

Human Trafficking

dimensions, challenges, responses &
innovations

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Preventing and combating all
forms of human trafficking:

A constitutional mandate

Article 23 of our Constitution prohibits trafficking for any exploitation...

Constitutional mandate

Constitutional right against HT

Violation is deprivation of FR

Prevention is FD

Accountability of all of us...

Constitutional offence.. Legislature was only to prescribe punishment

370 IPC

- New dimensions in definition
- All comprehensive
- Clarity
- Need effective utilization by all of us
- Yet challenges are many before public

ACTION

Any of the following acts:

- RECRUITS
- TRANSPORTS
- HARBOURS
- TRANSFERS
- RECEIVES

Modus operandi

- Using threats
- Using force or any form of coercion
- By abduction
- By deception or practicing fraud
- By abuse of power
- By inducement

**so as to achieve the consent
of the person trafficked**

purpose/ mens rea

- For the purpose of exploitation
 - Meaning ANY TYPE of EXPLOITATION
- shall include
 1. Any act of physical exploitation or
 2. Any act of sexual exploitation or
 3. Slavery or
 4. Practices similar to slavery, servitude
 5. For removal of organs
- Only illustrative, not exhaustive (note the words “shall include”)
- **Consent of the trafficked victim is immaterial**

basically 3 types

➤ **Trafficking For Commercial Sexual Exploitation**

➤ **Trafficking for Exploitative Labour**

➤ **Trafficking for other types of exploitation, including organ trade**

However, on ground, all are mixed up

Trafficking for exploitative labour

- ❖ labor- domestic, industrial, agricultural etc
 - ❖ entertainment (circus) etc ...
 - ❖ Camel racing
 - ❖ False marriage – “mail order bride”
 - ❖ Begging
 - ❖ Militancy, terrorism etc...
- As well as illegal adoption, etc...

Trafficking for commercial sexual exploitation

TRAFFICKING FOR CSE

- Brothel-based
- Non brothel based
- e-based

many a façade and camouflage

- **Sex tourism**
- **Façade of**
 - **Massage Parlour**
 - **beauty parlour**
 - **tourist circuit**
 - **bar tending**
 - **escort services etc...**
- **Pornography**
- **Cyber Sex**
- **...**

New forms: human ingenuity at its worst

- Trafficking for surrogacy
- Trafficking for medical tests as guinea pigs
- Trafficking for adoption
- Trafficking through adoption
- Reported missing but trafficked
- Trafficking under the façade of medical tourism

**A GIRL CHILD TRAFFICKED
INTO
COMMERCIAL SEXUAL EXPTN**

Let her speak.....

DISPLACED (ABDUCTED?)

2. CRIMINALLY CONFINED

**3. CRIMINALLY RESTRAINED FROM THOUGHT /
ACTION**

4. PHYSICALLY & MENTALLY TORTURED / INJURED

5. SOLD

6. PURCHASED

7. MODESTY OUTRAGED

8. RAPED REPEATEDLY

9. VICTIM OF SEXUAL PERVERSIONS

10. SERVITUDE & DEBT BONDAGE

11. PRIVACY DENIED

**12. ACCESS TO JUSTICE DENIED - NO
REDRESSAL**

13. CRIMINAL CONSPIRACY

14. MULTIPLE ABUSE & ABUSERS

*** ORGANIZED CRIME***

BASKET OF CRIMES

THE HR VIOLATION OF THOSE TRAFFICKED ACROSS THE BORDERS

- 1. DEPRIVATION OF RIGHT TO LIFE (SLAVE LIKE CONDITIONS)**
- 2. DEPRIVATION OF RIGHT TO SECURITY (PHYSICAL & ECON)**
- 3. DEPRIVATION OF RIGHT TO PRIVACY (BONDED LAB)**

Contd....

- 4. DENIAL OF ACCESS TO HEALTH SERVICES**
- 5. DENIAL OF RIGHT TO SELF DETERMINATION (RESOLD)**
- 6. DENIAL OF RIGHT TO RETURN TO OWN COMMUNITY - "STATELESS"**
- 7. DENIAL OF RIGHT TO REPRESENTATION (STATELESSNESS)**
- 8. DENIAL OF RIGHT TO BE HEARD BEFORE DECISION MAKING**

WHAT CONSTITUTES TRAFFICKING

- ❖ more often misunderstood as
PROSTITUTION-
- ❖ NEEDS DE-MYSTIFICATION and
Clarification of concepts
- ❖ TRAFFICKING **IS NOT**
prostitution

WHAT CONSTITUTES TRAFFICKING

- **DISPLACED FROM COMMUNITY**
- **TRANSPORTATION**
- **COERCION / DECEIT**
- **EXPLOITATION of vulnerability**
- **COMMERCIALIZATION**
- **COMMODITIZATION**
- **SERVITUDE**
- **VIOLATION OF HUMAN RIGHTS**
- **ORGANISED CRIME**
- **BASKET OF CRIMES**

human smuggling
vs
human trafficking

RECENT CASE STUDIES

- JHARKHAND to KERALA
- KERALA to GULF

Who are the victims of trafficking?

Why trafficking?

- Is it lack of education?
- Is it lack of awareness?
- Is it due to lack of livelihood?
- Is it due to child abuse and exploitation at home?
- Is it poverty?
- Is it due to poor law enforcement?
- Is it demand?

**Vulnerability factors and
Demand factors**

VULNERABILITY FACTORS

- **Socio cultural factors on top**
- **Ignorance of rights**
- **Illiteracy**
- **Gender discrimination**
- **Neglect/ lack of community/family care**
- **Abuse of children: different violations**
- **Economic deprivations**
- **Unemployment**
- **Disasters and resultant distress**

DEMAND FACTORS

- **The very demand**
 - Commercialization of human beings
- **Power / authority**
- **Profit**
- **Anonymity**
- **Nexus**
- **Impunity**
- **Poor/distorted law enft/justice delivery.**

usual myths... (HT for forced labor)

- **Poor children... nowhere to go... hence this is a better option...**
- **Victim was paid for the services / labour, so there is no crime...**
- **This is migration, but not human trafficking...**
- **Child labour and bonded labour cannot be trafficking...**

usual myths... (HT for CSE)

- **Poverty ... no employment... hence this is a better option...**
- **Woman does it willingly...enjoys...**
- **Woman is part of the crime...being paid for the services**
- **There were opportunities to escape but the victim chose to stay**
- **Affects only some poor...our children are safe...**

MISSING PERSONS vs. TRAFFICKING

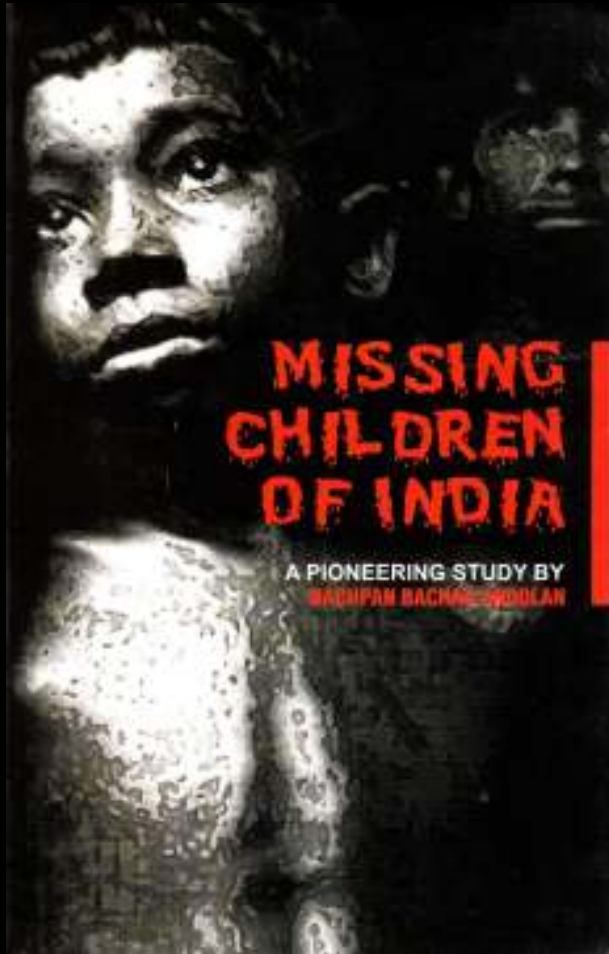
- **CASE STUDIES OF DELHI, MUMBAI, CHENNAI, AP**
- **LINKAGES OF TRAFFICKED VS. MISSING PERSONS**
- **NATIONAL DATA OF MISSING PERSONS**
- **UNIQUENESS OF DATA**

Annual all - India data of missing persons:

Average of 6 years – 1996 to 2001

Category	Persons Reported Missing	Not Returned	% Not Returned
Women	22480	5452	24.3
Children	44476	11008	24.8

BBA Research 2011



- Data sought from 640 Dists: RTI
- Data received from 392 Dists.
- 117480 children missing in 2 years (2008 + 2009)
- 41546 remain untraced
- Yearly average:
 - **One lakh** children go missing per year
 - **33000** remaining untraced !!!

orders of Hon'ble Delhi High Court

MHA Advisory

Orders of Hon'ble Supreme Court of India

BBA vs UOI
on
missing children

SC orders 17 Jan 2013

Ops smile

- Start
- Impact
- Replication
- Lessons learnt
- What is done and what is not

Who are the offenders in
trafficking crimes ?

Demand and perpetuating demand

Who are they ??

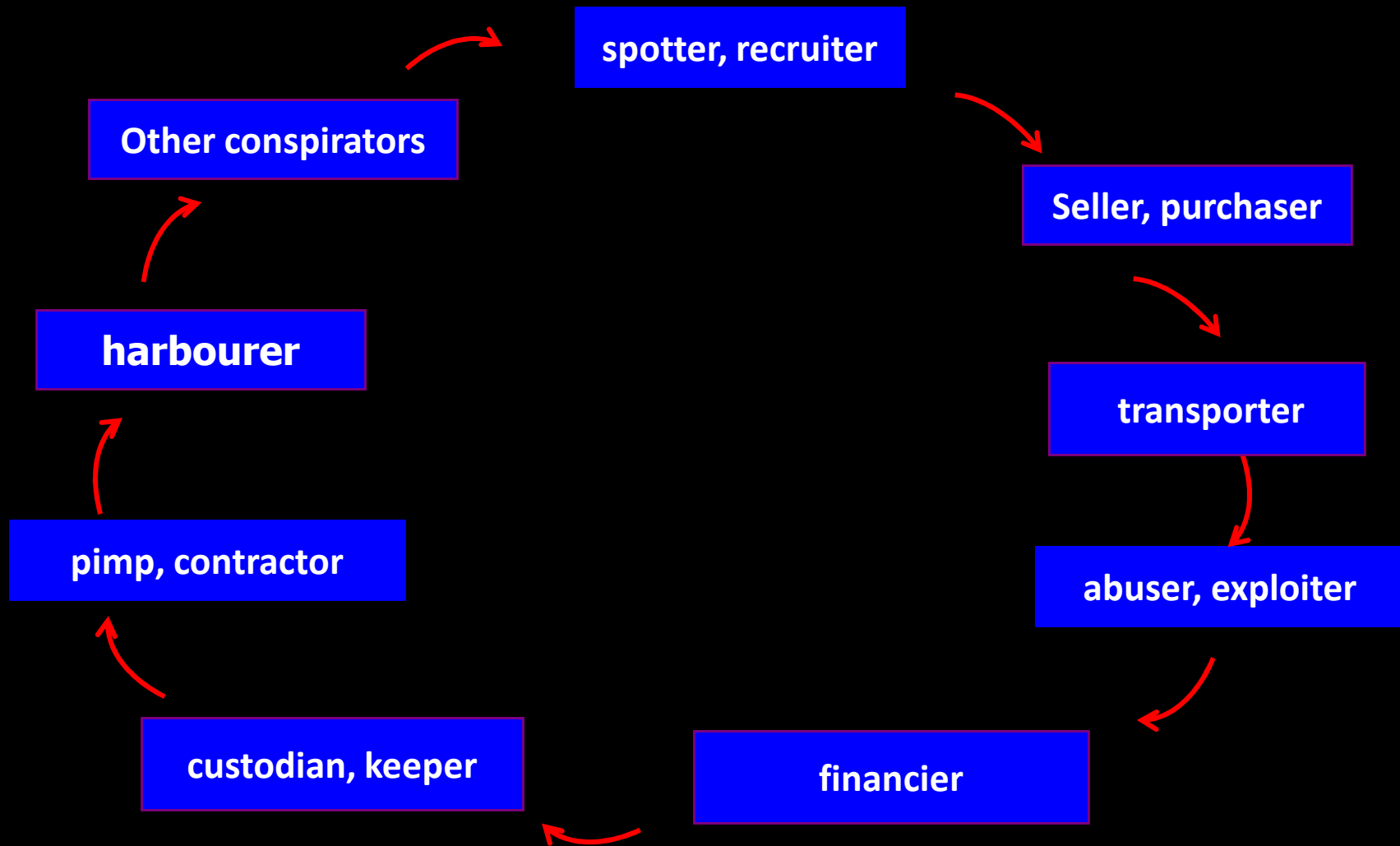
- Ω spotter, recruiter,
- Ω Seller, purchaser,
- Ω transporter,
- Ω abuser, exploiter,
- Ω financier,
- Ω custodian, keeper,
- Ω pimp, contractor,
- Ω nexus???
- Ω Other conspirators...

Have all of them been investigated into?

the Organized Crime with no boundaries

- source – transit- destination linkages
- push and pull factors linked
- electronic space gives further scope
- well networked
- nexus...

Trafficking Network



Story of traffickers illicit assets

- BRP at Delhi
- Panna Lal Mahto of RNC
- Confiscation of assets of traffickers...?

Economics behind forced labour trafficking

- 360 billion USD = 21 Lakh Crores INR are generated by enslaving children in exploitation in India
- Equivalent to one fifth of India's GDP
- This black money propels capital corruption and sustained exploitation of children in India
 - Kailash satyarthi, “Economic Behind Forced Labour Trafficking”, Global March Against Child labour, 2014

Trends in human trafficking

- **Increase or decrease?**
- **Demand...**
- **More children in labour...**
- **More women in sex and labour exploitation**
- **More demand for girls in sexual exploitation**
- **Increase in Illicit assets**
- **Trading in human misery**

Film 1

English Film

<https://www.youtube.com/watch?v=v-hBfhwEH6Q>

How do you rate
the response systems

Findings in the NHRC research, 2002-2004:

- **60% crimes not reported**
- only 6.6% police officers had any training on trafficking/related issues
- **No training for prosecutors in a systematic way**
- Nil/ low priority issue for everybody
- **Lack of integration among govt depts/ agencies/ schemes esp for rehab/post-care etc**
- **Lack of network of LEA with NGOs**

DISTORTIONS IN RESPONSE

- Average 13000 arrested every year, @90% are females !!
- 58 % were “ARRESTED” earlier
- mostly got released by the BROTHEL OWNER
- Victimization of victims across the spectrum- everywhere...
- Lack of rehab main reason for re-trafficking
- Preventive actions/steps: mostly on paper
- 72% victims were “convicted” earlier on charge of “soliciting”

WHY are the VICTIMS convicted?

- Who is responsible?
- Police?
- Prosecution?
- Courts?
- System?
- Individuals?
- Ignorance or insensitivity or callousness or vested interest or

Victimization of victims ?

- Primary victimization in the process of trafficking
- Secondary victimization at the hands of the responders
 - Rescue stage, Investigation stage, prosecution stage, long, arduous, unpredictable stay at Homes, trial stage, rehabilitation stage, repatriation stage ...
- Tertiary victimization on rehabilitation at the community

Secondary victimization: examples

- Being kept along with accused/transported together , accused intimidating victim
- Victim's belongings not carried along
- Victim's child left behind
- No relief/rehab mechanisms in sight
- Compensation to victim is still a dream?
- Victim's health issues not attended to
 - including mental health
- victim's dignity is further violated?
 - media publicity?

victimization starts even before rescue:

Rescue not being done in time?

- Who can rescue
- Special police officer not being available
- If **no SPO available**, what to do
- Powers of police/SDM/JM/NGO/ANYBODY
- Why no rescue in time?
 - Insensitivity, prejudices, lack of priority, lack of understanding the issues
 - Lack of Homes ?
 - Supervision/ Accountability issues?

REHABILITATION

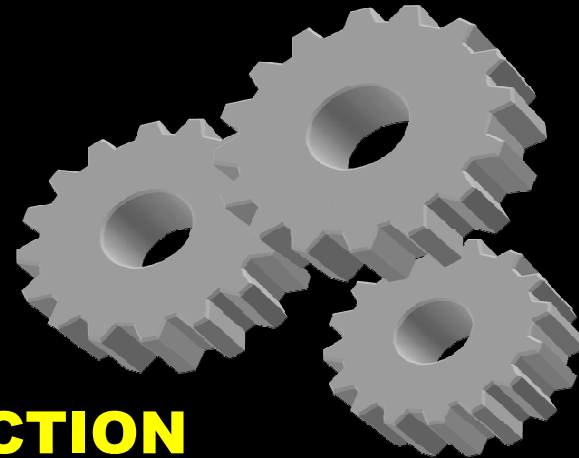
- Who does it?
- How is it being done
- Is it integrated with rescue/demand?
- Is it from the best interest of the rescued person
- Does anybody assess situation beforehand
- Is it sustainable?
- Is it followed up/facilitated/monitored?
- Is there any legal mandate?

**Situation was indeed vicious,
but for certain initiatives
which made a difference,
a great difference.**

NHRC study= Response has to be HOLLISTIC and INTEGRATED

P-P-P MODEL

PREVENTION



PROTECTION

PROSECUTION

The legal regime

Impressive Legal Regime

- Constitution of India
- Substantive laws :IPC, CrPC, EV Act
- Special legislations: POCSO Act, ITPA, JJAAct, IT Act, PMLA, BLAA, CLAA etc
- State legislation
- State Plan of Action
- MHA Advisories
- SC rulings
- HC rulings
- NHRC guidelines

Legislations to Combat Trafficking

- **Indian Penal Code 1860**
 - **Special Attention S.370 And 370A**
 - **Amendments in Ev Act**
 - **Procedural Laws, amendments in CrPC**
 - **Sc And HC Rulings**
 - **Child Rights Convention (CRC)**
 - **Conv Of Elimination Of Discrimn Against Women. (Cedaw)**
 - **TNOC and Protocols**
- Spl laws**
- **IMMORAL TRAFFIC PREVENTION ACT, 1956**
 - **POCSO**
 - **JUVENILE JUSTICE CARE & PROTECTION OF CHILDREN ACT 2015.**
 - **Bonded Labour Abolition Act/ Child Labour related Acts**
 - **Goa Children's Act 2003.**

The ITPA- strengths

(new trafficking law is in the anvil)

Authorities under PITA

- Special Courts By State or GOI (S.22)
- Special Police Officers in States (S.13.1)
- Trafficking Police Officers with all-India jurisdiction (S.13.4): CBI notified
- Non-official Advisory Body to associate with Special Police Officers (13. 3.b)
- Panel of NGOs to assist Court (17.5)
- Tourism Police
- Correctional Service Officers(S.21)

Highlights of ITPA

- The purpose is to address “**Trafficking**” & not Prostitution.
- Sections 3-9 are substantive, the rest cover procedural aspects.
- Applies to males and females
- Recognizes the Role of NGOs
- Attention to women’s rights
- Special attention to child rights
- Innovative Presumption Clauses

Unique spl prov under ITPA

- Estoppels against civil and criminal action on SPO and NGO/PW attending searches and rescue: S.15.6 ITPA
- SPO can arrest w/o warrant, authorise any subordinate in writing, S.14
- Search without warrant, S.15
- Med exam of rescued person is mandatory, S.15.5A
- Rescued woman to be interviewed by female police only; or else female NGO with male police, 15.6A
- **Home Verification mandatory** before release (S.15)
- Any person in CSE can seek rehab as a right, S.19

ITPA, 1956

Sec	Offence	Max Fine	Imprisonment	Classifica- tion
3(1)	Punishment for keeping a brothel or allowing premises to be used as brothel	Rs. 2000	Min 1 year; Max 5 years	Non-Bailable
4	Punishment for Living off the Earnings of Prostitution	Rs. 1000	7-10 years if Minor Max 2 years, if Adult	Non-Bailable, if MINOR
5	Procuring, Inducing or taking a person for the sake of prostitution	Rs. 2000	Min 3 years; Max. – Life Imprisonment	Non-Bailable
6	Detaining a Person in premises where prostitution is carried on	No. Max.	Min. 7 – Max. Life Imprisonment	Non-Bailable
7 (1)	Prostitution in the vicinity of public place	No fine	Min 1 day – Max. 3 months	Bailable
7 (1-A)	Offence in respect of Minor	No Max.	Min. 7 years – Life Imprisonment	Non-Bailable
7 (2)	Being a keeper, Tenant or landlord of Premises and knowingly permitting prostitution	Rs. 200	Max 6 months	Bailable
8	Seducing or Soliciting for purpose of Prostitution	Rs. 500	Max 1 Year	Bailable
9	Seduction of a person in custody	No Max	Min 7 – Max. 10 Years	Non-Bailable

Procedure for Production of Victims

<p>(1) In case of ADULT, before the appropriate Magistrate</p>	<p>Custody of adult in a Protective Home for adults, pending the enquiry - sec 17, ITPA</p>
<p>(2) In case of CHILD, before the Child Welfare Committee (CWC) established under section 29 of Juvenile Justice Act, 2000</p>	<p>Custody of CHILD in a Protective Home for child pending the enquiry - sec 32, JJ Act</p>
<p>(3) Children's Court established under S.27 of Goa Children's Act 2003</p>	<p>Custody of child in a Protective Home for child, pending the enquiry GCA</p>

Age Verification & Medical Examination of the Victim Section 15 (5-A) of ITPA and section 49 (1) of JJ Act

PURPOSE

- A- determination of age
- B- detection of any injuries as a result of sex abuse
- C- to diagnose sexually transmitted diseases

Nehru Dance Bar Case

PROOF OF AGE:

Birth Certificate

School Leaving Certificate

Medical opinion

Guiding Pointers

- ✓ **Presumption of Age at first sight - in favour of rescued person**
- ✓ **Brothel Madam / Exploiters confuse with respect to Age.**
- ✓ **Victim under pressure to conceal her true age.**
- ✓ **in case of doubt, the benefit there of goes to the victim. *Karnataka v/s Majamma,***

Intermediate Custody & Inquiry u/s 17 ITPA

- **Transfer the Jurisdiction to the CWC in case of Minors for Care & Protection**
- **Order for Safe Custody in a govt. recognized protective home. (3 weeks)**
- **Order to Conduct inquiry.**
- **Inquiry into the credentials of Applicants of Custody of victims.**
- **Detention of the victim for a period of 1-3 years in a protective home for rehabilitation.**
- **Magistrate to take assistance of a panel of 5 social workers to conduct inquiry and for suitable rehabilitations.**

Spl. provs against CHILD trafficking

- **Trafficking a child - procuring, inducing, taking or attempting to prostitute- minimum RI for 7 years. S.5(d)(i)**
- **Child found in a brothel- detention presumed. S.6(2)**
- **Medical exam of child found in brothel shows sexual assault- presumed that she has been subjected to CSE. S.6(2A)**
- **Any person who carries on prostitution with a child is liable for minimum 7 years punishment AND fine. S.7(1A)**
- **Prostituting a child in a Hotel- Hotel license liable to be cancelled. S.7(2).**

the law of presumption

Law of presumption (1)

- Knowledge is presumed u/s 3(2A)
- IF A REPORT IS PUBLISHED IN LOCAL PRESS ABOUT THE MISUSE OF THE BLDG, AS REVEALED DURING A SEARCH
- OR SEARCH LIST COPY IS GIVEN TO THE PERSON

Law of presumption (2)

- ➡ **ANY PERSON ABOVE 18**
 - ➡ **LIVING WITH / IN HABITUAL COMPANY OF PROSTITUTED PERSON or**
 - ➡ **CONTROLS MOVEMENT OF THE PROSTITUTED PERSON IN AIDING/ABETTING or COMPELLING HER for PROSTN**
 - ➡ **ACTING AS TOUT OR PIMP**
- is presumed to be living on the earnings of prostitution**

Law of presumption (3)

- A person found with a child in a brothel is presumed to have detained the child and is liable-
S.6(2)

Law of presumption (4)

- If med. exam of child found in a brothel shows sexual assault, it is presumed that the child has been subjected to CSE- S.6(2A)

Law of presumption (5)

- DETENTION of a woman or girl in a brothel is PRESUMED {s.6(3)(a)} if a person
- With holds any of her property/money or dress/ belonging
- or threatens action against her if she takes away any property lent or supplied to her

Presumptions in labour laws

BLA: debt and onus

- BLAA speaks about DEBTOR and CREDITOR, one who pays advance (bonded debt)
- Burden of Proof: S15: Whenever a debt is claimed by a bonded labour or the vigilance committee, to be a bonded debt, the burden of proof that such debt is not bonded, shall lie on the creditor

Bonded: presumption of Force

- PUDR v UOI, AIR 1982 SC 1473
- It may therefore be presumed that when a person provides labour or service to another, against receipt of remuneration which is less than the minimum wage, he is **acting under the Force of Compulsion**

Presumption: SC ruling

Badhua Mukti Morcha v UOI AIR 1984 SC 802

Whenever it is shown that a labourer is made to provide forced labor, the Court would presume that he is doing so in consideration of an advance received by him and therefore he is a forced labor. This **presumption** may be rebutted. But unless and until satisfactory material is produced in rebuttal, the **Court must proceed on the basis** that the labourer is a **bonded labourer**.

Advice of the Hon'ble Supreme Court

PUCR V UOI, AIR 1982,SC 1473, para20

Bandhua Mukti Morcha v UOI AIR 1984 SC 802

We would like to impress upon the magistrates and Judges of the country that violations of labor laws **must be viewed with strictness** and whenever any violation of labor laws are established before them, they **should punish** the errant employers by imposing **adequate punishment**

Private lawyer to defend victim

- The amended CrPC 24(8) permits the victim to assist the prosecution by engaging his own counsel:
- *Satyavani Ponrani V Samuelraj n othrs, 2010 (2)*
MWN (Cr) 273

The JJ Act

16 Guiding principles

- **Principle of presumption of innocence:** Any child up to 18 shall be presumed to be innocent of any *mala fide* or criminal intent
- **Principle of dignity and worth:** All human beings, incdgd child, shall be treated with equal dignity and rights.

- ***Principle of participation***: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.
- ***Principle of best interest***: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

- ***Principle of family responsibility***: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.
- ***Principle of safety***: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter

- ***Preventive measures***: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children
- ***Principle of non-stigmatising semantics***: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

- ***Principle of non-waiver of rights***: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.
- ***Principle of equality and non-discrimination***: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

- ***Right to privacy and confidentiality***: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.
- ***Principle of last resort***: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

- ***Right of repatriation and restoration***: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.
- ***Principle of non-stigmatisation***: All past records of any child under the Juvenile Justice system should be erased except in special circumstances

- ***Principle of better option***: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.
- ***Principle of natural justice***: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act

The Protection of Children from
Sexual Offences Act, 2012
and
Criminal law Amendment Act 2013
and
Child Trafficking

Basic Principles

ex-debito Justitae :

to do real and substantial justice

Salus Populi Supreme lex :

welfare of the people is the Supreme Law

- ✓ Speedy Trial under Provisions of 309 (1) Cr.PC. And POSO Act Sec. 35.
- ✓ Child-friendly Procedure of Special Court u/s 33 POCSO Act
- ✓ Accused not to see the child at the time of testifying (Sec. 36 POCSO Act)
- ✓ In case of any inconsistency provisions of POCSO Act shall have over-riding effect on provisions of other Acts (Sec. 42 A POCSO)
- ✓ Principles of presumption (accused has to prove his innocence / u/s 29 POCSO Act and Culpable mental State u/s 30 POCSO Act)

- ✓ Principle of right to life and survival of child victim
- ✓ Protecting the best interest of the child
- ✓ The right to be treated with dignity and compassion
- ✓ Right to be protected from discrimination
- ✓ Right to be informed about the legal processes and proceedings
- ✓ Right to be heard and opportunity to express views and concerns

- Right to effective assistance at all times till completion of trial.
- Right to privacy protecting identity of victim and precluding re-victimization.
- Right to be protected from hardship during the justice process.
- Right to safety of the child- Protecting child from any risk before, during and after the justice process.
- Right to compensation, relief and rehabilitation.

Criminal Law (Amendment) Act, 2013

Sec. 326-A – Voluntary causing grievous hurt by use of Acid	Punishment – Not less than 10 yrs up to life -	Sessions court
Sec. 326-B – Voluntarily throwing or attempting to throw acid	Punishment – may extend to 7 yrs and with fine	Sessions court-Non-Bailable
Sec. 354-Assault or use of criminal force to woman with intent to outrage her modesty	Punishment – for one year which may extend to 5 yrs and with fine.	Asst. Sessions Non-Bailable
Sec.354-A – Sexual harassment at work place	Punishment – for 3 years with fine or with both.	Any Magistrate Bailable
Sec.354-B – Use of Criminal force to disrobe woman.	Punishment – not less than 3 years and upto 7 yrs.	Any Magistrate Non-Bailable

Criminal Law (Amendment) Act, 2013

Sec.354-C – Voyeurism

Punishment – not less than 1 year and upto 3 yrs.

**Any Magistrate
Bailable**

Sec. 354-D – Stalking

Punishment – Upto 3 yrs

**Any Magistrate
Bailable**

Sec. 370- Trafficking of person

**Not less than 7 yrs,
upto 10 yrs.**

**Non-Bailable -
Sessions Court**

Sec. 370- Trafficking of more than one persons

**Not less than 10 yrs,
upto life**

**Non-Bailable -
Sessions Court**

Sec.376 – Rape

**not less than 7
years, upto life**

**Non-Bailable -
Sessions Court**

Criminal Law (Amendment) Act, 2013

Sec.376-A – Causing death during rape or woman to be in vegetative state

not less than 20 year, may extend to life imprisonment till remainder of that person's life or with death

Non-Bailable - Sessions Court

Sec. 376-B – Rape by husband on his wife during separation (only on complaint of victim)

Punishment – Not less than 2 yrs. upto 7 yrs.

Bailable- Sessions court

Sec. 376-C – Rape by a person in authority or a public servant etc.

Not less than 5 yrs, upto 10 yrs.

Non-Bailable - Sessions Court

Sec. 376-D - Gang Rape

Not less than 20 yrs, upto remainder of natural life

Non-Bailable - Sessions Court

Sec.376–E -Repeat offenders

For the remainder of the life or with death

Non-Bailable - Sessions Court

Victim-witness protection measures/provisions

Victim/witness protection

- do we have provisions?
 - Anonymity
 - In camera trial
 - Video conferencing
 - Screen
 - Recess: Free atmosphere in court
 - Legal representation
 - Never accomplice
 - Cross exam by accused- how?
 - Compensation

Victim/witness protection contd...

- Delayed reporting
- Defective investigation
- Victim not examined
- Character & antecedents
- Reliability
- Corroboration
- Expeditious trial
- Anonymity

Victim/witness protection

- Discrepancy in medical report ?
- Expeditious trial
- Participative role of the Court
- Witnesses to turn up
- Right to be rescued
- Right to restoration to safe place
- Right against re-trafficking:
 - Prosecutor's role in Prevention ?

Some important rulings of the Hon'ble Supreme Court of India

Victim Care during Court trial

❖ **Reject Bail Applications**

Guria swayam sevi sansthan v/s U.P

❖ **Prerana v/s State of Maharashtra**

ITPA + JJA, role of advocates, etc

❖ **Protecting Child Rights during trial**

Sakshi VS UOI, Sept 2004- AIR 2004 SC 3566.

- Guria vs UP, 2010 (2)Cri.L.J 1433
- Distinguishing victims from perpetrators
- Care of victims
- Bail after verification..

Victim Care during Court trial

❖ Video conferencing / Statements Recorded / Video Recorded u/s 164 CrPc so as to prevent Hostility of witnesses

1. State of Maharashtra vs Praful Desai 2003 4 SCC 601
2. Zahira Habibullah Shaikh v/s. Gujarat, 2004 (91) AIR 3114 SC
3. PIL by Prajwala & HRLN – Delhi High Court.

❖ Legal representation of the victim S.301(2) Cr.Pc / Compensation form the State

Delhi Domestic Working Women's Forum vs UOI, 1995 (1) SCC14

Victim Care during Court trial

❖ *Compensation even without Conviction*

Delhi Domestic Working Women's Forum vs UOI, 1995 (1) SCC14

❖ *Flawed investigation no ground to deny justice to the victim*

Zahira Habibullah v/s Gujarat, 2004 (4) SCC 158

❖ *Non Examination of Victim, no ground for Acquittal*

State of Himachal Pradesh v/s. Mohan Misra, 1995 Cr LJ 3845

❖ *Character & Antecedents of the victim has no bearing or relevance*

Haryana v/s Premchand & Others, 1990(1) SCC 249 / Maharashtra v/s Madhukar Marviker, AIR 1991 SC 207

❖ *Minor contradictions are irrelevant*

State of AP vs Gangula Satya Murthy JT 1996 (10)SCC 550

Presiding officers of courts can do a lot...

Zahira Shaikh v/s. Gujarat, 2004 SC(91) AIR 3114

“The Courts need to take a participative role in the trial. They are **not expected to be tape recorders** to record whatever is being stated by the witnesses. S.311 CrPc & S.165 IEA confer wide & vast powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence collecting process”

- Budhadev Karmaskar V/s. State of West Bengal, 2011 ALL MR (Cri) 943 (SC)
- Art.21 – Problems of physically and sexually abused women – **Prostitutes have also a right to live with dignity under Art. 21** – Their problems need to be addressed – Apex Court directed Government to prepare schemes for giving technical/vocational training to sex-workers in India – Central and State Government directed to place before Court first compliance report in this regard.

- Guria, Swayam Sevi Sansthan V/s. State of U. P. & Ors. Cri. Appeal No. 1373/2009 (Supreme Court Cases)
- **Bails** are also granted to other accused who are arrested from the brothels without bearing any distinction in mind as to whether they work from behind or may be held to be guilty of offences of higher magnitude.

- Shaikh Jaffar Shaikh Ahmed V/s. State of Maharashtra & Ors. 2008 Cr. L. J. 2413
- ITPA cases are of a very serious nature and therefore **bail should be denied** unless exceptional circumstances or facts present themselves.

- **PK Unnikumar v State, 1974 Cri.L.J 377:** Hotel owners who let hotel to accused are liable under the category of running the hotel
- **Cheriyam v State of Kerala, 1973 Cri.L.J.839:** A person is also guilty if he procures a prostitute for himself. **“Customer liable under the Law”**
- **Bai Radha V Gujarat, 2002 Cri.L.J.3152:** SPO’s failure to record reasons for warrantless search or lapses related to panchas do not vitiate trial

- **Vishaljeet v India, Cri.L.J. 1469**: severe and speedy legal action called for to curb HT
- **MP v Kashiram, 2009 Cri.L.J.1530**: Court will be failing in its duty if the accused's sentence is not consistent with the brutality they inflicted on the victim
- **Maha v Prabhul Desai, AIR 2003, SC.2053**: If video conf cannot be held in the court, commission be issued to CJM to depute a responsible officer to go to experts and get it done

VICTIM OR ACCOMPLICE ?

- Presumption of complicity of victim
 - Lack of understanding from the victim's perspective
 - Who sees the “mind of the survivor” ?
- Victimization of victim
- Especially in trans-border cases
 - Nationality of victim
 - Enforcing Immigration laws*

Listening to the victim

- Do we hear or listen?
- Why we need to listen
 - The heard and unheard story of the victim
- Legal Counsel of the victim
- Psychological counselor
- Child minder
- Giving time, opportunity, ambience, facility and concern
- “empty tank theory”

Post conviction steps

- Enhanced punishment
- Surveillance
- Externment
- Dossier- ITPA and related IPC and other offences
- Action u/s.18 (PITA)
 - Sealing / eviction
 - before / after conviction
 - with / without notice

EVICTION

of places of exploitation:

an effective tool in cutting out the
source of earnings of exploiters

EVICTION after conviction

- **Can trial Court order eviction?**
- **No notice required to be given.**
- **Which court?**
- **The trial court. s.18(2)**
- **Where does the appeal lie? ...**

Is eviction possible before conviction?

- **It is possible before conviction ?**
- **Which court?**
- **DM or SDM- notice to be given + hearing the party.
Due process to be followed.**
- **Where does the appeal lie?**
- **NO APPEAL NOR STAY AGAINST ORDER OF EVICTION BY THE COURT or the MAGISTRATE. S.18(3)**

Supreme Court rulings

- **AN Roy, COP Vs Suresh Sham Singh, AIR 2006 SC 2677**
- **AC Aggarwal, SDM Delhi Vs Mst Ram Kali, AIR 1968 SC 1:**
 - **S/3,7 deals with guilty persons; S/18 deals with premises;**
 - **in the former prosecution has to prove intention or knowledge, but in the latter, they are not necessary.**

SC rulings contd...

- Chitan Vaswani Vs West Bengal, AIR 1975 SC 2473:
 - S18(1) is a preventive section
 - It envisages summary procedure
 - S 18(2) operates not merely on places within the offending distance of 200 mtrs, but on all places where prostitution is being conducted

SC rulings contd...

- **Sunny Kamalsingh Mathur Vs COP Greater Mumbai; AIR 1968 SC1, CrLJ 2009, 1465 (Bom)**
 - S 18(1) is preventive in nature
 - Can be exercised by a DM or SDM
 - Show cause before passing order
 - Opportunity of hearing be given
 - Reasons must be recorded
 - S 18 (2) is punitive
 - Can be passed by a Court not inferior to MM or JM I Class
 - Only when a person is convicted u/s 3 or 7 ITPA
 - Open to the Court to pass order even without further notice

institutional
and
systemic
arrangements
and
improvements
in place

AHTU

Anti- Human Trafficking Units

the launch...

AHTU:

- **Comprehensive n integrated mechanism for holistic action**
- **First AHTU in India set up in AP July 2007**
 - by PM Nair, as Project Coordinator, UNODC
- **Total 9 AHTUs during 2007-8**
- **Synergy of stake holders: LE agencies + NGOs +....**
- **K+S+R provided**
- **sustained thru mentoring..**

Growth and Development of AHTUs

- Mentoring
- Facilitating
- Guiding
- Orienting
- Promoting
- Course correction
- The AHTU mantra:
 - live together, work together, deliver together...

Delivery and output

- Large scale rescue of trafficked persons from CSE and Forced labour
- Large scale arrest and prosecution of traffickers and all who constitute demand
- Conviction of traffickers and accomplices
- Eviction of places of exploitation
- After care of rescued persons, including rehab
- Tracing of illegal assets
- Prevention of trafficking

Post UNODC AHTUs

- Evaluation by external evaluators, 2008
- Replication by MHA, 2010-2013
- 270 AHTUs now in 270 Districts in India
- MHA advisories and guidelines 2010-2013
- Addition of manpower to AHTUs in 2015
- IGNOU Certificate Course, 2010
- Advisory by MHA making it mandatory for AHTU officers

AHTU going international

- Nepal
- Bangladesh
- Teams visit
- Study on the spot
- Going global...

Hon'ble Supreme Court of India

Bachpan Bachao Andolan Vs UOI

WRIT PETITION (C) NO.75 OF 2012, Order dated 10 May 2013

In case a missing child is not recovered within four months from the date of filing of the First Information Report, the matter may be forwarded to the **Anti-Human Trafficking Unit** in each State in order to enable the said Unit to take up **more intensive investigation** regarding the missing child.

The **Anti-Human Trafficking Unit** shall file periodical status reports after every three months to keep the Legal Services Authorities updated.

Perceptible improvements in India

- Rescue
 - Rights-based police action
 - Public awareness/involvement / trigger factor
 - Help seeking/rendering behavior
- Post rescue care and attention
 - New rehab programmes of Govt / NGO
 - Minimum standards...
 - Corporate involvement

Perceptible improvements contd...

- Legislative reforms (370 IPC)
- Witness/ Victim protection steps
 - Video conferencing across borders
 - In-camera trial
 - compensation
- State Government initiatives
 - State Plans of Action..
 - Immediate relief measures
 - State level monitoring

Perceptible improvements contd...

- Initiatives by MHA, Govt of India
 - AHTU replication to 260 Districts in India
 - **IGNOU Certificate Course**
 - **New start: TISS + NLUO Cert Course on AHT**
 - Advisories of MHA on topical issues
 - Judicial colloquium by MHA + Judl Academy
 - Capacity building of LE Officials
 - Monitoring the functioning of Nodal Officers
 - Attention on capacity building of prosecutors

Perceptible improvements contd...

- Eviction of places of exploitation
- Conviction of traffickers
- Drastic reduction in arrest/violation/
re-victimization of victims
- Crime registration on all cases of missing
children (SC order of Jan 2013)
- Public intolerance to HT

Perceptible improvements contd...

- Unique case
 - Action Research -> evidence based findings->
 - Implementation of recommendations -> evaluation of outcomes-> validation and certification of achievements -> replication
- New Research by TISS under NHRC guidance being undertaken:
 - To look into the new dimensions, trends, prevalence, revenue generated, response systems etc.

a paradigm shift in justice delivery

Disposal by the Special Court of ITPA Mumbai

year	disposal	acquittal	convicted	committed	victims	%
2008 (16.8.08)	283	255	25	3	411	8.8
2009	438	335	81	22	388	18.5
2010	424	336	72	16	276	17
2011	176	132	44	16	411	25

total cases instituted 1612

total disposed off 1312

pending 291

Cases more than 10 years nil

conviction u/s 8 ITPA NIL

Repatriated to Bangladesh (thru MEA) 35

(in the year 2013, as per order of Honble High Court, 109 women/girls were repatriated to BD)

repatriated to Nepal 35 girls

Repatriated to other Nations 11

taking an extra step forward in ensuring child/women rights:

Video Conferencing by Mumbai Court

laws, rulings, administrative orders in support

Salute

victim

Judiciary

Prosecutor

Police official

NGO

Orders of the Hon'ble High Court of Madras

-making a great difference in victims rights

- Victim compensation under BLAA, Rs 1000 given, but Rs 19000 delayed/not given as victim has no bank account
- Need for ID proof for Bank AC opening
- Order of HC on Release Certificate as proof
 - Commendable role of IJM
- Great support to victims, protecting rights of several victims
- SDM cannot adjudicate (S.21BLAA): Madras HC order: Executive cannot adjudicat

Present scenario

- There are islands of excellence,
- **but...**
 - Extent/ prevalence increased
 - New forms emerged
 - Exacerbated level of exploitation
 - Increase in demand
 - Very high demand for children
 - Illicit revenue generation increased
 - And...

Challenges on ground

- No dearth of Law and SC Rulings, but need implementation by all of us...
- Lack of priority for stakeholders
- Stakeholders not realizing their responsibility
- Disjointed working of stake holders
- Lack of HOMEs for post-rescue care and attention
- Absence of counseling mechanisms
- Lack of prompt/effective redressal mechanisms
- Delay in the systems: protocols and procedures
- Mind-set, prejudices, bias

Challenges on ground are too many

- Public Servants not aware of the legal mandate/ not available for rescue
- Labour/Police Officers do not invoke BLA Act
- Police investigation is perfunctory
- Release certificate and interim relief not given
- Child is rescued and sent home...
 - only to be re-trafficked...
 - circulation from one exploitation to another..
- exacerbates exploitation, violence, deprivation.

Challenges on ground and suggestions

- Delayed trial, victims languishing in Homes
- Victim's children not cared for...Need attention
- Legal representation of victim by private counsel
- S.24(8) CrPC amendment : **Lawyer to assist prosecution , not prosecutor**
 - Judgment of Hon'ble High Court of Madras= not only legal representation, but cross exam also allowed
 - Consider permitting victim lawyer to argue and cross exam

Challenges on ground and suggestions

- **Not utilizing the services of CWC and SLSA**
- Perfunctory investigation and prosecution?
- Relevant docs like Release certificate not produced on time
- Statement of victim not recorded as victim has moved to home State
- 164 stat rarely done
- Utilizing special provisions of POCSO, like for video recording of statements

we can also ...

- Promote and facilitate AHTU: (SC order in BBA case)
- Victim and witness care: utilize all provisions and SC Rulings
- Victim rehab: link up with all concerned
- Ensuring comprehensive action by all concerned
 - SLSA/DLSA, AHTU, JPU, CWC etc and schemes like Nirbhaya, ICPS

we can also do ...

- Ensuring proper investigation n prosecution, Expeditious trial, Sentencing with fining
- Utilizing the services of CWC and DLISA
- Eviction and confiscation of illicit assets, Compensation
- **DLISA to take a proactive role in coordination of activities by all**

Role of SLSA and DLSA

Ref the Guidelines from NLSA

- Victim compensation
- Facilitate rehab
- Victim protection systems
- Ensuring accountability of AHTUs
- Action on missing children not traced
- Paralegal volunteers
- Public awareness, including youth

AHT Clubs

The vision and mission of AHT Clubs

See the document enclosed

**take one more step forward
making AHT a mission
ensuring rule of law
ensuring our constitutional mandate**

Even if there is no innovation, one can still make a difference with the right perception and approach

- Coordinated skills: Sharpening observation skills to appreciate the victim's plight
- One step forward, just thinking beyond...

Hindi film

<https://www.youtube.com/watch?v=sECoeUxbbHc>

thanks
for your kind attention

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HUMAN TRAFFICKING



Dimensions, Challenges & Responses

P.M. NAIR