

## **CHAPTER 5**

### **CONCLUSIONS AND SUGGESTIONS**

#### **CONCLUSIONS**

After analysing all the causes, problems, Status of women and children, legal provisions at National and International levels, the researcher reaches the conclusions as under on the topic of research.

Trafficking in women and children is the gravest form of abuse and exploitation of human beings. Thousands of women and children are trafficked everyday to some destination or other and are forced to lead lives of slavery and prostitution. They survive in brothels, factories, guesthouses, dance bars, agricultural farms and even in homes of well off Indians and foreigners just like bonded labourers. The alarming condition and provisions for the victims of trafficking of various countries like Bangladesh, Nepal, Thailand etc. give us an impression of the growing awareness and recognition of the issues relating to trafficking of women and children across the world.

However, prosecuting these crimes is not without challenges. The current research findings indicate that those persons, directly involved in enforcing the provisions of these laws, recognize a variety challenges or barriers that can hinder their progress in the fight against trafficking in women and children. These include: limited understanding of the crime of

human trafficking; existence of archaic statutes in some states that continue to victimize or blame the victim; lack of understanding or awareness of new or modified legislation; and insufficient resources to support the investigation and prosecution of these crimes. On the other hand, there are factors that increase a prosecutor's likelihood of success. Experienced human trafficking prosecutors have implemented practices that include networking with local, state, and federal law enforcement and NGOs; providing victims with understanding and support; assisting victims in accessing services; recognizing key evidence when investigating trafficking cases; and using proven prosecutorial techniques to aid them in prosecuting these cases.

Success in the criminal justice system will most likely continue to be measured by the number of convictions for suspected human trafficking perpetrators and a reduction in the prevalence of the crime. This study provides preliminary measures of one of these outcomes—convictions. For some, convictions of 85 percent of the cases may be a sign of success. But for others, this may suggest the need to do more. Ongoing documentation, monitoring, and analysis of the prosecutions of human trafficking cases within federal and state courts is needed in order to chart progress and determine where we stand on successfully combating this crime. But convictions are just part of the measure. More information is needed regarding how well we are doing at reducing the prevalence of the crime and how well we are doing at helping victims reclaim their lives.

NGOs have played a great role in the post rescue activities, viz, counselling of victims and de-traumatisation, interviewing the victims, as mandated u/s 15(6A) ITPA, Help the police to identify the best interest of the victim, Help the police to get clues in investigation, especially regarding the traffickers and process of trafficking.

The Immoral Traffic (Prevention) Act, 1986 (IPTA), has not made mandatory provisions regarding the role of NGOs and the integration of rehabilitation with rescue. The age verification of the victims, which is an important issue in deciding the culpability of the accused, often meets with difficulty, because the law has not made specific and time bound provisions in this regard. Although the IPTA is a special law, it has no express provisions for victim protection. These points need to be considered by the concerned authorities so that the laws and provisions are made victim friendly, gender sensitive and child sensitive.

There is a tremendous increase in trafficking of women and children in the World. Therefore, this is an alarming situation for the Government to adopt strict measures for prevention of trafficking in Women and Children.

Specifically, the lack of coordination among agencies with statutorily-mandated roles and responsibilities has resulted in a failure to establish, achieve and monitor coherent goals and objectives. At the same time, no baselines or credible indicators

of meaningful outcomes, rather than outputs, have been developed. Therefore, activities can be described but anti-trafficking results cannot be documented. In combination, these critical gaps have resulted in inadequate implementation of the legislation and a vacuum in understanding of the impact efforts and investments. Numerous reports and independent studies have highlighted this lack of overall strategy and coordination, and have uniformly urged the need for leadership to address these serious deficiencies. The Administration must confront and resolve these issues to ensure that the three policy touchstones of prevention, protection and prosecution of traffickers are adequately implemented to get the positive results in the society.

In order to deal with trafficking in persons, especially in women and girls, effectively there is a need for rallying political will and resources, both human and financial. The dire lack of resources to support initiatives against this scourge was acknowledged and viewed by the participants as an indication of absence of serious commitment. Their wholehearted collaboration with international organisations, civil society, including NGOs, mass media and private sector is highly required. The need for united and concerned action of all countries in fighting the crime of trafficking is of permanent importance. The prevailing focus of the international community is on the Source countries of human trafficking and the ensuing imposition of trade sanctions against some countries of origin. Although poverty, gender discrimination make people vulnerable to human trafficking, these factors are not the root causes or prerequisites of

trafficking. More attention should be given to the demand side of human trafficking, prosecution of traffickers and ensuring of equal labour rights of migrants and domestic workers through creation of employers ethical associations, rising of public awareness in countries of destination, assistance to consumers in identifying services and products made without forced labour.

In number of countries, some law enforcement officers were found to be involved in trafficking of women and children in persons or, as a result of lack of proper training in handling such cases, they have added fuel in the fire of trafficking. Therefore there is a need to strengthen national criminal justice system for effective combating of trafficking of women and children.

### **NGO in Law enforcement Procedure**

The SP/DCP should call a meeting of NGOs working in the related fields and should also associate other government departments too with this issue. The discussion should focus on generating awareness, networking and developing synergy in preventing and combating trafficking. This would entail addressing the larger dimensions of women's rights and child rights. \_ In the Police Station, a list of NGOs showing their expertise, specialization as well as contacts, address, telephones, e-mails, etc. be maintained and displayed

- Notification of an advisory body, including NGOs, u/s 13(3)(b) ITPA should be got issued from Government. Suggest appropriate NGOs.
- Home verification by NGOs u/s 17(5) and u/s 17(a) ITPA is essential.

A cordial association with NGOs during rescue and post rescue activities is must. Maintain list of NGOs and provide this list to Magistrate.

- NGOs play an effective role in rescue operations as witnesses, advisors, and partners and as human rights ombudsmen. This should be appreciated and acted upon.
- Association with NGOs can be a good source for intelligence collection.

They can help identifying victims, vulnerable persons and carrying out risk assessment. NGOs can give intelligence on traffickers and exploiters. Therefore NGOs concerned be involved even before planning the rescue raid.

### **Post-Rescue Role of NGOs:**

NGOs can play a large role in the post-rescue activities. These are:-

- Counselling of victim and de-traumatisation.
- Interviewing the victim, as mandated u/s 15(6A) ITPA.
- Helping the police to identify the best interest of the victim so that police officers can act accordingly.
- Helping police to get clues in investigation, especially regarding the traffickers and the process of trafficking.

Providing translators, when required.

- Facilitating victim empowerment and rehabilitation programmes such as:
  - Providing orientation and motivation to the victim.
  - Identifying the appropriate programmes for the victim.
  - Empowering the victim with knowledge, skills and resources for rehabilitation. Resources should include adequate funding sources. Do involve MNCs and those dealing with CSR of corporate.
  - Providing networks to sustain the programmes.
  - Marketing the products and facilitating marketability.
  - Ensuring sustenance of the programmes and thereby preventing retrafficking of the victim.
- NGOs provide the appropriate linkage between police and civil society as well as between the victim and civil society. The box presents a few examples of rehabilitation by NGO's.

### **Role of NGO's in the trial of cases in courts:**

NGOs can play a constructive role in the process of trial of accused persons and, thereby, help in the conviction of offenders. This is an area which is largely untapped, though there are some examples of 'good practices' in the past. The police and prosecutors can associate NGOs in the following ways:

- NGOs are of great help as **counselors** to orient and prepare the victim/ witness to face the court and proceedings in the court. They can assist in interpreting children's perceptions and views.
- NGOs can act as '**child minders**' in the court to help out the child victim.

The Supreme Court of India, in the case of its judgement dated 26<sup>th</sup> May 2004, (*Sakshi vs Union Of India*<sup>1</sup>) directed that such provision be made in the trial of all cases of sexual assault on children.

- NGOs can assist in providing **translators** when the victim speaks a different language (i.e. STOP, a Delhi-based NGO assisted the court in translating Bengali to Hindi when child victims trafficked from Bangladesh to Delhi were tendering their evidence in the Delhi Court).

**NGO as prosecutor:** According to an order passed by the High Court of Calcutta, *SLARTC*, a Kolkata-based NGO, has been authorized to handle the prosecution work of all trafficking cases. The NGO has substituted State prosecutors and is utilizing the services of private lawyers to argue the case on behalf of the victim and the state. This experiment has been working well for several years. It should be encouraged.

**NGO Networks** are a very good tool for police in addressing inter state and trans-border trafficking. Several strong and effective networks of NGOs are available. Their services can be utilized for rescue, repatriation, transfer of information and such other services and processes in combating and preventing trafficking. Since government agencies are bound by rules and procedures which have jurisdictional restrictions, NGOs come handy as they have no such limitations. However, all such information and intelligence need to be formally brought through official channels, if they are to be utilized as evidence in the court of law. Moreover confidentiality of the information and the integrity of the NGO are relevant issues in decision making. The confidentiality of the information and the source

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<sup>1</sup> AIR 2004 SC 3566, 2004 (2) ALD Cri 504



has to be strictly maintained. Integrity of persons and associates of NGOs is also very crucial.

**NGO Resource centres:** Many NGOs have set up vast resource centres and networks which can be effectively utilized by the police in understanding the issues, for training and sensitization, as reference manuals and as guide books for example, the Resource centre of PRERANA, an NGO based at Mumbai. These resource centres are also helpful for evidence collection against offenders and in understanding the processes involved in trafficking.

**Training** police and other law enforcement agencies: Experience shows that NGO association has been fruitful and effective in the training processes, for developing training modules, getting appropriate resource persons, organizing training camps, supplying resource materials, process documentation of training programmes and impact assessment. During training sessions, NGO's can present the 'other side of the story' which the law enforcement official may not be aware of. This would help in getting a complete picture and a complete understanding of the issues.

**Research:** The services of NGOs can be effectively utilized for carrying out macro and micro research projects. The NHRC research on Trafficking in India, (2002-2004) carried out through an NGO, *Institute of Social Sciences (an NGO)*, was a macro-study and a pioneering work in the field. There are several issues which require micro studies and research. Impartial research by NGOs can provide appropriate inputs to the law enforcement agencies to modify and orient their activities and services.

## PREVENTION OF TRAFFICKING

Prevention is the *sumum bonum* of all activities in the process of suppression and eradication of trafficking. It includes prevention of re-trafficking too.

Law enforcement processes should be **integrated** and **comprehensive**. There should be a combination of steps for **Prosecution** of offenders, alongwith **Protection** and care of victims and **Prevention** of trafficking. An integrated P-P-P model is essential. Adequate attention should be paid to all the three legs and the efforts should be dove-tailed.

Prevention of trafficking requires attention at all the scenes of crime.

Prevention can be classified into three main parts:

### 1. Prevention at the **demand point**:

This requires proper investigation, prosecution, conviction, addressing the demand effectively and all post conviction measures. This also involves proper care and protection of victims to ensure prevention of re-trafficking.

### 2. Prevention at the **transit area**:

Trafficking when carried out from one place to another involves transit places. The major hub of such transit are railway junctions, bus stops, ports, border entry posts etc. 'Rights intervention centre' started by the NGO 'SEWA' of Gorakhpur at

Sanauli, with the partnership of local police, is a classic example of prevention of trafficking. In a span of nine months, 65 girls could be prevented from exploitation, by interception at the transits place. Effective surveillance and watch on suspects at the transit places by deputing spotters in association with NGOs can be a good method. The details of transit routes, mode of transport and the names of persons involved could be gathered on careful interviewing of victims and interrogation of suspects.

3. Prevention at the **source point** requires several steps, like addressing vulnerabilities, attending to missing persons, networking with the civil society and Panchayati Raj institutions, empowering the vulnerable sections along with other police strategies on prevention. The details of these strategies are discussed below:

Conviction, punishment and stringent action against traffickers and all exploiters must be ensured.

Post conviction steps must be ensured. This includes closure and eviction of brothels and other places of exploitation, externment of the convicted persons, surveillance and dossiers on convicted and suspected persons, confiscation of illegal assets etc.

**Address the demand factor effectively.** This calls for a strategic intervention, depending on the persons who 'demand'.

- All traffickers and intentional abusers, who are usually called "customers", should be prosecuted and firmly dealt with. Further, all those who perpetuate the demand,

including financiers, colluders, conspirators, abettors etc be prosecuted.

- Adolescents/youths also come in as 'customers' and contribute to the demand. They require a different treatment, as they have the knowledge but may not have the intention to exploit. Advocacy and orientation of such persons, with the help of NGOs, on issues of sexuality, gender, women's rights, child rights, etc. be carried out to address the demand in this sector.
- **Protection and care of victims** commence with proper rescue processes.

Victims should not be criminalized. FIR should be only against traffickers and abusers, but never against the victims. All further steps in investigation and justice delivery should follow this principle. Simultaneously, it must be seen that the victims are empowered and properly rehabilitated. Often police officials think that they have nothing to do with the rehabilitation of the victims. This is a mistaken notion. Prevention of crime is a mandate to police under the Police Act. To prevent re-trafficking, it is essential to rehabilitate the trafficked victim and hence it is the duty of police to put the victims in the process of their rehabilitation through the identified Social Institutions.

**Preventing re-trafficking** The NHRC has established the fact that a large number of rescued persons are re-trafficked. The reasons are many. Victimization of the victims, arrest of trafficked persons as accused and their criminalization are some of the reasons. Improper rehabilitation and inadequate empowerment lead to lack of livelihood options which, in turn,

make these persons highly vulnerable and subjects to fall prey to re-trafficking.

Therefore the following steps can be taken to prevent re-trafficking. Proper counselling, right-based empowerment and appropriate livelihood options, including adequate resources, skills and marketing facilities are to be provided to the rescued persons.

Police should network with other departments of government such as i.e.. women's development, child development, social welfare, health care, etc. as well as with NGOs and INGOs working in the related fields, in addition to Corporates who would like to be associated, and involve them in the various processes of empowerment.

It must be ensured that the repatriated/ rehabilitated person is reintegrated properly by taking regular feedback.

Accountability be saddled on the village-level functionaries to monitor the same. Do involve Panchayat Raj Institutions be involved in this task.

It must be borne in mind that re-trafficking is more often done by known traffickers and their coterie. Hence strict surveillance and action on and against such persons can be an effective tool to prevent re-trafficking.

**Addressing vulnerable persons/areas** is an important strategy in the prevention of trafficking. Police should develop synergy with the concerned governmental and non governmental organizations and undertake the following steps:

- 1, Identify the vulnerable persons and areas and focus attention on them and empower them on priority.
- 2, Pay special attention to the most vulnerable persons, such as children in brothels, on top priority.
3. Mount surveillance for suspects and look-out for victims at possible transit and transfer points like bus stands, railway stations, wayside hotels (Dhaba), beach resorts, etc.
4. Facilitate empowerment programmes by networking with government departments, MNCs etc.
5. **Success** in the criminal justice system will most likely continue to be measured by the number of convictions for suspected human trafficking perpetrators and a reduction in the prevalence of the crime. Conviction should be one of the preliminary measures. Ongoing documentation, monitoring, and analysis of the prosecutions of human trafficking cases within federal and state courts is needed in order to chart progress and determine where we stand on successfully combating this crime. But convictions are just part of the measure victims reclaim their lives. Multiple agencies involvement to provide sustainable livelihood options is very much required.

A “Human Rights approach” has to be adopted in all activities and programmes and discard the “welfare act” orientation. This requires change of mind-set. Proactive policing, with the support of NGO’s, can stimulate such a change.

**Networking with other government agencies:** Partnership with the departments of Women and Child Development, Social Welfare, Paramilitary agencies manning the borders, viz., BSF, SSB, ITBP etc is essential, depending on the area of functioning. In fact, it should be a process of mutual assistance. Agencies like BSF should have anti-trafficking cell with its network extending to State Police Systems, Human Rights agencies, NGO’s etc. Similarly police agencies should network with Human Rights Commission, Women Commission etc so that preventive steps could be meaningful, effective and institutionalized.

**Networking with Civil Society Members:** The law enforcement officials should develop synergy with NGO’s, CBO’s, Social activists, academicians, lawyers etc. **Panchayat Raj Institutions** can play a large role in identifying and addressing vulnerabilities, keeping surveillance on exploiters and in public awareness and empowerment programmes. Tamil Nadu has developed a good model in this direction.

**Issue of Missing Persons:** There is a strong linkage between ‘trafficking’ and ‘missing persons’. The research report of NHRC on trafficking (2004) shows that in one year more than 30,000

children<sup>2</sup> are reported missing and one-third of them remain untraced. This study has established with examples that many of these 'missing children are, in fact, trafficked. Hence prevention of trafficking requires the following:

1. The linkage between 'missing' persons and 'trafficked' persons are to be realised, because many who are 'reported missing' have been, in fact, trafficked.
2. The list of persons rescued from brothels and other places of exploitation be cross checked with the list of persons reported missing from anywhere in India.
3. The linkage will also help to expose the traffickers, trafficking routes and trafficking processes.
4. A follow up of missing women and children till a logical conclusion is arrived at is required. Special teams to go into the root of the issue and ensure rescue, return and recovery of the missing person are to be constituted. All the leads in this process to ensure that those responsible for making the person missing are brought to book be followed up. Any slight suspicion should immediately be taken cognizance of. A proper FIR be registered adequate and effective investigation be done through specially trained officers.
- 5, It is often seen that the trafficked person is blamed 'as if he or she is responsible for being 'missing'. One should realize that more often children who were missing are from the vulnerable

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<sup>2</sup> The research report of National Human Rights Commission on trafficking (2004)



sections of the society and are essentially 'children in need of care and protection'.

6. Provide the details of missing children be provided to the police agencies and NGOs who are working in the rescue of trafficked persons so that they could also follow up.

7. Network with NGOs/Helpline/Child line, etc. to identify the linkage has to be essential

The database of missing persons be linked it up with trafficked and rescued persons.

8. Mapping of missing persons for a specific time in a particular place, at least for one year period in the area of a police station, be done and special operations to locate them be undertaken. One linkage to a brothel elsewhere in the country could be a clue for locating many who are still missing.

**Utilizing preventive sections of CrPC:** Section 110 CrPC provides enough scope for preventing offences. Executive Magistrates are vested with the powers. The Magistrate can bind the persons for ensuring good behaviour. Steps u/s 111, 116, 121, 122 Cr.P.C. will further affirm the preventive actions against likely offenders.

**Helplines:** The Police Managers especially the SP, DCP should establish proper and functional networks with the existing help-lines like child-line, Women's helpline etc. Such help-lines should be linked up to the police control rooms and police stations for prompt response.

**Strengthening Police Stations:** Institutionalization of the response systems requires that the police stations, being the fundamental unit of police administration and public service, be strengthened. Besides empowering the police stations with the required human and material resources, their capabilities need to be enriched by regular training and discussions. The methodology prescribed for the functioning and training of STF are applicable here too.

**Involving local self government agencies:** The Panchayat Raj Institutions (PRIs) have lot of sway over the local public. Therefore their services can be effectively channelised towards the prevention strategies. Tamil Nadu has started this process through a Government order issued in 2002 followed by training/orientation programmes for PRI members on preventing trafficking. This model could be adopted by others too. Police officers should network with the PRI's, orient them, sensitize them and involve them in the anti trafficking processes. District level and village level Monitoring Committees could be set up by the DM/SP, involving all stake holders and PRI's.

**The doctrine of presumption as a good weapon for preventing and combating trafficking:**

ITPA gives so much strength to the law enforcement agencies by virtue of the fact that the specific provisions of presumption casts onus of proof on the accused.

The following are the provisions.

1. Section 3 provides punishment for keeping a brothel or allowing premises to be used as a brothel. It shall be **presumed**, u/s 3 (2A), that the concerned person (owner, tenant, lessee, occupier, in-charge of any such premises) has knowledge of the same if :
  2. A report is published in a newspaper with local circulation that the premises concerned are being used for prostitution, as revealed during a search.
  3. A copy of the search list is made available to the person concerned.
  4. If any person A, over 18 years of age, is proved to have exercised control, direction or influence over the movements of another person B, in such a manner as to show that A is aiding, abetting or compelling B to prostitute, it shall be **presumed** that A is knowingly living on the earnings of prostitution of another person and is liable u/s 4 ITPA.
  5. If a person is found with a child in a brothel, it will be **presumed** that the person has detained the child for CSE and is, therefore, liable for the same u/s 6(2) ITPA.
  6. If the medical examination shows that the child, who has been detained in a brothel, was sexually assaulted, it will be **presumed** u/s 6 (2A) ITPA that the child was detained for CSE and was sexually exploited. This legal presumption is a good tool to establish liability of the person.
  7. According to S.6 (3) ITPA, a person shall be **presumed** to have detained a woman or girl (of any age) in a brothel or upon any premises for CSE, if the person withholds

from her any of her property (like jewellery, dress, money etc), with intent to compel/induce her to remain there. He is also liable if he threatens her with action if she takes away any such property lent/supplied to her by, or on the direction of, such a person.

One of the problems in identifying the scale and nature of trafficking in human beings is that it is frequently hidden within other criminality such as prostitution, illegal immigration, etc. This often results in instances of trafficking not being investigated or recorded as trafficking cases. Very often the focus of criminal justice practitioners is on migrants rather than smugglers.

One result of the lack of focus on trafficking and smuggling itself is that it has established a reputation for being “low risk – high reward”. Another reason for this is the difficulty in securing prosecutions due to the practical challenge of investigating crimes across international borders, or the difficulty in obtaining evidence from trafficking victims. Through cooperation between judicial authorities and enforcement agencies. An important issue is how to reverse the position as “high risk – low reward” for criminals and, secondly, that there is more prosecution focus on the Migration Law rather than on the predicate crime itself, with due regard to the protection of the rights of the victims, the rights of smuggled migrants and of witnesses<sup>3</sup>.

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<sup>3</sup> See the Norwegian experience in Annex E (page 81) as an example of the steps that can be taken to increase the focus on the ML offence and help achieve the goal of turning THB/SOM into a “high risk- low reward” crime.

The trafficking in women and children is a complex issue and a challenge to address due to its invisible nature within Central American societies. Trafficking develops and is fuelled by a combination of socioeconomic and political conditions. Corruption emerges in impoverished societies and is present within sectors on local, national, and regional levels and leads to the increase in illegal migration. However, as governments are made more aware of the nature of trafficking, there is more pressure to view the issue within a human rights framework and not merely as a societal hindrance that can be ignored. Individual governments must address trafficking as a domestic issue that violates basic human rights, align their anti-trafficking policies with neighbouring states according to international standards, and make prevention and rehabilitation services readily available. Central American states have the opportunity to use the frameworks set forth by the TVPA and the Trafficking Protocol as a guide to develop policies tailored to their own country. If and when this happens, Central America will undoubtedly experience success in the fight against trafficking in Women and Children.

The trafficking in women and children is in fact issue of humanity, which usually occurs in backward countries where it involves the poor exploited by those who initially promised income if they have been accepted for work place and in accordance with the sector and where are they made to live. The poor usually have complex financial problems, and this

makes them willing to place themselves in anywhere without investigating the background and basic information that what will be their job. Furthermore, they also have lack of knowledge because ignorance about their rights and the importance of understanding, they don't know how to defend themselves from deceived cause they are unable to get out when hit by this problem. At the same time also, they have lack of exposure, and hence are more easily cheated. Thus, measures the best solution is comprehensive, especially the involvement of government in formulating and drafting laws that can protect people from falling prey to problems. Moreover, the involvement of NGOs' in helping the government solve this problem is appropriate and timely because the NGO's can carry out the duties that can not be carried out by Government.

## **SUGGESTIONS**

- The government of India having ratified the Convention on the Elimination of All Forms of Discrimination against women, the Convention on the Rights of the Child, the two Optional Protocols to the Convention on the Rights of child on the involvement of children i Armed conflicts; and on the sale of children, Child Prostitution and Child pornography and having signed the protocol to prevent, Supress and Punish trafficking in persons, especially Women and children supplementing United Nations convention against Transnational Organised Crime, 2000, there is a need to bring a new national law or amend the existing law in consonance with international standards.

The new or amended law should be comprehensive enough to address all forms of trafficking including provisions for stringent punishments and effective penalties.

- For example, incorporation of legislative provisions in the legislation regarding trafficking of Women and Children for confiscation of the assets and proceeds of trafficking and related offences. Whenever possible, the legislation should specify that the confiscated proceeds of trafficking would be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a Compensation Fund for victims of trafficking and the use of confiscated assets should finance such a fund.
- The new amended law should ensure that trafficked victims are prevented from being prosecuted, detained or punished for they are victims of situation beyond their control. Likewise, it should be ensured that protection of trafficked victims is built into the anti trafficking legislation itself. The protection offered in no way should be made conditional upon the willingness of the trafficked victims to co-operate in legal proceedings.
- The central and state governments/Union Territory administrations should review current laws, administrative controls and conditions relating to the licensing and operation of business that they serve as a cover for

trafficking, such as marriage bureaus, employment agencies travel agencies, hotels and escort services.

- The law enforcement machinery should take effective measures to investigate, prosecute and adjudicate trafficking, including its related activities, irrespective of the fact whether there are committed by governmental or non-state actors.
- In the light of international commitments made by the Government of India, the Union Ministry of Women and Child Development should review the Plan of action to Combat trafficking and Commercial Sexual Exploitation of Women and Children prepared by them.
- The Services of nodal officers- one representing the police department dealing with investigation, detection, prosecution and prevention of trafficking and other representing the welfare agencies dealing with rescue, rehabilitation and economic/social empowerment of the victims and those at risk- appointed by the State Governments/Union Territories with the suggestion of NHRC should be utilised for all purposes.
- Free legal aid should be provided to the victims of trafficking.
- Courts should give priority to the matters relating to trafficking in women and children and disposed off the cases speedily, which will facilitate the process of victims repatriation and rehabilitation.



- Modern system should be set up to monitor missing persons across districts and state borders at National and International Levels.
- Financial, educational assistance should be provided to the victims of trafficking, by the Government.
- **Protection and Care of Victims** commence with proper rescue process. Do not criminalise them. FIR should be only against traffickers and abusers and not against the victims. All further steps in investigation and justice delivery should follow this principle. Simultaneously, do see that the victims are empowered and properly rehabilitated. Prevention of crime is a mandate to police under the Police act. To prevent re-trafficking, it is essential to rehabilitate the victim.
- **NGO Networks** are a very good tool to police in addressing inter-state and trans border trafficking. Several strong and effective networks of NGOs are available. Their services can be utilised for rescue, repatriation, transfer of information and such other services and processes in combating and preventing trafficking. Since government agencies are bound by rules and procedures which have jurisdictional restrictions, NGOs come heady as they have no such limitations. However, all such information and intelligence need to be formally brought through official channels, if they are to be utilised as evidence in the court of law. Moreover confidentiality of the information and integrity of the NGO are relevant issues in decision making.

- There should be co-ordination amongst different state intelligence, police, immigration departments for exchanging information regarding inter-state traffickers at national and international level.
- NGO association should be given proper training modules, getting appropriate resource persons, organising training camps, supplying resource material, process documentation of training programmes and impact assessment.
- While conducting rescue operations, it should be ensured that the rescue team consists of both men and women police officers and representatives of non-governmental organisations/local inhabitants. This apart, due care should be taken by all concerned to ensure that trafficked victims are not unnecessarily harassed or intimidated during the course of rescue operations. Adoption of humane and rights based approach would go a long way in building the faith of the victims in the criminal justice system. This would also facilitate the overall rehabilitation and integration of the victims.
- Developing standard guide lines for all officials and service providers with regard to pre rescue, rescue and post rescue operations including rehabilitation, reintegration and repatriation of trafficked victims. These guidelines should be gender responsive and should also provide further referral to other service providers in order to prevent revictimization. These could be prepared in the form of information kits/booklets/handbooks/do's and

don't's or be made part of the rules issued under the concerned law and should specify the accountability of the agencies concerned in providing services. This would enable all officials and service providers – judicial officers, prosecutors, lawyers, law enforcement officials, medical and psycho-social professionals, functionaries manning homes/agencies of different kinds and others, to have discharge their functions and duties effectively.

- Government should improve the conditions of shelter homes, observations homes, Juvenile homes etc. These shelters should have counsellors, Nurses, Physicians and psychiatrists etc.
- Empowerment of the vulnerable sections living in remote corners of country by extending to them various welfare, development and anti poverty schemes of the Government of India, such as Swadhar swayam sidhha, Swa-Shakti, Swavalamban, Balika Samriddhi Yojana, Support to training and Employment programme for Women, Kishori Shakti Yojana etc. This would provide scope for ample economic opportunities for the women and other traditional disadvantaged groups in their native place itself so as to reduce their vulnerability to trafficking.
- The need for sound data and research on causes, risk factors, prevalence and forms of trafficking which would serve as basis for developing policy responses, effective laws and support services for victims is essential. There is lack of effective and comprehensive evaluation and monitoring of implemented measures as well as lack of

resources to finance such work. The importance of exchanging information, lessons learnt, best practices and the elaborations of common strategies should be adopted. The use of Interpol tools is suggested for more efficient data-sharing between the law enforcement agencies in order to increase the efficiency of co-operation in investigating trafficking crimes.

- All efforts should be made to ensure anonymity and privacy of the victims during and after rescue.
- Rehabilitation and reintegration process of rescued victims being a long term process, efforts should be made to consider the specific short and long term needs of each individual victim based on their age, education, skills etc. Efforts as far as possible should be non punitive aimed at protecting their rights.
- Accordingly, rescued victims should be placed either in an institutional or non-institutional setting with access to legal, medical and counselling services in order to restore their self confidence and self esteem. Special provision should be provided to those who have contracted HIV/AIDS.
- The central and State Governments in partnership with non-governmental organisations should provide gender sensitive market driven vocational training to all those rescued victims who are not interested in education. Government and non-governmental organisations should also work together to develop partnership with public and

private sectors in order to provide training to as a part of reintegration process. Due care should be taken to give ample choice to victims so that rehabilitation and integration becomes a holistic process, which respects their human rights.

- Involvement of the community in the rehabilitation and reintegration of trafficked victims. This means involving the families and the community by enhancing their awareness about trafficking in general and the impact of trafficking on the individual.
- Upgradation of the conditions and capacities of institutions/homes not only in the cities, but also at the district and taluka levels, are of utmost necessity.
- Appointment of trained social workers and counsellors at police stations, courts and homes/institutions of different kinds meant for accommodation of victims.
- Anti trafficking cells should be set up at the Centre, State and District level to facilitate and monitor the process of rescue, rehabilitation, reintegration and repatriation.
- The media should play an important role in informing and educating the public through newspaper, radio and other mode of communication, and should be targeted as a key partner in preventing the trafficking. It would be ideal if media can handle such issues with sense of responsibility and not for sale of their channel or news paper.

- Generating awareness and spreading legal literacy on economic rights, particularly for women and girl child.

### **Key Recommendations Relating to the Prevention of Trafficking in Women and Children:**

- The Administration should prioritize implementation of targeted and tailored prevention initiatives that address core contributing factors to trafficking in persons.

These initiatives should place a particular emphasis on economic development strategies that help individuals to find and hold viable jobs in communities and countries of origin.

- The Administration should convene multi-party discussions between businesses, workers' organizations (trade unions), non-governmental organizations and governments to develop anti-trafficking policies, programs and initiatives domestically and internationally. As part of this effort, the next President should work with the private sector and workers' organizations to develop joint strategies to address trafficking in corporate supply chains, prevent all forms of worker exploitation, and promote adherence to core international labour standards (including freedom from forced and child labour, freedom from discrimination, and the freedom of association and right to organize and collectively bargain).

- The Administration should consider ways that the U.S. might learn from, and build on, the example of Brazil in combating trafficking in supply chains. Brazil's National Plan for the Eradication of Slave Labour is widely recognized as a useful

model for addressing forced labour in supply chains. It rests on a foundation of federal enforce.

The entities found to be using forced labour are subject to civil sanction and oversight; companies pledge through the counterpart National Pact not to source from these entities. The ILO has played a key role in shaping this initiative, work that the U.S. has supported. Building on the Brazil model could include, among other initiatives, continued support for the ILO's work, sensitizing U.S. companies to the issue and raising awareness about the program, encouraging U.S. corporate adoption and implementation of ILO training tools and materials, and U.S. corporate participation in Brazil's National Pact as appropriate.

- The President should direct State/DRL and Labour/ILAB to work with and through the ILO, and its partners, to promote awareness of and adoption of ILO tools and programs to address forced labor in global supply chains among its tripartite partners (business, trade unions, and governments). The ILO has decades of experience on the issue, demonstrated expertise in technical cooperation, and the capacity to foster business engagement and monitor results.
- The State Department's Tier 2 Watch List should be the focus of an array of innovative initiatives to help move countries from failure to improved responsiveness and capacity in combating human trafficking.
- The Administration should improve the Oversight of Government Contractors and Procurement Regulations as they relate to human trafficking. Currently, antitrafficking provisions

require contractors to notify employees of the zero tolerance policy and to specify what actions will be taken against employees violating the policy.

However, self-regulation does not ensure the accountability necessary to prevent trafficking, and staff training is virtually non-existent.

### **Key Recommendations for the Protection of Victims of Trafficking in Women and Children:**

- The Administration must improve the identification and protection of victims of human trafficking, both in the United States and abroad. To help with identification and referral of human trafficking victims in the U.S., the next President should call upon Executive Branch entities to develop systematic and coordinated training programs for the range of local first responders associated with each agency's anti-trafficking work.
- All relevant Executive Branch departments/agencies, such as DOJ and HHS, should be directed to develop educational and training materials/programs for state and local law enforcement. These programs will improve cooperation between local, state, and federal government officials in finding and supporting potential victims of trafficking.
- The Administration should ensure, to the greatest extent possible by Executive Action, that the provision of services for victims of trafficking is de-linked from cooperation with law enforcement. Currently, a TVPA provision requires victims of Executive Summary<sup>4</sup> trafficking to cooperate with law

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<sup>4</sup> [www.theactiongroup.org](http://www.theactiongroup.org)



enforcement in order to be eligible for needed protection services. Victims should be entitled to protection services solely because they are victims of trafficking.

- The Administration should explore all legal mechanisms to allow trafficking victims to remain safely in the U.S. through the adjudication process.
- The President should call upon relevant departments and agencies to review issues with respect to the protection of “minor” victims of trafficking. Currently minors who are recognized by federal law as victims of trafficking are often unjustly charged and processed within the juvenile offenders system.
- The Administration must ensure that victims of trafficking receive comprehensive and appropriate services. Housing is among the most urgent and consistently needed services for survivors of human trafficking. The next President should direct that federal agencies with custody of trafficking victims place them in appropriate housing options where their special needs can be addressed. Increased funding for human trafficking shelters should not impact funding for domestic violence or other shelters.

Moreover, the President should ensure that quality legal services are provided to trafficking survivors. The need for quality case management for all trafficking survivors in the U.S. is also essential and must be ensured. Finally, the next Administration should ensure that those trafficking victims who require long-term recovery support receive appropriate services.

- The President should call for reducing bureaucratic burdens on providers of services to victims of trafficking. The President should also institute an administration wide system to track the expenditures on victim services by federal grantees.
- The President should strengthen protection of domestic workers employed by diplomats. This can be accomplished by directing relevant Executive Branch departments and other entities to work with NGOs and others to develop and institute a system that includes check-ins and information sessions for the domestic workers to ensure they are aware of their rights and have access to appropriate resources.

### **Key Recommendations for the Prosecution of Traffickers:**

The Administration needs to seek full resources for federal investigation and prosecution efforts against traffickers and promote the importance of the role of state and local law enforcement in addressing trafficking in persons. The federal government should take steps to help establish this crime as a priority for state and local law enforcement. It should strengthen institutional processes and procedures to ensure seamless cooperation and collaboration among law enforcement at all levels of government in identifying, investigating and prosecuting human trafficking cases, while concurrently assisting and protecting the victims of human trafficking.

The Action Group | Recommendations for Fighting Human Trafficking in the United States and Abroad The next President should direct Executive Branch departments

- to support the strengthening of training for all levels of state and local law enforcement to increase capability to identify and investigate human trafficking cases.
- The President needs to ensure that DOJ's Human Trafficking Protection Unit (HTPU) receives adequate funds to execute its expanded role and responsibilities.
- The President and his Administration should work with state and local law enforcement associations to mobilize state and local law enforcement attention on anti-trafficking measures.
- The U.S. Government should request that foreign missions waive criminal and/or civil immunity for diplomats or family members of diplomats who abuse domestic workers. It should negotiate restitution for the victims and penalize foreign governments that fail to cooperate in cases of human trafficking and/or abuse of domestic workers.

## **Assistance to victims**

### **1. Assistance measures<sup>5</sup>**

The human rights approach emphasises unconditional assistance to all victims of trafficking.

Trafficked persons, as victims of human rights violation, have a right to protection, assistance and redress irrespective of their interest in the criminal justice process.

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<sup>5</sup> The OSCE NRM and the OSCE Action Plan include a number of recommendations on medical, psychological, social, financial, legal assistance, education and employment opportunities, some of which are reflected under Palermo and the COE Convention (article 12). The EC Experts Group Report also includes numerous recommendations on assistance provision focusing on both short-term and long-term assistance provision (recommendations P99 – 103).

National good practices show that assistance to trafficked persons in most cases is managed by NGOs and other civil society organizations, which can more easily ensure a victims' friendly approach. In addition, only a critical review by civil society actors can assist governments to implement international human rights obligations in the framework of national anti-trafficking policies. Therefore, civil society service providers should be adequately funded by governments and local institutions. It is also important that the civil society service providers and public services involved can cooperate in accordance with clear guidelines. The independent status of NGOs towards the state should be respected at all times.

International instruments indicate a minimum standard of assistance measures which must be ensured to trafficked persons at different stages of the identification process, during the reflection period and the duration of the residence permit.<sup>14</sup> However, Member States should go further, and ensure to any trafficked person the assistance measures which are appropriate, taking into account the individual needs of the person involved.

Assistance services for women should be based on a gender-sensitive approach. In particular, services for women who have been victims of sexual exploitation should integrate the support of other women.

The types of assistance made available to any trafficked persons should be adequate to help them in their physical and psycho-social recovery, especially in the first stage of the identification process. The final aim of assistance is facilitating

their long-term social inclusion in the country of destination or in the country of origin.

In order to grant victims of trafficking all the social benefits they are entitled to, it would be very helpful to have an overview of existing European Union *acquis* on social rights of citizens of one European Union member State in another Member State and of general social rights of third country nationals in the European Union.

Regardless of whether services are provided by public agencies or civil society organisations, assistance must be provided on a voluntary and confidential basis, in a non-discriminatory and non judgemental manner and in compliance with basic principles derived from international human rights norms, in particular the respect for privacy, confidentiality, self-determination and freedom of movement. Service providers should offer tailored solutions through professionals who are specifically trained with cross-cultural and gender-sensitive approach, including insights about the effects of physical and sexual abuse.<sup>6</sup>

Therefore, assistance measures should be established according to an individual needs assessment, and agreed with the person concerned.<sup>7</sup> Service providers for trafficked persons should develop standards based on clear and measurable

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<sup>6</sup> EC Experts Group Report, 5.4, p. 71-73.

<sup>7</sup> In particular, the decision concerning the type of assistance measures such as sheltering or individual housing should be made on individual basis, and in agreement with the person concerned. In any case freedom of movement must be ensured to any trafficked person who is sheltered.

indicators, to regularly monitor and assess the quality of their services.

***Member States should adopt appropriate measures to assist victims in their physical and psycho-social recovery, with the aim of long-term social inclusion in the country of destination or in the country of origin.***

***Member States should ensure that civil society organisations are adequately funded to provide appropriate assistance and services to trafficked persons.***

Article 6 of the UN Palermo Protocol to prevent, suppress and punish trafficking in person, especially women and children; Article 12 of the Convention on action against trafficking in human beings; Articles 6-12 of the European Union Council Directive 2004/81/EC on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

***Assistance should include safe and appropriate accommodation, counselling and information, legal assistance, health care, psychological and material assistance, translation and interpretation services, language training, education for children, vocational training, employment opportunities, and protective***

*measures, where necessary and possible also for family members at risk in countries of origin.*

*Assistance measures must be respectful of the rights of the person, based on a gender-sensitive approach, and established in agreement with the person concerned.*

*Assistance measures should meet quality standards and be monitored by a recognised monitoring system or inspectorate on a regular basis.*

### **Assistance measures for child victims**

The best interests of the child shall be a primary consideration in all actions concerning child victims, whether undertaken by public or private social welfare institutions, judicial authorities, administrative authorities or legislative bodies.

Critical to the best interest determination is that the child is provided with accessible information regarding her/his situation and rights, including protection mechanisms, other available services, and on the processes of family reunification and/or repatriation. Based on this information, the views of the child shall be sought and given due weight for the determination of the child's best interests in all matters affecting the child.

The particular physical, psychological and psycho-social harm suffered by trafficked children and their increased vulnerability to exploitation require that specific attention is paid to child

trafficking and the rights of affected children in laws, policies, programmes and interventions.<sup>19</sup> In order to ensure that Member States fulfill their legal obligations to safeguard the human rights of children, special measures need to be established to provide child victims of trafficking with appropriate assistance and protection and legal safeguards and to take full account of their special rights and needs.

The best interests determination is a formal process with specific procedural safeguards and documentation requirements that is conducted for children, whereby a decision-maker is required to weigh and balance all the relevant factors of an individual child's situation, giving appropriate weight to the human rights of children and legal obligations of Governments under the UN Convention on the Rights of the Child and other human rights instruments, so that a comprehensive decision can be made that best protects the rights of the individual child<sup>8</sup>.

The UN Convention on the Rights of the Child (CRC), which is in force in all EU Member States, states that State Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of any child victim of any form of neglect, exploitation or abuse, including trafficking. Such recovery and reintegration shall take place in

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<sup>8</sup> See UNHCR Guidelines on the Formal Determination of the Best Interests of the Child. 2006. p. 32.



an environment which fosters the health, self-respect and dignity of the child.<sup>9</sup>

***Individual case management for each child identified as a victim of trafficking must be ensured. This includes an individual needs and risk assessment and the determination of the best interests of each individual child in all actions concerning the child and taking into account the child's views.***

***The relevant competent authorities must be charged with taking measures directed to the protection of the child and ensuring that final disposition regarding jurisdiction and competence over child victims is established as swiftly as possible.***

***Child victims must receive immediate care and protection. Under no circumstances shall child victims of trafficking be placed in a law enforcement detention facility.***

***In addition to the measures available to adults, child victims must have access to education and/or vocational training. In accordance with relevant international standards and national labour regulations, child victims of trafficking shall have the right to access work independently of their legal status in the country in which they find themselves.***

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<sup>9</sup> See UN Convention on the Rights of the Child, article 39 and article 3.

Treatment of presumed trafficked persons during the reflection period When the competent authorities have an indication that a person has been trafficked, this person should be immediately granted the reflection period. This implies that the granting of the reflection period must not be subject to further legal requirements, since it would undermine and even contradict the aims of the delay.

The reflection period has multiple goals, since it prevents immediate expulsion, and allows the person to start the recovery process, avoid possible reprisal from traffickers and escape their influence, make an informed decision about his or her options such as whether to assist with criminal proceedings, to pursue compensation claims, and/or to participate in a social assistance programme.

Directives does not provide for a minimum duration of the reflection period, while the Convention of Europe- provides for a minimum length of 30 days. The European Commission 2004 Experts Group Report recommends a duration of at least three months. Taking into account national best practice, it is recommended that the reflection period has adequate duration bearing in mind its multiple goals, especially victims' recovery Given its legal basis<sup>10</sup> only applies to third country nationals. However, EU nationals should be entitled at least to the same assistance measures granted to third country nationals during the reflection period, with a view to allowing them to See the

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<sup>10</sup> (Art. 63 (3) TEC), Directive 2004/81/EC

Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, in particular article 13, paragraph 1. See also Council Directive on Residence Permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004/81/EC). Article 6 clearly states that the reflection period aims at allowing trafficked persons to recover, escape the influence of perpetrators and take an informed decision as to whether to cooperate with the competent authorities.

***As soon as the competent authorities have an indication that the person has been subject to trafficking, they shall grant a reflection period during which presumed trafficked persons are afforded access to support services and, if needed, legal status and protection from deportation. It is recommended that the reflection period has adequate duration, especially with respect to victims' recovery.***

***EU nationals should be entitled at least to the same assistance measures granted to the third country nationals during the reflection period.***

***During the reflection period or equivalent legal status the presumed trafficked person shall have access to assistance measures and will receive adequate information, especially concerning their rights in administrative and judicial proceedings.***

***Child victims who are not nationals or habitually resident in the territory of the Member State in which they find themselves, shall be granted a temporary humanitarian visa or other forms of judicial and/or administrative leave to stay in the Member State, pending a final decision on jurisdiction and competence relating to all measures concerning the child and in her/his best interest.***

Treatment of trafficked persons during the residence period or equivalent legal status. In conformity with conditions laid down in Directive 2004/81/EC, the Member States must grant a residence permit to persons who meet the legal requirements. One of these prerequisites is the willingness to cooperate. Nevertheless the granting of the residence permit is recommended not only in case of cooperation with the authorities but also taking into account the personal situation of the victim concerned. This implies that the competent authorities should take into account the trafficked person's safety, state of health, family relationships, integration into the labour market and participation in a social integration programme.

Since the Directive only applies to third country nationals, an equivalent legal status giving access to assistance measures should be granted to nationals of the same country and EU nationals, unless they are entitled to a better treatment under national legislation.

In both cases the competent authorities must ensure that the legal status of the victim does not produce social stigmatisation or discrimination on the grounds of gender, race or on any other grounds, including through a regime of confidentiality. This is crucial especially for victims of trafficking for the purpose of sexual exploitation, who could suffer secondary victimisation

***Once the competent authorities take a favourable decision concerning the legal status of the victim, if the person concerned is a third country national and wishes to remain in the Member State, they will grant a residence permit of at least six months in conformity with Directive 2004/81/EC.***

***The granting of the residence permit is recommended not only in case of cooperation with the authorities but also taking into account the personal situation of the victim concerned.***

***When the trafficked person does not need residence status, the competent authorities should grant her/him a legal status giving access at least to the same assistance measures which are granted to third country nationals.***

***In both cases the competent authorities shall ensure that the residence status or other legal status granted to the trafficked person does not cause social stigmatisation or discrimination.***

### **Risk assessment before return**

Victims of trafficking are entitled to safety. No expulsion order can be enforced if the person is exposed to a serious risk in the country of origin.<sup>25</sup> Therefore, a person can only be returned following an individual risk assessment which takes due account of risks of stigmatisation, and protects the victim's privacy. Member States are encouraged to cooperate on making the risk assessment before returning the victim.

Victims of trafficking who are in need of international protection must be guaranteed access to asylum procedures.

According to the European Court of Human Rights case-law, under certain circumstances expulsion can be considered illegitimate when it exposes the person to inhuman treatment in the country of origin, not only as a consequence of the behaviour of public officials but also of also of private individuals. See, in particular, *Cruz Varas v. Sweden* – 20.3.91; *Chahal v. United Kingdom*<sup>11</sup>.

A specialist risk assessment must be carried out for child victims, giving due consideration to the best interest and the views of the child.

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<sup>11</sup> Report of 15.11.96; H.R.L. v.s France – 29.4.97.

***An individual risk assessment shall be carried out by the competent authorities before any decision is taken concerning the return of a presumed trafficked person.***

***In establishing the appropriate protection measures and durable solution for child victims of trafficking, Member States shall give due consideration to the best interests and the views of the child.***

**Victims' rights during investigation and criminal proceedings**

### **Non-punishment clause**

The possible punishment of trafficked persons for offences committed while trafficked is an important factor deterring victims from 'self-identifying'. It is also incompatible with legal obligations of Member States to protect and assist trafficking victims.

In fact trafficked persons are often prosecuted either for the violation of immigration laws or for illicit activities they have been involved as a consequence of their situation as trafficked persons such as violations of immigration laws, the use of false documents or working without a work permit, if these are criminal offences under national legislation<sup>12</sup>.

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<sup>12</sup> The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking and the OSCE Action plan recommend non-punishment. The COE Convention on action against trafficking in human beings includes a non-punishment provision. The EU experts report also makes a similar recommendation.

Therefore it is recommended that Member States introduce a clause in their domestic law, ensuring that a victim of trafficking is not punished for such offences committed by them as a direct consequence of the circumstances noted in Article 1 a) to d) of the Council Framework Decision 2002/629/JHA of 19 July 2002. Exceptions from non-punishment should be possible in case of extreme severity of the offence involved.

The content of the clause can be different in the framework of various legal systems. Independent of whether it is a system where prosecution is mandatory or not mandatory, the non-punishment clause should ensure that the legal system provides *in casu* opportunities for the prosecutor or the court to non-punishment of the victim of trafficking. In particular, in the framework of legal systems where prosecution is mandatory, the non-punishment clause should ensure that in cases mentioned above prosecution is not initiated, or is terminated by the judge, at an early stage of the criminal proceedings.

***Member States should take appropriate measures providing that victims including children are not punished for offences they have been involved as a direct consequence of their situation as trafficked persons, such as violations of immigration law or working without a work permit, or the use of false documents.***

***Exceptions from non-punishment should be possible in case of extreme severity of the offence.***



## **Prevention of secondary victimisation**

The trafficked person must be protected from secondary victimisation which can result from criminal and administrative proceedings, or even from ill-managed social assistance. In particular the vulnerability of children requires special practices and measures. During the identification process law enforcement, judicial and administrative authorities should bear in mind that such procedures can imply renewal of the trauma, gender stereotypes, discrimination and violation of victims' dignity and rights. Therefore, public officials and social workers should be specifically trained with a view to ensuring a victims' friendly approach in all the procedures and activities concerned. In particular, children should be entitled to child friendly interviews conducted by trained professionals throughout the procedure. Such interviews should be limited to only when necessary.

In conformity with Framework Decision on the standing of victims in criminal proceedings, trafficked persons must be treated with respect for their dignity<sup>13</sup>. The aim of avoiding secondary victimisation must be ensured by the law enforcement and judicial authorities from the beginning of investigation. In particular, the respect for dignity should be a

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<sup>13</sup> Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), Article 2.

major concern for the competent authorities during raids and deportation procedures.

In addition, practical conditions and appropriate procedures should be developed to avoid placing victims under unnecessary pressure, especially concerning the taking of information from the victim.

Good judicial practice should be further developed in Member States, in particular aimed at avoiding as far as possible excessive questioning, unnecessary repetition of the testimony, visual contact with the defendant through any appropriate means compatible with basic principles of the national legal system including the use of audio-video-facilities.

***Law enforcement and judicial authorities should develop good practice to ensure that victims of trafficking are treated with respect for their dignity and are protected from secondary victimisation from the beginning of investigation.***

***In particular, good judicial practice should be further developed, aimed at avoiding as far as possible unnecessary pressure, excessive questioning, repetition of the testimony, visual contact with the defendant.***

***Law enforcement and judicial authorities should take particular care to develop practices that protect the rights***

*of child victims and reflect their special needs and vulnerabilities*

### **Right to information, protection and privacy**

In accordance with the Framework Decision on combating trafficking in human beings, children shall be considered particularly vulnerable victims for the purpose of the FD on the standing of victims in criminal proceedings<sup>14</sup>. However, also trafficked adults can be in a situation of post-traumatic disorder, or in a personal situation which requires special treatment<sup>15</sup>. Therefore, an individual assessment should be carried out by competent law enforcement and judicial authorities, to establish case by case if a trafficked person should be considered a particularly vulnerable victim and therefore entitled to special treatment.

In conformity with Article 4 of FD on the standing of victims in criminal proceedings 2001/220/JHA, any victim of crime is entitled to the right to receive information from the first contact with law enforcement authorities. The information includes the type of services and organisations to which they can turn for support.

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<sup>14</sup> Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), Articles 2 and 8.

<sup>15</sup> Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), Article 2 (2).

The right to protection is enshrined by Article 8 of FD on the standing of victims in criminal proceedings 2001/220/JHA, which in appropriate cases must be extended to their families and persons in a similar position. The right to protection includes the protection of their privacy, avoidance of contacts with the offenders in the court premises, protection from the effect of giving evidence in open Court<sup>16</sup>. Therefore, Member States shall ensure that appropriate protection measures are available to any presumed trafficked persons, on the basis of an individual risk assessment. National witness protection schemes should also be adapted and applied to trafficking victims, if needed.

The right to protection includes the protection of privacy. In the context of trafficking for labour exploitation there have also been calls by trade unions and migrants rights organisations for the protection and anonymity of 'undocumented migrants' who denounce forced labour/exploitation<sup>17</sup>.

Sometimes relatives of trafficked persons, especially children, are seriously threatened in the countries of origin by the same criminal groups which are connected with the exploiters, with a view to preventing the person from making statements against them in criminal proceedings.

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<sup>16</sup> Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), Article 8.

<sup>17</sup> See Anti-Slavery International report on forced labour in the UK calling for protection for 'whistle-blowers', i.e. those who come forward to the authorities to denounce exploitation. Also see TUC report on exploitation of migrants in UK: 'Overworked and over here'.

In the most serious cases, when it is impossible to protect relatives in the home country, the facilitating of family reunification could ensure both protection of relatives and successful prosecution.

***An individual assessment should be carried out on a case by case basis, to establish if a victim can be considered a particularly vulnerable victim, and therefore will be entitled to specific treatment.***

***An individual risk assessment shall be carried out on a case by case basis, to establish protection measures for the presumed trafficked person, and if appropriate for their families or persons in a similar position.***

***In appropriate cases, when relatives have been subject to threats in countries of origin, Member States should consider, on a case by case basis, facilitating family reunification.***

***Member States shall ensure full implementation of all the rights enshrined in the Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), including the right to information, protection, privacy.***

## **Right to compensation**

Member States are obliged to ensure the right to compensation to victims of trafficking according to FD on the standing of

victims in criminal proceedings, the Council Directive relating to compensation to crime victims and other relevant instruments on trafficking such as the (2000) UN Protocol on trafficking in persons and the (2005) CoE Convention on trafficking.

Victims of trafficking should be considered victims of a violent intentional crime for the purpose of the access to compensation in cross-border situations, according to Article 1 of the said Directive on compensation. In particular, the State where the crime was committed is responsible for paying compensation and is obliged to provide for a national scheme on compensation which guarantees fair and appropriate compensation to victims. However, in reality in most of the cases victims still do not receive compensation. Therefore the establishment of national funds for compensation is recommended.

All the investigative measures aimed at early seizure and confiscation of proceeds should be implemented. The use of confiscated proceeds for the benefit of victims, and the establishment of national funds for compensation have been recommended by the EC Experts Group Report. In order to ensure compensation, Member States are encouraged to take into consideration the use of confiscated proceeds in the establishment of national compensation schemes including funds for compensation.

In order to ensure that the right to compensation be effective, specific measures should be established from the beginning of

the identification process. In particular, assistance measures should include legal counselling and free legal assistance aimed at enabling the person to present her/his civil claims, including before labour courts. In particular, Member States must ensure full implementation of Articles 4 and 5 of the Directive on compensation, providing for information and assistance to potential applicants.

The right to compensation and labour law rights must be guaranteed even if criminal proceedings are terminated for whatever reason. Therefore residence status and legal assistance to presumed trafficked persons should be extended until civil proceedings have been completed. 32 Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

*Member States must ensure full implementation of the provisions related to the access to compensation of victims of violent intentional crime in cross-border situations. Trafficked persons should have access to any compensation schemes for victims of violent intentional crime*

*Member States should take appropriate measures to identify and trace proceeds of trafficking. These proceeds have to be subjected to confiscation and other measures such as freezing and seizing.*

*In order to ensure effective compensation to victims, the establishment of national compensations funds is recommended. Consideration should be given to the use of*

*confiscated proceeds in the establishment of a national scheme on compensation. Member States should ensure that trafficked persons are provided with legal counselling and free legal assistance with a view to enabling them to claim compensation and/or their employment rights in civil and criminal proceedings. In cases where criminal charges for trafficking have led to a conviction, legal status and legal assistance should be extended until civil claims, including those before labour courts, are completed.*

In this last chapter the researcher gives concluding remarks with the observations done from the various case laws we discussed decided by the apex court. And also legislative support developed for the topic in India as well as International context of the subject.

Though the problem is very large, which has many appendages lightly gripped the society, the researcher feels that, even with the limitations of legislations and lack of empowerment due to geographical variation not only in India but other countries. It is possible to control and reduce the trafficking of women and Children with the help of NGO and co-ordination between different agencies and government machinery with the foregoing suggestions.

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