

STANDARD OPERATING PROCEDURES

on
Trafficking in Persons for
Commercial Sexual Exploitation
for
Law Enforcement Agencies,
Government and Non-Government
Service Providers

2016



Inside Cover

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Service Providers**

2016



Published by

ARZ

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ACKNOWLEDGEMENTS

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

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

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

We would like to thank Mr Sushil Kumar and Ms Mini Mathew for drafting the SOPs. It is due to their hard work and extensive research that Arz has been

able to prepare and publish this book. Mr. Vidyadhar Gadgil provided editing assistance.

As always, Arz staff Juliana Lohar and Vijayashree Irraker have played an invaluable role in bringing this project to fruition. Bringing their extensive field experience to bear on the issues, they reviewed all the secondary data contributed in drafting of SOPs and developed the sample formats.

This book would not have been possible without the generous financial support of Terre des Hommes, Netherlands.

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

Arunendra Kumar Pandey
Director, Arz



Smt. Mridula Sinha
Governor of Goa



MESSAGE

In the contemporary era, it has been universally recognized that human trafficking of women and children for commercial sexual exploitation is the worst form of human rights violation. Article 23 of the Constitution of India prohibits trafficking in human beings in any form, and any contravention thereof is illegal. Despite the existence of many constitutional provisions and legislations within the country, the members of vulnerable and disadvantaged communities, and especially the poor women and children among them, often become victims of human trafficking. The society as a whole has the primary responsibility to respect, protect and promote the rights of all trafficked persons.

Arz Social Work Organization has done commendable work by preparing this handbook, entitled "Standard Operating Procedures on Trafficking in Persons for Commercial Sexual Exploitation". This handbook has been specifically developed to bridge the many gaps encountered by law enforcement agencies and other stakeholders while dealing with cases of commercial sexual exploitation.

This handbook would thus serve as a useful tool for the different stakeholders, especially the police department, criminal justice system and civil society.

M. Sinha.

Smt. Mridula Sinha
Governor of Goa



Shri Virendra Kumar, IAS
Secretary,
Women & Child Development,
Government of Goa



MESSAGE

Human trafficking for commercial sexual exploitation has become an evil of the modern society which violates the very basic tenet of human dignity and rights. Article 23 of the Constitution of India prohibits trafficking in human beings in any form and has been enshrined as one of the fundamental rights. The Government of India has further made sincere efforts by enacting various legislations and issuing of appropriate advisories to combat human trafficking of women and children. Despite this, society has been witnessing cases of human trafficking, especially women and children, for commercial sexual exploitation.

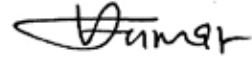
In order to combat and prevent human trafficking, a holistic approach is required by all stakeholders. The current book titled "Standard Operating Procedures: Trafficking in Persons for Commercial Sexual Exploitation", by Arz is an effort to bring together all the possible provisions and procedures to be followed while dealing with cases of human trafficking in an effective manner. This book thus attempts to cover the entire spectrum of intervention and services to combat the problem of human trafficking for commercial sexual exploitation.

The handbook adequately deals with various aspects of the issue including search & rescue, recording of statements, medical examination of rescued victims, care & protection at shelter homes, compensation to victims of CSE, release & custody, repatriation, case investigation, managing evidence, filing of charge sheets, witness protection, deposition before courts and trial before courts.

This book not only empowers various stakeholders with knowledge and skills but also facilitates their work by providing sample formats for complaint, recording of the statements etc. passing of orders, etc. With its emphasis on

the human rights perspective of the victims, it will surely contribute to justice for the victims of commercial sexual exploitation.

I expect all stakeholders would find this handbook useful to render effective intervention for all the trafficked victims of commercial sexual exploitation.

A handwritten signature in black ink, appearing to read 'Virendra Kumar', with a stylized flourish at the end.

Shri Virendra Kumar, IAS



Dr. Muktesh Chander, I.P.S
Director General of Police,
Goa



MESSAGE

Human trafficking for commercial sexual exploitation is one of the worst human rights violations committed against any human being. The victims of commercial sexual exploitation suffer physical, sexual, psychological, financial and social exploitation.

The challenges to combat human trafficking are innumerable. Trafficking is a borderless crime. The perpetrators of the crime are usually located in different police jurisdictions. Multiple agencies at the state and national level are involved in combating trafficking for commercial sexual exploitation, which is an organized crime. Also, it is not only the crime which has to be dealt with but it is equally important to protect and rehabilitate the victim of the crime.

There are numerous legislations which provides for protection and rehabilitation of victims and prosecution of traffickers. Wherever there are gaps, these are effectively addressed by orders of the Hon. Supreme Court and Hon. High Courts of India and advisories issued by different ministries. Various government and non-government agencies have been working towards addressing trafficking of persons for commercial sexual exploitation. But we are yet to achieve complete success in controlling the crime, protecting the victims of the crime and in successfully rehabilitating them. There are various reasons for this, and one of them is lack of proper understanding of standard operating procedures among the front-line service providers.

The book titled, “STANDARD OPERATING PROCEDURES: Trafficking in Persons for Commercial Sexual Exploitation” is a good effort by ‘Arz’ (Anyay Rahit Zindagi), towards empowering the law enforcement agencies and NGOs with knowledge and skills which would enable them to follow

provisions laid down in our legislations.

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

The book is a sincere effort by 'Arz' in empowering the service providers with knowledge and skills. I am sure that this book will be useful to the police, judiciary, and those involved in care, protection and rehabilitation of the victims of commercial sexual exploitation in India.

Dr. Muktesh Chander, IPS



Shri Karthik Kashyap, I.P.S,
Superintendent of Police,
Goa



MESSAGE

Human Trafficking for commercial sexual exploitation is an organized crime. Human Trafficking is a growing issue in INDIA, with many adults and children trafficked and exploited.

Government of India and different state government in India have taken various initiatives to prosecute the perpetrators of this organised crime and to prevent, protect, rehabilitate victims of commercial sexual exploitation. The initiative taken include legislating laws, amending the existing laws, setting up Anti Human Trafficking Units, issuing advisories, etc. The Hon. Supreme Court and Hon. High Court have pronounced various judgments to address the menace of trafficking of human being in India. In India we have enough laws and judgments to address human trafficking. But unfortunately, the front line officials of law enforcement agencies; government and non government service providers are not well aware about all the procedures, thus failing to control human trafficking.

Arz (anyay rahit zindagi) an anti human trafficking organisation is known to Goa police. Arz is the “Nodal NGO” of the Anti Human Trafficking Unit of Goa Police. It has been assisting the police in rescue of the victim, recording the statement of the victim, repatriation of the victim and prosecution of the traffickers. I am happy to know that Arz is publishing a book, titled “Standard Operating Procedures: Trafficking in Persons for Commercial Sexual Exploitation” which brings together all possible procedures while dealing with cases of trafficking for commercial sexual exploitation.

This book will surely be a good resource for the different stakeholders dealing with cases of human trafficking for commercial sexual exploitation. As the book is based on an empirical approach, it will surely contribute to justice for the victims of commercial sexual exploitation.

I urge all stakeholders to make use of this book to follow prescribed procedures while handling cases of human trafficking for commercial sexual exploitation and while dealing with victims of commercial sexual exploitation.

Shri Karthik Kashyap, I.P.S

LIST OF ABBREVIATIONS

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

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

CHAPTER 1

Missing Persons

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

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

IMPLEMENTING AGENCY: POLICE

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

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

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

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

SOPs to be followed in cases of missing persons:

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

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

unaccompanied minors/children or adults carrying children and behaving with them abnormally, during checking of vehicles/public transport.

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

agencies in the state, with mechanism to update the data on regular basis. This data, along with the photographs of the children, should be digitized and regularly sent to NCRB. The NCRB should upload this data on their website www.ncrb.gov.in for pan-India search by other state police/stakeholders.

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

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

through other websites maintained by www.childlineindia.org.in and www.stoptrafficking.in, to mention a few.

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

CHECKLIST

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

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

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

CHAPTER 2

Search & Rescue Operation

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

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

IMPLEMENTING AGENCY: POLICE

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

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

SOPs for Rescue Process and Operation

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

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

28. To prevent leakage of information prior to the actual rescue operation, mobile phones and any other modes of communication belonging to the rescue operation team members should be taken in custody by rescue team leader.
29. On reaching the site of rescue, everyone (i.e., Police, Panchas and NGOs) should take their respective positions as per plan decided.
30. The area should be cordoned off, all entry and exit points should be sealed before entering the building/house/ hutment/or any such place.
31. If decoy is used, once money is given by decoy to the pimp or victim for sexual services, the rescue team should enter the site/brothel etc. on signal from decoy.
32. The women police personnel along with NGO member should enter the brothel prior to the rest of the male team members to ensure that the victims are properly dressed.
33. If the victims are found inadequately dressed/covered, they need to be provided clothes and enough time to cover themselves.
34. Child victims should be immediately segregated from adult victims and safely escorted out and transferred to a Police Station or a suitable location/home, depending on the circumstances.
35. The rescue team should systematically start the search for the victims by processing each and every nook and corner of the rescue site with possible hide-outs. (Trafficked persons may be kept hidden in cubicles, false ceilings, basements, boxes, attics, wardrobes, toilets, surrounding areas etc).
36. During search, the rescue team should carefully look for hidden victims, children, offenders and incriminating materials.
37. There may be a situation where a victim other than the one being searched for is also identified. All identified victims, whether Indian nationals or foreigners, adults or children, should be rescued.
38. Victims should be clearly identified and handled with sensitivity.
39. Victims should be separated from perpetrators.
40. Help and take all steps to retrieve all possessions and belongings of all rescued persons.
41. Victims should be provided immediate reassurance by the NGO or the police about (a) their personal safety (b) their status as a victim (not

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

violation of the rights of the victim should be dealt in appropriate manner.

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

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

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

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

CHECKLIST

Important check points during search and rescue operation for IOs:

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

CHAPTER 3

Recording of Statement

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

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

IMPLEMENTING AGENCY: POLICE

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

SOPs for Recording Statement of Victim

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

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

and accused should be recorded as per the provisions of New Criminal Law (Amendment) Act 2013.

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

Recording the Statement of a Child

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

prescribed, to record the statement of the child.

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

Sample Format

for recording the statement at police station

(The details given here are indicative only.)

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

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

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

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

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

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

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

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

On _____ police entered the hotel room and brought me to the police station

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

CHAPTER 4

Medical Examination

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

IMPLEMENTING AGENCY: MEDICAL OFFICER

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

SOPs for medical examination of rescued victims

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

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

11. The fact that genital examination may be uncomfortable but is necessary for legal purposes should be explained to the victim.
12. The two-finger test should not be conducted.
13. The victim should be informed about the need to carry out additional procedures such as X-rays, etc. which may require him/her to visit other departments.
14. Maintain the chain of custody scrupulously.

Sample Format to make Referral by Police for Medical Examination

I@.....agedoriginal
resident of , presently residing at
.....

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

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

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

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

Place:

Date:

Time:

SIGNATURE

WITNESS

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

Sample Format for informed consent of victim for Medical Examination

No: _____

Police Station: _____

Date: _____

To,

The Medical Officer

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

Ref: _____ Police Station, Crime No _____ u/s _____

Madam/Sir,

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

- 1.
- 2.
- 3.

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

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

_____ dated _____.

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

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

Thank you,

Police Inspector,

Police Station

CHAPTER 5

Care and Protection at Shelter Home

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

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

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

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

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

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

Admission in Shelter Home:

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

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

Communication

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

Confidentiality of details at Shelter Home

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

5. The residents should not be exposed to any type of media.

Protection of Residents at Shelter Home

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

Key Services & Facilities at Shelter Home

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

support (check-up, treatment for immediate ailment, etc). Pediatric support should be given for children and a check-up by a gynecologist if the woman is pregnant

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

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

court proceedings, so that he/she is aware of the procedures and is mentally well prepared. After every hearing of the case, the child should be informed about the court order, if any, so that he/she is kept fully updated on his/her case.

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

her family. No rescued child should be sent back to his/her family without ensuring social acceptance and family support to prevent re-trafficking and further exploitation.

- R.** Foster care of child victims or children of victims of trafficking should be arranged whenever possible .
- S.** Trafficking cases should be fast-tracked to reduce the trauma and suffering of the child.

Sample Format for seeking Magistrate's Order for Admission to Shelter Home

To,
The SDM/DM/Judicial Magistrate

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

Ref: Case No _____, Sections

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

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

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

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

1. _____
2. _____
3. _____
4. _____

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

In view of the above, necessary orders be passed:

That the rescued women _____ be lodged

at _____ Shelter Home

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

Any other orders to serve the course of justice.

Thank You

Police Inspector

_____ Police station

CHAPTER 6

Compensation to victim

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

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

IMPLEMENTING AGENCY: LEGAL SERVICE AUTHORITY (DISTRICT/STATE)

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

Central Victim Compensation Fund (CVCF)

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

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

It has been suggested to States to make appropriate changes in State Victim

Compensation Schemes to reduce disparities in quantum of compensation amount notified by them, and claim financial support from the Central Victim Compensation Fund Scheme.

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

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

CHAPTER 7

Alternative Livelihood Promotion

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

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

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

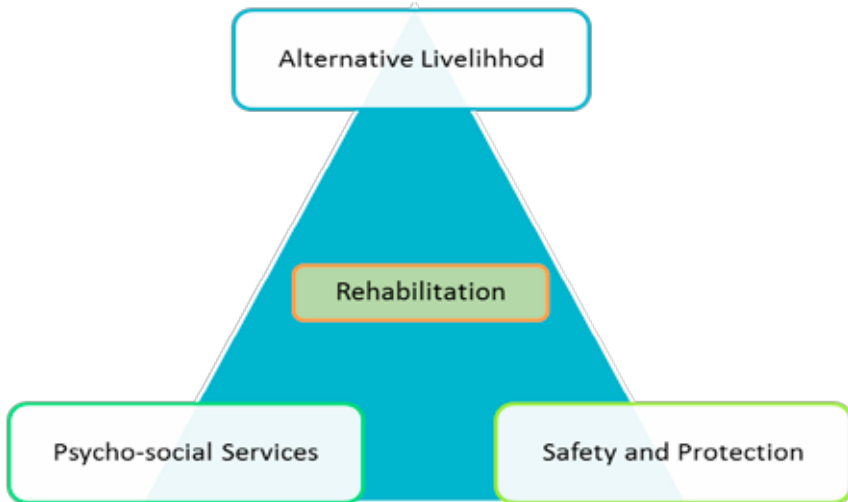
Rehabilitation is a need for sex workers as well as victims of CSE. The only difference is that for sex workers rehabilitation is a precondition for exit from prostitution whereas for a victim of CSE rehabilitation is demanded post-rescue to prevent re-trafficking. It is important to understand that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

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

Partnership Model of Rehabilitation

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

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



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

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

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

Business Selection Criteria

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

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

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

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

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

Social Work Services

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

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

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

Important Principles

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

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

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

CHAPTER 8

Inquiry

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

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

IMPLEMENTING AGENCY:

1. CHILD WELFARE COMMITTEE

(in case of rescued victim being a child)

2. MAGISTRATE (as defined in ITP Act)

(In case of rescued victim being major in age)

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

SOPs for conducting inquiry

1. The IO should escort the rescued child/adult along with the required documents to CWC/Magistrate.
2. The concerned magistrate/CWC should issue necessary orders related to shelter at Short-Stay Homes/Protective Home, medical examination and treatment, home investigation report, and addressing special needs of victims (u/s. 17 (2) ITPA) (notified under u/s. 21 ITPA or u/s. 37 of J.J. Act).
3. The magistrate should conduct an inquiry under Section 17 of ITPA to decide upon safe custody, institutionalized care and protection, release, and repatriation of the rescued victim.
4. In case of a minor, such inquiry should be completed within 4 months of the receipt of the order from CWC or within such shorter period as may be fixed by the Committee (Section 33 of Juvenile Justice (Care and Protection) Act, 2000.³
5. Before the inquiry, the magistrate should seek a report under Section 17 (A) of ITPA from Probationary Officer. The Magistrate should ask the Probation Officer to submit a report.
6. Home Investigation Report (HIR) or Home Verification Investigation is an important component of enquiry process. The Magistrate should seek for a HIR.
7. The Magistrate/CWC should seek a report from case worker/counselor providing details of the victim for the purpose of conducting inquiry.
8. For the inquiry, the IO should make available following documents:
 - A. A copy of FIR
 - B. 164 CrPC statements of witnesses, if available at this stage
 - C. Report of medical examination of victims
 - D. In case of victim being child, a copy of proof of age including the statement of a parent/birth certificate/school certificate/Panchayat identify card.
9. For the inquiry, the IO should arrange for a translator(s), if required. (The translator should not be the same who has been used earlier to communicate with the accused to prevent any influence or contamination of evidence, threat, or coercion.
10. While conducting the inquiry under section 17, ITPA, the magistrate

should summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him. He may keep readily available list of experienced social workers for this purpose.

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

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

Sample Format for Home Verification/Investigation

Name of Interviewer:		Date of interview:	
Name of Organization:			
Case Number:		Time of interview:	
Place of interview:			

Personal details of the Rescued Survivor/Child/Victim

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

Details of person being interviewed:

Name, Phone number and Relationship to the Survivor/Child/Victim:	
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Family Information

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

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

Details of Circumstances

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

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

Details of Survivor's relationship with family

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

TRAFFICKER'S DETAILS

With whom did the Survivor go or who trafficked her?

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

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

OBSERVATIONS AND COMMENTS:

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

Note: Collect and attach the following documents

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

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

Sample Format for

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

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

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

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

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

On _____ police entered the hotel room and brought me to the police station

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

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

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

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

Name: _____

Date: _____

Sample Format

for recording statement under Section 17 of ITPA

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

I say that I am originally from _____.

I understand _____ and speak _____.

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

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

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

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

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

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

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

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

Name:

Date:

Sample Format for Final Order of The Magistrate:

The notified Police Inspector, _____ Police Station, vide report no _____,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I pass the following order:

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

To,

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

Copy to:

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

CHAPTER 9

Release & Custody

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

Section 17 (2) of ITPA, 1956

IMPLEMENTING AGENCY:

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

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

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

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

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

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

Undertaking by _____ (Parent/'Fit Person'/Fit Organization Taking Custody)

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

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

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

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

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

I shall ensure that she is not re-trafficked

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

1. WITNESS:

NAME & ADDRESS:

2. WITNESS:

NAME & ADDRESS

(Signed before me)

CHAPTER 10

Repatriation

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

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

IMPLEMENTING AGENCY:

In case of victim being Indian Citizen:

8. Department of Women and Child Development
9. Superintendent (Government and Non-government Shelter Homes)
10. Police

In case of victim being Foreign Citizen, additional agencies:

11. Concerned Embassy/High Commission
12. Ministry of Home Affairs, Government of India
13. Ministry of External Affairs, Government of India
14. Foreigner Regional Registration Office (FRRO)
15. Foreigner Registration Office (FRO)

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

SOPs for Repatriation of Rescued Victims:

IN CASE OF VICTIM BEING AN INDIAN CITIZEN

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

IN CASE OF VICTIM BEING A FOREIGN CITIZEN

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

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

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

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

SUGGESTED PROCESS TO BE FOLLOWED FOR REPATRIATION TO BANGLADESH

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

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

CHAPTER 11

Investigation

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

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

IMPLEMENTING AGENCY: POLICE

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

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

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

SOPs for Investigation into Trafficking Crimes:

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

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

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

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

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

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

CHAPTER 12

Collection of Evidence

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

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

IMPLEMENTING AGENCY: POLICE

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

SOPs for collection of evidence into Trafficking Crimes

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

Documentary evidence includes:

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

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

Biological evidence includes:

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

Material evidence includes:

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

- Surgical instruments

Digital evidence includes:

- Computers: desktop, laptop, palm top
- Floppies / CDs / pen drives
- Mobile phones
- Blue films – CD/cassettes
- Laptops / Palm-held devices
- Email accounts, social networking sites.

7. The seizure list and memo should be prepared on the spot itself in the presence of two independent witnesses. The witnesses should sign the lists and memos giving their full details including temporary and permanent addresses.
8. All procedures mandated by law should be completed at the site itself and advice taken from the prosecutors where necessary.
9. All evidence collected at site should be properly packed, sealed and marked. Each packet should be duly labeled with the description of exhibits, case reference, markings and authentication by the forwarding authority. The specimen seal should also be packed and forwarded along with exhibits, along with a detailed forwarding note.
10. A detailed forwarding note should be written, requesting expert to give his/her specific opinion on points of investigation relevant to a case.
11. Proper chain of custody should be maintained. Care should be taken while collecting biological evidence and should not be degraded or lying gathering dust. This will have bearing on the forensic report.
12. There may be other evidence in the form of interrogations, statements of victim(s), medical examination reports, psychological reports, statements of other witnesses, previous cases, cases pending in other jurisdictions etc.
13. The IO should make a separate record of the statement of each such person whose statement is recorded. The person so questioned shall be bound to answer all questions relating to the case put to him. The

answer to these questions would expose his/her involvement in crime..

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

CHAPTER 13

Filing of Charge-Sheet

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

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

IMPLEMENTING AGENCY: POLICE AND JUDICIARY (PROSECUTION)

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

SOPs for filing of Charge-Sheet

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

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

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

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

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

CHAPTER 14

Witness Protection

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

- Jeremy Bentham, Jurist

IMPLEMENTING AGENCY: POLICE AND JUDICIARY

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

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

SOPs for Witness Protection

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

the state should consider following measures for witness protection:

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

CHAPTER 15

Deposition before Court

“In cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience, the court could consider issuing a commission to record evidence by way of video-conferencing.”
- **Justices S N Variava and B N Agrawal, Supreme Court.**

IMPLEMENTING AGENCY: POLICE, PROSECUTION AND JUDICIARY

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

SOPs for deposition before court

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

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

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

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

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

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

Deposition of a child (Child as Witness or Victim)

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

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

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

accused persons.

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

are handling all aspects of the case involving a child victim or witness including such proceedings which may be out of criminal justice system. This may involve all steps commencing from the investigation to the prosecutor to whom the case is assigned as well as the judge who is to conduct the trial.

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

CHAPTER 16

Trial of Case

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

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

IMPLEMENTING AGENCY:

1. POLICE

2. PROSECUTION AND JUDICIARY

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

Key processes involved in trial:

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

SOPs to be observed during trial of case

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

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

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

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

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

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

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Arz (anyay rahit zindagi) is a development organization working towards combating Human Trafficking for commercial sexual exploitation in INDIA.

Arz (anyay rahit zindagi) was awarded (by the Ministry of Home Affairs, Government of India in 2011) for ‘Outstanding work done by an Ngo in the field of anti-human trafficking for the year 2011’. The Ministry of Women & Child Development, Government of India in 2014 awarded the “Stree Shakti Puraskar (Ahilya Bai Holkar)” to Arz for its outstanding contribution towards socio-economic development of women. The award was presented by The the President of India in a ceremony at Rashtrapati Bhavan.



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