered loss or injury as a result of crime causing substantial loss to the income of the family making it difficult to meet their both ends without the financial aid or has to spend beyond his means	Rape 50,000 Human Trafficking 25,000

State	Definition of Victim	Compensation Awarded
	on medical treatment of Mental/Physical injury and require rehabilitation	
Delhi	Victims and their dependent(s) who have suffered loss, injury or require rehabilitation, as the case may be, as a result of the offence committed.	Rape 2-3 Lakh Human Trafficking/Abuse 50,000
Gujarat	Victim means a person who has suffered loss or injury as a result of crime and require rehabilitation and the expression victim include his/her dependent	Rape 1 Lakh Human Trafficking 25,000
Haryana	Victim means a person who has suffered loss or injury as a result of crime and require rehabilitation and their dependents (proved through evidence)	Rape 3 Lakh HT 50,000
Himachal Pradesh	"Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir	Rape 50,000 HT 24,000
Manipur	Victim means a person who has suffered loss or injury as a result of crime and require rehabilitation and their dependents	Rape 20,000 (Minor 30,000) HT 10,000
	"Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her dependent or legal heir.	Rape 50,000 HT 25,000
Odisha	"Victim" means a person who himself/herself suffered loss or injury as a result of crime and requires rehabilitation and in case of his/her death also his/her dependants. Provided where the victim is a minor, his/her parents would be dependants in case they are found to have been affected by the crime or in case the perpetration of crime has left a scar on their dependant family members.	HT 10,000

PART II—NEPAL

At the national level, there have been a number of positive initiatives undertaken by the government, especially in terms of legislation and policy. However, commentators point to the fact that the lack of effective implementation of laws and policies aimed at ending trafficking is reflected in the low conviction rates for perpetrators of crimes of violence against women. Data suggest that only a very small number of trafficking cases are reported to the police. This is further compounded by claims of evidence being deemed insufficient or unreliable and of police reluctance to register first information reports (FIRs). According to the Office of the National Rapporteur on Trafficking in Women and Children, the nation-wide crime report register of the police department shows that the number of registered trafficking cases never exceeds 150 per year. In addition, the police figures show that the conviction rates of trafficking cases are low. For example, out of the approximately 150 cases of trafficking-related offences during 2001, as many as 55% resulted in acquittals.⁸⁹ The trafficking in persons report⁹⁰ published by the Office of the National Rapporteur on Trafficking in Women and Children has also stressed the problem of under-reporting as well as low conviction rates in cases related to trafficking.

A number of institutions and a number of policies impact on the overall process of combating trafficking of women and children and the repatriation, reintegration process. Only the most relevant for the current research process are included below, but it needs to be kept in mind that some of the wider empowerment and protection programmes will undoubtedly touch on the vulnerable sections of women and children, including on trafficking victims.

Nepal's adherence to international conventions:

Name of Convention	Status
UNCRC	Signed on 26th Jan, 1990 and Ratified on 14th September, 1990
Optional Protocol to CRC on Sale of Children, Child Prostitution, Child Pornography	Signed on 8th September, 2000 and Ratified on 20th Jan, 2006
Convention on the Suppression of Immoral Traffic and of the Prostitution of Others	Date of Accession: 10 th December, 2002
ILO Convention 138 Minimum Age Convention	Ratified on 30th May, 1997

⁸⁹ E/CN.4/2001/73/Add.2, Report of the Special Rapporteur on the Trafficking of Persons, Mission to Bangladesh, India and Nepal, Feb 2001, p.10 (Accessed at: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/4cb26594f04a53a4c1256a1b0055e5df/\\$FILE/G0110865.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/4cb26594f04a53a4c1256a1b0055e5df/$FILE/G0110865.pdf)).

⁹⁰ 2005 National Report: Trafficking in Person Especially on Women and Children in Nepal, Office of the National Rapporteur on Trafficking in Women and Children (ONRT), National Human Rights Commission (NHRC), Lalitpur, Nepal, September 2006, p. 73-74.

Name of Convention	Status
ILO Convention 182 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor	Ratified on 3rd January, 2002
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Signed on 5th February, 1991
SAARC Convention of Preventing and Combating Trafficking in Women and Children for Prostitution 2002 and SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia	Signed on 5th January, 2002
UN Convention against Transnational Organized Crime	Signed on 12th December, 2002
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	Not Signed
Protocol against the Smuggling of Migrants by Land, Sea and Air	Not Signed

Government of Nepal has been forthright in its report to the International Bodies and has acknowledged that enforcement against trafficking has been poor. The Committees under the CEDAW, CRC and the ICESR have all independently reiterated the need for the Nepal Government to take affirmative action to prevent trafficking and bring the perpetrators to justice.⁹¹

Nepal was a monarchy for a long time and has recently been replaced by a democratic government. The Constitution itself is being re-drafted along with many policies. However, the three hierarchies of courts which are the Supreme Court, the Appellate Courts and the District Courts continue to function without any major changes made in their functioning. In addition to that there are tribunals and special courts to hear some types of cases. Special courts have been established for hearing special cases like matters relating to labour, revenue and other cases of an exceptional nature like those of corruption, drug smuggling etc. Under the new anti-trafficking legislation, there is a special court for trying cases of trafficking.

⁹¹ See concluding remarks in website of UNHCHR

Under the Supreme Court, it is laid down that the Supreme Court shall function from Kathmandu. It is the highest court of the country and its findings are binding on the entire country. The jurisdiction of the Court is for:

- Appellate jurisdiction
- Revisional jurisdiction
- Review Jurisdiction
- Original jurisdiction
- Sanctionable jurisdiction⁹²
- Writ Jurisdiction
- Advisory jurisdiction
- Supervisory jurisdiction

Under the Justice Administration Act, 1991, the appellate courts and the District courts are set up. The Appellate courts are one level below the Supreme Court. They have jurisdiction to hear:

- Cases directly presented to it under original jurisdiction
- Appeal from the District Courts
- Writ Jurisdiction
- Other jurisdiction

The District Court is the court of the first instance in the judicial hierarchy. There are 75 District Courts, which translates to one District Court in each district. The District Court works with one Chief Judge and other required numbers of judges. It has the jurisdiction to hear civil and criminal cases. All trafficking cases will commence at the District Court and be taken in appeal to the Appellate Courts and then to the Supreme Court. Cases of public interest are heard by the Supreme Court directly.⁹³

Laws Relating to Trafficking

The interim Constitution which is in operation currently has various provisions for women and children which are prescribed as fundamental rights and casts some obligations on the State through its Directive principles. Article 20(3) states that “every woman has the right against physical, mental or any other forms of exploitation”. Article 29 provides rights to be free from exploitation, including traffic in human beings, slavery, serfdom and forced labour.

⁹² hearing cases of life imprisonment with confiscation of property and life imprisonment.

⁹³ Landmark Judgments on violence against women and children from South Asia, SARI-Equity, USAID, 2006

A. General Penal Laws

Trafficking is an offence and punishable under the law. The first country code of 1853, prohibited slave trade, human trafficking and separating children from their mothers for the purposes of sale.

In the 1963 Country Code, there is a separate chapter classifying trafficking as an offence.

B. Foreign Employment Act of 1985

This was an act enacted to govern and regulate migration. However it drew a lot of criticism due to its section 12, which states “notwithstanding anything mentioned elsewhere in this act, the license holder shall not provide foreign employment to children and to women without the consent of their guardian”. According to the government, this provision is necessary because of the mistreatment and harassment experienced by Nepali women working abroad. However, it translates into women being forced to resort to practices, which are unsafe making them vulnerable to trafficking. The act was challenged in the Supreme Court. However, the Court upheld the provision and dismissed the petition.

C. Children Act 1991

The Human trafficking act does not address children separately. It does not seem like there is any law, which deals directly with child trafficking or even commercial sexual exploitation of children. In this act, there is reference to this by prohibiting use of children for “immoral profession” or take photographs for “immoral purpose”. An inference can be drawn from these sections that it is trying to deal with child prostitution.

D. Trafficking in Persons and Transportation (Control) Act, 2007

In 2007, the Government passed the Human trafficking (control) act. Since this is an enactment, dealing specifically on human trafficking, it is critical that its salient features are understood.

Salient features of the Act

Extra-territorial Application

Like the previous act⁹⁴, this act too applies to acts performed within and outside Nepal as long as the victim is a Nepalese citizen.

⁹⁴ The Human trafficking act, 1986

Specific Definitions

This act defines various aspects to be covered under the Act like a 'victim' means a person sold, transported or caused to be engaged in prostitution, 'children' means a person who has not completed the age of eighteen years and 'exploitation' means the act of making (a person) slave, servitude and the word includes the act of removing, save as per prevailing law, human organ.

Right to privacy of the victim

It allows for the name of the victim not to be mentioned in the complaint in cases where she so desires.

Right to arrest in certain cases

Under the new act, the police can detain persons even during investigation.

Burden of proof shifted to the trafficker

This has been maintained in the act like the previous act and the burden of proof is shifted to the trafficker to prove that he was indulging in any act of trafficking.

Right of the victim to have her own lawyer

This is a unique section as ordinarily in criminal cases, it is the accused which has a right to a lawyer and the victim/complainant is reduced to merely being a witness. Providing for her own lawyer gives tremendous potential to the case as she can control the course which the case is taking.

Rehabilitation provision made a statutory right

Normally, in most jurisdictions, the rehabilitation processes are dealt with in the policies. This makes the right extremely discretionary on the government and very rarely can victims claim it as a matter of right from the state. As it is introduced as a specific section under the statute, rehabilitation has become a right and even the district court can enforce it by directing the state to ensure that the victim is rehabilitated.

Creation of a corpus for the purposes of rehabilitation prescribed under the statute;

As has been seen in the section relating to policy, budget allocations to enforcement of policies is normally very poor. Even though the task force and NPA both talk of creating a budget, they have not been satisfactory as stated by the NHRC. The act here provides for collection of fines and creating a corpus with the same.

Clear punishments

In the previous act, there was a discretion given to the judge for prescribing punishments even in clear-cut heinous offences. The present act prescribes specific punishment of 20 years of imprisonment.

Civil remedies of compensation provided in the act itself

The Act also provides for compensation. This is another important aspect as ordinarily in criminal cases, the provision for compensation is absent which makes many victims decide against participating in the criminal justice system. Providing for compensation is a positive step.

De-criminalising victims

This is another important provision of the act, as it does not punish victims who have been forced into a situation of prostitution.

In-camera proceedings

This provision helps in ensuring the privacy of the victim and also enables her to be comfortable in deposing fearlessly.

An interesting part of this law is the distinction it draws between trafficking and transportation. Trafficking in persons is defined as selling and buying a person for any person, being responsible for a person to be engaged in prostitution either for consideration or otherwise, removing of organs outside the purview of the law and having sexual intercourse with a woman in prostitution. As against this, acts relating to taking a person abroad for the purposes of sale as well as taking a person by separating from the house, place or person or abode or having control over or keeping with him/her or harboring or taking from one place to another place within Nepal or to a foreign country or handing over to somebody a person by enticement, allurement, misrepresentation, fraud, deception, force, coercion, abduction, taking hostage, taking benefit of vulnerability, making unconscious, abusing post or power or alluring, causing fear, giving threat or coercing the parent or guardian, with the propose of causing to be engaged in prostitution or exploitation is defined as transportation.

It is not clear the reason for this distinction, as in the internationally accepted definition, trafficking in persons will include all the aspects as defined under transportation. It appears that the law seeks to impose different punishments for what it defines as trafficking and what it defines as transportation. Another interesting part of this act is the provision allowing using the statement of the victim even in her absence if adequate care has been taken by the judge to record her original statement properly.

Enforcement of Act

The Nepalese criminal justice system follows the common law system and is an adversarial system. As soon as the complaint is filed, the investigation machinery comes into operation. The police then obtain permission from the court to begin the investigation and initiate investigation. After the completion of the investigation, a report is submitted to the court following which formal charges are framed. Then the trial would commence and the Government lawyer would appear in the court for the police but is expected to be a neutral assistant to the Court.

Inadequate Reporting of Cases

Even though it is documented that as many as 5000 to 7000 girls are trafficked from Nepal to India each year, the number of cases registered does not exceed 150 every year. In the year 2006-7, the total number of cases registered under trafficking was 112.⁹⁵ As per the report of the attorney General, only 45% of the complaints are lodged by the victims themselves and rest 55% are lodged by their relatives⁹⁶. Under reporting is due to diverse factors. As per the study conducted by the FWLD, under-reporting takes place for the following reasons.

- Fear of social stigma
- Lack of awareness
- Harassment during the conduct of the case
- Absence of victim protection
- No provision for compensation
- Lack of family support
- Lack of encouragement from agencies

One glaring factor that is missing from this list is the fact that many communities accept and willingly send women and children for prostitution. In these cases therefore the question of reporting this as a crime does not arise. Another aspect to be considered is the fact that even though women and girls are trafficked in large numbers, the numbers who are actually rescued are minuscule. In cases where victims have complained, it would appear that in a large number of them it would be through the intervention of a civil society organization.

Status of Prosecution

If there are few cases being reported, there are fewer which results in conviction.⁹⁷ This is another reason why victims do not come forward to make a complaint as a victim

⁹⁵ Global Trafficking in Persons Report, UNODC, 2008

⁹⁶ Office of attorney general as stated in the Report on Trafficking, FWLD, UNIFEM, 2004

⁹⁷ There were 29 convictions of cases of trafficking in persons in appellate courts in 2002-2003,

who has made a complaint and has not managed to get a conviction would be doomed further and this fear will ensure that she does not complain in the first place. The inadequacies in the investigation can be classified as:

- Incompetence;
- Poor quality documentation;
- Corruption;
- lack of sensitivity;
- archaic techniques;
- Poor co-ordination;
- Access of traffickers to the victims;
- Lack of victim protection.

Both police and Government attorneys receive no specific training in prosecuting trafficking offenses. Trafficking cases, in view of the way in which the act has been defined is different from those under the generic code. Unfortunately, this aspect has not been introduced to the law enforcement officers in the manner it ought to be. In addition to that, most people in law enforcement believe that prosecuting traffickers is not necessary as women and children indulge in prostitution out of their free will. Gender insensitivity is predominant amongst both male and female law enforcers. The infrastructure provided to them is poor as well. As against this, the defense attorneys would have access to enormous resources. This is in addition to the influence and other pressures they may be subjected to. The FWLD report⁹⁸ states that in as many as 23% of the cases, the Government attorneys have failed to appear in the Court. It is not clear as to what action has been taken against them. Police and the Government attorneys have to complement each other in the trial. However, there is no system of co-ordination between them and this gives a huge benefit to the defendants.

four in 2003-2004, 11 in 2004-2005 and nine in 2005-2006. Convictions of cases of trafficking in persons in the Supreme Court numbered 11 in 2002-2003, 17 in 2003-2004, 16 in 2004- 2005 and four in 2005-2006. Global Trafficking in Persons Report, UNODC, 2008

⁹⁸ Report on trafficking, FWLD-UNIFEM, 2004

IV. Findings from Stakeholders' Consultations

Over the years, repatriation of Nepali children from India has been managed directly between NGOs, with little engagement and no accountability of government counterparts. There have been conflicting views of different stakeholders as to whether this system should be formalized and if yes, then to what extent.

During stakeholder consultations, majority of the discussions were around trafficking of children leading to commercial sexual exploitation. There is an acknowledgement that trafficking of children happen for majority of other reasons including child labor, begging, organ trade etc. but due to lack of information and research on other aspects of human trafficking, detailed discussions could not be managed on these aspects.

In summary, repatriation of children to Nepal from India is being managed between NGOs with minimum engagement and practically no role of ministries like home or external affairs (which have defined roles in case of Bangladeshi repatriation). It has been reported by Nepal government officials⁹⁹ that the two governments are in the process of drafting the MoU for repatriation but this could not be confirmed from representatives of the Indian government.

1. Journey of Nepali Children to India and Back

In order to identify practices and challenges in the entire process, it needs to be understood through the specific components of rescue, recovery, repatriation and integration. This section provides details under each of these components.

1.1.1 Rescue

Nepali children are rescued through two distinct procedures. One is rescue from places of exploitation by police/law enforcement agencies or identification of missing children within India and the second procedure is through interception at the border points (either in the territory of Nepal or India). In India, laws, including JJ Act and ITPA, mention the minimum standards for rescue which broadly include role of police, engagement of NGOs and other dimensions to ensure the rights of children.

1.1.1.1 Rescue Operations at Places of Exploitation

Raids in India are normally conducted after a tip off of an exploitative activity happening. In some cases, police might also be conducting rescue operations to find a

⁹⁹ Proceedings of the workshop conducted by Shakti Samuha on "Guidelines about safe and voluntary repatriation of Nepali trafficked children and women", August 25, 2013, Kathmandu

missing child, for whom report has been filed. Once a rescue operation is conducted, children (and also adults) who are identified as victims of trafficking are rescued and brought to a police station. As per the JJ Act law, these children are to be presented before the Child Welfare Committee (and before court in case of adults, as per ITAP) within 24 hours of rescue. The CWC/Court would then order for the care and protection and refer them to a short stay home until she can be rehabilitated back with her family. Though it is specifically mentioned in the JJ Act that the victim children should only be presented before CWC, there have been reported instances where NGOs have been presenting the rescued children before the Juvenile Justice Board (JJB), Magistrates or courts. No specific reasons could be identified for this, despite discussions with police and NGOs. It seemed, though, that it was either due to ignorance or personal rapport among stakeholders.

Stakeholders in Maharashtra have mentioned about the steep downfall in the rescue of Nepali girls during the rescue operations. Most stakeholders believe that this downfall is due to the fact that Nepali girls are now being replaced by Bangladeshi girls. Many of the smaller districts of Uttar Pradesh and Bihar reported the presence of Nepali girls in places of exploitation but also that they were not being rescued during regular rescue operations. Some explained it by the fact that there could be a nexus between police and brothel owners while some others mentioned that the police officers are unwilling to rescue Nepali girls as they feel their repatriation process is too complex to handle.

1.1.1.2 Rescues at Border Points

Several border crossing points between India and Nepal are currently manned by NGOs engaged in prevention of human trafficking where they operate facilitation centers (or kiosks, as these are popularly known as) at these points. The NGO staff deputed at these border points keep a close eye on people crossing the border, particularly from Nepal to India. Once a child suspected of being trafficked is intervened or stopped at the border, the NGO personnel provides first hand counseling, more to ascertain whether the child is being trafficked, at risk or vulnerable. If the NGO personnel is convinced that the child is being trafficked or at risk, the child is handed over to the police at the border point. This would be Indian border security force if intervened or stopped at Indian side and Nepal Prehri (Nepali border police) in case the child was still on the Nepal side.

Considering that many Nepali girls are being trafficked through India for Middle Eastern countries (as they cannot travel through Nepal), the Nepal government has requested the Indian government to check such emigration of Nepali individuals, particularly girls, from Indian airports. Indian government responded favorably to this request and necessary orders might be issued very soon for airport authorities.

1.1.1.3 Issues in Rescue of Girls

Most of the issues identified at rescue stage cut across nationalities of girls, however there are some specific issues related to Nepali girls.

- Rescue Operations are only being organized at identified locations of commercial sexual exploitation. Children engaged in other forms of exploitation e.g. child labour, domestic labour etc. are neither being identified nor being rescued. This poses a huge gap in rescue processes
- The children when intervened or stopped at the border points (Indian side) are not produced before the CWC, while they should be as per the law. They are directly handed over to an NGO on the other side of the border and the police at Indian side are only informed
- Except for metro cities like Delhi and Mumbai, there are no mechanisms to monitor whether the rescue operations are being held in accordance with the minimum standards prescribed under the law. The Anti-Human Trafficking Units (AHTUs) are not established in each district and, wherever they exist, lack sensitivity and capacity to manage rescue operations.
- There is no mutual trust between police and NGOs, making the rescue operations further complex, increasing the vulnerability of the girls at places of exploitation and leading to 'failed rescue operations'¹⁰⁰
- Stakeholder reported that due to increased pressure on organized places of commercial sexual exploitation (brothels and hotels) in big towns, the business was now rapidly moving to nearby smaller towns and taking other forms like use of expressways, flats and dance troupes. It has now spread thinly across wider population which is making rescues very difficult
- CWCs in smaller districts of Bihar and Uttar Pradesh expressed their limitations for referring the rescued girls to shelter homes as there are not sufficient short stay homes where girls can be temporarily housed till their families are traced. Wherever available, these facilities are far away and transporting girls to these places is a big issue. In such instances, the first choice of CWC is to look for someone who can take the custody of the girl. In many instances, someone known to the girl will appear as a guardian and the CWC would hand over the girl to this person simply by signing an undertaking that s/he will take care of the girl. This is a common practice currently being adopted by CWCs of several districts in these states

¹⁰⁰ Failed rescue operation is a term frequently used by stakeholders in smaller districts which essentially mean that though the rescue operation was conducted, nothing was found at the place. NGOs blame the police for leaking the information while the police blames the NGOs for providing unconfirmed information

- In the Indian districts of Bihar and Uttar Pradesh, along the borders of Nepal, stakeholders mentioned that there are a lot of Nepali girls that are regularly brought come to these Indian districts for commercial sexual activities and return back. This being a mobile population, rescues are very difficult.
- Stakeholders in Nepal mentioned that an increasing number of girls now cross borders to China for serving as domestic workers for bars and restaurants and get exploited in the process. This is also termed as a mobile population for which rescues are difficult to manage.
- Nepali stakeholders also had a grave concern about children being trafficked to Middle Eastern countries via India, for whom, there are no proper rescue mechanisms either in transit or at destination.

1.1.2 Recovery

Recovery refers to the time that a rescued survivor spends at a shelter home where she receives different services for her physical, mental and economic wellbeing. Nepali girls rescued in India go through two different stages of recovery, one in a shelter home in India and another in a shelter home in Nepal, after they are repatriated.

1.1.2.1 Recovery at Shelter Home in India

In India, once the girl is rescued, she should necessarily be sent to a shelter home referred by the CWC, (irrespective of her nationality) but only till her family is located when she can be rehabilitated. This could be a government run shelter home or an NGO managed (and government certified/supported) home. The home is then expected to follow certain procedures within 21 days of the admission of the girl and then prepare the longer term case management plan with reintegration of the girl as a primary focus.

Some of the big and established NGO run shelter homes in metro cities like Mumbai, Kolkata and Delhi are able to complete most of these mandatory procedures in time, but government homes even in these metros struggle to complete even the basic requirements such as

Mandatory Procedures to be adopted by Shelter Home for a girl within 21 days of her admission

- Request CWC to order for initiating Home Investigation
- Counselling the girl to deal with initial trauma
- Medical examinations at Shelter Home and designated government facility
- If in doubt, establish age as per the prescribed verification procedure
- Get home and family details from the girl and identify NGO for requesting home investigation
- Send formal request to the identified NGO for home investigation
- Three to four rounds of counseling (as needed)
- Literacy assessment
- Assessment of appropriateness of vocational skills
- Presentation before CWC/Court if required

counseling. Shelter Homes in smaller towns do not have the capacities and resources to accomplish these mandatory requirements and they are only able to produce girls before CWC/ Court, conduct medical examinations and send request for home investigation.

Counseling is one of the most crucial yet most neglected aspects of recovery process. Stakeholders, both in India and Nepal, mentioned that there are not any trained counselors in the country or even specialized institutions or courses to produce such counselors. All the existing counselors have earned these skills through experience. Therefore, the quality of counseling being provided is certainly not up to the desired standard.

Many big shelter homes also maintain a section isolated from the main home where the girls are kept for the initial 2-3 months, till they are accustomed to the environment. Homes mention that many of the girls who come in behave differently, are violent in nature and addicted to substance and therefore it is not advisable to mix them with other girls who are far more settled in the home.

After nearly a month, when the girl seems a bit more settled and has gone through some rounds of counseling she is enrolled into education and/or vocational skill which entirely depends on the individual capacity of the shelter home and facilities available there. Government run shelter homes do not have vocational training facilities and only very few of these homes (e.g. in Mumbai) have established partnerships with other NGOs who provide vocational skills to these girls.

After this process, there are four possibilities for any girl:

- She could be handed back to the family if her family is identified, recommended to be fit by the NGO conducting home investigation, provided that the CWC is convinced with the findings and passes orders for the same
- She could be transferred to another shelter home, to her state of origin, closer to her country/state of origin or to another shelter home in case of specific needs
- She could be repatriated to her country and handed over to another NGO in her country of origin.
- She could continue to stay with the shelter home till she attains the age of 18 years, if her family is not identified.

In practice, most of the Nepali girls would stay at the shelter home until orders for repatriation are received and they are repatriated back to Nepal. There are reported instances when adult Nepali girls have been released by the court/CWC as Nepali citizens have right to rehabilitate themselves in India. In many of the smaller towns, there are instances reported where CWC has handed over the Nepali girls to the

persons who approached them as their guardian and demanded custody. These persons are of Nepali origin and claim to have settled in India.

1.1.2.2 Recovery of Girls in Nepal

The girls repatriated to Nepal from an Indian home are not handed over directly to the families there. Rather they are handed over to the NGO managing a shelter home in Nepal. The girls are kept here for a period of time and engaged in education/vocational skills if such facilities are available within the shelter home. The shelter home will probably attempt to contact the family (if the family has been found fit during the home investigation conducted earlier) and hands over the girl to the family. If the family is not traceable, not fit or if the girl does not want to return to the family, the shelter home engages her in vocational skills and try to rehabilitate her.

During this period, shelter Homes/NGOs in Nepal also start an important process of supporting the survivor and her family in filing legal complaint against the person who trafficked her and provide legal support and protection to pursue the girl. Despite risks and threats, this trend has picked up in recent times and several cases are now being lodged against traffickers in different districts of Nepal.

1.1.2.3 Issues in Recovery of Girls

Overall, the recovery process adopted by shelter homes in India and Nepal are not up to the desired standards and need massive infrastructural and capacity development. Some specific issues identified during this research are:

- Huge shortage of short stay homes (where girls can be temporarily housed till their families are traced) in India is making the recovery process difficult for girls. Except for very few NGO run shelter homes, all shelter homes lack basic capacities and resources to provide the much needed recovery support to the survivors
- Many attempts have been made in India to design the minimum standards of operation for shelter homes for providing rehabilitative support to the survivors. While most NGOs and homes agree with these standards, these are not being implemented due to lack of necessary resources
- Organizations in Nepal face constant threat from traffickers as they provide legal support to the survivors for fighting cases against them. There are not any legal safeguards available in the Nepali laws to protect them from these threats
- Several NGOs operating from smaller towns of India and Nepal do not come to know about important policy changes, landmark judgments and other directives/guidelines from the government and hence are not able to take advantages of these initiatives
- Quality of services, particularly counseling is neither monitored nor adhering to any agreed minimum standards

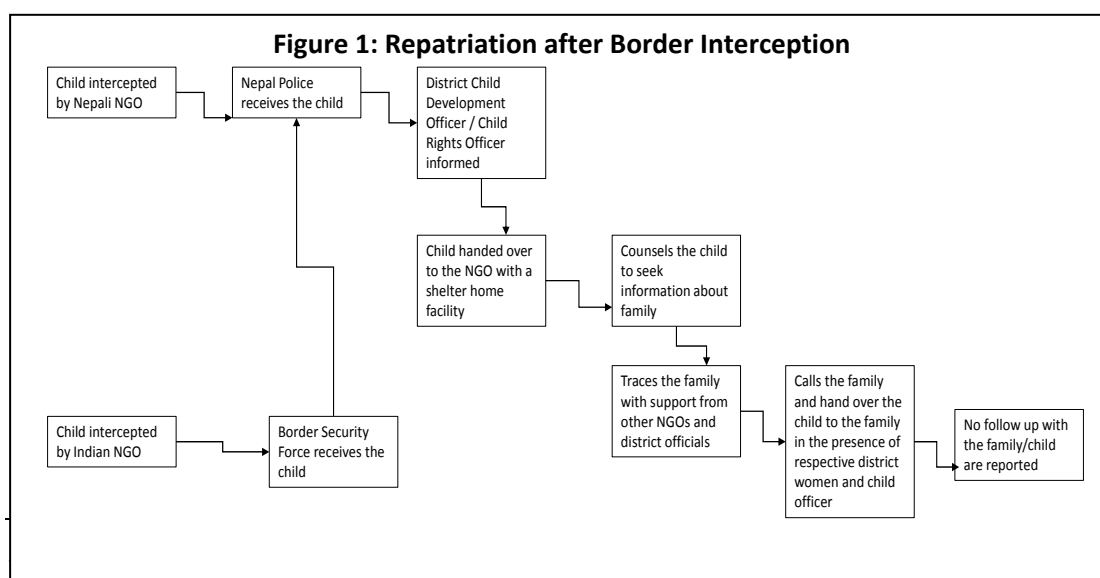
- Vocational skills (wherever available) are not market oriented and do not lead to livelihood opportunities in most cases. Even when these opportunities are available, the incomes are far below the earnings of the survivors when they were in exploitative situations. This demotivates the survivors to continue to work and keeps them inclined to go back to their earlier lives

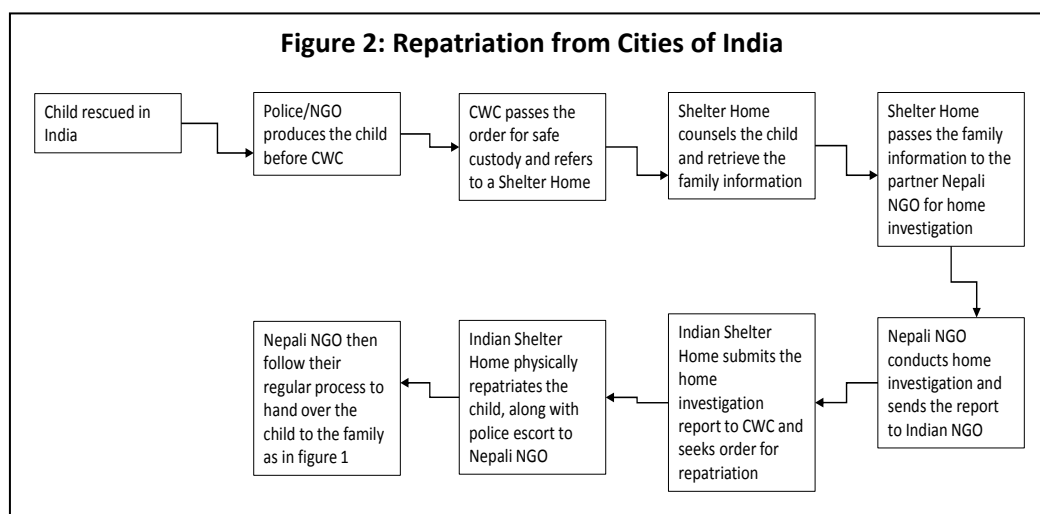
1.1.3 Repatriation to Nepal

While the Indo Nepal treaty provides the Nepali citizen right to settle in India, Nepali trafficked survivors are necessarily required to be repatriated and are not provided with option to settle in India. Once brought into the legal system in India, these girls have to be necessarily repatriated to their country. In case the families in Nepal are not identified or are not safe for the girl, the girls will have to be taken back by the Nepali entity. It should ideally be Children and Social Welfare Board (CSWB), a government entity, but in practice a Nepali NGO who would also take the custody of the survivor on behalf of the Government of Nepal and the family of the survivor (if traced).

The Government of Nepal is very supportive of the repatriation process and is generally very willing to receive its nationals back in their country. In order to facilitate this process, Nepali Embassy/Consulates in India and other countries have been provided with funds by the Nepal Government to provide travel support to the survivors who want to return back to Nepal. However, most of the NGOs and Shelter Homes in India are not aware of this “scheme” and therefore do not avail it.

As there are two different rescue processes, the repatriation is also slightly different in both forms of rescue. The two processes are explained through two different flow charts as shown in the Figure 1 and 2 below.





1.1.3.1 Stakeholder Engagement in the Repatriation Process

The following table illustrates the stakeholders involved in the process and their perceived responsibility as per the established practices.

Stakeholders in Repatriation Process at Each Site of the Border

India		Nepal	
Stakeholder	Responsibility	Stakeholder	Responsibility
CWC	Pass order for repatriation	NGO	Supports the shelter home in India to conduct home inquiry and receive the girl Receives the girl when she arrives from India
Court	Clears that the survivor is not required as witness	District Women and Child Development Officer	Keeps information about the repatriation of the child Physically present at the time and place where Nepali NGO receives the survivor
Shelter Home	Coordinates the entire process of repatriation with different stakeholders including NGOs in Nepal Physically repatriate the survivor along with police escort	Nepal Prahari	Physically receives the survivor only when she is intercepted at the border
Nepali Consulate	Provide travel support for physical repatriation (movement) of the survivor	Local police	Supports the NGO in family tracing and handover of the child to the family

In the recent past, the Government of Nepal (Ministry of Women and Child Development) has been working with Shakti Samuha (Nepal based NGO) to explore the possibilities of adopting the SoP developed jointly by Shakti Samuha and Sanlaap (Kolkata based NGO). The ministry confirmed that they received the copy of the SoP and is now initiating the process of getting feedback from a wider group of stakeholders. The ministry also expressed the need for technical and financial support to organize events for seeking feedback from stakeholders for other processes needed for adoption of the SoP in the medium term.

1.1.3.2 Issues in Repatriation of Girls

Some of the aspects that enhance the vulnerability of the survivor in the entire process of repatriation are:

Within India

Obtaining CWC Orders: CWCs, before passing the orders, are generally concerned about re-trafficking of the child and whether the child can be brought back for witness, in case required by the law. At times, CWCs need a lot of evidence and convincing for these which would mean efforts at the level of the NGOs managing the case and hence this can delay the repatriation process

Government Engagement: There is no mandatory requirement of engaging the Indian or Nepali Governments in the repatriation process and the Indian NGO/Shelter Home can directly liaise with a Nepali NGO for physical repatriation, without informing the relevant government authorities. This is a common practice during border interceptions.

Getting Quality Home Investigation Reports: Indian NGOs do get home investigation reports but many a times these are incomplete/inadequate to conclude whether the child would be safe if handed back to the family. On the other hand, if the family is not traced, Indian NGOs/Homes are left with no option but to hand over the child to the Nepali NGO with an assurance that the child will be safe in Nepal and integrated.

Pending Court Proceedings: Many of the survivors are required as witnesses in cases filed against the brothel owners and/or traffickers, if arrested. Therefore, CWC before passing orders for repatriation, would need confirmation that the survivor is no more required as a witness. While recording statements under Section 164 are being attempted, courts still demand physical presence of the survivors which delay the process of their repatriation

Compensation: Twelve Indian states have Victim Compensation policies that specifically include compensation for survivors of human trafficking. The policy does not limit itself to Indian nationals only. However, none of the human trafficking survivors have reported to have applied for compensation and received it. One possible reason is that

the funds have not been allocated to the State Legal Services Authority which is a nodal agency for providing compensation.

Within Nepal

Minimum government engagement: The officials from Women and Child Department are only informed and kept in the loop about the child's rescue and further movement. The child does not have to be physically produced before the officials when brought into Nepal neither is their consent or approval required for handing over the child to the family

Home Investigation: Nepal NGOs report that due to difficult terrains at times getting to the place where family lives is very difficult and takes a lot of time. In many cases, the families are too poor and hence not fit for handing over the child as there would be a risk of re-trafficking. There have been cases reported where families have refused to accept the child fearing social stigma.

Necessary handover to the family: If the NGO is able to trace the family, the child is necessarily handed over to the family. There are no records maintained in terms of safety of the child at home (no home investigation reports could be seen during the field visits)

No follow up of children handed over to the family: Follow up is not a norm or a normal practice among NGOs, as they are not expected to submit any follow up reports to any agency.

Compensation: Anti Trafficking Plan of Nepal has provision for compensation to the survivors of human trafficking by the state. However, there are not any reported cases where the compensation has been received.

1.1.3.3 Comparison with Bangladesh Repatriation Process

Considering that there is not any free movement between Indian and Bangladeshi borders, the repatriation processes are quite complex and legal in nature.

One of the most important aspect of Bangladeshi repatriation is the formal establishment of the nationality of the survivor as Bangladeshi which has to be accepted by the Government of Bangladesh. This is a complex process as it engages Ministry of Home Affairs at national level, local police and NGOs and therefore takes a lot of time. Fortunately, this is not a requirement for Nepali survivors as the Nepal Government is very open to accept its nationals, once they admit to be of Nepali origin. This makes repatriation to Nepal far simpler than the Bangladeshi repatriation.

Under current laws, repatriation cannot be voluntary (but mandatory) for Bangladeshi children rescued in India. The repatriation to Bangladesh cannot be undertaken unless¹⁰¹:

- The Government of Bangladesh accepts the child as its national (provide nationality certificate)
- The High Commission of Bangladesh provides temporary travel document for the child
- The Foreign Office and Crime Branch of India provides clearance

Considering these are complex processes that engage several Government Departments across both countries, repatriation takes a lot of time. One particular bottleneck in the process is tracing the family in Bangladesh, confirming the nationality of the family and then to confirm that the girl rescued/traced in India belongs to the family.

Law enforcement agencies in India are aware of the status of Nepali citizens in India and hence the survivors are not booked under Foreigners' Act and therefore not produced before the Juvenile Justice Board

Fortunately, none of these hold as minimum requirements for Nepali children in India and hence, the repatriation process can be made quick, easy and voluntary, the only challenge being making it safe for the child.

1.1.4 Integration

Integration has emerged as the least developed component in the entire process and stakeholders pay least attention to this dimension. Stakeholders in India feel that once the child is repatriated to Nepal, their responsibility is completed and hence do not look back. They do complain that they do not receive any follow up reports from the Nepali NGOs who receive the child but then there are no formal mechanisms established for follow up.

Nepali NGOs operating at district level and engaged in handover of the girls back to the family admit that they normally do not conduct any follow up or keep any contact with the family. They also do not deny that the girls handed back to the families run a risk being re-trafficked.

The only cases where survivors/families keep contact with the NGOs are when NGOs have supported them to file complaints against the traffickers. In such cases, NGOs maintain regular contact and ensure that the girl remains with the family at least for the duration of the case.

¹⁰¹ The full details of Bangladeshi repatriation process is available as a separate document.

There have been some examples of community based integration attempted by NGOs in Nepal where survivors are not handed back to the families but are supported by these NGOs to get into livelihood and establish themselves independently, away from the family. Though very few, these survivors maintain contact with the NGOs. However, it is also reported that not many of these livelihood options sustain over a long period.

1.1.4.1 Issues in Integration

- There are not many successful livelihood options available with the survivors which makes integration extremely challenging for survivors
- NGOs, particularly in Nepal, do not deny the existence of stigma in the society against these survivors which at times force them to move out of the community, making them again vulnerable to trafficking
- Girls intercepted at border points and handed back to families run the great risk of getting re trafficked using other border points. This is essentially because these girls and their families are not counselled properly and they continue to feel that their right to migration is being violated by the border agencies for no reason
- Traffickers have been using this misunderstanding to their advantage by convincing the parents to accompany the child till the border point so that s/he can easily cross the border
- There are very few examples in Mumbai where survivors have been trained on skills like retail sale, hospitality and home care. While these are successful, there is very limited market for such skills and that too only in big towns like Mumbai and Delhi. Survivors coming from small towns and sent back to their homes do not have access to these options

2. Solutions Attempted by Stakeholders

Some of the promising practices attempted are:

- CWCs in India have asked Nepali NGOs (taking the custody of the child) to give an undertaking that they will ensure the safety of the child, keep regular follow up to ensure she is not re-trafficked and that she would be brought back for witness if required by the court/law.
- Nepal Consulate in Kolkata has agreed to provide travel support for repatriation of survivors which also helps in quick repatriation once the orders are obtained
- NGOs in India and Nepal signed a mutual MoU to regularize the repatriation process, developed a Standard Operating Procedure (SoP) and managed repatriation from several cities of India to Nepal over the last few years.
- NGOs in India and Nepal are currently discussing the SoP with other NGOs and Government functionaries in an attempt to build a consensus towards adopting the SoP and find out ways to implement it.

V. Judgments' Analysis

Part I—India

S. No	Issue	Court	Case Number
Part I: India			
1	What evidences should be considered for determining the age of a suspected minor	Supreme Court	CA No. 1209 of 2010
2	Rejecting the request to hand over the custody of the rescued minor to any claimant Authority of Child Welfare Committee	Bombay High Court	CRIMINAL WRIT PETITION NO. 227 /2011
3	Who can be kept at Protection Homes	Allahabad High Court	1978 CriLJ 1003
4	Establishment of JJBs and CWCs Legal help for Juvenile in Conflict with Law (JCL) Training to Police on management of JCL	Supreme Court	Interim Order
5	Who can be kept at Protection Homes	Allahabad High Court	2004 Cri LJ 4540
6	Management of Missing Child Complaints by the police	Supreme Court	WRIT PETITION (CIVIL) NO.75 OF 2012
7	Does ITPA contradicts with certain sections of the Constitution	Gujarat High Court	(2004) 2 GLR 1764
8	Special police officers appointed under ITPA Act	Delhi High Court	CA No 220 of 1960
9	Should the case be rendered illegal if search has not been conducted regularly	Supreme Court	1970 AIR 1396
10	Guidelines for State Machinery on Implementation of ITPA	Madras High Court	W.P.No.36807 of 2006
11	Guidelines for regulation of placement agencies	Delhi High Court	WP (Crl) No.879 of 2007 and WP (Crl) No.619 of 2002
12	Circumstances under which bail of offenders under ITPA can be rejected	Supreme Court	CA No 1373 of 2009 (Arising out of SLP (Crl.) No. 2585 of 2006

S. No	Issue	Court	Case Number
13	Rights of Children working in Circuses	Supreme Court	WP (CIVIL) NO.51 OF 2006
14	Recording of Victim Statement through Video Conferencing	Delhi High Court	CrI.M. 1467/04 in CrLW 532/1992
15	Detention of victim or accused at police station, pending medical report	Allahabad High Court	HC No 383 Of 2010
16	Bail for a brothel owner	Bombay High Court	CA No. 940 of 2009
17	Special powers of District Magistrate to Commissioner of Police for certain sections of ITPA	Supreme Court	Appeal (CrI) No 702 of 2006 (arising out of SLP (CrI) No 150 of 2006
18	Guidelines for managing the victims of rape	Delhi High Court	W.P.(CRL) 696/2008
19	Medical Termination of Pregnancy of a rape victim	Supreme Court	CA No. 5845 OF 2009
20	Management of children of sexual abuse	Supreme Court	W.P.(MD)No.8355 of 2011 W.P.(MD)No.12572 of 2011
21	Importance of victim testimony and corroborative evidences in cases of child abuse	Supreme Court	CANOs. 1208-1210 of 2008
22	Guidelines for management of girls at government shelter homes	Allahabad High Court	Writ Petition No. 20737 of 2011
23	Preventing multiple recording of statements of victims of rape	Supreme Court	Special (CrI) Appeal No(s).5073/2011
24	Guidelines for monitoring women protection homes and their inmates	Allahabad High Court	(CrI) WRIT-PIL No. - 20736 of 2011

Summary of Cases

1. Age Determination of Minor

A. Issue Addressed

What evidences should be considered for determining the age of a suspected minor

B. Summary of Court Observations

- Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, honourable court was of the opinion that the aforesaid statutory provision should be the basis for determining age, **even for a child who is a victim of crime**. For, in their view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime.
- The manner of determining age conclusively, has been expressed in Rule 12 sub-rule (3) of JJ Act. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor.
 - In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon.
 - Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon.
 - Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child.
 - It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.
- Under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the victim.

C. Brief Facts of the Case

This was a case filed by the parents of a girl where their girl was found missing. The father gave out her age as about 16 years. One Jarnail Singh was suspected of this abduction. The girl was recovered on 29.3.1983, from the custody of the accused-appellant Jarnail Singh who was arrested, on 29.3.1993. The statement of the victim

VW-PW6 was recorded under Section 164 Cr.P.C. by Judicial Magistrate First Class on 6.4.1993.

The Additional Sessions Judge, arrived at the conclusion, that the prosecution had been able to bring home the guilt of the accused-appellant beyond any shadow of reasonable doubt, under Sections 366, 376(g) and 120-B IPC. The High Court, in appeal upheld the judgment of Trial Court.

Advocate for the accused-appellant vehemently contested the determination of the High Court in the impugned judgment, wherein it had concluded, that the victim was a minor.

2. Custody of Minor

A. Issue Addressed

- Can anyone claim the custody of a minor girl rescued from abusive situation.
- Authority of Child Welfare Committees

B. Summary of Court Observations

- The minor girls rescued under the PITA are required to be taken utmost care as they are likely to be driven to the same environment of red-light area and there is high risk that may be induced or coerced into unlawful sexual activity or flesh trade
- Once the Magistrate had sent the girls to the Child Welfare Committee, his jurisdiction ended and further procedure under the Juvenile Justice Act comes into play.
- The decision as to protective custody of the child in need of care and protection with a view to rehabilitate the rescued minor child can be left best to be considered by the competent quasi-judicial authority like Child Welfare Committee created under the said Act as it can pass appropriate orders to protect the dignity of the child as well as its best interest.
- The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the 'Children in Need of Care and Protection' as well as to provide for their basic needs and protection of human rights.
- Child welfare Committees have the final say to dispose of the cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs, protection and restoration to their family.

C. Brief Facts of the Case

The Lakadganj Police Station, Nagpur raided the infamous Red light area known as 'Ganga Jamuna' and rescued some girls from the alleged brothel on 25/11/2010. They were treated as victims and produced before the learned Judicial Magistrate, Court no 3, Nagpur, who directed the Investigating Officer to produce rescued victims under PITA before Child Welfare Board and to conduct their medical examination through Medical Officer by 08/12/2010 for carrying out age determination, and to determine whether they were suffering from any sexually transmitted diseases. The learned Magistrate rejected the Application by the petitioner—Munni seeking custody of the minor victim Kumari Mamta, on the ground that she is minor, aged about 15 years old and her rehabilitation is necessary through care and custody of the Child Welfare Board. Learned Sessions Judge who heard the parties in Appeal, on facts, considered the application for the custody by mother of the rescued minor victim from the Red light area and the likelihood that she may be thrown into same abominable flesh trade by their relatives. The fact is that the minor girls were given into the custody of the Child Welfare Committee. They have been treated as minor victims. They were considered as child in need of care and protection within the meaning of the Juvenile Justice Act and sent to Child Welfare Committee. They were not "Juvenile in conflict with law" and therefore were not sent to Juvenile Justice Board.

3. Detention at Protective Home

A. Issue Addressed

Who can be detained or lodged at a Protective Home

B. Summary of Court Observations

- Protective Homes find a mention In the Suppression of Immoral Traffic in Women and Girls Act, 1956 which clearly shows that a person can be kept in a Protective Home only when she is being dealt with under the Act.
- No person can be kept in the protective home unless she is required to be kept there either in pursuance of the Suppression of Immoral Traffic in Women and Girls Act, or under some other law permitting her detention in such a Home.
- If a girl is kept in a Protective Home, proper provisions of law or jurisdiction should be cited for her custody at the Protective Home

C. Brief Facts of the Case

This Habeas Corpus petition was filed by a girl claiming that she was wrongfully detained in Manila Ashram, Moti Nagar, Lucknow. The documents produced and the statements made before the court show that the Station Officer apprehended that there was likelihood of tension growing between the parents of the girl and

some others. On the basis of this apprehension he made a report to the Magistrate and the learned Additional City Magistrate directed that the girl be kept in the Protective Home, Moti Nagar.

4. Implementation of JJ Act

A. Issue Addressed

- Legal assistance to juvenile in conflict with law (JCL)
- Management of JCL at the police station
- Establishment of JJBs and CWCs

B. Summary of Court Observations

- The Home Departments and the Director Generals of Police of the States/Union Territories will ensure that at least one police officer in every police station with aptitude is given appropriate training and orientation and designated as Juvenile or Child Welfare Officer, who will handle the juvenile or child in coordination with the police as provided under Section 63 (2) of the Act.
- The required training will be provided by the District Legal Services Authorities under the guidance of the State Legal Services Authorities
- Secretary, National Legal Services Authority will issue appropriate guidelines to the State Legal Services Authorities for training and orientation of police officers, who are designated as the Juvenile or Child Welfare Officers.
- The training and orientation may be done in phases over a period of six months to one year in every State and Union Territory.
- The Home Departments and the Director Generals of Police of the States/Union Territories will also ensure that Special Juvenile Police Unit comprising of all police officers designated as Juvenile or Child Welfare Officer be created in every district and city to coordinate and to upgrade the police treatment to juveniles and the children as provided in Section 63 (3) of the Act.
- Juvenile Justice Boards should ensure that juveniles in conflict with law, who are brought before them, are provided immediate legal aid and if there is any difficulty to direct or instruct, the respective District Legal Services Authority to provide such legal aid.
- Juvenile Justice Boards should follow Section 15(2) by calling for social investigation report. For this purpose wherever, the Probation Officers are not already appointed and attached to the Juvenile Justice Boards, the State Government should take steps to ensure that the Probation Officers are appointed.
- State Legal Services Authorities are requested to co-ordinate with the respective Child Welfare Department of the respective States to ensure that the Juvenile Justice Boards and Child Welfare Committees are established and function with the required facilities.

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- NALSA may examine and try to put in place a Legal Aid Centre attached to the Juvenile Justice Board in the State capitals where there is a high pendency.
 - As considerable co-ordination is required, the Executive Chairmen and Member Secretaries of the State Legal Services Authorities may arrange for periodic supervision and visits to ascertain the functioning of the Children Homes, Observation Homes etc.

C. Brief Facts of the Case

In many places juveniles in conflict with law who are produced before the Juvenile Justice Boards do not get adequate or appropriate timely legal aid and assistance. Various reports have been submitted by the State Government stating that Juvenile Justice Boards and Child Welfare Committees have been established in every district. But there are complaints that in many districts, the Child Welfare Committees are not operational or functional and even the Juvenile Justice Boards are not constituted in the manner provided for under the Act.

5. Detention at Protective Home

A. Issue Addressed

- Inaction by the trial court in releasing the women from Protective Homes
- Who can be booked under ITPA

B. Summary of Court Observations

- ITPA provides for the removal of a person found in a brothel. It does not appear to give any power to detain a person, at the time when she is moving around on a rickshaw, even if there are some suspicions that such a person may be involved in some immoral activity.
- Likewise Section 15 of the ITP Act also only applies to apprehension of person living in any premises after search of those premises without warrant
- It also requires a special Police Officer or a trafficking Police Officer who are appointed by the State or Central Governments respectively under Section 13 of the ITP Act, to take a person into custody
- Proviso to Section 17(3) provides that a person can be kept in custody for a maximum period of three weeks from the date of the order for an inquiry under Section 17(2) of the ITP Act
- The Sessions Judges as Chairmen of the District Legal Services Authorities must proactively ensure that the inmates of the Protective Homes receive proper legal aid.
- The Sessions Judges must also get an enquiry conducted into the living conditions in the homes, as stories have appeared in the press of living conditions in the homes being extremely poor and unhygienic, and there have

been occasional reports of physical and sexual exploitation of inmates of some Protective Homes with the connivance of the staff of those homes.

- The enquiry must also throw light on the efficiency of the programme for education, training, rehabilitation and health care of the inmates, and whether there is any programme for arranging the marriages of the inmates, who are bereft of any outside support. Whether there are any provisions for entertainment of the girls in the homes, and is there any scope for outside visits, or are the inmates kept permanently confined in the homes.
- After getting the aforementioned enquiry conducted and outlining their proposed plan of action for ensuring compliance with the provisions of the ITP Act, and for providing legal services to the inmates of the Protective Homes, the reports of the Sessions Judges of Agra and Mathura, must reach this Court on or before 16-9-2004

C. Brief Facts of the Case

The present application has been filed under Section 482, Cr. P.C. for quashing proceedings under Sections 15, 16 and 17 of the ITP Act and for release of Pushpa who is detained in a Protective Home in the charge of her mother or brothers, because the Magistrates have completely slept over the matter and have failed to pass any further orders in her case.

One woman Pushpa was detained when she was going on the road on a rickshaw and was lodged at Shelter Home in Agra under ITPA. Pushpa was produced before the City Magistrate presumably under Section 17(1) of ITP Act, who passed the initial order for keeping her in the Protective Home at Mathura and from where she had been transferred to the Protective Home at Agra. Pushpa appears to have been kept in custody for almost 9 1/2 months and no final orders were passed for keeping her in the Protective Home or handing her over to any other appropriate custody.

6. Management of Missing Children

A. Issue Addressed

- Comprehensive management of cases of missing children by police and state authorities

B. Summary of Court Observations

- In case of every missing child reported, there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise

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- Accordingly, whenever any complaint is filed before the police authorities regarding a missing child, the same must be entertained under Section 154 Cr.P.C.
 - However, even in respect of complaints made otherwise with regard to a child, which may come within the scope of Section 155 Cr.P.C., upon making an entry in the Book to be maintained for the purposes of Section 155 Cr.P.C., and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint.
 - The Magistrate, upon receipt of the information recorded under Section 155 Cr.P.C., shall proceed, in the meantime, to take appropriate action under sub-section (2), especially, if the complaint relates to a child and, in particular, a girl child.
 - Each police station should have, at least, one Police Officer, especially instructed and trained and designated as a Juvenile Welfare Officer in terms of Section 63 of the Juvenile Act.
 - There should be, in shifts, a Special Juvenile Officer on duty in the police station to ensure that the directions contained in this Order are duly implemented
 - National Legal Services Authority is directed to ensure that the para-legal volunteers, who have been recruited by the Legal Services Authorities, should be utilized, so that there is, at least, one para-legal volunteer, in shifts, in the police station to keep a watch over the manner in which the complaints regarding missing children and other offences against children, are dealt with
 - There is also a suggestion to create a network between the Central Child Protection Unit as the Head of the Organization and all State Child Protection Units, District Child Protection Units, City Child Protection Units, Block Level Child Protection Units, all Special Juvenile Police Units, all Police stations, all Juvenile Justice Boards and all Child Welfare Committees. The said suggestion should be seriously taken up and explored by the National Legal Services Authority with the Ministry of Women and Child Development. Once introduced, the website link should also be made known to the public at large
 - The State Legal Services Authorities should also work out a network of NGOs, whose services could also be availed of at all levels for the purpose of tracing and re-integrating missing children with their families which, in fact, should be the prime object, when a missing child is recovered
 - It is suggested on behalf of the NALSA, every found/recovered child must be immediately photographed by the police for purposes of advertisement and to make people aware of the missing child. Photographs of the recovered child should be published on the website and through the newspapers and even on the television so that the parents of the missing child could locate their missing child and recover him or her from the custody of the police. The Ministry of Home Affairs shall provide whatever additional support by way of costs that

may be necessary for the purpose of installing such photographic material and equipment in the police stations.

- Standard Operating Procedure must be developed to handle the cases of missing children and to invoke appropriate provisions of law where trafficking, child labour, abduction, exploitation and similar issues are disclosed during investigation or after the recovery of the child, when the information suggests the commission of such offences. As part of the Standard Operating Procedure, a protocol should be established by the local police with the High Courts and also with the State Legal Services Authorities for monitoring the case of a missing child. In Delhi, such a protocol could be established with the help of the All India Legal Aid Cell on Child Rights, set up by NALSA, in association with the Delhi State Legal Services Authority, and Bachpan Bachao Andolan. In fact, the same could be treated as a nodal agency of the All India Legal Aid Cell on Child Rights.
- Reference to the Advisory issued by the Ministry of Home Affairs on Missing Children on January 31, 2012
- Any private Home, being run for the purpose of sheltering children, shall not be entitled to receive a child, unless forwarded by the Child Welfare Committee and unless they comply with all the provisions of the Juvenile Justice Act, including registration

C. Brief Description of the Case

Court intervention was sought to issue guidelines to states on how to handle cases of missing children, considering that there is a regular increase in the cases of missing children and not many are being found/traced.

7. Contradiction between ITPA and Sections of Constitution

A. Issues Addressed

- The provisions of Section 7(1)(b)¹⁰² and Section 15¹⁰³ of the Immoral Traffic (Prevention) Act, 1956 do not violate Articles 14¹⁰⁴, 19(1) (d) (e) (g)¹⁰⁵ or Article 21¹⁰⁶ of the Constitution of India

¹⁰² Prostitution in or within a vicinity of a public place shall be punishable with imprisonment for a term which may extend up to 3 months.

¹⁰³ Search without a warrant

¹⁰⁴ Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

¹⁰⁵ Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(g) to practice any profession, or to carry on any occupation, trade or business

¹⁰⁶ Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

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- For effective supervision and control of the rehabilitation of prostitutes, there shall be constituted by the State a high power State Level Rehabilitation Committee

B. Summary of Court Observations

- The provisions of Section 7(1)(b) and Section 15 of the Immoral Traffic (Prevention) Act, 1956 do not violate Articles 14, 19(1) (d) (e) (g) or Article 21 of the Constitution of India
- The female offender who is found guilty of an offence under Section 7 or Section 8 may be ordered by the Court to be detained in a corrective institution in lieu of sentence of imprisonment in accordance with the provisions of Section 10A of the Act
- The provisions of the said Act contemplate identifying the victims of the offences under the Act committed by other persons and their rescue and rehabilitation in protective homes or corrective institutions and, therefore, the authorized police officers and the appropriate magistrates are required to exercise their functions and duties under the Act in a manner that would achieve the object of the Act of rehabilitation of the women and girls rescued or removed from brothels and other premises
- Having regard to the statutory provisions authorizing the appropriate magistrate to order detention of prostitutes in protective homes or corrective institutions as contemplated by Sections 10-A, 17(4) and 19(3) of the Act read with Rule 5 of the Rules framed there under, it is obligatory for the State Government to provide under Section 21 of the Act such number of protective homes and corrective institutions under the Act as are, in its discretion, sufficient and adequate
- For effective supervision and control of the rehabilitation of prostitutes, there shall be constituted by the State a high power State Level Rehabilitation Committee comprising of the following members:
 - Additional Chief Secretary of the Social Welfare Department as Chairman,
 - Secretary or Officer of equal rank of the Health Department,
 - Secretary or Officer of equal rank of the Home Department,
 - Secretary or Officer of equal rank of the Finance Department and
 - a Member of State Level Commission for Women or a similar Government Body
- There will also be constituted by the State Government a Local Cell for the District of Surat having the following members:-
 - Commissioner of Police or Additional Commissioner of Police, Surat as Chairman;
 - District Health and Welfare Officer;

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- Civil Surgeon or a medical officer (The name of Dr. Vikas Desai, in his capacity as the Senior Medical Officer, orally suggested in Court on behalf of the petitioners, may be considered);
 - A representative of N.G.O.
 - The State Level Committee for Rehabilitation will get acquainted with the "Convention for the Suppression of Traffic in Persons and of the Exploitation of Prostitution of Others" and other relevant International Conventions, Declarations, Agreements or Protocols etc. to which India is a Party, and which have a bearing on the suppression of immoral trafficking and rehabilitation of women and girls including the "Protocol to Prevent, Suppress and Punish Traffic in Persons Especially Women and Children" supplementing the "United Nation's Convention against Transnational Organized Crimes" and also the relevant provisions of the said Act and the Rules made there under having bearing on the aspects of rescue and rehabilitation of women or girls and children. The State Level Rehabilitation Committee may also get acquainted with the Recommended Principles and Guidelines on Human Rights and Women Trafficking - Report of the United Nation's High Commissioner for Human Rights to the Economic and Social Council of the United Nations (E/2002/68-Addl.)
 - The State Level Rehabilitation Committee will prepare and circulate a note for guidance for all the authorities and officials concerned with such rescue and rehabilitation under the Act. This may be done expeditiously and preferably within three months from the date of this order
 - The State Level Rehabilitation Committee may be entrusted by the State Government, subject to its ultimate control, power to take and implement its decisions in the matters of rescue and rehabilitation of the women, girls and children who are required to be dealt with for detention in protective homes and corrective institutions under the provisions of the Act
 - The State Level Rehabilitation Committee will take up the issue of rehabilitation of the prostitutes operating in Chakla Bazaar area of Surat on priority basis, and collect data for identifying cases which are required to be put up before the magisterial courts through authorized police officers for being dealt with under Sections 17(2)(4) , 16 or 19(3) of the Act and issue directions to subordinate authorities for expeditiously dealing with such cases for the speedy rehabilitation of the women or girls and children affected by the trade of prostitution
 - The State Level Rehabilitation Committee shall periodically convene, as per its convenience, at least once in two months, to review the progress in the matter of rescue and rehabilitation of the trafficked persons, especially women and children who are required to be rescued and rehabilitated as per the provisions of the said Act and the Rules made there under and the international norms reflected in the Conventions, Protocols and Agreements to which India is a party

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- The State Level Rehabilitation Committee shall consider the recommendations and suggestions of the Local Cell which will study the nature and extent of the offences committed under the Act in the City of Surat and identify the trafficked persons and females and children who are required to be rescued and rehabilitated under the provisions of the said Act and the Rules made there under and in consonance with the International Conventions and Protocols etc. to which India is a party and make suggestions or recommendations to the State Level Rehabilitation Committee towards rescue and rehabilitation of such persons
 - The Local Cell shall periodically check-up the conditions in the protective homes or corrective institutions established under the Act in City and District of Surat, and, if any violation of the Rules relating to maintenance of such homes/institutions are noticed, report them immediately to the State Level Rehabilitation Committee with its suggestions and recommendations in the matter;
 - The Local Cell shall inform, by suitable publications, posters or handbills in the localities involved, the women and girls working as prostitutes, about their right to make application under Section 19 for being kept in a protective home/corrective institution and also about the facilities available in such homes and institutions under the various provisions of the Suppression of Immoral Traffic in Women and Girls (Gujarat) Rules, 1985, particularly drawing their attention to the provisions showing the facilities that are required to be made available in such homes/institutions, such as medical examination of inmates (Rule 12), daily routine of inmates (Rule 22), diet to inmates (Rule 23), supply of clothes etc. (Rule 24), living space for inmates (Rule 25), religious and moral instructions to inmates (Rule 26), libraries for protective homes/institutions (Rule 27), and similar ameliorative provisions
 - The Local Cell will examine genuine grievances made against police officers and other authorities in writing with sufficient particulars by NGOs or the aggrieved women or girls or other persons involved in prostitution and try to locally sort them out in accordance with law and, if legal aid is called for in any case, refer the same to the appropriate authority under the Legal Service Authorities Act, 1987
 - The Local Cell may make such suggestions and recommendations as deemed proper for attending to the grievances of affected women or girls or other persons who are victims of prostitution at the hands of other persons, to the State Level Rehabilitation Committee for its consideration and decision
 - The Local Cell shall be convened periodically, at least once in a month, to consider the aspects of rescue and rehabilitation of the women and girls working as prostitutes and the children affected by the trade, their grievances, and make monthly reports to the State Level Rehabilitation Committee about the action taken by the Local Cell for redressal of genuine grievances and

facilitating rescue and rehabilitation of women or girls involved in prostitution and the children affected by the trade of prostitution under the provisions of the Act and the Rules made there under

- The State Level Rehabilitation Committee shall submit its yearly report and recommendations to the Cabinet for its consideration

C. Brief Description of the Case

Two petitions raising common questions challenged the provisions of Sections 7 (1) (b), 14 and 15 of the Immoral Traffic (Prevention) Act, 1956 on the ground that they violate the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India and the notification dated 23.2.2000 issued by the Commissioner of Police under the provisions of Section 7 (1)(b) by which the areas within the jurisdiction of Chakla Bazaar Police Station, Surat were notified rendering carrying on prostitution in any premises within those areas as an offence.

8. Relevance and Authority of Special Police Officer under ITPA

A. Issues Addressed

- Establishing the relevance and competence of Special Police Officers appointed under ITPA

B. Summary of Court Observations

- The special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act.
- Police officers not specially appointed as special police officers cannot investigate the offences under the Act even though they are cognizable offences.

C. Brief Description of the Case

Special police officer appointed within the meaning of Section 13 of the ITP Act

9. Impact of quality of search on overall case vitality

A. Issues Addressed

- Whether the trial becomes illegal by reason of the search not having been conducted strictly in accordance with the provisions of Section 15 of the Suppression of Immoral Traffic in Women & Girls Act, 1956

B. Summary of Court Observations

- Non-compliance with the directions contained in Sec. 15(2) in the matter of search would only be an irregularity and not such an illegality which will vitiate the trial.
- It is significant that there is no provision in the Act according to which any search carried out in contravention of Sec. 15 would render the trial illegal. In the absence of such a provision we must apply the law which has been laid down with regard to searches made under the provisions of the Criminal Procedure Code
- The legislature in its wisdom is provided special safeguards owing to the nature of the premises which have to be searched involving inroads on the privacy of citizens and handling of delicate situations in respect of females.
- The court, however, has to be very careful and circumspect in weighing the evidence where there has been such a failure on the part of the investigating agency but unless and until some prejudice is shown to have been caused to the accused person or persons the conviction and the sentence cannot be set aside

C. Brief Description of the Case

The sole point which arises for decision in this appeal by special leave is whether the trial became illegal by reason of the search not having been conducted strictly in accordance with the provisions of Section 15 of the Suppression of Immoral Traffic in Women & Girls Act, 1956

10. Guidelines for State Machinery on Implementation of ITPA

A. Issues Addressed

- Issued guidelines/directives for police, Magistrate/JJB/Legal Service Authority and state government on proper and comprehensive implementation of ITPA in the state of Tamil Nadu

B. Summary of Court Observations

Directions for Police

- Every rescued victim who is taken into custody at the time of search shall be produced before the legally competent authority within 24 hours.
- The members of the official machinery who carry out the rescue operations shall not dispose of the rescued victims, whether minor or major, at their own discretion.
- All victims, apparently or suspected to be minors, should be kept at a special home for juveniles in need of care and protection and must be produced before the competent authority within 24 hours. A member of the competent

authority constituted under the Juvenile Justice System shall be consulted by the Police Officer while deciding whether the rescued person should be brought before the Juvenile Justice System or before a Magistrate, depending upon the apparent age of the person. Victims should be treated with compassion and respect for their dignity and have access to mechanisms of justice and prompt redress for the harm that they have suffered, as provided for by law. Efforts must be made in assisting the victim to develop and keep contact with her child/children unless directed otherwise by any legally competent authority.

- The members of the official machinery who carry out the rescue operations and the members of voluntary organisations who facilitate the rescue, shall take complete precaution to ensure that the facial and other identity of the rescued victim is not revealed to anyone except those who are legally competent to know the same. Particular care shall be taken to protect the identity of the rescued victims from publicity through media and victims shall be protected against their being used by the media for its own commercial end. It should be ensured that the victim is immediately taken to a certified place of safety after the raid. The victim should never be kept overnight in the police station, except All Women Police Station. It is to be ensured as far as possible that a social worker or a support person, preferably a female, is present when the girls are being interviewed by police officers after the rescue. The services for socio-psychological wellbeing shall start immediately. On rescue or at the first helping, contact with the victims is necessary, which also includes counselling for therapeutic intervention. The list of psychological counsellors for each district shall be prepared by the Social Welfare Department within a period of two months from today. Medical examination of all rescued victims and accused/other persons taken into custody by the police shall be conducted within 48 hours of rescue of a victim or arrest of the accused. The rescued victims must be freely and unconditionally provided with professional, medical (physical and mental) assistance and professional counseling immediately after the rescue. The list of medical personnel for each district shall be prepared by the Social Welfare Department. The rescued victims shall be freely and unconditionally provided with legal assistance by the Tamil Nadu State Legal Services Authority immediately after the rescue.
- The age and other tests of the rescued victims should also be done as far as possible in the presence of child-supporting individuals and preferably within 48 hours from the rescue. Questioning should be done mostly by women police officers. The mental health aspects of the children have to be kept in mind. There should not be too much pressure on the child to speak all the details of the traumatic incident. Adopting a multi-disciplinary approach to the crime should be attempted by co-adopting additional members into the investigating team so as to include doctors, social workers, co-opting mental health experts, counsellors or anyone who would be useful in the overall rehabilitation of the

child. Investigation should necessarily be conducted into the trafficking angle in all cases of missing persons, procurement of minor girls, buying and selling, child marriages, and all cases of kidnapping and abduction. The State and Police must focus on increasing the number of trafficking victims rescue and number of prosecutions and convictions of traffickers.

- Separation of victims from offenders is necessary at the initial stage to avoid the dependency of the victims on offenders.
- Access to victims must be under the supervision of the Child Welfare Committee or the Organisation or any other competent authority dealing with the issues of women and/or children. Child victims may be identified by the use of decoy customers. N.G.Os. and social workers must be involved in this regard.
- Rescue operations to be more humanely and sensitively carried out along with a rehabilitation plan, protecting the human rights of the prostitutes.
- Examination of the victim/witnesses should be in the presence of social workers/women police/parents or others who have the trust or confidence of the child. Examinations should also be done in a victim-friendly atmosphere and not in police stations. State and Police must focus on increasing the number of trafficking victims rescue and number of prosecutions and convictions of traffickers.
- After rescue operation, the police authorities shall intimate the State Legal Services Authority as early as possible so that immediate legal aid may be provided.

Directions for Magistrates/Juvenile Justice Board/Legal Service Authority

- The Magistrate/Juvenile Justice Board shall handle all cases involving sexual abuse of children within a stipulated time frame preferably within a period of six months. On production of the rescued traffic victims, the concerned Magistrate/Board shall ensure that medical examination is conducted in order to check sexual abuse and/or rape. The Magistrate/Board shall issue appropriate directions to conduct enquiry to find out who is the parent or guardian and whether they are responsible for the trafficking of the child and if need be, to appoint a guardian ad litem to protect the interests of the child. The custody of the rescued child should not be handed over to parent/guardian without involving the Probation Officer/Social Worker and if necessary the Magistrate/Board may make an order for the child's intermediate custody in a safe place. If the child has objection to go back, the Magistrate/Board should try to determine the reasons for it and take a decision which will serve the best interest of the child rather than giving her custody to the claimers such as parents or relatives. Trials of cases of trafficking should generally be In-Camera and the Magistrate/Board should avoid disclosing the name of the prosecutrix and their orders, to save embarrassment to the victim and anonymity of the

victim of the crime should be maintained throughout. While holding the trial of a child sex abuse or rape cases, the courts should ensure that –

- A screen or some such arrangements are made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused.
- The victims of child abuse or rape cases, while giving testimony in court, should be allowed sufficient breaks as and when required.
- The questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court, who may put them to the victim or witnesses in a language which is clear and is not embarrassing to her. Orders sending victims to Homes must be made with their consent after providing them legal representation and counselling.
- Children rescued from streets should be located in a shelter home or in a protected place, away from red light areas in order to facilitate their rehabilitation.
- The State Legal Services Authority shall form a Legal Aid Clinic in every vigilance home/shelter home, so that, if the victims need recourse to law, either under the criminal jurisprudence or under the civil jurisprudence, steps can be taken without delay. Judicial officers and Juvenile Board Members need to be sensitized on the issue of trafficking and sexual exploitation of children.
- To prevent secondary victimization during interrogation/examination by investigating agencies as well as during court procedure, where a child is made to recall minute details of the sexual acts and experience, and is grilled for getting proof, a model code of conduct should be evolved to check:
 - What offences have been committed against the trafficked victim.
 - Who has committed these offences and whether they have been booked under appropriate sections of law; if not, direct the police to do so.
 - If the appropriate sections of IPC, ITP Act and Juvenile Justice Act against the traffickers have been stated in the Charge Sheet and refer the matter to the concerned Court.
- Ensure that the evidence of the child is taken in-Camera, as per Section 327 of the Cr.P.C. and arrange for translators, if the child is from another State and does not speak the local language.
- Ensure that the Special Courts/Boards have a child friendly and supportive atmosphere while taking the child's evidence. Preferably, an elder woman who inspires the confidence of the child may be present.

Directions for State Government

- The State is directed to establish more shelter homes in all the districts at the district level. The shelter homes should have all basic amenities and the environment there should be clean, pollution free and well ventilated.
- Each home shall have facilities for periodical health check-ups by the Government approved panel of doctors.
- The needs of trafficked victims who are drug addicts or alcoholics must also be addressed. For this purpose, the help of a de-addiction expert must be obtained. The State Government must prepare a list of de-addiction centres across the State. Every victim and their minor dependants shall be helped in every possible way to obtain formal education free of cost, which includes free supply of text books, uniforms, transport and scholarships to victims and their school going children. Where such education is not possible for certain unavoidable circumstances, as well as in addition to the formal education, life skills education shall be provided. The State Government is directed to frame new schemes for training of the inmates of the Home and traffic victims in computers, languages and related fields. The rescued persons shall be equipped with the knowledge and skills appropriate to their attitude and orientation, so that their economic rehabilitation becomes easier. The rescued person shall have the right to choose her own economic rehabilitation plan.
- Vocational training and guidance shall also be given to such rescued persons. No rescued victim shall be sent back to the family without adequate assessment and without ensuring social acceptance and family support.
- State will ensure that rehabilitation is carried out depending on how safe and nurturing the family environment is for the victim.
- Specialized centres of health shall be set up and maintained to cater to the needs of palliative care for the victims suffering from terminal states of HIV/AIDS. Specialized counselling shall be provided to victims of HIV/AIDS including pre-test, post-test and ongoing support. Psycho-social interventions shall be conducted in a private and confidential setting and shall take into account the recipient's language, culture, age, sex, ethnicity, class and religion. Upon discharge from the Home, each victim shall be provided with her educational records, medical records, legal documents and other means such as savings and personal belongings. Daily allowance which is given for the inmates shall be increased from Rs.17.50 to Rs.20/- so as to facilitate variety in breakfast.
- Police, B.S.F., B.D.R., Superintendents and Staff of Governments and non-government Home need to be oriented in Juvenile Justice, Rights of the child and on how to handle a child victim. Documentation of each of the cases, developing a database on the individual victims and doing action research on

the issues will help in handling these cases more scientifically and developing a policy on how to handle such cases efficiently.

- Besides, specialists can provide the following assistance to victims:
 - Information about available protections, especially against threats and intimidation, and available remedies;
 - Information about emergency medical and social services;
 - Information about shelter options;
 - Referrals to public and private programmes available to provide counselling;
 - Information about a victim's rights and his or her role in the criminal justice process;
 - General information about the status of an investigation and notice of important case events;
 - Information about how to apply for crime victim compensation through State compensation programmes;
 - Information about restitution; and
 - Information about the right to individual privacy and confidentiality issues.
- Creation of public awareness by generating public opinion and social pressure against trafficking and sexual exploitation of women and children. A strategy has to be evolved by the Social Defence Department with the help of N.G.Os. The media, both electronic and print, may be deployed to achieve this end.
- An exercise of sensitization of police, judicial officers and other local bodies shall be undertaken by the Tamil Nadu State Judicial Academy and Police Training Academy.
- An Accreditation Council shall be constituted, consisting of officers to be nominated by the Social Welfare Department in order to identify the genuine N.G.Os.
- The Government shall ensure that no birth of a child goes unregistered. There shall be a drive to achieve this goal and public awareness shall also be created to stress the importance of registration of births. Similarly, it should be ensured that all deaths are registered. This is to avoid non-registration of the deaths of girl children which results in the disappearance of women, spoken of by leading economists. Both NGOs and Social Welfare officers may be utilized to achieve this objective.
- 100% literacy among girl children should be made the immediate object of the State and for that, a program should be evolved. The provisions of the Tamil Nadu Compulsory Elementary Education Act, 1994 may be used to achieve this object.
- Establishment of Help Booths at Railway Stations and Bus Stands, since these are the vulnerable areas from where women and girl children who abandon their families to towns and cities due to multiple factors are often picked up.
- Establishment of a Women Help Desk at each police station would help women victims to express their grievance freely.

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

Every technical administrative measure shall be exhausted to ensure that prosecution is speeded up and the presence and travel by the victims is minimized.

- The rescued persons shall be equipped with the knowledge and skills appropriate to her attitude and orientation so that her economic rehabilitation becomes easier.
- The members of the professional and (preferably) voluntary sector organizations who have had some helping interaction with the victim shall be represented in the process of rehabilitation.
- In case where women or child victims are from other States, the Department of Women and Child Development of the concerned States along with NGOs would jointly and collaboratively take action to ensure proper shelter, travel arrangements, medical and psychological treatment and reintegration with humane treatment.
- Government and local bodies would appropriately facilitate NGOs to locate night shelters and Child Development or Care Centres in or near red light areas.
- In cases where women and child victims are from foreign countries, a system of co-ordination through the Government of India and through inter-country NGO networks would be set up so as to ensure safe passage, rehabilitation and reintegration in their community in their home countries.
- Women's organization should be involved in monitoring of remand, protective and other homes.
- Local communities, NGOs, and other interested individuals would be mobilized and encouraged to be involved in identification, rescue and rehabilitation of women and child victims. All efforts should be made to persuade and motivate victims of trafficking and other forms of violence to be reintegrated and rehabilitated in society to lead a dignified life.
- Outreach/support activities shall include counselling support visits to assist in counselling upon reintegration to the victims/family/relatives and local community people.
- Every victim shall be gradually, systematically and professionally linked to a variety of support systems and given the skill and confidence to avail herself of these systems.
- Positive intervention of the State may end with social reintegration. Thereafter the trafficked and rehabilitated person should be able, in case of need, to fall back on a support system established jointly by the government and voluntary sector organizations for that purpose
- The State in consultation with the State Level Co-ordination Committee should prepare a perspective policy note with regard to immoral trafficking, which ensures a coordinated, participatory, transparent, accountable approach and an integrative policy, and entrust the responsibilities across all branches of the Government.

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- The Member Secretary, Tamil Nadu State Legal Services Authority and the Director, Tamil Nadu State Judicial Academy shall jointly conduct inspection of all the vigilance homes/shelter homes/rescue homes in the State and submit a report as to the infrastructure and facilities provided in the said homes, within a period of two months from today.

C. Brief Description of the Case

This petition was filed under Article 226 of the Constitution of India with following prayers:

- To direct for inquiring into the grievances of each and every inmates
- To frame fresh rules under ITPA
- To constitute Special Courts to deal with the offences under the ITPA
- To provide relief to the victims by placing them in the hands of recognized NGOs so as to reintegrate the victims within the respective family members and in case of failure, rehabilitate them after placing them in any appropriate institution
- To direct homes and institutions not to keep the accused and victim together
- To direct the personal attendance of all the inmates to find out all other possible reliefs that could be granted to the victims as are available under the provisions of the ITPA; and
- To direct the government to make periodical inspection of homes and institutions by the Magistrates; and pass such further orders

11. Impact of quality of search on overall case vitality

A. Issues Addressed

- Regularization of placement agencies in the best interest of child labour, domestic labour and those in the unorganized sector and face abuse at the hands of employers

B. Summary of Court Observations

- There is a need to study the feasibility of having a legislation to regulate the problem of employment of children and adult women, who are working as domestic helps.
- Emphasis should be laid on the regulation of placement of agencies who provide such helps.
- Existing laws do not provide and effective speedy remedial which could ensure that women and children are able to seek recovery and wages; ensure freedom of movement and access shelter option in case of abuse before being able to go home.

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- Immediate concerned respondent authority to ensure as to how various enforcement agencies of different statutes are able to work in a coordinated and cooperative manner. Necessary guidelines should be issued or rules framed in this behalf.
 - If possible, single window enforcement agency be created so that the NGO on behalf of such victims are able to approach the said agencies instead of knocking the doors of different authorities.
 - For more effective implementation of the Juvenile Justice (Care and Protection of Children) Act 2000 and Delhi Commission for Women Act, guidelines are issued for Labour Department, Child Welfare Committee and Delhi Commission for Women (**refer to complete judgment for the guidelines**)
 - **In Para 36, the Court has directed the Government of NCT of Delhi as well as Government of India to take steps in the manner suggested in the writ petition treating the same as directions of this Court given in this order**

C. Brief Description of the Case

These writ petitions dealt with the issue of forced child labour and regulation of placement agencies. The main concern in these writ petitions has been that there was no comprehensive legislation regulating the placement agencies to take care of the menace

12. Circumstances under which bail of offenders under ITPA can be rejected

A. Issues Addressed

- Prescribed situations and circumstances under which bail plea of arrested brothel owners can and should be rejected

B. Summary of Court Observations

- It is unfortunate that investigating officers do not distinguish between victims (who are mostly children and women) and those who commit the crimes of human trafficking and manage brothels
- Granting bail to victims (letting them go) poses additional threat to them and increases their chances of going back into the same circumstances
- The Legislature as also the Executive have also failed to draw a well-thought out plan for rehabilitation of the rescued children in the society by bringing in suitable legislations or schemes.
- The question as regards grant of bail, therefore, should be considered having regard to the gravity of the offence wherewith the accused had been charged
- The High Court has gone wrong in recording that the statements of the girls have not been recorded under Section 164 of the Code of Criminal Procedure, as the same was not necessary.

C. Brief Description of the Case

The High Court, allowed applications for bail on furnishing personal bonds with two sureties each of the like amount to the satisfaction of the Chief Judicial Magistrate, stating:

“...It is pertinent to mention that in the statement of the aforesaid witnesses though the name of some of the applicants emerged but no specific role has been assigned to them nor there is any description of their activities in the statement of the witnesses recorded under Section 161 Cr.P.C. Moreover, no statement of these witnesses was got recorded under Section 164 Cr.P.C. which could give weight to their testimony. There is no specific evidence regarding inducing or taking a specific person for the sake of the prostitution. Besides that some legal pleas were also taken, i.e., search of the premises can be made by a special police officer which is very relevant for the purpose of bail. In the circumstances, I am of the opinion that the applicants deserve to bail”

13. Rights of Children working in Circuses

A. Issues Addressed

- State responsibility in rescue and rehabilitation of children working in circuses in India

B. Summary of Court Observations

- In order to implement the fundamental right of the children under Article 21A it is imperative that the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today.
- The respondents are directed to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children be kept in the Care and Protective Homes till they attain the age of 18 years.
- The respondents are also directed to talk to the parents of the children and in case they are willing to take their children back to their homes, they may be directed to do so after proper verification.
- The respondents are directed to frame proper scheme of rehabilitation of rescued children from circuses.
- We direct the Secretary of Ministry of Human Resources Development, Department of Women and Child Development to file a comprehensive affidavit of compliance within ten weeks.

C. Brief Description of the Case

This petition has been filed in public interest under Article 32 of the Constitution in the wake of serious violations and abuse of children who are forcefully detained in circuses, in many instances, without any access to their families under extreme inhuman conditions. There are instances of sexual abuse on a daily basis, physical abuse as well as emotional abuse. The children are deprived of basic human needs of food and water.

14. Recording of Victim Statement through Video Conferencing**A. Issues Addressed**

- Victims need not be physically present for witnesses and can provide through video conferencing

B. Summary of Court Observations

- It will definitely be inconvenient for the witnesses, placed in peculiar circumstances, to come to Delhi for the purpose of recording of their statements
- It is a fit case where their evidence could be recorded by video conferencing
- Learned Trial Court shall fix a date for recording the statements of the witnesses, based in Andhra Pradesh by video conferencing.
- While recording evidence by the said mode the learned Judge will keep in mind the safeguards, enumerated in the decision of the Supreme Court in State of Maharashtra Vs. Dr. Praful B. Desai (2003) 4 SCC 601
- The State of Andhra Pradesh shall produce the witnesses summoned and make them available for the purposes of recording their evidence by video conferencing. They will also make all necessary arrangements for recording of the evidence by video conferencing in Andhra Pradesh Bhawan

C. Brief Description of the Case

By this application, the applicant-NGO namely, Prajwala, seeks a direction to an Additional Sessions Judge, Tis Hazari Courts, Delhi to record evidence of some of the witnesses in a case arising out of FIR No's. 144/2002 and 110/2002, registered at P.S. Kamala Market, Delhi under Sections 376/365/368/34 IPC. The application has been necessitated because the learned Trial Judge has dismissed the application moved by the said NGO for the said purpose.

15. Recording of Victim Statement through Video Conferencing**A. Issues Addressed**

- Victims cannot be detained at the police station beyond 24 hours for any reason

B. Summary of Court Observations

- No person who is a witness in a case, female or male shall be permitted to reside or be detained in the police station awaiting medical check-up or medical report or for any other reason for more than 24 hours.
- As a rule, minor girls, especially those termed as 'strayed' should not be kept in the custody of the police
- In all cases where a hospital or dispensary with female accommodation exists, such girls should be made over to the hospital authorities as dieted patients
- The period for which it will be necessary for the dispensary to keep such girls will not exceed fifteen days save with the consent of the district board concerned
- Regulation 162 seems to become redundant in view of the Juvenile Justice (Care and Protection of Children) Act, 2000
- The provisions contained in U.P. Police Act regulating the minors' custody cannot be read in derogation of the statutory provisions
- The Government shall ensure that the medical examination of the prosecutrix or a witness or the person involved in a criminal case be done on the same day or within the maximum period of 24 hours and the hospital/Primary Health Centre shall ensure to submit the report by the next 24 hours to the police station concerned

C. Brief Description of the Case

This writ petition was filed in the nature of habeas corpus asserting that the petitioners were unlawfully detained by the police in pursuance to a FIR lodged on the allegation that the petitioner No.1 had abducted the petitioner No.2 who is alleged to be a minor. It was stated by petitioner No.1 that in spite of the interim order passed by this Court, he was arrested by the police on 1.6.2010 and continued under detention up to 5.6.2010. It has also been asserted that Smt. Afreen Bano was also detained in the police station for about fourteen days. The State justified the stay of Afreen Bano at the residence of Station House Officer till receipt of the medical report on the ground that there was no place to keep her.

16. Bail for a brothel owner**A. Issues Addressed**

- If the brothel was not closed and other victims not evicted, the brothel owner should not be given bail

B. Summary of Court Observations

- Noted that the prosecution has not taken any steps for closure of the brothel or for eviction of the offenders from the brothel premises (in fact, the petitioner's counsel also stated that the brothel has not been sealed, as required under Section 18 of the ITP Act)
- The same offence, albeit for violations upon other persons, including children, is liable to be committed if the petitioner is released, since she is the owner of the brothel which has not even been closed/sealed.
- No case for release on bail by suspension of the sentence is made out.

C. Brief Description of the Case

This case involves trafficking of a child by the Applicant, who is stated to be a brothel owner/brothel keeper. She has been convicted, inter alia, under Section 6 of the ITP Act for detaining, inter alia, a minor in the brothel which she runs and for detaining her for use in commercial sex with persons.

17. Special powers of District Magistrate to Commissioner of Police for certain sections of ITPA**A. Issues Addressed**

- Whether the Notification dated 1.10.1999 issued by the State of Maharashtra empowering the Commissioner of Police, Brihan Bombay, the powers of District Magistrate for the purposes of Sections 18¹⁰⁷ and 20¹⁰⁸ of the ITP Act, has been validly made

B. Summary of Court Observations

- The State has power to appoint the Commissioner of Police of Brihan Bombay as an Executive Magistrate and further appoint him as an Additional District Magistrate, who shall have the powers of District Magistrate for the purposes of Sections 18 and 20 of the Act
- In the peculiar facts and circumstances of this case, the status quo ante as on 28.6.2004 shall be maintained till the Commissioner of Police is appointed by the State Government in the above terms. This would mean the Commissioner of Police after necessary appointment shall revive the case from the stage of order of eviction

¹⁰⁷ Section 18 relates to closure of brothel and eviction of offenders from the premise

¹⁰⁸ Section 20 relates to removal of prostitutes from any place

C. Brief Description of the Case

As the problem of trafficking of minor girls and women in the metropolitan city of Bombay was on the increase in an epidemic form, the State of Maharashtra issued a Notification NO.PPA-0199/778/CR-10/POL-8 dated 1.10.1999 conferring on the Commissioner of Police, Brihan Bombay, the powers of District Magistrate within the metropolitan area of Brihan Bombay, for the purposes of Sections 18 and 20 of the Immoral Traffic (Prevention) Act, 1956. The Notification was issued in exercise of powers conferred by Section 20 sub-section (5) read with sub-sections (1) and (2) of the Cr.P.C. and of all other powers enabling it in that behalf. Pursuant to the aforesaid Notification, the Police Commissioner constituted the task force, which conducted an effective raid and ordered eviction or closure of the brothels as preventive steps to curb the menace, which has achieved desired results.

18. Guidelines for managing the victims of rape

A. Issues Addressed

- Various agencies and their roles in managing rape victims, mandatory safe kit for medical examination and making the trial victim or child centric

B. Summary of Court Observations

- Following responsibilities have been identified:

POLICE

- The duty officer, immediately, upon receipt of the complaint/information intimate to the "Rape Crises Cell" on its notified helpline number.
- The statement of victim shall be recorded in private, however, the presence of family members while recording statement may be permitted with a view to make the victim comfortable. In incest cases where there is a suspicion of complicity of the family members in the crime such family members should not be permitted.
- The Investigating Officer shall bring the cases relating to "child in need of care and protection" and the child victim involving in incest cases to the Child Welfare Committee.
- The accused should not be brought in the presence of victim except for identification.
- The Investigating Officer shall endeavour to complete the investigation at the earliest and he shall ensure that in no case the accused gets the undue advantage of bail by default as per the provisions of Section 167 Cr.P.C. It is desirable that in cases of incest the report under Section 173 Cr.P.C. is filed within 30 days.

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- Periodically Training to deal with rape cases should be provided to the Police Officers, Juvenile Police Officers, Welfare Officers, Probationary Officers and Support Persons. A Training Module be prepared in consultation with the Delhi Judicial Academy;
 - The Police should provide information to the Rape Crisis Cell regarding the case including the arrest and bail application of the accused, the date of filing of the investigation report before the Magistrate;
 - The police should keep the permanent address of the victim in their file in addition to the present address. They should advise the victim to inform them about the change of address in future;

DOCTORS/HOSPITALS/HEALTH DEPARTMENT

- Special rooms to be set up in all government hospitals for victims to be examined and questioned in privacy;
- A sexual assault evidence collection kit or sexual assault forensic evidence (SAFE) kit consisting of a set of items used by medical personnel for gathering and preserving physical evidence following a sexual assault should be available with all the Government Hospitals.
- A detailed description of “Assault/Abuse History” be mentioned by the attending doctors on the MLC of the victim; The doctor must ensure that the complete narration of the history of the case detailed by the victim and her escort is recorded.
- After the examination is complete the victim should be permitted to wash up using toiletries provided by the hospital. The hospital should also have clothing to put on if her own clothing is taken as evidence.
- All hospitals should co-operate with the police and preserve the samples likely to putrefy in their pathological facility till such time the police are able to complete their paper work for dispatch to forensic lab test including DNA.

CHILD WELFARE COMMITTEE

- In cases of incest and child in need of care and protection, the Child Welfare Committee shall examine the victim to ascertain the nature of support she is getting from her family and initiate steps for ensuring best interest of the child. In such cases the Child Welfare Committee shall conduct a home study to assess and ensure the safety of the victim.
- In cases where the child is placed in the shelter, the Committee shall monitor the condition of the victim closely.
- In cases of incest, while the victim stays in the foster home the family members should be allowed to meet the victim only in the presence of the support person and care be taken by the staff of the home that the meeting be not used to pressurize/influence the victim to change for statement;

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- Child Welfare Committee shall ensure that rehabilitation facilities are provided to the victim in appropriate cases. In cases of a prolonged stay, the victim should be given educational and vocational training in order to enable the victim to support herself after she leaves the foster home. The Social Welfare Department and Child Welfare Committee will develop and implement Foster Care Services within two months.
 - Before passing any order of restoration of custody of child to the family, the Child Welfare Committee shall conduct an inquiry to assess the suitability of the victim being restored to the family. The Custody of the child will be altered by the Child Welfare Committee only after consultation with the stake holders;
 - Child Welfare Committee shall ensure that the victim is provided with necessary medical and psychological aid during her stay in foster home for the purpose of her rehabilitation;
 - Child Welfare Committee shall maintain a list of all registered Foster Homes providing residential support, special services and rehabilitation facilities to the victim.

PROSECUTORS

- In cases where the child is placed in a shelter following the orders of the Child Welfare Committee or a Metropolitan Magistrate, the application seeking custody of the child made by the parents/relatives of the victim should not be acceded to till such time, the Public Prosecutor gets the status of the applicants verified with the Rape Crisis Cell and also call for the records of the Child Welfare Committee if it is not available.

COURTS

- The Magistrate unless there are compelling reasons shall record the statement of the victim under Section 164 Cr.P.C. on the day on which the application is moved by the Investigating Officer. The Magistrate before proceeding to record the statement shall ensure that the child is made comfortable and she is free from the extraneous pressure.
- An endeavor shall be made to commit such cases of offence to the Court of Sessions expeditiously and preferably within 15 days.
- The Hon'ble Supreme Court in Delhi Domestic Working Women Forum Vs. Union of India, 1995 (1) SCC 14 and reiterated by this Hon'ble Court in Khem Chand Vs. State of Delhi 2008 (4) JCC 2 497 had directed that the victim be provided with a counsel. The existing practice of the victims being represented by a counsel from the Rape Crisis Cell may continue. In cases where the victim has a private lawyer, she may be allowed to retain the private lawyer.
- That as far as possible chief examination and cross examination of the victim must be conducted on the same day;

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- The Additional Session Judge/District Judge shall maintain a panel of psychiatrists, Psychologists and experts in sign language etc. who would assist in recording the statement of witnesses as and when requested by the Sessions Courts.
 - If it is brought to the notice of the Court from a support person/Rape Crises Cell Advocate/victim, regarding threats received by the victim or her family members to compromise the matter, the judge shall immediately direct the ACP to look in to the matter and provide an action taken report before the court within 2 days. The Court must ensure that protection is provided to the victim and her family.
 - In cases in which the witness is sent back unexamined and is bound down, the Court shall ensure that at least the traveling expenses for coming to and from for attending the Court are paid.

C. Brief Description of the Case

Pursuant to the order dated 10.9.2008, Delhi Commission for Women has filed draft guidelines to enable the authorities to effectively tackle sexual offences including incest and child sexual abuse offences. The guidelines have been prepared in consultation with all departments, police and the judges of Delhi Higher Judicial Service. A modified draft has also been placed on record keeping in view of the suggestions made by the State as well as the Registry of the High Court.

19. Medical Termination of Pregnancy of a rape victim

A. Issues Addressed

Invasive procedure such as medical termination of pregnancy without consent is violative of Article 21 of the constitution

B. Summary of Court Observations

- The applicable statute (Section 3 of the Medical Termination of Pregnancy Act, 1971) clearly contemplates that even a woman who is found to be 'mentally retarded' should give her consent for the termination of a pregnancy
- The language of the MTP Act clearly respects the personal autonomy of mentally retarded persons who are above the age of majority
- Victim's pregnancy cannot be terminated without her consent and proceeding with the same would not have served her 'best interests'
- Subjecting the victim who had been raped at a state run home to an abortion against her consent would have resulted in further trauma to her, with deleterious effects on her mental health

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- Proceeding with an abortion at such a late stage (19-20 weeks of gestation period) poses significant risks to the physical health of the victim

C. Brief Description of the Case

This was a petition against an order passed by a Division Bench of the High Court of Punjab and Haryana ruling that it was in the best interests of a mentally retarded woman to undergo an abortion. The said woman (hereinafter 'victim') had become pregnant as a result of an alleged rape that took place while she was an inmate at a government-run welfare institution located in Chandigarh. After the discovery of her pregnancy, the Chandigarh Administration, which is the respondent in this case, had approached the High Court seeking approval for the termination of her pregnancy, keeping in mind that in addition to being mentally retarded she was also an orphan who did not have any parent or guardian to look after her or her prospective child. The High Court directed the termination of the pregnancy in spite of the Expert Body's findings, which showed that the victim had expressed her willingness to bear a child. As per the findings, the victim was physically capable of continuing with the pregnancy and the possible risks to her physical health were similar to those of any other expecting mother.

20. Management of children of sexual abuse

A. Issues Addressed

Protection of a child victim of sexual abuse from investigation procedures

B. Summary of Court Observations

- Child Welfare Committee should take the assistance of a Child Psychologist so as to ensure that the children are not exposed to any forms of trauma.
- In such cases the children should be examined at their own houses and should not be brought to the police station
- In such cases, there has to be a certain level of sensitivity while examining the children, hence following the guidelines issued in *Sakshi vs. Union of India* (2004) 5 SCC 518.

C. Brief Description of the Case

This case was related to sexual abuse of children by the Headmaster of their school. The petition sought issue of a writ of mandamus to direct the Superintendent of Police to constitute a special investigating team led by a gender sensitive police officer not below the rank of D.S.P consisting of experienced and sensitive police officers preferably female and directions for the District Collector to take necessary steps to restore confidence among the girl students of the Government High School, Podhumbu by involving Child Welfare Committee and other agencies if necessary.

21. Importance of victim testimony and corroborative evidences in cases of child abuse

A. Issues Addressed

Testimony of a child victim will supersede the lack of corroborative evidences

B. Summary of Court Observations

- It recognized the importance of the protection provided to the Children by the Constitution of India and other laws the seriousness with which crimes relating to children and unnatural offences against children in Shelter Homes should be treated.
- It held that no corroborative evidence or statement is required and refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury.
- It was held that the High Court was not justified in asking further corroboration to the statements of the victims of the shelter home.

C. Brief Description of the Case

This case is regarding child sexual abuse in shelter homes. Duncan Alexander Grant, a British national, in and around 1995 opened three Shelters called the Anchorage Shelters for the welfare of street children in Mumbai and John Waters who was also a British national and a friend of Duncan Alexander Grant (A3) used to visit the said Shelters regularly and they were sexually abusing the children in the shelter home. The Trial Court had convicted the accused but the High Court had reversed the Trial Court finding and acquitting them. The High Court held that the victim's testimony had not been corroborated by other evidence and hence they were not reliable.

22. Guidelines for management of girls at government shelter homes

A. Issues Addressed

Defining the responsibilities of state run institutions and government authorities, emphasizing the need for improvement

B. Summary of Court Observations

- Several factors responsible for the occurrence of such incident.
- The attitude of Government officials is that of shirking responsibilities.
- Even though they are paid handsome and adequate summaries as compared to private counterparts, the general attitude is of shirking responsibility.

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- Lack of care and attention from higher governmental authorities due to the negligible political importance of orphans has resulted in the little or no monitoring of these homes.
 - The Child Welfare Workers constituted under the Juvenile Justice Act have failed to take a proactive role in improving the conditions of these children.

The Court has issued guidelines and directions in relation to this case and safety of children at government homes in general (available in the judgment).

C. Brief Description of the Case

In this case, the girls of the Government Children's Home at Shivkuti were harassed by the contract guard (chowkidar). He not only indulged in sexually abusing and raping the young girls at the home but also forcefully made them do chores such as washing clothes, cleaning toilets, kitchen work, etc. Other staffs as well as the superintendent were aware of his actions but for some inexplicable reasons, they chose not to take any action thereby emboldening his sinful misdemeanor.

23. Preventing multiple recording of statements of victims of rape

A. Issues Addressed

Emphasizing the need for recording the statement of victim only once in order to minimize the trauma of the victims and also to save time

B. Summary of Court Observations

- All the witnesses who are examined in relation to the offence and incident of rape cases should be straightway produced before the Magistrate for recording their statement which is to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial which may be put to test by subjecting it to cross-examination
- Statement of victim should as far as possible be recorded before the Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the police under Section 161 Cr.P.C which in any case is inadmissible except for contradiction so that the statement of the accused thereafter be recorded under Section 313 Cr.P.C
- the trial court can straightway allow cross examination of the witnesses whose evidence were recorded earlier before the Magistrate
- Recording of evidence of the victim and other witnesses multiple times ought to be put to an end which is the primary reason for delay of the trial.

C. Brief Description of the Case

Fast Track Courts are being constituted for expeditious disposal of cases involving the charge of rape at the trial stage, but there are no fast track procedure for dealing with cases of rape and gang rape lodged under Section 376 IPC with the result that such heinous offences are repeated incessantly.

24. Guidelines for monitoring Women Protection Homes and their Inmates**A. Issues Addressed**

Rights of women inmates residing at Women Protection Homes and procedures for monitoring these homes

B. Summary of Court Observations

- Women detained in the Government Shelter Homes as well as their children up to 7 years are to be given free food, clothing, bedding and medicines for meeting their essential needs
- Those women, who are not wanted under any criminal offence and desire to work for earning their livelihoods may be allowed to go out to work after proper verification of the safety of their proposed work place by the Probation Officer/ in-charge of the Home
- Bank accounts of such working women will be got opened
- Women who are detained by custody or protection orders or who are wanted for giving evidence in criminal offences by Magistrates/ Courts will not be allowed to go out to work
- Adult women may be released on their own applications after obtaining orders from Magistrates/ competent authorities who have ordered their detention in the homes
- The women, who give applications for being married may be transferred to the After Care Homes of the Women Welfare department for facilitating their marriages and rehabilitation
- No women can be forcibly detained in the Homes, other than those wanted in some criminal offence.
- Female police escorts will be available for appearance of women in the Courts. The employees working in the Homes should be given training for sensitively and competently handling their responsibilities towards such women
- A committee may be constituted that should consist official members such as the District Magistrate or his nominee, Probation Officer, Superintendent of the Home, preferably a female Judicial Officer nominated by the District Judge and especially non official members who could be activists and volunteers (usually female) to be selected by the District Magistrate in consultation with the District Judge/ District Secretary Legal Services Authority and the Probation Officer.

- The said Committee should meet at least once a month
- Principal Secretary, and Director Women's Welfare to make necessary changes in the guidelines for creating such monitoring committees in the homes for ensuring that the guidelines are properly implemented and the conditions of the homes/ inmates are monitored.
- Minor women who were detained for their protection or welfare are not indefinitely detained and that they are released as per their wishes on reaching majority, or are released sooner in the custody of their parents/ guardians if they earlier make applications
- Legal aid is liberally made available to all such "forgotten" women who want to be released, in case they cannot afford a lawyer

C. Brief Description of the Case

Pursuant to the Court orders dated 28.3.2012 and 10.7.2012, Guidelines for running Women's Protection/Shelter homes have been issued by the Special Secretary, Department of Women's Welfare, Child Development and Nutrition on 19.8.2012.

PART II—NEPAL

S. No	Issue	Court	Case Number
Part II: Nepal			
1	Discretionary powers to trial courts for pronouncing sentence	Supreme Court	Writ No. 3178 of Year 2002
2	Statements of victims to be corroborated by other evidences	Supreme Court	Writ No. 063C.R. of Year 2011
3	Burden of Proof	Supreme Court	Writ No. 0017 of Year 2007 and Writ No. 0033 of Year 2009
4	Sufficiency of victim statement before competent authority	Supreme Court	Writ No. 2067-CR-0191

1. Discretionary powers to trial courts for pronouncing sentence

A. Issues Addressed

In order to interpret sections of the law, the courts may use discretionary powers to pronounce the sentence, after observing circumstances and seriousness of the crime

B. Summary of Court Observations

- The law determines maximum and minimum imprisonment and therefore discretionary power is used only after carefully observing the seriousness of crime.
- The punishment should be charged according to the circumstances and the seriousness of the crime.
- Defendants are convicted under Anti Human Trafficking Act 1986; section 4(b), which states that anyone who takes any person to outside the country intending to sell the person can be convicted as an offended person
- Specific punishments are provided under the law for transportation of persons to another country which shall be applicable

C. Brief Description of the Case

It has been proven that the defendants took victim to India but presented dispositions failed to prove that these defendants sold victim in India.

2. Statements of victims to be corroborated by other evidences

A. Issues Addressed

The statement of victims needs to be supported by other evidences in order to prevent the abuse of Section 7 of the Act

B. Summary of Court Observations

- If a woman claims that she is sold by someone and her evidence is approved by the court, her claim should be proved by presenting adequate corroborative evidences otherwise there would be the chances of abuse of section 7 of Anti Human Trafficking Act 1986.
- Therefore, considering the possibility of abused of section 7, the judge have to consider not only the appellant but more concern should be given to uncover the fact identifying, whether the crime happened or not, whether there is adequate witness on involvement or not, whether the defendant can prove himself a guiltless or not.

C. Brief Description of the Case

Interpretation of Section 7 of the Anti Human Trafficking Act 1986

3. Burden of Proof

A. Issues Addressed

Reinstating the provision that the burden of proof lies on the accused

B. Summary of Court Observations

- As the case is considered as Human Trafficking Crime, it is defendants' responsibility to prove that they are innocent
- The crime of kidnapping and selling people after taking outside the country; is considered against the Anti Human Trafficking Act 1986
- There is already the core act for such major criminal activities, therefore the Social Crime and Punishment Act 1970 is not applied, as defendants claimed.
- If the old and new provisions conflict, it is the provisional principle to accept the new provisions.
- Similarly, if the same level of legal precedents conflict with each other, the latest precedent is applicable.
- In this case, if the Social Crime and Punishment Act 1970 and Anti Human Trafficking Act 1986 conflicts with each other the latest provision or Anti Human Trafficking Act 1986 is applicable.

- In other hand, Anti Human Trafficking Act 1986 has denoted to use the Social Crime and Punishment Act 1970 for extensive use in case of such criminal activities, which are covered under the Anti Human Trafficking Act.

C. Brief Description of the Case

Appeal against the conviction under Anti Human Trafficking Act

4. Sufficiency of victim statement before competent authority

A. Issues Addressed

It is not mandatory for the victim to be present at the court if she has already recorded her statement before a competent authority

B. Summary of Court Observations

- As the victim testified her statement before the authority persons, which is supported by the statements of dispositions and other evidences; therefore, the offence can't be declared as never happened or defendants can't be released by reasoning the not presenting the victim before the court to give her statement.
- Anti Human Trafficking Act strongly states that the victim should prove her/his statement before the authority person, therefore, to consider only the statements of victim presented before the court as evidence enough to convict defendants is not convenient because, in such human trafficking crime, where the majority of victims are women, the involved are always more than one persons as such crime can't be done by one person or one's effort.
- As such crime is always done by more than one person; this kind of crime is considered as cooperative crime. In such crime, the victim is always under the fear, threat, lure, and intimidation of involved persons, that the defendants may threaten the family members of the victim with propose to keep from the present evidence before the court or may force to give the hostile witness.
- Considering this same situation, the Anti Human Trafficking Act 1986, section 6(2) has the provision to prove the statement of dispositions of victim before the authority persons, prior to the statement in the court.
- Once the statement of dispositions of the victim is approved by the authority persons, the statements are considered as evidence, unless there is conflict on the claims.

C. Brief Description of the Case

Defendant's lawyer claimed before the court that the victim herself should be presented in the court to prove her claim

VI. Challenges and Recommendations

Despite all the government and non-government efforts on curbing human trafficking in South Asia, there are no evidences that human trafficking has decreased in last ten to fifteen years. In fact, experts now tend to believe that it has actually increased and many newer forms of trafficking have come up, which are making the fight against human trafficking even more complex. While there are new challenges to counter, the field of anti-human trafficking is still grappling with the long standing issues—increase in demand for trafficked victims for various purposes, lack of credible data and lack of capacity of stakeholders being only few of these. Experts now believe that time has come to rethink the entire strategy and explore ‘out of the box’ solutions to some of these issues. There are certain definite shifts observed (e.g. less emphasis on institutionalized care and more emphasis on community integration of survivors) but much more needs to be done, possibly at a much faster pace.

This study has particularly identified several constraints and challenges that modern day practitioners and institutions working on anti-human trafficking initiatives continuously struggle with. These are discussed in detail in the report and this chapter summarizes these challenges. Also presented in this chapter are some of the recommendations from the stakeholders and emerging from the findings of this study.

Overall, it is clear from stakeholders and survivor testimonies that repatriation from India to Nepal is a long drawn process; does not necessarily safeguards the survivors and certainly is not in the best interest of the child. Different sources have indicated increasing collaboration between NGOs in Nepal and India, as well as between government agencies and NGOs, but overall it seems that generally repatriation has been conducted in an ad hoc manner. It is not surprising then, that rights abuses take place in the process of repatriation. Although Nepalese citizens do not need formal identification or permission to travel to or from India, many rescued persons have spent months in Indian shelter homes awaiting legal processes to permit their repatriation. The living situation in these shelter or short stay homes is unfortunate and some reports quote rescued persons saying that their living situation had been better in the brothel from which they were rescued. Reports also indicate that although a significant number of Nepali girls and women are trafficked to India and engaged forcibly in brothels, the rescued number of children/women is very low.

Overall, there are too many gaps in the existing knowledge that hampers the comprehensive understanding of the RRRI issues in India and Nepal. It is also not clear whether all the survivors in homes in India and Nepal are being institutionalized in shelter homes after adequate justification and as per their will. It seems that a number of girls are retained in residential care because they are (a) thought to be at risk of being re trafficked; (b) they are under threat from the traffickers as they have lodged

complaints against them or (c) they do not want to return home due to the fear of rejection from the family or society. Standard case management procedures are not conducted in most care giving institutions for trafficked persons in the two countries. It is also not clear whether adequate training on case assessment is provided and whether the processes of intake assessment, case planning and review are followed and recorded. It is also not clear whether all the facilities for rescued and repatriated victims operate under internationally-acceptable minimum standards of care, although a movement towards quality of care seems to be gaining momentum both in India and Nepal.

There is also no study on comprehensive evaluation of reintegration activities for trafficked survivors in Nepal. Although many NGOs indicate that 'reintegration' activities are undertaken, it is unclear whether these have been successful in the long or even the medium-term. Some stakeholders indicate that reintegrated girls face ill treatment and stigma as time goes by and eventually forced out of homes and villages. It is clear that the stigma faced by the returnees is immense and this is one reason why most cannot or do not wish to return to their families. In this regard some of the NGOs have mentioned home assessments before reintegrating the girls. Although specific information is lacking, it is agreed that upon leaving the institutional setting many rescued trafficked persons have returned to India, entered local sex work, or returned to the facility.¹⁰⁹ It remains in Nepal to develop discrete stigma-reduction activities for trafficking, addressing the somewhat different causal factors for stigma and discrimination.

Credible data on human trafficking are still not available in the subcontinent and this has been a long expressed gap and need of practitioners in this field. Challenges of gathering accurate, comprehensive, and timely data make it difficult to assess the impact of anti-human trafficking initiatives and identify good and replicable approaches. Even the civil society initiatives have been insufficient to generate reliable database on human trafficking or missing children. There is a long standing demand for a central (national or regional) database but not many efforts have been made on developing such database. Some of the efforts in India (e.g. Track Child) have not been implemented appropriately. SAIVAC is another initiative which has a potential but is yet to deliver.

Although a number of NGOs work on interception strategies, such as border-based rescue programmes and also community surveillance, these have not been tested for efficiency or effectiveness. NGOs actively attempt to intercept girls and women at border points between Nepal and India in collaboration with the police. Trafficking is suspected in cases where the suspected victim gives hesitant or conflicting answers to

¹⁰⁹ Frederick, J. documents and Pearson, E. and Oxfam GB, Gaps Analysis on Intervention Strategies against Trafficking in Women in Nepal, 2004.

questioning. At present, no data are available on the accuracy of this method for identifying trafficked persons or the proportion of intercepted women who are re-trafficked. Traffickers on the other hand have started engaging parents of these girls to cross the border so that these children are not questioned by these border surveillance units.

Corruption remains a cross-cutting area which impacts AHT efforts negatively throughout the spectrum of activities, be it corruption among the police, border officials and other government personnel, or collusion between traffickers/touts and various officials. Alleged complicity of officials in human trafficking has been highlighted as a problem in numerous reports and by several stakeholders during this study. Corrupt law enforcement officers reportedly facilitate the movement of sex trafficking victims, protect suspected traffickers and brothel keepers from law. Some police officials allegedly may also tip-off the perpetrators to impede rescue efforts. Some brothel owners are politically connected and hence are not convicted.

The SAARC protocol and definition would be useful in strengthening inter country cooperation efforts and in making future policy, including for cross-border efforts. It would make it far more relevant if it were mirrored in domestic laws; however there has not been much movement on the ground in South Asia, particularly in India and Nepal towards implementation of SAARC convention. It seems to be just languishing on paper or in supportive statements in some conferences and workshops. India has also not ratified the UNTOC or the Protocol. The Protocol is meant to establish global standards, and a lack of ratification leads to a lack of a common understanding of trafficking that can be legally enforced.

Cross-border trafficking in the region cannot be tackled without India's commitment matched by law, policy and action. India needs to cooperate with its neighbours, especially with Nepal (and Bangladesh) to tackle cross border trafficking. It is widely accepted that simply rescuing the girls and sending them back to their respective countries will not help resolve the issue and a comprehensive approach is needed. Although some measures exist between India and some of the neighbouring countries, these should be formalized in law and policy and operationalized through collaborative approaches between stakeholders.

Nepal remains a major source for trafficking of women and children to India. Trafficking of women and girls remain a serious problem in Nepal. The large movement of people across the porous borders between India and Nepal, and the clandestine nature of the crime makes trafficking a difficult crime to detect. There has been a diversification of market centers, so that the victims are not sent merely to metros in India but also to other towns, as well as countries. In addition, there is internal trafficking within the

country. The stakeholders in Nepal (both government and non-government) are not adequately equipped to manage this complex phenomenon of human-trafficking.

Adequate life skills and vocational training is absent in all care giving facilities in Nepal and the sustainability aspects are unclear. In its reintegration capacity-building activity with Maiti Nepal, The Asia Foundation had developed a comprehensive life skills curriculum in 2005. Some organizations (Maiti Nepal, Saathi) seek to place survivors in local training institutions, which are certainly inadequate in number in Nepal. Some have developed relationships with the private sector, placing survivors in work-experience situations in hotels and restaurants. It seems that a number of organizations have developed various set of tools and strategies, and the need is to not duplicate but collate, and standardize the tools/strategies which have proved to be effective. In addition, the role of media and private sector needs to be strengthened further.

Some of the other relevant conclusions that can be drawn from this study include:

- There are no standardised tested modules/curriculum for training of service providers or IEC materials and hence NGOs develop and use these at their own will, putting the relevance and effectiveness in question.
- Law reform, policy and prevention measures are slow to respond to newer forms of trafficking (e.g. trafficking for organ removal, mentioned in the beginning of the document). There needs to be continuous quality research and analysis on the emerging trends and patterns of trafficking.
- There are no established mechanisms of referrals of survivors from one institution to another and no provisions of mutual collaboration between institutions so as to build upon each other's strengths. Institutions attempt to deal with the situations to the best of their abilities and efforts and in turn may have to compromise with certain things due to lack of capacity.
- Research has shown that there exists a high demand for children for purposes of CSE. Being more vulnerable, children are subjected to extreme violations of their rights during and after trafficking and an improper response aggravate the harm already inflicted on them. Therefore, response has to be specifically oriented to their specific rights.
- Efforts to prevent trafficking often limit women's voluntary migration. A common approach to the control of trafficking (especially in Nepal in the past) has been the limitation of women's migration, thus impinging on their right to movement.
- Children born to Nepali survivors (while they were in India) face nationality issues as neither of the governments are willing to recognize these children as their nationals

RECOMMENDATIONS

The prime purpose of repatriation should be safe and voluntary and in the best interest of the child. All procedures developed should be guided by these principles. Through this study, several recommendations have emerged from review of existing literature and discussions/consultations with stakeholders. While many of these recommendations are long standing ones (mentioned in several previous studies) some are emerging directly from the findings of this study. These recommendations have been classified into different segments as per their relevance and urgency in the context of this study.

1. Strengthen Rescue and Recovery Mechanisms at Destination Points

- Immediate efforts are needed by the Government of India to issue orders to Child Welfare Committees (CWCs) not to grant the custody of the survivors without proper third party home investigation
- Massive efforts are required to build the capacities of Child Welfare Committees and AHTUs, particularly in smaller districts. Guidelines need to be drafted on “post rescue management of survivors by CWCs and law enforcement agencies” and these agencies need to be trained on these guidelines
- Governments (particularly in states of Bihar and Uttar Pradesh) need to intervene and establish short stay or transit homes in most districts so that CWCs do not handover the children to their guardians because of lack of space to temporarily house them. Meanwhile, other facilities in these towns (e.g. homes for destitute, orphans, differently abled, adults) can be strengthened to provide temporary shelter to rescued survivors, till they are integrated with their families

2. Strengthening Repatriation and Integration Processes

- Facilitate dialogue between governments of India and Nepal to agree on what roles each government should play in repatriation process. This dialogue should be facilitated using Indo Bangladesh as a case study for learning the facilitating and constraining factors for government engagement.
- A Standard Operating Procedure should be developed which any organization (either Indian or Nepali) engaged in repatriation should follow. As many stakeholders have indicated, some of the essential components of this SOP could be:
 - Specify the roles of government departments and civil society organizations
 - Include standards for integration i.e. the process till the child is handed back to the family and successfully integrated with the family/society

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- Follow up, at least up to 2 years, to be made a mandatory part of repatriation process and any family/child not traced during the follow up should be treated as “missing” and appropriate complaint be launched with respective police station
 - Should address the nationality issue of children born to Nepali survivors while they were in India but now repatriated back to Nepal with their children
 - Build consensus among NGOs through thorough consultation processes and encourage NGOs to voluntarily adopt the SOP
 - Individual or group of NGOs from India and Nepal should consider signing mutual MoUs for adopting SOP for ensuring safe and voluntary repatriation of Nepali children. A model is available through Sanlaap-Shakti Samuha coordinated effort which can be adapted. A regional/national network of NGOs can consider facilitating this process
 - Undertaking by Nepali NGOs of safe custody and follow up of the repatriated child given to CWC/Court in India should be experimented on a wider scale for feasibility and acceptability. This has a potential of being a good practice in reducing the time taken in repatriation
 - Delhi High Court in one of its judgment has validated the use of video conferencing for providing statements by the survivor witnesses. This need to be promoted by informing all NGOs to argue early repatriation of survivors even if they are wanted as witness in cases. Courts/CWCs in India would need support in managing the technology side of this initiative which Indian/Nepali NGOs can provide

3. Advocacy with the Government on Policy Implementation/Change

- Considering that both Governments are keen to keep their role to a minimum for repatriation process between India and Nepal, both Governments can jointly authorize (issue licenses to) few organizations in both countries to manage repatriation on their behalf. All repatriation could then be regularized through these NGOs (acting as government representatives). Minimum standards for obtaining the authority/license could be developed and agreed upon
- A centralized monitoring mechanism should be established for NGOs managing repatriation and integration to report on the repatriated cases and their regular follow up. This will help in tracking re-trafficking cases. Some lessons can be drawn from the Indo-Bangladesh Task Force experiences.
- Bring other ministries (beyond social welfare, labour and police) and agencies on board with the anti-human trafficking initiatives. These particularly include institutions like Human Rights Commission, Ministries like Rural Development,

Law and Corporate Affairs and institutions like South Asia Initiative to End Violence against Children (SAIVCE). Wider stakeholder consultations should be facilitated, ensuring participation from these institutions, defining roles these institutions can play in RRRI procedures

- Nepal is a signatory to the Transnational Organized Crime Convention, but not a signatory to the related protocols on human trafficking and migrants. Therefore, advocacy with Nepal for ratifying the protocol needs to be stepped-up. Similarly advocacy should be stepped up with Indian government to ratify the UNTOC and its related Protocol in order to be in line with international standards.
- Stakeholders, particularly in Nepal feel there could be an increased role of officials working with Embassies, High Commissions and Consulates in other countries. Stakeholder expectations from these officials and their capacity should be matched to identify a feasible role for this arm of the government

4. Institutional Capacity Development

- Anti-Human Trafficking Units (AHTUs) and NGOs currently engaged in rescue operations, particularly in smaller districts need to be sensitized on other forms of exploitation and trained on identification and rescue of such children.
- Provide platforms for interaction to different stakeholders where issues related to trafficking can be discussed and common solutions may be attempted. These platforms are required both at district and state level (national level in Nepal). In India, either Anti Human Trafficking Units or District Legal Services Authorities can act as facilitating agencies. In Nepal, this facilitation can be provided by the office of Chief Development Officer. Initially, a local NGO would need to set up the process and agenda which could slowly be taken over by the Government agency
- Stakeholders across the border should also be supported to initiate cross border dialogue. Though there are certain efforts currently ongoing at border points where stakeholders across the border meet but these coordination meetings are not very effective because (a) these are entirely dependent on facilitation by the local NGO; (b) there are not any agenda set for these meetings and therefore no concrete outputs are expected and (c) there are not any follow ups planned for these meetings. Therefore, there is an urgent need to strengthen this mechanism (wherever exists) and initiate at other border points. NGOs present at border points should support the available government officials at border points to facilitate the process, keeping their direct engagement to a minimum
- Instead of organizing ad hoc trainings for government officials by different NGOs, systematically work with the training institutions of line ministries to

mainstream trafficking into the induction, refresher and on the job training of these officials. Institutes training police officials, judiciary, Child Welfare Committees, Administrative Services Officers (IAS) should specifically be targeted. The training modules/curriculum developed for service providers, or IEC materials, need to be standardized, in order to improve effectiveness and reduce duplication and confusion.

- Both India and Nepal have victim compensation policy which are currently not being used for the benefit of survivors. Some NGOs/Shelter Homes can be supported to file applications on behalf of survivors to seek these funds. In case the funds are not available, NGOs should even consider filing a Public Interest Litigation (PIL) asking states to provide the necessary funds.

5. Investment opportunities

- A comprehensive study on forms of exploitation other than commercial sexual exploitation needs to be conducted to assess the extent of these exploitation and ways to rescue the children from these exploitative situations. This will support in development of interventions for the benefit of children into other forms of exploitation
- Efforts like creating comprehensive directories of contact details of stakeholders in different states would be very useful for stakeholders like CWCs and NGOs to identify their counterparts in the states and districts of the survivors for seeking support in home investigation, repatriation and integration
- Indian NGOs should explore more widely the options of integrating Nepali children within India, making repatriation an option for them. Given the Indo Nepal treaty, there should not be any legal binding against this option.
- Massive efforts are required to create viable livelihood options for survivors of human trafficking beyond traditional vocational skills that do not lead to economically productive livelihood.
- NGOs in the states of UP and Bihar should be supported to access funds through schemes like Ujjawala to start/strengthen more short stay homes for rescued girls at district level.
- Develop pilots towards strengthening the prosecution in the two countries. These efforts could include:
 - Free legal aid to the survivors to pursue their cases
 - Victim witness protection
 - Making Indian brothel owners and traffickers from other countries as party in the cases and using extradition treaty for their prosecution

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- More research on the ground is needed to identify the specific areas of problems and bottlenecks that can smoothen the RRRI process in the best interest of the child, still ensuring necessary legal dimensions.

Immediate Priorities for Action

Round Table consultations were organized in India and Nepal with select group of stakeholders where findings from research were discussed, along with viable options that could be attempted with support from the stakeholders. Within the long list of recommendations, the stakeholders identified certain priorities and suggested that pilot(s) be developed to test out the feasibilities and then take these to scale. Some of these identified priorities include:

- Build on the Delhi High Court order of validating the use of video conferencing for providing witness during court procedures. Identify certain Nepali girls in India awaiting repatriation pending their witness in the court and test the feasibility. The process would include supporting the relevant NGO/Shelter Home to first apply for repatriation order and then facilitate the technology for providing witness. Once documented, this could easily be replicated in other similar cases
- National Committee for Combating Human Trafficking (NNCHT), an apex body of the Ministry of Social Welfare, Nepal has expressed the need for financial and technical assistance to move forward the human trafficking agenda in Nepal. One specific effort that NNCHT would like to initiate include adoption of SOP for India Nepal repatriation. Also NNCHT has expressed the desire to initiate nationwide movement to highlight the plight of Nepali nationals who are trafficked and bring trafficking as an issue to the Prime Minister's Office. It is recommended to support NNCHT to conduct a national level strategy formulation workshop and support them to develop an Action Plan, which could then be supported appropriately. NNCHT should also be supported to explore with their Indian counterparts the possibilities of government to government collaboration on this issue.
- In India, initiate efforts for building capacities of Child Welfare Committees and Anti Human Trafficking Units towards fulfilling their roles and responsibilities. National Commission for Protection of Child Rights (NCPCR) is planning to initiate the process and it would be worthwhile to advocate with NCPCR to ensure that findings of this and earlier researches on capacity assessment of service providers are incorporated into the contents of the training. A similar model may be attempted for AHTU capacity building through Ministry of Home Affairs.
- In Bihar and Uttar Pradesh, there is an immediate need for profiling of safe residential facilities for girls that can be used as a temporary accommodation for girls' survivors of human trafficking so that no girl is handed back to a

risky/vulnerable situation in absence of a facility. This profile may be widely circulated to all CWCs in these states.

- Government of India is favorably considering restricting the exit of Nepali citizens from Indian airports (Nepali citizens would need No Objection Certificate from a competent authority in Nepal to exist from Indian airport). Some stakeholders have reported that this has even started and the immigration officers at major airports demand for a No Objection Certificate from the Nepali Consulate/ High Commission. Concentrated efforts are needed to first ensure that guidelines are sent to all airports and then monitoring the implementation.

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