

PRESS RELEASE

17-12-2013

National Commission for Women (NCW) after taking the suo-moto cognizance of the media reports on the incidents of trafficking of Women in the States of Bihar, Jharkhand and West Bengal for forced labour constituted an Inquiry Committee to inquire into these incidents. The Inquiry Committee after looking into the facts and circumstances of the incidents has submitted its recommendations vide Report titled " Trafficking of Women for Forced labour: Need for Safe Migration and Regulation of Domestic Work" to the concerned Deptts. and Ministries.

Note: Copy of the Report is enclosed please



NCW
INQUIRY COMMITTEE REPORT
on
Trafficking of Women for Forced Labour



**Need for Safe Migration
&
Regulation of Domestic Work**

Chairperson Inquiry Committee
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Members Inquiry Committee

Dr. P M Nair, IPS (Retd)

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Mr. Nirnay John Chettri

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Preface

In the shadow of the pristine snow clad peaks and the picturesque dense forest of the states of West Bengal, Jharkhand among others, rampaging dangerously is the menace of exploitation and trafficking of girls. A large number of women and girls are being trafficked or moved throughout the country and overseas through clandestine means, which is a matter of grave concern for the National Commission for Women. This Report highlights the urgent need to recognize that trafficking of women and children for forced labour is a complex problem that requires to be viewed within the context of migration. Women migrate for a multiplicity of reasons, including displacement and dispossession, search for sustainable livelihoods, naxal activity, search for more fulfilling opportunities, or an aspiration for more in life. In the process of migration the lack of access for women and girls to safe channels for mobility, as well as the absence of legal and social protection aggravates their vulnerability to trafficking and harm. This report is an attempt to highlight the linkages between trafficking and migration, and draw attention to the feminization of migration.

The fundamental right to freedom of movement is a women's right, which must be distinguished from trafficking. Trafficking is a coercive and violent form of movement, where there is use of force, abuse, violence, deception and exploitation. A frequently used method of deception by traffickers is to lure vulnerable girls selling the idea of a "lucrative job", and thus simultaneously creating the "urge" to move. On her movement taking place, the woman is trafficked and vulnerable to several harms including abuse at work, poor living conditions, and health risks.

Prevention of trafficking in women requires not only examining the factors that contribute to the problem but also, providing awareness among potential victims in order to reduce the traffickers abusing their position of vulnerability. Both government and non-governmental programs need to identify women who are at risk for trafficking and provide them with the tools necessary to find work without putting themselves at risk. The Government is obliged to take

adequate measures for the Prevention of Trafficking and put in place appropriate legislation and effective anti-trafficking strategies that should not be restricted to post-trafficking criminal prosecutions, as is being done presently in India. Most importantly, greater cooperation between non-governmental organizations, the police and the public is essential, in addition to creating awareness among the community at large, especially among the vulnerable females and youth in the rural, underprivileged and deprived areas. There is need for both a short-term and long-term approach to combat trafficking. Short-term actions include education and awareness-raising initiatives. Medium and longer-term projects include advocacy to change laws, training and technical upgradation for law enforcement agencies and sensitization of the judiciary; all are in addition to improving the social and economic position of women living in states vulnerable to trafficking.

In this report I have relied on the invaluable research of NHRC and the inputs of resource persons Ms. Mondira Dutta, Ms. Sunita Krishnan, Prof. Roma Debabrata, Ms. Indrani, Shakti Vahini among others, during the 2011 NCW Seminar. The objective of this Inquiry Committee is to make recommendations for prevention of trafficking of women and children for forced labour, and post trafficking strategies; including the need for safe migration of women alongwith regulation of domestic work. It is my belief that if freedom of mobility and migration for women is a right and trafficking is an offence, then the obligation lies on the State for creating an enabling environment for women and girls so that their journey is harm-free and safe.

*DR CHARU WALIKHANNA
MEMBER NATIONAL COMMISSION FOR WOMEN
03 December 2013*

CHAPTER 1

The Inquiry

National Commission for Women
New Delhi

File No. 08/4 (07)/(71) PM- 2013- NCW

Dated : 03.12.2013

Report of the Inquiry Committee to inquire into the incidents of trafficking of women in the states of West Bengal, Jharkhand and Bihar.

In exercise of the powers conferred under Sections 8 (1), read with Sections 10 (1) and 10 (4) of the National Commission for Women Act, 1990, with the approval of the competent authority an Inquiry Committee was constituted to inquire into the incidents of trafficking in the states of West Bengal, Jharkhand and Bihar for forced labour and on the pretext of marriage.

The Commission constituted an Inquiry Committee comprising the following:-

- | | |
|---|-------------------------------|
| 1. Dr. Charu WaliKhanna
(Member, NCW) | Chairperson Inquiry Committee |
| 2. Dr. P M Nair, IPS (Retd) | Member |
| 3. Ms. Hemlata S. Mohan
(Former Chairperson, Jharkhand State Women Commission) | Member |
| 4. Mr. Nirnay John Chettri
(Local social activist) | Member |

A) THE TERMS AND REFERENCE OF THE INQUIRY COMMITTEE ARE AS FOLLOWS:

- i) The Inquiry Committee shall investigate into the case in accordance with the procedure laid down under Section 10(1) read with Section 10(4) of the National Commission for Women Act, 1990 and submit its recommendations to the Commission for taking such action as deemed fit against those involved in the case referred to above.
- ii) The Inquiry Committee shall inquire into the circumstances, leading to the incident and the action taken by the authorities. The Committee shall meet the concerned police officials & other such persons as it deems proper to ascertain the facts and circumstances.
- iii) The Inquiry Committee should investigate the entire matter in a thorough manner.

- iv) The Inquiry Committee shall recommend remedial measures and strategies to punish and prevent recurrence of such incidents.
- v) The Inquiry Committee shall meet at such time and place, as it deems proper.
- vi) The Inquiry Committee shall regulate its own procedure.

.....The local police (UP Police) do not take much interest to rescue these helpless girls.

B) BACKGROUND

The Commission is seriously concerned about the heinous incidents being increasingly reported of persons known and unknown or fraudulent placement agencies making false promises to girls for giving employment, and then exploiting and brutalizing them. Trafficking in women and children for forced labour and domestic servitude, is an organized crime that gravely violates women's human rights. Hence, the Commission has taken suo motu cognizance of the **incidents of trafficking in the states of West Bengal, Jharkhand and Bihar** with a view to inquire into the serious dimensions of this crime and make concrete recommendations for the safety of women, so that strict action is taken against those involved in such trafficking, at all three - in the source, transit and destination areas.

The Commission taking suo moto cognizance of the media report published in Mathura Jagran on **16.04.2013** titled "*Dehat Mai Bik Rahi Bihar or Paschimi Bengal Ki Mahilayen*" (**Annexure-A**) sent by Shri Satish Sharma, former CWC Member, Mathura. Commission sent letter dated **17.04.2013** to DGP, Uttar Pradesh, DGP, Bihar and DGP, West Bengal seeking ATR within 15 days (**Annexure-B**).

BIHAR: Commission received ATR dated **16.07.2013** from Bihar Police (**Annexure -C**) alongwith detailed statistics of human trafficking and child labour in the State.

WEST BENGAL: Commission received ATR dated **25.07.2013** from DG&IGP, West Bengal (**Annexure -D**) which clearly stated

"..... Unmarried and aged girls (of the age group of 40-45 years) from West Bengal are transported on the lure of good job or placements by the gang of traffickers and they are sold to the Bihari labourers at an average rate of Rs.25,000/- per girl. When I asked them how many Bengali girls might be transported from Bengal to Mathura and sold out to the Bihari labourers they told that the figure may be 25 (twenty five). They also reported that the girls are kept in such a situation they cannot come out on their own and bring it to the notice of any Police Station. The local police (UP Police) do not take much interest to rescue these helpless girls. CID, West Bengal is sending a team of officers to conduct an enquiry into the matter and also hold raid and rescue operations to recover the girls from the clutches of the traffickers".

UTTAR PRADESH: Since, the Commission did not receive communication from the Govt. of UP within the stipulated time and in view of the response received from DG&IGP, West Bengal, again a letter dated 18.11.2013 was sent as reminder alongwith report of DG&IGP, West Bengal to DGP, Uttar Pradesh seeking ATR within 07 days (**Annexure-E**).

COMPLAINT: A complaint has been received by the Commission from a survivor of human trafficking racket (Ms. Alihsus Hansda), who alleged to have been trafficked from Jharkhand to Delhi deceitfully on the pretext of job in a hospital in Delhi but made to do forced labour (domestic work) beaten, not provided food and all her money and jewellery snatched. The same is registered with the Commission as Complaint No. No.8/11813/2013/NCW /CW/VC dated **11.09.2013** (**Annexure-F**).

most of these girls trafficked / exploited belong to the most vulnerable sections of society – SC/ST

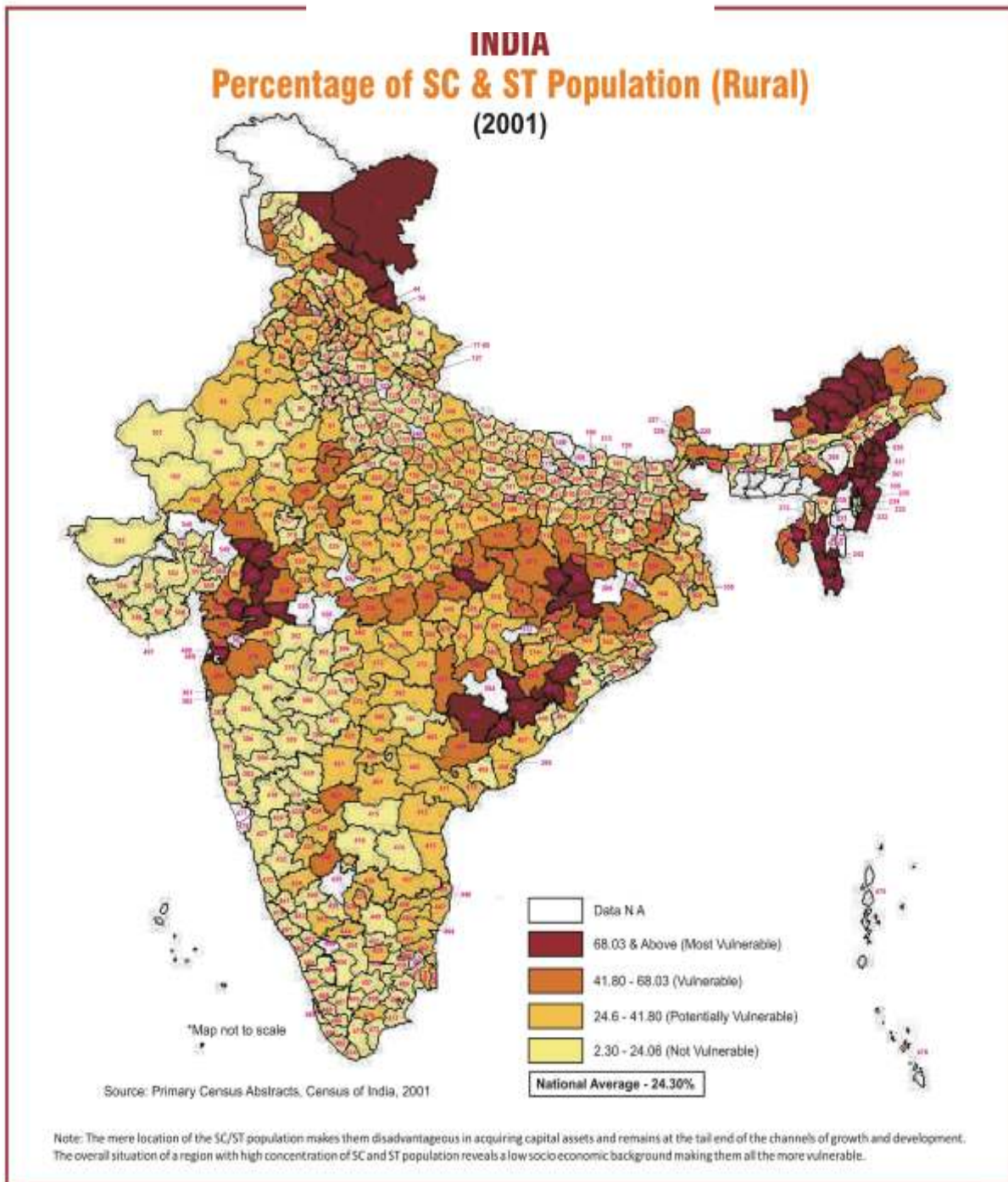
SUO MOTU COGNIZANCE: a) Simultaneously, cognizance has been taken of media report titled '**two trafficked girls raped in capital**' and Commission sent letter dated 24.07.2013 sent to Commissioner of Police seeking ATR. Reply was received from Addl. Commissioner of Police, North-East District (**Annexure-G** Colly) stating that the alleged area of incident is not specified in news clipping therefore no action can be taken. However, the contents of news clipping have been noted / briefed to all staff, so that they may remain sensitized in this regard.

b) Cognizance was also taken on the incident of death of a female domestic help in the house of a Member of Parliament at Delhi vide Commission's letter dated 7.11.2013 sent to Commissioner of Police, Delhi seeking ATR. No reply has been received till submission of this report (**Annexure-H** Colly).

It has been observed that most of these girls trafficked / exploited belong to the most vulnerable sections of society – SC/ST. They come from areas which are relatively inaccessible and deprived, in addition they are at risk of unsafe migration due to their relative isolation being disturbed because of planned development - dams, mines, industries and roads (Figure-1 based on the Mapping Vulnerability of Women and Girls to Trafficking in India by Ms. Mondira Dutta sponsored by UN Women in collaboration with National Commission for Women, 2011. The results from deprivation indices include Social & Demographic, Cultural, Economic, Environment and Composite Picture of Vulnerable Districts. In the social & demographic factors are included, Scheduled Caste & Scheduled Tribe Population, Female illiteracy Rate, Age Specific Sex Ratio, Crime Against Women and Prevalence of HIV / AIDS).

In view of the serious nature of the offences concerning safety of women it was felt necessary by the Commission to constitute an Inquiry Committee.

FIGURE 1



Vulnerability mapping of women by Ms. Mondira Dutta, School of International Studies, New Delhi and presented at the “Seminar on Preventing and Combating Human Trafficking in India” organized by NCW on 23.11.2011.

C) JHARKHAND: The Inquiry Committee Chaired by Dr. Charu WaliKhanna, Member, NCW and accompanied by Dr. P M Nair arrived at **Ranchi** on **07.11.13**, where they were joined by Ms. Hemlata Mohan. From the airport directly surface journey was undertaken to Dumka via Dhanbad (approx 160 km) and Shri Anurag Gupta, IGP (CID) and in-charge of AHT accompanied the Inquiry Committee.

DHANBAD : At Dhanbad meeting was held with senior police officers to have idea of field level status of vulnerability of women after which the Inquiry Committee proceeded to Dumka (approx 150 km).

DUMKA : Meeting was held in Dumka with around 100 participants including SP, District Magistrate, CDPOs, supervisors, survivors of trafficking, NGOs. The SP of Dumka had ensured the participation of the Officers in Charge from all police stations of Dumka comprising 10 blocks (within a radius of 100 kms etc.). During the interaction the SHOs raised their doubts and queries on the laws, rulings, provisions, steps to be taken etc. which highlights the need to organize systematic training and empowerment programmes for the SHOs and their supervisory officers.

The Inquiry Committee held public hearing and complaints were collected from individuals/victims/survivors and same forwarded to appropriate authority for action. Since, the police and representatives of labour department were present some cases of non payment of wages as alleged by women workers were resolved on the spot. During the meeting in Dumka it emerged that the Mahila Thana does not have a female officer in-charge. The NGO managing the child help line stated that from the districts of Sahibganj, Pakur, Dumka and Deoghar five to ten phone calls in a day are received for help, being mostly from landline phone numbers. It also emerged that often the case is not registered under The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 making it easier for the accused/trafficker to get bail. Also there is pressure from the police and community to compromise the matter since a local person is always involved.

At Dumka the SP, Dumka submitted ATR dated 7.11.13 regarding the specific case under inquiry and the Inquiry Committee was informed that FIR has been registered. Investigations are underway keeping the element of confidentiality in mind (**Annexure-I**). Information regarding Anti Human Trafficking Unit (AHTU), Dumka and its activities were also provided. (**Annexure-J**).

On **08.11.2013** early in the morning the Inquiry Committee visited a private health centre being run by a missionary organization (St. Ursula Health Center). The health center was spotlessly clean and well managed. The Chairperson of Inquiry Committee interacted with the patients in the female ward. There were many female patients in serious condition and small minor girls working as their caregivers. They can be considered as “*sitting ducks*” for

Often the case is not registered under The SC/ST (Prevention of Atrocities) Act, 1989 making it easier for the trafficker to get bail.

traffickers; who on getting information will prey upon them and abuse the position of vulnerability of these poor, sick women.

MASALIA VILLAGE : Thereafter, the Inquiry Committee went for field visit to Masalia village (approx 25 km) to know the effectiveness and implementation of the checks and balances by government to prevent trafficking. Meeting was held in School of Panchayat Baghraydih, Block Masalia, District Dumka where over 50 people including Pradhan, Sarpanch, Block Development Officer and local officials were present. Many issues in the sanction and release of old age pension, widow pension, issue of BPL card etc were raised. Several poor women and men had genuine grievance and the need was felt for the administration to be more responsive to these poorest sections of society. The initial response of the government officials who accompanied the Inquiry Committee to the village was to deny or stone wall the genuine demands of the women villagers. There is a need for the DM and SDM to camp in these villages along with all concerned government officials and elected representatives to ensure that the grievances are redressed. There is a need for the administration to be proactive.

**Women
trafficked from
vulnerable areas
in north Bengal
of Jaigoan,
Madharihaat,
Makrapara,
Kalchini,
Chilowni,
Nagrakata,
Hashimara, Mal,
Chalsa**

BOKARO : The Inquiry Committee proceeded onwards to Bokaro where meeting was held with Superintendent of Police Bokaro and other officials. According to police officials there is no AHTU in Bokaro and Bokaro is not a vulnerable area, which may possibly be due to it's well developed infrastructure, easy access to administration and media, as also high alertness levels of the police. In addition to it being an industrial town, employment has been generated for local persons as unskilled / contract labour i.e. polaries have local persons. However, one cannot deny the prevalence of trafficking just because no FIR has been registered so far. The SP was advised to make police stations proactive and visit vulnerable areas for prevention of trafficking. The Inquiry Committee also inspected the Bokaro Mahila Thana to have idea of nature of crime against women in the area.

D) WEST BENGAL:

DARJEELING: The Chairperson Inquiry Committee reached Bagdogra on **11.11.13** where she was accompanied by Shri Nirnay Chhetri and travelled by road (approx 90 km) to **Darjeeling the second largest district in West Bengal after Kolkata**. The Committee held meetings with Ms. Purnima Sherpa, DSP DSWO, DCPO, DCPS, NGOs, other Govt. Officers, survivors and other stakeholders. During the meeting it emerged that women / children from vulnerable areas in north Bengal of Jaigoan, Madharihaat, Makrapara, Kalchini, Chilowni, Birpara, Nagrakata, Hashimara, Mal, Chalsa, Ooadlabari, Washabari are trafficked to metros, especially Delhi for domestic work and lured on the pretext of marriage.

Marriage : The practice of marriage by elopement prevails in the area, in which a couple elope and return after 3 days to the family. These 3 days are very crucial because in this

period the traffickers forcefully/ deceitfully transport the girl to a far away place and by the time the parents register a missing complaint, crucial time has been lost. According to an NGO who was provided information under RTI by the West Bengal CID - the number of “missing” people in the state has gone up from 196 in 2001 to 6514 in 2010. From the six north Bengal districts only three missing cases were reported in 2001, whereas the number was 1,089 in 2010.

Many NGOs brought the modus operandi of the traffickers to the notice of the Inquiry Committee. One of the methods adopted was by placing advertisements in newspapers by traffickers under the guise of **Friendship Club and Placement**. Also advertisements are published in Nepali newspapers stating that girls / women are required **immediately (*jhatte chahiyo*) and no processing fee for visa will be charged**. Since the Indo-Nepal border is porous young girls on either side are trafficked for labour and sexual exploitation. Minor children are trafficked at very young age as small as 4 years and often after rescue not only do not know their home address but have even forgotten the language being re-trafficked again and again from Jharkhand /Bengal to Delhi / UP.

**high literacy rate
due to which
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migration/ being
trafficked**

NGOs also gave instances of identities of girls being changed on their being trafficked to Nepal and fake Nepal passport made for them, subsequent to which they are re-trafficked to middle-east / Dubai. There they live like bonded labour are not paid wages, and often sexually exploited. An example was given of a girl who died in the Middle-East but her last rites could not be performed in India since she was holding fake Nepal passport. It was with great difficulty and networking that her body was brought from middle-east to Nepal.

It is pertinent to mention here that the **Darjeeling district electoral list is better than the state average and the ratio of women voters is more than 1000**. In other words there are more women than men. There is a high literacy rate in the area due to which women desire to migrate for better employment and livelihood opportunities, resultantly becoming vulnerable to unsafe migration/ being trafficked. **Darjeeling despite being a vulnerable high risk area has no home for women, with the nearest home being at Jalpaiguri.**

KALIMPONG: The Inquiry Committee proceeded to Kalimpong by surface (aprox 70 km). On **12.11.13** meeting was held with police officials, NGOs, victim’s families and other stakeholders. On Inquiry Committee enquiring from the police as to what proactive steps are being taken by them. The response was that sensitisation programmes have been attended by police at Jalpaiguri and Delhi. Police suggested that cases registered under Sections of the IPC and triable by the Sessions Court should be charge sheeted in a stipulated time. It was brought to the notice of the Inquiry Committee that despite the provisions of Protection of Children from Sexual Offences (POCSO) Act mandating separate independent courts be setup to try cases under the said Act, with the ACJM / ADSJ being given additional charge, adding to the burden of their cases.

In most districts whether in West Bengal or in Jharkhand, the second officer of the police station has been assigned to Special Police Juvenile Unit and AHTU, in addition to other law and order duties. The Inquiry Committee was also informed that due to there being no specific law on prevention of trafficking the cases were closed after statement as “Mistake of facts”. The police informed the Inquiry Committee that ITPA is rarely applied except in raids on hotels etc or specific cases of prostitution. Police complain that girls are rescued after great effort and only after elaborate counseling are they convinced to make their statement under S.164 CrPC, but unfortunately they are made to wait the whole day which results in the girls rethinking of registering the case and her turning hostile. Since the girl has herself agreed to go with the trafficker, although her consent was under deception, often the girl in a statement says she went on her own (which indeed she did) and was not abducted as a result of which the case is closed in police record as “mistake of fact”. Mentioned was the case of a trafficking survivor woman who was speech and hearing impaired but due to lack of facility of a translator her statement could not be recorded.

In Kalimpong a vulnerable area, there is no independent AHTU nor facilities provided to improve efficiency in responding to trafficking,

Women and children are at risk in Kalimpong since it is a school hub and school girls are at risk. Frequent complaints of outsiders / traffickers taking assistance of local boys for trafficking have come to the fore. An NGO brought a complaint of 3 missing girls enticed on the pretext of marriage. The complaint letter also contained a phone number from which threats were being received by the family. Immediately, Member Dr. Charu WaliKhanna took up the matter with the police. The police was cooperative but expressed their inability to track the call immediately since despite Kalimpong being a vulnerable area there is no independent AHTU nor any special facilities provided to them to improve their efficiency in responding to trafficking, reaction time, tracking / monitoring phone calls of traffickers etc. The case has been registered with the Commission (No. 8/14543/ 2013/NCW/CW/PK) and Action Taken Report sought from DG&IGP, West Bengal.

ODLABARI: The Inquiry Committee proceeded to Odlabari from Kalimpong (approx 150km) by a hilly almost nonexistent winding road where meeting was held with survivors and informants. The route passed through tea-gardens. It is pertinent to mention here that the condition of the women in tea estate is very deplorable. Most have a not paid their wages and being the main bread earners of the family (alcoholism among men is common) find it difficult to survive. Refer to news reports in which it is reported that **nearly “a dozen labourers died over the past few months owing to prolonged illness...”**. **“we are eating tea flowers and wild herbs. It is tough for us to even arrange for a proper meal. We do not have money for food or medical care of our ailing family members. We are not getting any health services”** (Annexure K & L colly).

Enroute a stop was made midway at Baragaon between Kalimpong and Odlabari. Across high on top of a mountain totally inaccessible (except by a *chor road*) was village *Satdunge*

(seven stones). The mention of this village is being made because despite its inaccessibility and isolation the Inquiry Committee was informed that the *Sarva Shiksha Abhiyan* function and primary school facilities are available even in remote areas. After getting basic education the girls are at a loose end and vulnerable to trafficking because education has raised their aspiration level but there is no opportunity to fulfil them in the village.

The NGO sector in north Bengal has a well developed system of identification and monitoring of areas which are vulnerable to trafficking. It is due to the efforts of the NGOs that many girls have been saved/rescued from being trafficked by abuse of their position of vulnerability. Informant relationships are secured all over the district to keep track about specific trafficking incidences and create a bond between the community and law enforcement agencies. The Inquiry Committee met Shri R Nepali, an informer who shared information on his activities. He facilitated interaction of the Inquiry Committee with a survivor of trafficking who over a long period of time was made to work as bonded labour, in addition to being sexually exploited. Her case was taken up with the police to expedite investigation since FIR had already been registered U/s 376 IPC. Chairperson Inquiry Committee requested the labour department to take up her case for non-payment of wages. Complaints from survivors and families of missing girls were taken for follow up and registered with the Commission (No.8/14543/2013/NCW/ CW/PK, 8/14545/2013/NCW/CW/PK, 8/14544/2013/NCW/CW/PK, 8/ 14547/2013/ NCW/CW/PK, and 8/14546/2013/ NCW/CW/ PK) and ATR sought from the DG&IGP, West Bengal. Notable is that these missing girls are tribal, who are original dwellers of Jharkhand and their families have migrated decades ago.

...the girls are at a loose end and vulnerable to trafficking because education has raised their aspiration level but there is no

JALPAIGURI: The Inquiry Committee went onwards to Jalpaiguri (30 km) where meeting was held with police officials, social welfare department, NGOs and other stakeholders. The cases of Odlabari falling within the jurisdiction of Jalpaiguri district were handed over to the ADM (General) for follow up. The Inquiry Committee reviewed the measures taken by the local authorities to prevent trafficking. The trafficking of women / girls from the slum areas in Jalpaiguri district was discussed. All felt that strategies aimed at preventing trafficking should take into account demand as a root cause, in addition to factors that increase vulnerability to trafficking, such as inequality and poverty. The problems of reintegration and repatriation were discussed. Example was given where parents were shifted to Kerala. The need for a safety net for protection of children especially young girls discussed with the local authorities who provided information to the Inquiry Committee about the 6 Service Providers, 2 Family Counselling Centers, Ujjwala programme, JJB and CWC. The Sakhi Saheli and capacity building programme being run by CINI and the lack of budgetary provisions were discussed and representation by NGO given to Member, Dr. Charu WaliKhanna who assured that the matter would be taken up with the M/o Women and Child Development.

The Committee found that there is an acute shortage of shelter homes for women / children in north Bengal. **In fact, in the vulnerable area of Darjeeling there is no shelter home and women have to be sent to Jalpaiguri after being rescued**, the Inquiry Committee visited one such home being run by an NGO. It came to the knowledge that there are allegations of vested interests who procrastinate in giving / renewal of license for homes, with view to gain sexual favours. One such instance came to the notice of Chairperson Inquiry Committee and information regarding the same immediately brought to the notice of ADM (General), Jalpaiguri for action.

In the vulnerable area of Darjeeling there is no shelter home and women have to be sent to Jalpaiguri after being

SILIGURI: On 13.11.13, the Inquiry Committee went to Siliguri. At Siliguri interaction was held with D.M. Darjeeling Sh. P. YADAV, IAS and strategies for combating of trafficking discussed, in coordination with assistance of local NGOs. Sh.Nirnay John Chhetri, Member of the Inquiry Committee who is actively involved in anti trafficking activities gave the example of how the police succeeded in arresting the accused after being given tip off by NGO, MARG. The case has been reported in newspapers (**Annexure-M**) wherein 2 minor girls went missing from Lodhama, the incident was reported at Lodama Police Station. With the assistance of NGO MARG the girls were recovered from the car of a Darjeeling Architect.

The NGO MARG also presented the case of Ms. Pinky (name changed) who was only 9 years old when she was bought by a man from Sikkim who had visited Jorhat. Today she hardly remembers her family and has nowhere to go. She narrates how she was regularly raped by this man who bought her. He was an army man and during his holidays he returned home and sexually exploited her. One day she ran away to her friend's house in Sikkim, where a good Samaritan from Darjeeling spotted her who brought her to Darjeeling and kept her at her own house. The good Samaritan informed the NGO MARG and CWC who without wasting any time registered a general diary at the Sadar Police Station and informed the CWC Gangtok. Darjeeling SP coordinated with MARG and CWC to take the child to Ramphoo where she was handed to CWC Gangtok in the presence of Sikkim Police. With the help of Sikkim Police the man was arrested and presently trial is pending.

Information was also provided to the Inquiry Committee by NGOs of girls being lured from North Bengal to Bangladesh, Nepal, Middle-East on pretext of working in beauty parlours or domestic help, then being exploited. Notable are the reports published in 'The Statesman' dated 12.11.2013 or The Hindu dated 8.8.2012 (**Annexure-N Colly**) wherein it has been reported that about eighteen young women who were being trafficked into the Capital by an international manpower syndicate, had been rescued by the CBI from a house in Dwarka, Delhi but the gang members could not be arrested. It is significant to note that the real traffickers are rarely caught and intermediaries who are arrested get released due to there not being sufficient evidence.

CHAPTER 2

Migration and Trafficking

A. DISTINGUISHING BETWEEN MIGRATION AND TRAFFICKING:

The study of migration of women is essential for more effective strategies to combat trafficking of women, without violating the right of a woman to freedom of movement. The crucial factor that distinguishes trafficking from free migration of women is the use of force, coercion and deception. Examples are the cases under inquiry by the Inquiry Committee, and of young girls being lured within India and across the border to Bangladesh, Nepal, Middle-East on pretext of high paying jobs in beauty parlours or as domestic help, instead they are exploited and made to work in slavery like conditions. It is repeated that in addition to poverty, dispossession from land and commercialization of agriculture are the main reasons behind large scale migration. Historically tribal women have migrated for short durations for specific types of agricultural work like sugar cane or cotton harvesting. Many tribals migrated from West Bengal to Jharkhand for work and have been living there since decades.

Traffickers illegally use this social network to establish links on getting information on the condition of women to abuse their position of vulnerability.

B. ROLE OF SOCIAL NETWORKS:

In a free migration process, there is normally a personal link between the woman and the destination to where she is migrating, like an offer for employment, or friend / relative / agent. These 'community networks' act as a link and provide support systems to the migrating girl. Traffickers illegally make use of this social network to establish links for getting information on the condition of women in order to abuse their position of vulnerability. In trafficking, the victim's perception of what is happening is different from the trafficker's as the victim's consent is not informed. Any consent obtained by fraud is no consent at all. It is important specially for the judiciary while recording statement of the girls to realize that consent is not as simple as it appears, but has been taken under deception. The woman's mistaken belief calls into question whether her agreement is free, informed and valid. It is important for the police and judiciary to understand this concept, and only then will they not simpliciter close cases of trafficking as "Mistake of fact".

C. ABUSE OF POSITION OF VULNERABILITY:

Vulnerability, the most important factor, but least discussed nor is it included in the definition of trafficking in the new Criminal Amendment Procedure Act 2013 under S.370 IPC which deals with Trafficking. Totally ignored in the law is the position of vulnerability of women and children to trafficking. Traffickers prey upon them, misusing their position of vulnerability, coercing them, deceiving them not only at source areas, but also during the journey, and at the workplace on reaching the destination. The experience of a girl within her family or the social patterns in the community increase her vulnerability.

Examples are the young minor girls met by the Inquiry Committee in Health Center in Jharkhand who are the care givers for their mothers while the mother in the health center in serious condition. The responsibility of being the attendant for the mother falls on the young minor girl, who in addition acts as caretaker for her younger siblings. Situations like this increase the position vulnerability, advantage of which the traffickers take. A trafficker may offer large sum of money to the mother or close relative who in the hope of a better life for her daughter innocently may agree, not realizing that the consent has been taken under deception.

Trafficking is done in connivance with local persons, which may be with or without their knowledge that they are indulging in this crime.

D. COMMUNITY/ FAMILYS A COLLUDING FACTOR:

The traffickers through a vast community network keep a tab on vulnerable girls/women in villages. It has been observed that trafficking is done in connivance with local persons, which may be with or without their knowledge they are indulging in this crime. Often family members, are willingly may be involved, as in the case of the husband and mother in law who have been alleged of selling the girl for Rs.3.00 lakh in District Sahibganj. During the Inquiry Committee interaction in District Dumka, Jharkhand it emerged that Delhi and villages in Punjab are favorite destination points with traffickers tempting the guardian of girls with large amounts of money in exchange. When a young woman goes missing the silence of the community plays a role in silently colluding if not actively with the trafficker. Prevention can be done at various levels with whom the young women come in contact with like transport providers, vendors, police etc. For example an alert driver of the vehicle who was transporting 3-4 girls on directions of the contractor, rescued them when he realized they were being trafficked for exploitation and not across the Jharkhand State border for work as promised to them by the contractor. In backward and minority communities some derogatory practices persist, resulting in the trafficking of girls, eg the practice of Thuggi Vivah among the Muslim community in which large sums of money are given as dower and the girls sent mostly to Bareilly, UP after which they are exploited.

The traffickers comprise, but are not limited to, the following persons:

- Recruiter/Agent of Recruiter
- Seller of trafficked person
- Buyer of trafficked person
- Transporter
- Conspirator
- Customer'/clientele, who create/perpetuate demand
- Pimp
- Brothel madam
- Brothel managers
- Financier
- Parent(s)/guardian(s) who knowingly sell/cause to sell/traffic their children/ward

Traffickers prey upon the position of vulnerability of women. Their informant network being highly well developed and use of latest technology employed for

E. TRAFFICKING AN ORGANISED CRIME:

Trafficking is an organized and continuing crime. The organized nature of this crime can be judged from:

- Someone locates and recruits the victim.
- Someone 'escorts' the victim.
- Someone 'neutralizes' the official machinery.
- Someone who knows and makes arrangements in local places.
- Someone keeps the victims safely
- Someone sells her, buys her, exploits her, makes money by violating her, ie commercializes the human being
- Someone provides logistic support to the movement of victims – food, housing

Thus the someone soon becomes many persons, and the organized link goes beyond borders of village, district, state and even cross country borders. Traffickers prey upon the position of vulnerability of women with their informant network being highly well developed. The moment there is death of a male member in the family or death of mother and the father is an alcoholic, immediately traffickers abuse the position of vulnerability of the family. The exact location of the family is pin-pointed by using latest technology/on google earth and a known/local person deputed to give payments or benefits to achieve the consent of guardian to have control over the girl, for the purpose of exploitation.

F. ATTITUDE OF POLICE OFFICIALS:

'Police' and 'Public Order' being State subjects, the primary responsibility for preventing and combating the crime of human trafficking lies with the State Governments. However, it appears that in naxal affected States or in States having disturbed areas, the priority or responders may be much less or even nil on anti human trafficking operations.

On Commission's seeking ATR from police authorities of different States, their response and sensitivity levels varied. Bihar police their attitude appeared to be recalcitrant and careless, to say the least when the reference is to incidents in Munger district, report has been called for from another district Khagaria. The local officials (of the CB Team) stated that the village does not exist in District Khagaria. The factum of non-existence of the village may be correct but the police officers i.e. the SP/DIG and the IG of CID should have applied the mind and initiated pro-active investigations about trafficking of women. West Bengal Police admitted to the news item as being genuine and in a positive mode are taking further steps to investigate the same. The attitude of the UP is extremely callous for till the submission of this report no response has been received from them. Delhi Police appeared sensitive by stating that the contents of news clipping have been noted – briefed to all staff, so that they may remain sensitized in this regard.

Lack of specialized training of police officials is a draw back in combating trafficking, in addition to their being overburdened since there being NO INDEPENDENT

Some common problems :-

- **Lack of specialized training** of police officials is a draw back in combating trafficking, in addition to their being overburdened. Even where there is an AHTU the missing linkage of the police with public and NGOs was obvious. The AHTU cannot function in isolation and needs to work with other stakeholders. The senior officers should facilitate this and mentor the AHTUs. Such mentoring was conspicuous by its absence, and in addition to there being **no independent AHTU** in vulnerable areas.
- **NO PROPER COMPLIANCE OF MINISTRY OF HOME AFFAIRS ADVISORY** dt. 9.9.2009 to States/UTs to deal with the crime of trafficking in a holistic manner and to evolve an effective and comprehensive strategy encompassing prevention, rescue, relief and rehabilitation of victims, besides taking deterrent action against the violators of law. **The Advisory listed special measures to prevent trafficking, such as identification of women and children at risk, development of victim profiling, carrying out of checks on sponsors and persons who claim to be the relatives of children identified as being at risk of trafficking, etc.** It also stated that there is a need for exchange of information between stakeholder, ministries and civil society constituents to ensure that such activities do not go unchecked in any garb, including that of labour migration. Police Agencies have been advised to set up helplines and Special Desks in the Police Stations and Control Rooms as well as officers of senior formation to address this issue on a real time basis.
- The advisory also states that Ministry of Women and Child Development, State Govts/UTs and NGOs must undertake large scale public awareness campaigns to make the potential target/ vulnerable groups aware of such activities including the traps laid by traffickers.

- According to the advisory detailed instructions are to be issued to all police formations, especially SP/DCP and Station House Officers, to sensitize and alert the beat constables to lookout for cases of suspected trafficking at all transit points/ places like railway stations, bus stands, taxi stands, public places, isolated hotels/ guest house/ streets etc. The contact nos. of the AHTU are to be displayed by way of hoarding at transit points Bus / Railway Stations, which is not the case at the ground level.

It is clear that the advisory not being followed and is merely on papers.

There are allegations of vested interests who procrastinate in giving / renewal of license for homes with view to gain sexual favours.

G. ATTITUDE OF LOCAL ADMINISTRATION:

- **Shelter Homes are in dismal condition.** In Darjeeling which is highly vulnerable to trafficking there are no home for rescued girls, who have to be sent to Jalpaiguri, creating a logistic problem. This is in addition to the sexual harassment and exploitation of NGOs by the Govt officials in issuing / renewal of license.
- **Help line numbers largely defunct** and are not being properly coordinated with District Administration and local police.
- **Lack of proper rehabilitation mechanism.** The so called “Rescued” girls are at risk of being re-trafficked, eg (Ms Yram Soren) young daughter of an alcoholic father was trafficked and subsequently rescued in Surat, when she escaped barefoot from her employer’s house and went to the police station. She has been lodged in the Nari Suraksha Sadan Gujarat since, in her case repatriation back to Jharkhand, in an abusive environment is not the solution.
- **No identity papers/documents** possessed by migrant girls, nor are they aware of mechanism for help. There is no monitoring mechanism of movement of these girls either at Panchayat/ Block/ Thana level despite claims of government. The registers are not being maintained at the Panchayat level, despite the Jharkhand Dept. of Labour advisory (**Annexure- O**). During the Inquiry Committee field visit it emerged that no one was aware of the labour department advisory nor was the Pradhan aware of the register to be maintained. The local authorities said that they were issuing yellow, red, green labour cards in collaboration with the Panchayat. Despite persons being aware of some cards being issued most did not possess the cards.
- **CWCs and JJBs** have **not** been **sufficiently empowered**, need training programmes.
- **No mechanism for filing labour law cases in metro cities** since most states eg Govt. of Jharkhand do not have office/ legal representative there.

CHAPTER 3

THE LAW

The Constitution of India prohibits trafficking in human beings and forced labour through Article 23, however there is no specific legislation in India for the Prevention of Trafficking. An offence has to be made using a combination of the Indian Penal Code and other Acts.

INDIAN PENAL CODE: The relevant provisions of the Indian Penal Code (IPC) used by the police in registering a case are Sections 293, 294, 317, 339, 340, 341, 342, 354, 359, 361, 362, 363, 365, 366, 370, 371, 372, 373, 375, 376, 496, 498, 506, 509 and 511.

There are many gaps in the law for example Section 366A makes procurement of a minor girl below the age of 18 years from one part of India to another punishable BUT what if she is a major how will an offence be made out. Section 366B makes the importation of a girl below the age of 22 years punishable, BUT as has been seen most of these girls are under 22 years of age but do not fall strictly under the category of 'importable' since the trafficking is occurring within the border of the country.

Section 374 allows for punishment for compelling any person to labour against their will. The girl gave her consent not knowing that she would be exploited, hence technically it is difficult to prove that she is being made to labour against her will.

IMMORAL TRAFFICKING PREVENTION ACT, 1956 (ITPA): The present legislation, ITPA 1956 is not adequate to deal with "human trafficking", nor does it take into account forced labour or services and other forms including the removal of organ; which is one of the reasons why human rights violations inherent in trafficking are not being properly understood. **There is a conflation between trafficking and sex work.** Even the National Crimes Record Bureau data regarding percentage distribution of human trafficking / instances of crimes of human trafficking, is limited to buying of girls for prostitution (Section 373 IPC), procurement of minor girls (Section 366A), importation of girls from foreign countries (Section 366B IPC), selling of girls for prostitution (Section 372 IPC) and ITPA. The term human trafficking cannot be considered solely from the sexual exploitation perspective as women and

ITPA not adequate to deal with trafficking, nor does it take into account forced labour, which is why human rights violations inherent in trafficking are not properly

children are trafficked for various other purposes too eg. labour (cheap labour, bonded labour, forced labour) as in the present cases under inquiry.

Since the cases under the present inquiry mostly relate to trafficking for non sex based exploitation the ITPA has no application. As stated by the police authorities, cases under ITPA are not made out except when raids are made, in which case the distorted practice is of arresting rescued victims rather than the trafficker. Also undue attention to Section 8 of the Act has led to criminalization and victimization of the trafficked victim. **The police routinely abuse sex workers, illegally detain and torture them. Their rights when being arrested are routinely violated in blatant violation of the guidelines on arrest and custody laid down by the National Human Rights Commission.**

Magistrates routinely pass orders allowing transfer of the rescued women to be taken back to their native villages without

giving access to the due process of the law and an opportunity to be heard. Strangely enough though the ITPA is a special law, however it has no mandatory provisions regarding confiscating assets of traffickers, or victim protection.

The NCW has recommended to the M/o WCD in 2012 the repeal of the present ITPA on the grounds of being limited and circumscribing the scope of the problem, including recommending a new legislation titled "Prevention of Human Trafficking Act" focusing on all aspects of human trafficking with stringent penalties for traffickers acting as deterrent.

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006: Child marriage is a violation of girl's constitutional rights, including their fundamental rights to life, health and non-discrimination. According to the Act age at the time of marriage is 18 years for the bride and 21 years for the bridegroom. Section 3 of the Act says that Child Marriages are voidable at the option of the contracting party to the marriage, who was a child at the time of marriage. **The Act restrains solemnization of child marriages yet it does not declare them to be void or invalid.** Further, poor birth registration procedures in India are a barrier in substantiating that the marriage was a child marriage, due to lack of proof of age at the time of marriage. This is corroborated by police who on rescuing young girls find age verification to be an uphill task, since the age of the woman / girl survivor is essential to determining the culpability of the accused. The areas which are vulnerable to trafficking are the states mentioned in the NHFS Survey in which percentage of women married before attaining the age of 18 years was high i.e. Bihar , Jharkhand, and Rajasthan. Also identified are the states of Assam, Tripura, Karnataka, and West Bengal where the difference between the age of bride and bridegroom is more than 10 years, making them vulnerable to abuse and trafficking.

The Act completely ignores the social and legal barriers girls face in accessing the law once married, as a result of which young girls are trapped in marriage which jeopardize their lives,

The NCW recommended to the MWCD in 2012 a fresh legislation focusing on all aspects of human trafficking with stringent penalties for traffickers acting as

health and experience all forms of violence including at risk to being trafficked. Abduction of women and arrangements for debt release are instances of human trafficking.

THE INFORMATION TECHNOLOGY ACT, 2000: The Act extends to the whole of India and also, applies also to any offence or contravention committed outside India by any person. Specifically, Section 66A makes provision for punishment for sending offensive messages through communication service, etc. and Section 66E provides for Punishment for violation of privacy. (Inserted Vide ITA 2008). Section 67 provides for Punishment for publishing or transmitting obscene material in electronic form which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in it. Section 67A provides for punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form (Inserted vide ITAA 2008).

Abduction of women and arrangements for debt release are instances of interlinkages between child marriage and trafficking.

It is to be noted that most of the advertisements by the traffickers have a concealed message and are not explicit so as to contravene the law.

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2002: In the definition clause a “child in need of care and protection “ is a child who is found vulnerable and is likely to be inducted into drug abuse or trafficking {Section 2(d)(vii)}, or who is being or is likely to be abused for unconscionable games {Section 2(d)(viii)}. The Act has elaborate provisions for restoration (Section 39) and process of rehabilitation and social integration (Section 40); including constitution of Juvenile Justice Boards (JJB) (Section 4), Child Welfare Committees (CWC) (S.19), Children’s homes (Section 29), Shelter homes (Section 30), sponsorship (Section 43), After Care Organization (Section 44), Linkages and coordination (Section 45), Special Juvenile Police Unit (SJPU) (Section 63) etc.

DIFFERENCE BETWEEN TRAFFICKING AND PROSTITUTION:

Often, trafficking is conflated with prostitution. These are not synonymous. Trafficking is the process /means while prostitution can be the result/end (of being trafficked). While prostitution is a punishable offence when there is commercial sexual exploitation of a person and any other person who makes profit from the same [Section 2(f) of ITPA 1956], trafficking is the whole (or any point of the) process of recruiting, contracting, procuring or hiring a person for commercial sexual exploitation (CSE) or for any other purpose.

Trafficking is therefore the overall ‘process’ while prostitution/ commercial sexual exploitation/ forced labour is the ‘result’. From a review of the laws above it is abundantly clear that the present law as it is does not address the growing menace of trafficking and ensuring the human rights of women victims and survivors of trafficking.

CHAPTER 4

RECOMMENDATIONS

INTRODUCTION

The overarching goal of the Inquiry Committee is to make recommendations for the prevention, suppression and punishment of trafficking of women and girls for forced labour and to promote safe migration for women, In pursuit of this, attention is drawn to the importance of combating poverty and inequality; in addition to the need for widespread dissemination of information to alert the public, in particular vulnerable groups, simultaneously the importance to take preventive steps through specialized training on human trafficking, in particular of those involved in public security, specially the police, thereby enhancing their intervention capacity.

This report while providing a comprehensive background information on the legal framework in India, governing the response to trafficking in women and children, presents in this chapter the structure of model laws on Prevention of Trafficking and Regulation of Domestic Work.

Presents in this chapter the structure of model laws on Prevention of Trafficking and Regulation of Domestic Work

A. AIMED AT PREVENTION

1. PRE TRAFFICKING

i) **VICTIM ORIENTED-** Women have a right to safe migration and to migrate for a better livelihood, hence the woman / girl should be central to our preventive planning.

- To increase their awareness levels of girls in order to prevent them from being exploited.
- To conduct outreach programmes in schools and colleges for creating awareness. Programmes being run successfully by NGOs to be emulated and awareness programme on anti human trafficking to be jointly organized by police in collaboration with the local NGO in which girl students are explained the dangers of human trafficking, including the modus operandi on traffickers and how they prey upon the girl's position of vulnerability. Teachers also be explained the need to be alert to drop outs and absent students.

ii) COMMUNITY ORIENTED

- To include PRIs in the anti human trafficking measures by providing details of police / local authorities of whom to contact in case of suspicious persons.
- To create awareness among the elder members of the community in the village by the Police / labour department in coordination with PRIs, so that they remain vigilant and keep a check on the details of unknown persons entering the village / accompanying known persons.
- To form Vigilance Committees at the village level which have frequent / monthly meetings.

Create awareness among the elder members, so that they remain vigilant and keep a check on the details of unknown persons entering the village / accompanying

iii) GOVERNMENT ORIENTED

- To institutionalize trainings and awareness programmes dealing with the issue of trafficking.
- To also conduct awareness programmes for police, community and public at large specially in vulnerable areas, including reaching out to Panchayati Raj Institutions (PRIs).
- To increase the number of Mahila / Kishori Mandals attached to an Anganwadi. Monthly Mahila Mandal/ Kishori Mandal meeting are being held in the anganwadis where women come to collect dry rations. It is the ideal first point in vulnerable areas where capacity building and awareness can be created among women and girls, including providing them details / contact numbers and persons whom to contact in case of problem. Girls should be made aware to always take the details of the employer for whom they are migrating to work and stress on always sharing the information with someone before leaving the village, preferably the same may be entered in a register.
- To involve CDPOs and supervisors in this awareness creation.
- To not limit widow pension for women only between the age of 40 to 59 years. Women under the age of 30 years to be considered in view of the fact that there are a large number of widows and their economic condition makes them/ their children vulnerable to being trafficked.
- To design a web site where the names, addresses and contact numbers of all the PRI office bearers are available for verification.
- To maintain a register at the panchayat level, which includes a column for Aadhaar Card number (or if aadhar card has not been allotted then details of any other proof of identity). In case the migrating girl does not have any proof of identity, it will be the duty of the concerned PRI worker to provide her with an identity document free of cost. For this the govt should make adequate arrangements, including allocation of funds for the same.

2 .POST TRAFFICKING

a) RESCUE - It is reiterated that a victim centric approach should be taken, for which Police-

- To have coordinated pre-rescue planning as a team effort- within AHTU, and between AHTU
- To provide required resources
- To develop Standard Operating Procedures (SOP) in all situations whether intra state or inter-state

b) POST RESCUE - Post rescue measures to be put in place including minimum standards of care, providing victim witness protection, having linkages between stakeholders for effective prosecution and creating sensitization and skill building of all stakeholders.

c) REHABILITATION

- To center rehabilitation around the survivor by providing a holistic psycho-social package which addresses not only the psychological needs, but also makes provision for economic rehabilitation.
- To have an identified role for all stakeholders.
- To provide in addition facility for a drop in shelter for trafficked survivors and also for girls who are vulnerable to trafficking (like children of tea estate workers / single women).

d) REINTEGRATION

- To understand that restoration is not reintegration.
- To put in place mechanisms for home safety assessment.
- To assess (individual case-wise) scope for reintegration with or without biological families and have mechanism for continuum of care.
- To make provision for counseling, medical and psychiatric care in addition to legal assistance, education and employment assistance, referral services etc.

e) ROLE OF POLICE

- To immediately after the rescue operation, take the girls to the police station for recording their statements. Status of a case largely depends on the meticulous framing of charges against the perpetrators.
- To be proactive in addressing human trafficking, conduct rescue operations after developing intelligence, attend to all activities of post care and attention, investigate crimes of trafficking from an organized crime perspective and take it to its logical conclusion at the earliest.
- To ensure presence of well-trained, sensitized police officials at the police station with knowledge in law and it's interpretation. The facility of translator be provided to victims with disabilities, eg those who are speech or hearing impaired.

Ensure presence of well-trained, sensitized police officials at the police station with knowledge in law and it's interpretation.

- To immediately send the girls for medical check up. Police to accompany the girls since in the absence of the police often hospital, doctors refuse to conduct check-up.
- To escort the girl if minor, to the Child Welfare Committee (CWC). In case she is an adult, be taken to the Metropolitan Magistrate to obtain permission for her safe custody.
- To take the girl or woman into safe custody and recover her children and personal belongings from the place of crime/exploitation.
- To replicate good practice being followed. For example the system being followed by West Bengal where village police volunteers from one panchayat area are used as resource persons. They are given uniform and daily wages, but no arms, and report to officer in-charge at the Police Station once in two days.

To make the survivor of trafficking aware of the court-room situation and feel comfortable while deposing.

f) ROLE OF PROSECUTION – A semi-legal format successfully being used for combating human trafficking is the Mock Trial. This tool is used to make the survivor of trafficking aware of the court-room situation and feel comfortable while deposing. In the court the girl is exposed to the traffickers and known / unknown group of people who abused her position of vulnerability, hence, it must be understood that in such a situation it would be normal for the girl to feel nervous, or not be able to depose confidently. Also the environment at the court-room is not victim-friendly, and possibly the public prosecutor may be insensitive or non-committal. Thus, Mock Trial is a tool which helps the woman to overcome her fear and inhibitions.

3) SPECIFIC RECOMMENDATIONS TO STATE GOVERNMENTS WITH AREAS VULNERABLE TO TRAFFICKING

- To ensure that record is maintained of girls moving out of the State from vulnerable areas. The register to contain not only the details of the girl but also the names/ addresses of the employer as well as the middlemen/ dalals at whose behest she is being induced to move.
- **The Government of Jharkhand** specifically to ensure that the circular of the Labour department order No 1353 dated 17/7/2012 is implemented in a time bound manner. The Collectors and Labour department officers posted in the district to ensure compliance within 1 month.
- To post Labour Officers in State Bhawans and also have a panel of lawyers in metropolitan cities which are at trafficking destination points to pursue cases (whether criminal cases or those under the Labour Laws).
- To improve the economy of villages by encouraging industry. Trafficking is demand and supply related and if the economy of the village improves the need for women to migrate will be reduced and their subsequent exploitation.

B) LEGISLATION

a) SPECIFIC RECOMMENDATION TO MINISTRY OF HOME AFFAIRS

- TO DRAFT SPECIAL LEGISLATION TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN:

A fresh legislation be legislated to prevent and combat trafficking in persons especially women and children comprising the following :

- To include in the Special Act a **Statement of Purpose** To prevent and combat trafficking in persons, paying particular attention to women and children; And to protect and assist the victims of such trafficking, with full respect for their human rights.
- To include in the Special Act **definition of trafficking as per Article 3** of UN Convention 2000 and its Protocol include the term “abuse of position of vulnerability” (which is missing in Section 370 IPC).
 - "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power **or of a position of vulnerability** or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
 - The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- To include in the Special Act jurisdiction clause by **extending it not only to India but also to any offence or contravention committed outside India** (as in ITA 2000)
- To include in the Special Act provision for **Criminalization, Protection of victims of trafficking in persons, specially women and children; and Prevention, cooperation** and other measures.
- To include in the Special Act **Exclusive Chapter on Prevention** of trafficking in persons with obligation on State to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
- To include in the Special Act special Provision for **Police training and Information exchange by law enforcement, immigration** or other relevant authorities. The training to focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider

Include in the Special Act definition of trafficking as per Article 3 of UN Protocol and the term “ the abuse of position of vulnerability” (which is missing in Section 370 IPC).

human rights and child- and gender-sensitive issues and it should encourage cooperation with civil society.

- To include in the Special Act provision for **security and control of documents**, in order to ensure that travel or identity documents issued, specially to women, cannot be easily misused, readily falsified or unlawfully altered, replicated or issued.
- To include in the Special Act provision mandating a **responsibility and accountability** of the concerned departments like welfare, relief, rehabilitation, etc in rehabilitation of the girl / woman.
- To include in the Special Act provision **for the seizure and confiscation of all illegal assets**.
- To include in the Special Act provision for setting up a National Nodal Authority to Coordinate all Anti Human trafficking Activities (similar to CNB, or NACO)
- To ensure that the issues of missing persons are linked up with the investigation of trafficking; and to ensure that the investigation of missing persons and trafficking is facilitated by technological integration of innovative schemes like “Missing Children Alert (MCA)” of PLAN International, which is a regional technological support system to extend, integrate and strengthen the existing systems like ‘track the missing child’ of the Government of India and similar systems in Bangladesh and Nepal.

Sensitivity among people is lacking and absence of a comprehensive legislation is responsible for the unprecedented rise in atrocities and exploitation

b) SPECIFIC RECOMMENDATION TO MINISTRY OF LABOUR

- TO DRAFT LEGISLATION FOR REGULATION OF DOMESTIC WORK WITH A GENDER COMPONENT:

Right to earn a livelihood, with dignity and respect, and rights at work to apply to all women who engage in economic activity, including domestic workers. It is unfortunate that sensitivity among people is by and large lacking and the absence of a comprehensive legislation is responsible for the unprecedented rise in the number of atrocities and continued exploitation of women domestic workers, across the country.

In 2012, India extended the benefits of a government health insurance scheme to domestic workers. The NCW draft Bill included domestic workers as ‘workers’ and ‘dwelling house’ as workplace and the same has been included in the recent Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The NCW recognizing that domestic work continues to be undervalued and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination and to other abuses of human rights; felt it necessary to draft the Domestic Workers Welfare and Social Security Bill, 2010. Presently, there are 2-3 drafts by different stakeholders and it is essential to integrate the same in order to supplement the general standards with standards specific to women domestic workers so as to enable them to enjoy their rights fully.

- To formulate a **NATIONAL POLICY FOR DOMESTIC WORKERS.**
- To formulate **specific legislative mechanism** to ensure that Domestic Workers rights as workers can be exercised comprehensively by including –
 - Statement of Purpose recognizing that every domestic worker has the right to a safe and healthy working environment, social security protection, as provided in the Unorganized Sector Social Security Act 2008, including maternity benefits.
 - Definition of the terms “domestic work” and “domestic worker” with specific provision for female domestic workers.
 - Provision for minimum wages as applicable under the Minimum Wages Act, 1948 with periodicity of payment (at regular intervals but not less often than once a month).
 - Provision for Right to remuneration without discrimination based on sex, as stipulated in the Equal Remuneration Act 1976.
 - Provision for domestic workers and employers of domestic workers to enjoy freedom of association and the effective recognition of the right to collective bargaining.
 - Provision for domestic workers to enjoy effective protection against all forms of abuse, harassment and violence.
 - Provision for fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.
 - Provision for informing domestic workers of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in vernacular language, in particular to include:
 - a. the name and address of the employer and of the worker;
 - b. the address of the usual workplace or workplaces;
 - c. the starting date and, where the contract is for a specified period of time, its duration;
 - d. the type of work to be performed;
 - e. the remuneration, method of calculation and periodicity of payments;
 - f. the normal hours of work;
 - g. paid annual leave, and daily and weekly rest periods;
 - h. the provision of food and accommodation, if applicable;
 - i. the period of probation or trial period, if applicable;
 - j. the terms of repatriation, if applicable; and
 - k. terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.
- Provision for domestic workers being entitled to keep in their possession their

**Informing
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understandable
manner, through
written
contracts in**

- travel and identity documents.
- Provision for equal treatment, minimum wages, overtime compensation, leave, taking into account the special characteristics of domestic work.
 - Provision for payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.
 - Provision for effective protection of domestic workers, specially women migrant domestic workers, recruited or placed by private employment agencies, against abusive practices:

- a) Determining the conditions governing the operation of private employment agencies recruiting or placing domestic workers;
- b) Ensuring that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;
- c) Adopting all necessary and appropriate measures, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses; and
- d) Taking measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

Provision for effective and accessible complaint mechanisms for the protection of domestic workers.

- Provision for implementing measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work.
- Provision for specifying the conditions under which access to household premises may be granted, having due respect for privacy.
- Provision for regularization of domestic work and mechanism for regulation of placement agency, including the details / address of local contacts in source area so that they don't just come to the village and disappear.

**Provision for
effective and
accessible
complaint
mechanisms for
the protection of
domestic
workers**

c) SPECIFIC RECOMMENDATION TO MINISTRY OF WOMEN AND CHILD DEVELOPMENT

- **To finalize and notify the Draft Integrated Plan of Action to combat trafficking in women and children jointly prepared by NCW, MHA, NHRC, UNICEF and MWCD.**

Trafficking in human beings, specially women and girls is globally considered to be one of the most serious of criminal offences. This report of the NCW Inquiry Committee recommends measures for prevention and combating of trafficking in women and girls in the hope that they will serve as a guide in creating an effective mechanism to ensure the Constitutional promises materialize into action and the implementation of corresponding legal and administrative provisions, significantly raise the quality and level of anti-trafficking responses of the country and provide the authorities with assessments and recommendations for future actions.

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