

**Research Study on Human
Right Violation of Victims
of Trafficking
Conducted by
Social Action Forum for
Manvaadhikar**

PREFACE

PREAMBLE

Project Roshni is a research study that takes an in-depth look into the human rights vulnerability of the victims of trafficking. **No less importantly, it focuses on the human rights concerns of workers engaged in the sex trade (commercial sex workers), which most often the female victims of trafficking are forced into entering.** The Project was undertaken by Social Action Forum for Manav Adhikar (SAFMA), which is a Non-Governmental Organisation of lawyers, professionals and people committed to the Protection & Promotion of Human Rights. SAFMA believes that trafficking in human beings, and women and children in particular, is the worst form of sexual exploitation. Prohibition in traffic in human beings and forced labour is enshrined in the Constitution of India and given the status of a Fundamental Right.

The Project site where the field work has been done is the well-known G.B. Road of old Delhi City.

CONTEXT

Human trafficking in India is a complex process, and often starts with family members handing over responsibility for the safety and well-being of the trafficked person to others known to them, but then ending up trafficked by a third set of persons and into the profession as a Commercial Sex Worker (CSW), commonly known as a prostitute. The term 'prostitute' has always aroused a range of hostile feeling and

perceptions. However till date no society has been able to eradicate or abolish it. In India available statistics on trafficking are limited and contested.

The Suppression of Immoral Traffic in Women and Girls Act 1956, now Immoral Traffic (Prevention) Act (ITPA), was enacted in pursuance of India's international commitment on ratifying the Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of others (signed at New York on 9th May, 1950). Legislation on the subject of suppression of immoral traffic did exist in a few States but the laws were neither uniform nor did they go far enough. In the circumstances, it became necessary that a Central law be passed which would not only secure uniformity but also be sufficiently deterrent for the purpose. **The importance of prevention of trafficking is irrefutable, but somehow, the entire focus of ITPA appears to be on eliminating prostitution rather than prevention of trafficking in persons.** It is noteworthy that in the continuum of anti-trafficking initiatives, law formulation and enforcement is more or less restricted to the area of raid, rescue, repatriation and to a limited extent the rehabilitation aspect. There is a marked absence of any standard guideline for intervention or law enforcement in preventing trafficking from occurring.

Prostitution in itself is not an offence under the Act, save in the manner given in Sections 7 and 8¹ of the ITPA. Yet the rights of these CSWs/ victims of trafficking are often violated. SAFMA feels that the discussion and analysis should move from questions of morality towards an

¹Umedsinh P. Champawat v State of Gujarat, MANU/GJ/0367/2005

examination of the human rights of women. A mix of both repressive and empowering strategies can be of value in addressing the present problem of trafficking of women. On the one hand repressive strategies aim at suppressing organized crime, while on the other hand empowering strategies, used primarily by NGOs, aim at supporting the women concerned and strengthening their rights. The data collected by SAFMA highlights the need for poverty reduction, promoting gender equality and addressing labour standards.

“The lack of international and local protection renders sex workers vulnerable to exploitation in the workplace, and to harassment or violence at the hands of employers, law enforcement officials, in medical settings, clients and the public”. As rightly stated by the Ministry of Labour that there is thus a strong need for their protection in terms of working conditions, their rights including occupational health and safety provisions. This is particular so in the context of the current HIV/AIDS upsurge as the sex workers without rights in their place of work are unequally vulnerable to infection with HIV and other sexually transmitted disease.

CHAPTER 1

INTRODUCTION

UNDERSTANDING TRAFFICKING

Trafficking is a complex and multidimensional phenomenon and requires a multidisciplinary approach. Any analysis of the root causes of human trafficking must take into account factors that are specific to India, its socio-economic conditions and its poverty levels

Human trafficking is a violation of human rights and any strategy to eliminate trafficking should be framed within a human-rights perspective by placing the victim at the centre. A focus that is primarily directed to the prosecution of traffickers has the potential to ignore or minimise the human rights of those who have been trafficked by failing to adequately protect the trafficked women.

The key feature of the present research lies in its study not only of the affected women but also of the courts, police stations and

A girl had been trafficked and forcibly kept in a room for two years where she did not even see any light. She was rescued by the police on information by an NGO and repatriated. Within 2 months she was back in G.B.Road by her own will.

-BOX 1

complaints/FIRs regarding related crimes. For easy translation of the recommendations, the concerns have been concretized into formulating policies and programmes. No other report has so extensively in such a comprehensive manner made recommendations for protection, prevention and prosecution simultaneously, and also suggested amendments in the Immoral Trafficking (Prevention) Act. The present research study also focuses on the human rights concerns of workers engaged in the sex trade and the recommendations reflect their concerns and voices without taken a moral stand.

Available literature on trafficking mainly consists of reports of studies, conferences and workshops conducted by international and domestic non-governmental organisations. Referred to by SAFMA interalia is the Trafficking in India Report- 2004 by Shakti Vahini; and A Report on trafficking in Women and Children 2002-2003 by NHRC; Also referred to are the International Labour Organization (ILO) Reports on The Link Between Migration and Trafficking and Child Labour and Trafficking; and the Trafficking in Persons Report (Released by the United States Office to Monitor and Combat Trafficking in Persons June 14, 2004).

The methodology utilized by the SAFMA Team (made up of six members - Project Director, Group Leader and 3 Investigators) consisted of series of indepth interviews with the CSWs in Delhi, besides interviews with police officers, NGOs and the study of police and court files relating to offences under the Immoral Trafficking (Prevention) Act. Strangely enough a popular assumption that most trafficking incidents start with kidnapping did not appear to be true and highlighted the need to understanding why those vulnerable to trafficking migrate (or become involved in the sex

trade) in the first place. Another frequently assumed myth is that all trafficked persons who are initiated CSW desire to return home, whereas the fact is that they may have initially left home before being trafficked to escape an abusive environment (refer to BOX 1). In fact 78% of the women interviewed said they would prefer to remain in the profession, while 22% said they would like to leave. This question was rephrased and asked in a different manner twice at different places in the questionnaire and only a small minority expressed a desire to leave the profession.

As there are relatively few cases of kidnapping, it is important to understand the motivation or need behind why a trafficked person (woman) was convinced or voluntarily moved in the first place and who or what influenced that decision. Poverty or the failure to meet basic needs, social exclusion, insecurity, or stigmatization are

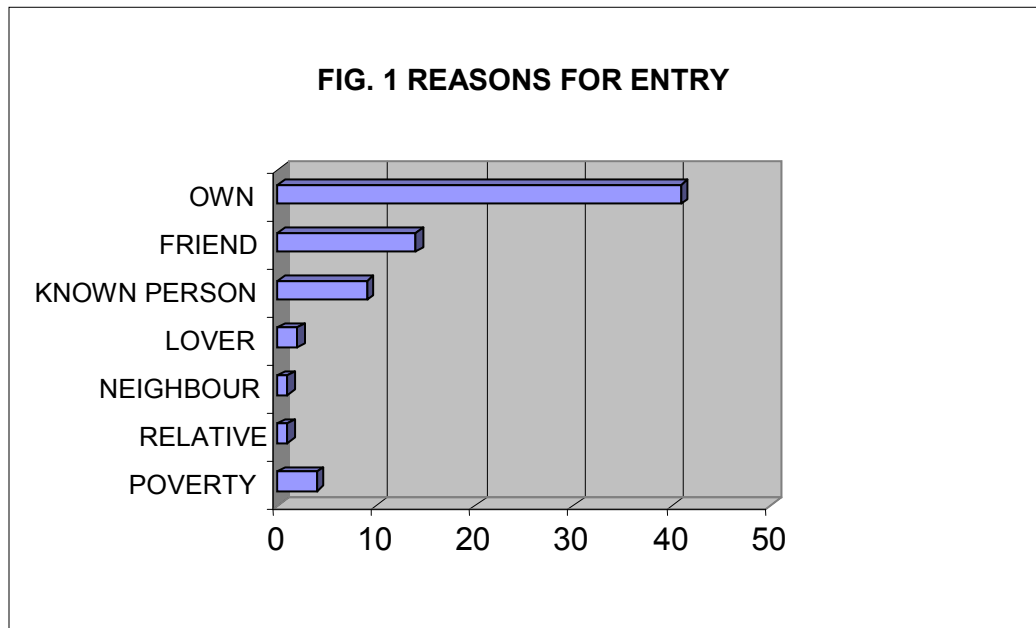
***“I heard that women
can earn more money
in Delhi, that is why I
shifted base from
Meerut to Delhi.”***

-BOX 2

often identified as the initial motivating factor. It has also been seen that trafficking is part of the modernization process where individuals migrate to seek new horizons as cities offer better economic opportunities (refer to BOX 2). A few of the girls had come to G.B.Road Delhi since they had read about it in the newspapers, while a few responded that they got better rates from their clients in Delhi as compared to their hometown.

Extreme poverty combined with the low social status of women often results in the handing over by parents of their children to strangers for what they believed was employment or marriage. In many cases families

and other community members close to the trafficked person also benefit financially from the process, further limiting the probability of the trafficked person taking action to escape or bring about the severe consequences of prosecution. Interestingly enough though it is difficult for a CSW to be accepted back into their communities, they visit their hometown at least twice a year by claiming to be working in Delhi in an export house or as a domestic worker. On being questioned most of the CSW said they got involved in the sex trade on their “**OWN**” volition and by their “**own consent**” (refer to FIG. 1). However, it is important to be careful while



using the term “consent” since it assumes the ability of an individual to have choice and control over their lives. The home-life experience of a CSW makes her choose to remain in this profession, for in many cases it is the families who push women or girls into trafficked circumstances.

All those involved in trafficking gain pecuniary benefits; beginning from the family who sells the trafficked girl, from the point of recruitment/deception to the point of use of her labour as a CSW. All are direct perpetrators of the crime of human trafficking. However, very little attention is paid to prosecuting recruiters, those involved in supporting this process along the way such as transporters (rickshaw, bus and truck drivers), vendors (dhobis, pheriwalas etc.) and hotel and restaurant workers, who knowingly provide services to traffickers and their victims. The victim is mostly reluctant to make a complaint since the trafficker may be her own family or person known to her. It was not uncommon for families to sell their daughters in times of economic distress or order to avoid starvation.

Sex workers/ prostitutes, have occupied an anomalous position in societies throughout history. They are generally regarded as a social category who do not adhere to sexual and other behavioral norms; pitied or despised, excluded from mainstream society, their lowly and marginal position analogous to that of a low caste or minority ethnic group. The outcast status denies them whatever international, national or customary protection from abuse is available to others as citizens, women or workers. This social exclusion renders the prostitute vulnerable to exploitation. Prostitution today occurs in various different settings:

- In **Brothels** popularly known as 'kothas'; establishments specifically dedicated to prostitution.
- On the **Street**, where the CSW solicits customers while waiting at street corners or walking alongside a street;
- In **Beauty/Massage parlors** where sexual services may be offered;
- **Escort or out-call** services, where customers call an agency and the act takes place at the customer's place of residence or more commonly at his or her hotel room.
- **Single** or two CSW operating out of their apartment (in many countries this is the only legal form of prostitution). A hybrid between brothel and apartment prostitution exists in Australia, Germany, Belgium, Switzerland, China and the Netherlands: female prostitutes rent tiny one-room apartments and solicit customers from behind windows or through advertising.

CHAPTER 2

THE LAW

OUR CONSTITUTION

The Constitution of India which is the highest law of the land and from which all laws emanate, guarantees equality as a fundamental right and prohibits traffic in human beings.² Article 23(1) specifically prohibits traffic in human beings, *begar* and other forms of forced labour. **It is pertinent to mention here that there is no specific prohibition of prostitution, what is prohibited is traffic in persons.**

² **Article 14** provides equality before the law or equal protection of the laws within the territory of India.

Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth, or of any of them.

Article 15(3) provides for positive discrimination in favour of women and children. It states that, "Nothing in this article shall prevent the State from making any special provision for women and children."

Article 16 (1) provides equality of opportunity in matters of public employment.

Article 23 prohibits traffic in human beings and forced labour.

Article 38, enjoins the State to secure a social order for the promotion of welfare of the people.

Article 39 enumerates certain principles of policy to be followed by the State. Among them being right to adequate means of livelihood for men and women equally and equal pay for equal work.

Article 39 (f) provides that the children should be given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood should be protected against exploitation and against moral and material abandonment.

Article 46 directs the State to promote the educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections (in which women are included) and that it shall protect them from social injustice and all forms of exploitation.

IMMORAL TRAFFIC (PREVENTION) ACT, 1986

The Suppression of Immoral Traffic in Women and Girls Act, 1956 now Immoral Traffic (Prevention) Act, 1986 was enacted in pursuance of India's commitment on ratifying the International Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of others (signed at New York on 9th May, 1950)(hereinafter referred to as "the Convention). According to Articles 1 & 2 of the Convention³ countries are bound to punish persons who, to gratify the passions of another procures, entices or leads away, for purposes of prostitution, another person, even if it is with the consent of that person. By section 3 of the Suppression of Immoral Traffic in Women and Girls Act 1956 the nomenclature of the Act has been changed to The Immoral Traffic (Prevention) Act (with effect from January 26, 1987)(hereinafter referred to as ITPA). **It is pertinent to point out here that the Convention has proven to be a redundant and an ineffective international agreement, which only 72 had ratified or, acceded to (as of October 14, 1997).**

The objective of the ITPA is to:

³ **Article 1.** The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

(1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;

(2) Exploits the prostitution of another person, even with the consent of that person.

Article 2. The Parties to the present Convention further agree to punish any person who:

(1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;

(2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others

- Punish immoral trafficking;
- Punish traffickers;
- Punish persons living off the earnings of a woman; and
- Provide welfare measures directed towards rehabilitation of sex workers.

The emphasis IS NOT on punishing the CSW, but the clients/pimps/brothel owners etc.⁴ The Act in order to protect women in

⁴ **Section 3. Punishment for keeping a brothel or allowing premises to be used as a brothel.** (1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees,

(2) Any person who- (a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

Section 4. Punishment for living on the earnings of prostitution. (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of a woman or girl shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

(2) Where any person is proved- (a) to be living with, or to be habitually in the company of, prostitute; or

(b) to have exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1):

Provided that no such presumption shall be drawn in the case of a son or daughter of a prostitute, if the son or daughter is below the age of eighteen years.

Section 5: Procuring, inducing or taking person for the sake of prostitution (1) Any person who-

custody provides for punishment of any person who having the custody, charge or care of, or a position of authority over any person causes aid or abets seduction.⁵ Licensing authorities are being empowered to cancel

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- (a) procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of Prostitution; or
 - (b) induces a woman or girl to go from any place, with the intent that she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
 - (c) takes or attempts to take a woman or girl, or causes a woman or girl to be taken, from one place to another with a view to her carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a woman or girl to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term seven years shall extend to imprisonment for a term of fourteen years.

Section 6. Detaining a woman or girl in premises where prostitution is carried on. (1) Any person who detains any woman or girl, whether with or without her consent,--

- (a) in any brothel, or
 - (b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person,
- shall be punishable on conviction, with imprisonment of either description for a term of not less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine.

(2) ...

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with man other than her lawful husband, if such person, with intent to compel or induce her to remain there,-

- (a) withholds from her any jewellery, wearing apparel, money or other property belonging to, her, or
- (b) threatens her with legal proceedings if, she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for, the recovery of any jewellery, wearing apparel or other property. alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

Section 7. Prostitution in or in the vicinity of public places. (1) Any woman or girl who carries on prostitution, and the person with whom such prostitution is carried on, in any premises which are within a distance of two hundred yards of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or District Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

.....

⁵ **Section 9. Seduction of a person in custody.** Any person who having the custody, charge or care of, or a position of authority over any person causes aid or abets the seduction for prostitution of that person shall be punishable upon conviction for a term which shall be not less

licences of hotels where of hotels where children or minors are detected to be used for purposes of prostitution. Interrogation is to be done only by women police officers if not in the presence of a woman social worker.

In fact, the Supreme Court has exercised its extra-ordinary writ jurisdiction making powers under Article 145 and Article 142, to lay down a comprehensive scheme to rescue and rehabilitate victims of sexual exploitation specially in the case of Gaurav Jain v Union of India (AIR 1997 SC 3021). The CSW on being questioned as to whether the profession they were practicing was legal or illegal; most did not understand the implications of the question nor did they have any knowledge of the law, not even sparingly. They had a fear of the law enforcing authorities, but at the same time they said that the police helped them and 66% of the women said they were satisfied with the behaviour of the police. On being questioned as to whether they wanted the profession to be legalized or not, 79 % said yes, but one is not sure if they still understood the implications. Only 13 CSWs out of the 100 interviewed had a previous criminal history, which is a surprisingly small figure. Even these women had no clue of the law or court procedures, all they knew was that they had to attend the dates regularly otherwise they would be summoned. The 13 women who had been arraigned as accused did not belong to any one particular state but were from different states.

The Act does not provide for a clear and precise definition of “prostitute”. Prostitution is defined in Section 2 (f) and according to it “*means the*

than seven years but which may be for life or a term which may extend to 10 years and shall also be liable to fine

sexual exploitation or abuse of persons for commercial purposes, and the expression “prostitute” shall be construed accordingly.” Section 2 (f) of the Act indicates that there should be sexual exploitation or abuse of persons for commercial purposes. Therefore, there has to be an element of commercial purpose which means offer of money by the customer and acceptance of the same by the person who offers her body in lieu of consideration received.

To constitute a brothel a place must have been used for purposes of prostitution.⁶ When the prosecution proved the presence of only one girl in the premises and a single instance of prostitution, the premises cannot be held “used for brothel” in the absence of any proof from the surrounding circumstances (In Re Dhanalakshmi, 1974 CriLJ 61 MAD). Solitary instance of prostitution in a place does not make a place a “brothel” (Sushila v. State of Tamil Nadu, CriLJ 1982 MAD 702). **Thus in case a single woman uses the premises she is committing no offence but if for the mutual gain of two prostitutes the same premises is used it constitutes a “brothel”.** The last part of the definition is significant. It implies that where a single woman practices prostitution for her own livelihood, without another prostitute, or some other person being involved in the maintenance of such premises, her residence will not amount to a “brothel” (In Re Ratnamala, AIR 1962 MAD 31).

The Act clearly deprives CSWs of the ability to work because, if the law is implemented perfectly, women cannot work in brothels and they cannot

⁶ **Section 2(a)** : brothel” includes any house, room, conveyance or place or any portion of any house, room, conveyance or place, which is used for the purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.

solicit on the street. Section 8 punishes seducing or soliciting for the purpose of prostitution.⁷ It criminalizes the act of solicitation for prostitution, and is being used to arrest and punish women and girls who are victims of trafficking. The CSWs are left to find clients by some other means not involving solicitation. Seeking clients by soliciting is, indispensable to earning a livelihood and this section only lends clout to the police, who tend to harass the CSWs workers by threatening to invoke section 8. This is based on the misguided premise of the International Convention that if the operation of the commercial sex industry is criminalized, the industry will collapse.

A large number of arrests and convictions under the ITPA are secured under Section 8 (Refer to FIG..7. FIRs REGISTERED UNDER IPC & ITPA) Clearly, this section is unlinked to human trafficking and only serves to watch over 'public morals'.

⁷ **Section 8. Seducing or soliciting for purpose of prostitution.** Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not-
a) by words, gestures, wilful exposure of her person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or
b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees.
Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.

In fact the NHRC survey in which data was collected by interviewing 852 police officials (117 senior officials and 735 middle/junior rank officials) presents the following scenario⁸:

- The sex-disaggregated data of law enforcement shows that 93% of those arrested, mainly under Section 8 A (ITPA), 95% of those chargesheeted and 90% of those convicted were women
- 40% of the police officials were not aware of the issue of trafficking
- Only 6.6% of the police officials had undergone some sort of training/sensitization on the issue.
- 54.8% police officers give no priority at all to trafficking, 25.3 give it low priority, 12.2% consider it to be a medium priority issue and only 7.7% think it is a high priority issue
- Reporting on trafficking appears to be only 40%. As stated by the police officers themselves, 60% of the cases go unreported

The Act was amended to make good some inadequacies in the light of the experience gained in its implementation; and presently empowers the State govt. to appoint Special Police Officers for dealing with offences under this Act in a specified area.⁹ The Magistrate may confer upon any

⁸ <http://nhrc.nic.in/ResearchStudies&Project.htm>

⁹ **Section 13.** 1. There shall be for each area to be specified by the State Government in this behalf a special area.
2. The special police officer shall not be below the rank of an inspector of police.
2(A) the District Magistrate may, if he considers it necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally: Provided that no such power shall be conferred on-

retired police or military officer all or any powers conferred on a special police officer with respect to particular cases or cases generally. Enabling provisions have been added to empower the Central government to appoint any number of trafficking officers who shall exercise powers and discharge functions in relation to the whole of India. Thus the trafficking officers appointed under the Act are empowered to investigate offences having inter-state ramifications.

(a) retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an Inspector.

(b) a retired military officer unless such officer at the time of his retirement was holding a post not below the rank of a commissioned officer

(3) For the efficient discharge of his functions in relation to offences under this Act -

(a) the special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers where practicable) as the state Government may think fit: and

(b) the state Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including woman social welfare workers, wherever practicable) to advise him on questions of general importance regarding the working of this Act

(4) The Central Government may, for the purpose of investigating any offence under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one state, appoint such number of police officers as trafficking police officer and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.

CHAPTER 3

METHODOLOGY

OBJECTIVE

The present research studies:

- the limitations faced by the CSWs in accessing the legal system;
- what efforts are made to combat trafficking of persons through prosecution and enforcement against traffickers; and
- what protection and assistance is given to victims of trafficking, the problems and difficulties faced by them and their children.

PERIOD OF STUDY

4 months - 1 November 2005 to 28 Feb. 2006.

Preparatory Work - 2 weeks -1 Nov- 15 Nov 2005

Pilot Study - 2 weeks -16 Nov-30 Nov 2005

Data Collection	- 8 weeks	-1 Dec 2005-31 Jan 2006
Data Analysis &	- 4 weeks	-1 Feb- 28 Feb 2006
Report Writing		

METHODOLOGY

A Project Director headed the research and fact finding activity towards determining the status of cases filed and investigations therein under the provisions of the relevant statutes. A group consisting of 3 investigators under the guidance of a group leader did the investigations and data collection of

- 100 decided and pending cases relating to offences under the Immoral Trafficking (Prevention) Act in the Tis Hazari Courts of Delhi.
- 100 CSWs in Shradhdhanand Marg or G.B.Road.
- Police station of Kamla market

The background note prepared by SAFMA on the basis of which the financial assistance was granted by NCW was circulated to the investigators in order to sensitise them about the objectives and scope of

the research. This note also dealt with the programme of work, expectations of the study, the time frame and their responsibilities.

In order to familiarise the investigators with the interview questionnaires and methods of data collection, a short 3 day training programme was organised . A brain storming session was held and views of the team were taken. The deliberations brought out a spate of suggestions as well as reservations which were kept in mind before finalizing the questionnaire. The methods of data collection and the necessity of being sensitive towards the respondents, etc. were emphasized.

The Challenge

The present research study was exploring uncharted territory, that too of a clandestine activity like trafficking, hence presented a formidable challenge. Locating the respondents was not difficult but getting them to open up and respond seemed an uphill task. The investigators initially faced hostile respondents who were wary of revealing information since they felt it would be used against them. It was not easy to gain their confidence and to assure them that their identities would not be revealed. Despite the fact that initial ice-breaking sessions helped to establish a bonding between the CSWs and the investigators; yet it was felt that and their fear acted as a barrier to eliciting a truthful response. It required considerable ingenuity and perseverance on the part of the investigators to coax them to part with information and to assure them of anonymity. In fact photography was strictly prohibited since the women did not want any

adverse publicity. Interviews were rescheduled, postponed and even repeated to get an indepth view.

Primary Data

Primary data collection consisted of interviews with the CSWs. The investigators chose to visit the brothels to interview the women only after fixing the time in advance, keeping in mind that it would not disturb their “business” or scare away the “clientele”. In fact on the first visit news spread in the whole area that a raid is being conducted and the investigators were almost trampled in the stampede that followed in the narrow staircase. This totally shook up the investigators and they needed reassurance of their safety before continuing their task.

Unlike the experience of other NGOs most of the police officials who were approached were willing to spare time to respond and we must specially mention the name of Shri G.I.Sharma SI, Kamla Nagar Police Station who whole heartedly rendered his cooperation and assistance

Secondary data

Material was collected from published and unpublished sources. Interaction with NGOs and law enforcement agencies; besides critical study of the legal provisions and judicial pronouncements.

THE PROBLEM

Trafficking in women is a complex problem, related to different fields and interests. It can be seen viewed as a human rights or possibly a labour problem, or a problem of organized crime and then logically its solutions will be drafted accordingly. Often the real issues get camouflaged by taking moral stands and measures to combat trafficking aim at suppressing prostitution, either by criminalising all parties in prostitution, including the prostitute herself or by criminalising any third party.

SAFMA through this study has tried to understand the working conditions of the women. How the women involved define the problem? What are their problems, motives and needs, in what do they want to be protected? Instead of excluding the CSW from the debate — as has been done in the past — the SAFMA team has included their participation as an essential condition. However, there is still further need for a debate on the human rights status of CSWs.

Questionnaire

A random sample of 100 CSWs was drawn from the universe being G.B. Road. The methodology used was direct interviews. A questionnaire (ANNEXURE A) was seen as the most effective tool for eliciting information which has been tabulated and analysed, and on the basis of that recommendations have been formulated. It was not an easy task getting the women to open up. The SAFMA team initially faced the hurdle of being greeted by a suspicious silence and the girls insisting that all was

fine. It took hours of building a relationship and probing, before getting the women to answer the questions.

The questionnaire was divided in 6 sections namely; A – General, B – Health related, C- Law related, D- Economic, E –Socio-psychological and F related to their children.

The questions were based on the following design:-

1. Attribute – What the women are, their personal or demographic characteristics age, income, etc;
2. Knowledge based- What women know, how well they understand something;
3. Beliefs, Attitudes and opinions– These questions refer to the psychological state and elicited from the respondents their past, present and future reality.
4. Behaviour based – What the women do, what they have done in the past and what they plan to do.

The questions among others related to the following:

- Age of entry into profession, place of birth, level of education, skills if any;
- Whether married or single, number of children if any, school-going children;

- Principal reason for entering into trade, what made them decide and whether voluntarily or forcible;
- Number of client serviced daily, charge, how do they 'meet' their clients, what is the common process, where do they go, do they have regular clients;
- Relations with other sex workers: indifference, solidarity;
- What is the condition of their health: do they suffer from any chronic disease, do they use condoms, are medical facilities available/affordable;
- Use of drugs: which drugs, what are the reasons for, when do they use it;
- Level of Violence: are they victims of violence, do they feel safe, what is the forms of abuse (physical ill treatment, rape or verbal), how do they escape this violence;
- Have they ever been abused apart from prostitution (family members, domestic violence) Does anyone (family, children) know about their work. What are their expectations in life, do they plan to leave the sex trade;
- Ways in which their working conditions can be improved, do they have any recommendations; did they ever escape from it, did they ever try to find another way of earning money, what were the obstacles (lack of assistance, stereotypes, general mentality, shame, family, fear of pimps).

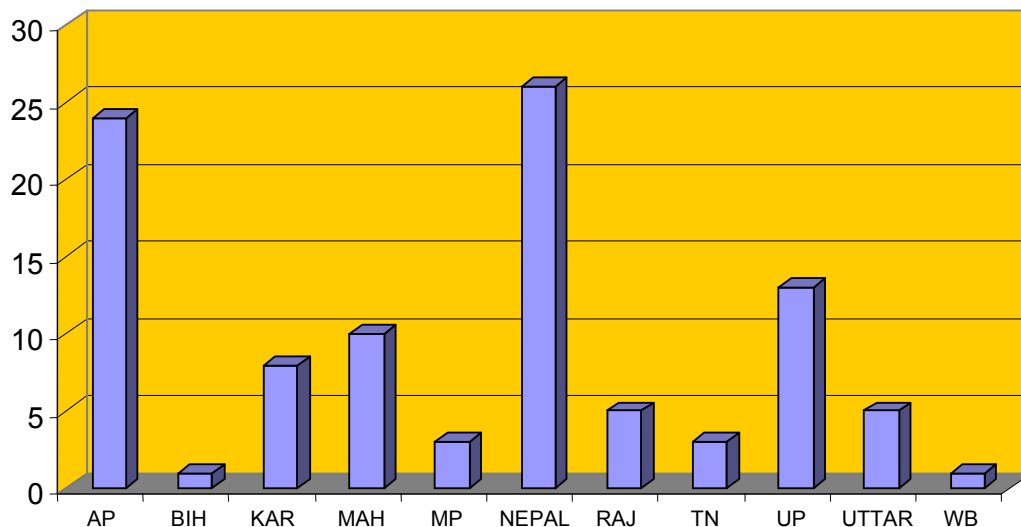
PROJECT AREA

The maximum number of brothel houses in Delhi are in Shradhhanand Marg which is the target area of the research study. Shradhhanand Marg popularly known as G.B.Road Delhi's red light area, consists of an one km stretch starting at the historical ruin of Ajmeri gate, east of New Delhi railway Station to Lahori gate on the other end. Just 7 kms away from the Rashtrapati Bhawan, G.B. Road is the largest hardware and electrical market of India, with shop Nos 40 to 71 on the ground floor and commercial sex workers (CSW) on the upper storeys. It is said that in 1947 after partition of India, the government demolished Kaat Bazaar (opposite the present Tis Hazari Courts) and allotted the upper storeys of the shops to the CSWs.

A chaos of parked cars, carts, cycle rickshaws, scooters, cattle, lined up trucks, one does not get to see the women in the daytime until one climbs the narrow staircases. Most of the buildings are in a dilapidated state and might "collapse any day". Interestingly enough despite their decaying condition, the shops command high property rates. There are approximately 25 shops on G.B. Road housing about 750 CSWs. Old style narrow, barely lit, steep staircases with high steps lead one to the 'kotha' where the women reside and carry on their profession. The 'kothas' consist of a 10' x 10' room where the girls are paraded for the customer to choose from, and he is then serviced in a tiny, claustrophobic, 2' x 5' cabinet-size pokey hole. Some shops which are relatively more upmarket are cleaner which fashionable-looking with sliding doors and mirrors.

The women hail from different states of India and also Nepal (refer to FIG. 1). They prefer to come to Delhi because of the anonymity the metropolis offers. It is interesting to note that the women are not trafficked from states which have a low female ratio namely Punjab and Haryana; but are from states like Andhra Pradesh. In most cases the CSW live in the 'kotha' and parts with her earnings (normally 50%) to the brothel owner. The brothel owner referred to as "NAYAIIKA", normally a lady, is the occupier or person in charge of the premises. In some cases the person who owns the premises also runs the brothel indirectly through an agent who collects the money and this way avoid the perils of being charged with living off the earnings of a prostitute or keeping a brothel. Most of the 'kothas' are divided statewise, since the girls feel more comfortable living with others girls belonging to the same state and who speak the same language.

FIG. 2 STATEWISE BREAK-UP



It is amazing that Andhra Pradesh a state which boasts of being an agriculturally prosperous state and having a large number of educational institutions and a strong R & D infrastructure; has the maximum number of CSWs. The results given in the Statewise breakup given in FIG 2. are similar to the results of the NHRC survey in which out of the interviewed survivors and victims who were trafficked, the maximum (29.5%) were from Andhra Pradesh, followed by Karnataka (15%), West Bengal (12.5%) and Tamil Nadu (12.3%). Intra-state trafficking was also observed to be very high in almost all the states studied except Delhi and Goa.

Working hours:

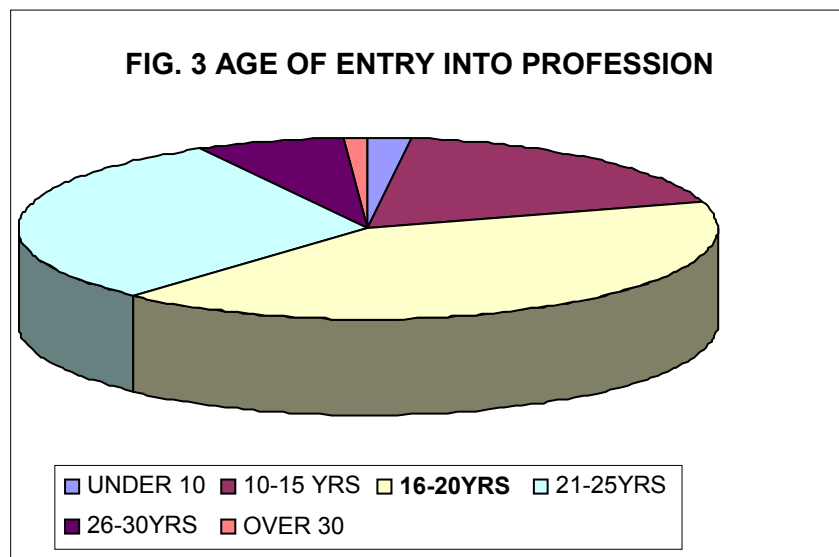
The women normally like to work only after 4 pm since they sleep late (around 3 am) and wake up late (around 11am). Some of the older women operate after 5 am to lure customers since at that time the younger ones have retired for the night. Often instances of violence and nuisance are caused by older women, who forcibly try to lure men plying their trade since this area falls in the main wholesale supply route.

Security :

Security is a major concern and according to the Delhi Police they are seen by the women as "Protectors". The G.B. Road area comes under the Kamla Market Police Station and there are always 2 Police women on duty. G.B.Road is divided into 2 Divisions with each division being headed by a Sub Inspector assisted by an Asst. Sub Inspector and there are 5 Constables in Division I and 6 Constables in Division II. The peak time is from 9pm to 1pm when the police is on high alert.

The CSW are often affronted with drunk or violent customers (knifing incidents are not infrequent) and at this time the police acts as their saviour. The brothel owners mostly have the mobile numbers of the beat constables and do not hesitate to make phone calls if faced with a violent customer or an uncomfortable/unmanageable situation.

The situation becomes volatile when protest rallies are held in Delhi and large number of men (sometimes over 1,000) from other parts of the country before boarding their trains back home come to this infamous area in order to try it out and misbehave with the CSW, who have their own sense of sexual integrity, autonomy and working hours.



Minors:

It is important to distinguish between women and children/minors. Women and children are particularly vulnerable to trafficking for a series of

reasons but they are not the same reasons. Minors have distinct needs for the protection of their rights. The public concern on the issue of child prostitution originated in a land mark judgement of the Hon'ble Supreme Court of India in 1990. In response to Public Interest Litigation (PIL) on the subject, the Court ruled that the States and Central Government should initiate comprehensive measures for the rehabilitative care of such children besides elimination of this social menace.

The SAFMA team was unable to trace any minors. The CSW did not admit their entry into the trade as minors, but on probing and calculating backwards the figures are alarming, for 61% have entered the trade when they were under 21 years of age (refer to FIG 3 AGE OF ENTRY INTO PROFESSION). Again no particular state shows higher number of entrants of minor in compared to others but again most are from Andhra Pradesh, Karnataka, Maharashtra, Nepal and Uttar Pradesh.

Due to the recent strictness by the authorities, sealing off of some shops on directions of the High Court and the fact that the police is constantly keeping a watch on new entrants, makes it difficult if not impossible for trafficking in minors. The local IO Shri G.I.Sharma has devised his own method of keeping a strict vigil and keeps a register in which not only the name of the CSW is mentioned but also her identification mark along with other details, like age, address number of children etc. This helps the police to monitor the activities of the girls whether they have gone to their home town on leave or they are operating, and specially controls the entry of fresh entrants. When trafficking in minors is done in G.B. Road, immediately the police gets the information through the informers who are the NGOs, local vendors and sometimes the customers themselves. Infact

all the CSWs knew the consequences of bringing minors and there was a general fear on this subject, despite the fact that most of them had themselves come as minors many years ago. However, the same is not the case in other localities where the policing is not so strict. The girls themselves admit that their business has been affected since prostitution rackets are proliferating in areas other than G.B. Road (plush cinema halls and residential localities) and attract the moneyed customer.

The Police

The police takes pride in busting prostitution rackets a fact which is highly publicized. The police busted around 40 such rackets and arrested over 150 people till July 10, 2005 (The Hindu, Jul 31, 2004). Unfortunately there may be a mistaken impression not only among the police but also the authorities that the Act is to be used to focus on curbing the menace of prostitution, whereas, infact the objective of the Act is to Prevent Immoral Trafficking for which there are absolutely no guidelines. Little headway appears to have been made towards this end since the due to lack of concrete evidence the acquittal rate is high and the same persons, mostly females, are repeat offenders.

The Courts :

The problems of lack of evidence leads to a low conviction rate; and long drawn out cases and light punishment only add to the police's woes as the real offenders manage to go scot-free.

FINDINGS

SAFMA cannot claim that the present research study has answered all the questions and addressed all the concerns that surround this multidimensional problem. But it definitely has made an attempt to unravel some of the key issues. The data collected and analysed may not be exhaustive but is definitely indicative of the problem and its dimensions. A comprehensive picture emerges on the nexus of trafficking and how it works, who the victims are and why they are victimized. The present research studies the socio-economic backgrounds of the people involved and how the law impacts their lives.

“ I was raped by the neighbour and had to leave the village in shame. Since I was no longer a virgin, I was initiated into this profession”-No.31.

-BOX 3

Extensive consultations verified that there is a severe lack of concrete data from which to build an accurate picture of the scope of trafficking. Traffickers go to great lengths to avoid monitoring of their illegal activities and any available data must be treated with caution. The lack of data and solid body of research has also led to the building of certain myths and assumptions about trafficking that need to be questioned.

As a Gender Issue

Gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women, key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993. Yet gender disparity manifests itself in various forms and women form specially disadvantaged groups. These groups include women in extreme poverty, destitute women, women in conflict situations, women affected by natural calamities, single women in difficult circumstances, women supporting the entire household, women who are victims of marital violence, deserted women. Women belonging to these disadvantaged groups are vulnerable to being exploited or being trafficked. Out of the women interviewed 52% had been married but were now widowed or deserted by their husbands. Any woman living on her own was the target of harassment or “*huri nazar*’ by males. Gender discrimination and the low status of women results in them having fewer options or means available

“ My husband and mother in law used to beat me and did not give me food to eat, since according to them I had brought insufficient dowry.”-

No17

-BOX 4

to them to counter the deceptions of traffickers and as a result women are more vulnerable to threats of violence than men.

The percentage of women who married before attaining the age of 18 years was as high as 71 per cent in Bihar, followed by Rajasthan (68 per cent), Madhya Pradesh (64 per cent), Andhra Pradesh (62 per cent), UP (47 per cent), Maharashtra (46 per cent), Karnataka (45 per cent) and West Bengal (41 per cent) (National Family Health Survey). Thus it made the girl child all the more vulnerable to the threat to violence including physical and mental violence, whether at domestic or societal levels, by customs like dowry. A CSW is

“ I was married at 12 years of age and had 5 children. My husband deserted me. I tried my hand at all professions, cleaning dishes, working in an export house etc, but nowhere was I safe. Finally I came here.”

– No 13

- BOX 5

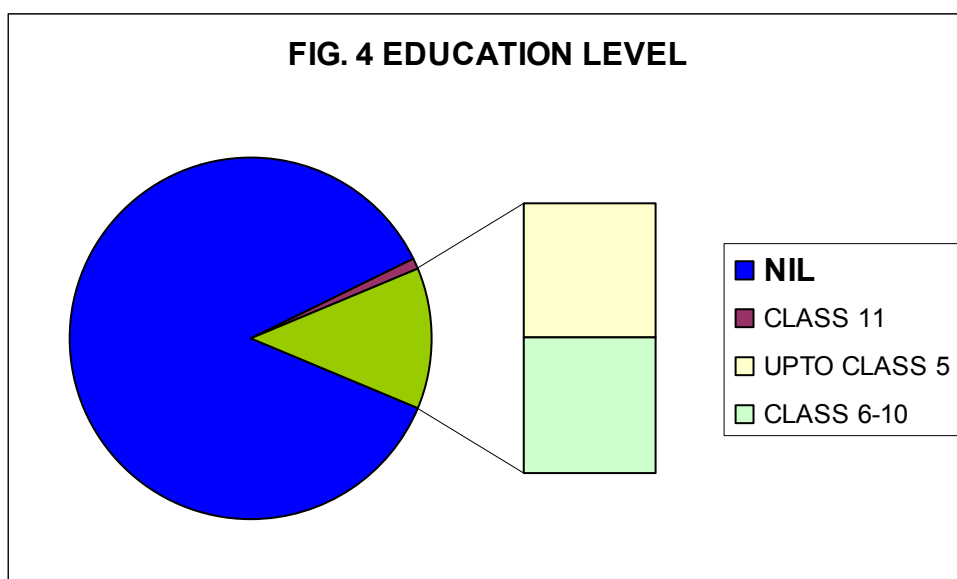
prone to violence not only by the customers but also the police and third parties and do not always get appropriate protection, not even sometimes by Courts; since attention gets focussed on defining whether a woman is worthy of protection rather than the violence. With this attitude it is no wonder that violence against women continues to be a problem in society. Thus violence against prostitutes endangers not just women, but society in general. However in the present study 66% of the women were satisfied with the protection being given by the police. This may not be the norm but due to the individual efforts of the Inspecting Officer who had given his and his *sepahis* personal mobile number to the women in his jurisdiction

and told them to contact them immediately whenever they had apprehension of violence.

Article 6 of CEDAW calls on states parties to "suppress all forms of traffic in women and exploitation of prostitution of women"; however, there is no mention of the reasons for which women and girls are trafficked. The meaning of the language has been clarified and expanded by the Committee on the Elimination of All Forms of Discrimination against Women (the Committee), which oversees implementation of the Women's Convention. In its General Recommendation No. 19 on Violence Against Women, the Committee recognizes that "poverty and unemployment . . . force many women, including young girls into prostitution" and that "prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them" and consequently calls for "equal protection of laws."

“ I was lured by my neighbours to Delhi on the pretext that I will be provided a job and I landed in the prostitution racket. On my complaint I was rescued by the police” – FIR.

-BOX 6

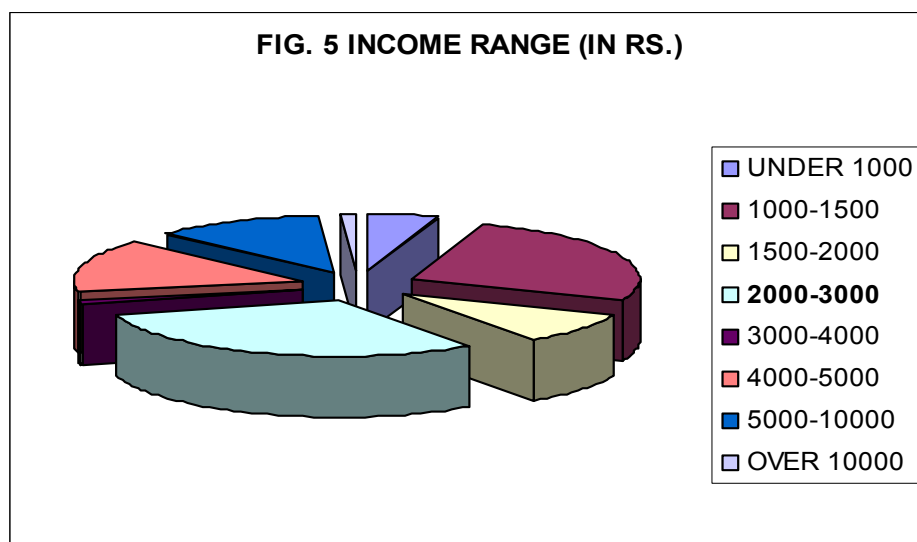


Lack of education and inequitable property and inheritance rights can also disempower women, increase their vulnerability to being trafficked and limit their access to health care and economic opportunities. Infact 82% of the women interviewed had no education and the 2 girls who had studied upto class 11 and 12, belonged to a caste for whom this profession was a traditional trade carried on from mother to daughter.

Again the exclusion of the informal labour sectors – where thousands of women/CSWs make a living for themselves and their families through this work - from labour law protection, constitutes a form of indirect discrimination and thus a violation of the CEDAW to which India is a party. Most of the women earn less than Rs 3,000/- which is barely minimum wages. From the study it appears income is not directly related to age or level of education, however the older women grow they move out of the

profession and become brothel managers, inducting fresh girls consistently. The price per customer ranges from Rs10-120 (for approx. 15 minutes), with the average being Rs.50/- Customers who stay the whole night are charged RS.300-500. Dancing girls or those women for whom this profession is a family tradition earn more since there is no fixed rate and depends on the customer's level of appreciation. However, middlemen, brothel-keepers and employers will clearly be in a position of power, as long as the CSWs lack any legal protection of their rights as workers.

The expenditure pattern was also analysed and the major item of expenditure was food (they did not cook in the brothel but ordered from outside) with clothes and cosmetics coming next. A large amount of their earnings was sent home to support persons dependent on them.



As a human rights problem

The right to work is an inalienable right of all human beings and so is the right of free choice of profession {CEDAW Art.11(1)(a)&(c)}, then it follows that CSWs should have the same human rights as everyone else. Human rights instruments recognize the "right to work, which includes the right of everyone to the opportunity to attain his living by work which he [or she] freely chooses or accepts" and which is "an inalienable right of all human beings." However, CSWs are denied full realization of this right, both by international law and national laws. They are considered less than human and their rights are selectively recognized, based upon the perceived morality of the work involved. Some people support the protection of the human rights of CSWs, as women, but object to her right to work as a CSW on the ground that such a right "usurps and negates already established human rights of the woman to human dignity, bodily integrity, physical and mental well-being". **A distinction must be drawn between prostitution as a matter of personal choice and a form of work and trafficking in persons (women) considered a slavery like practice to be combated.**

Sex work has often been identified as a form of violence against women, but that is always not the case. Women experience violence in different forms. According to the Crime Against Women Percent Distribution 2003, Immoral trafficking of women and kidnapping & abduction consisted of only 3.9% and 9.5% crimes respectively; as against 36.1% for torture, 23.4% for molestation and 4.4% of dowry deaths (Source: *National Crimes Record Bureau, Ministry of Home Affairs*).

For most CSW it is not the work as such that violates their human rights, but the conditions of deceit, abuse, violence, debt-bondage, deprivation of freedom of movement etc. The Criminal law system isolates prostitutes from their family, both by exacerbating the stigma of prostitution with a criminal record, and

*“ I support 7 brothers,
1 sister and my
mother.” – No. 2*

-BOX 7

because contact with the prostitute can lead to criminal charges -- living with a prostitute can result in "living on the earnings" charges. The "living on the earnings" charge demeans not only the individual against whom it is made, but also the prostitute making it, inferring that they are emotionally incapable of normal relationships and intellectually incapable of handling their own money. Yet 85% of the women send their income home and not only are their children dependent on them but also other blood relatives like mother, sisters, grandmother etc.; some of whom were aware of the profession of the girl (refer to FIG 6.) According to the present law (S. 4 ITPA)¹⁰ all of them can be charged with "living on the earnings".

¹⁰ **Section 4. Punishment for living on the earnings of prostitution.** (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of a woman or girl shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

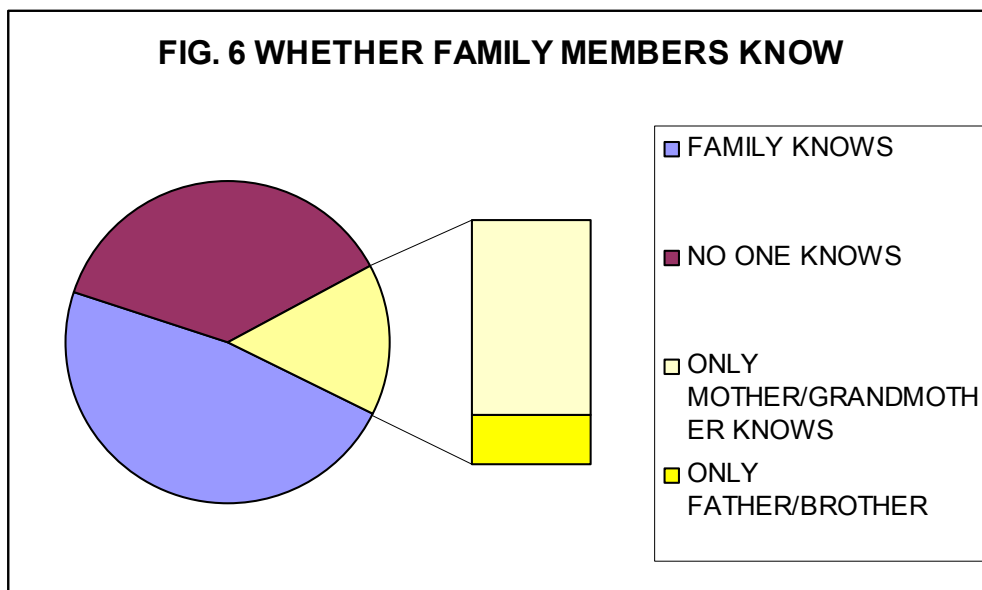
(2) Where any person over the age of eighteen years is proved- (a) to be living with, or to be habitually in the company of, prostitute; or

(b) to have exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute,

it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section.

Linkage with family: The present study reveals that the women send home approximately **50% of their earnings ranging from Rs. 500-4,000/-**. Out of the women interviewed 53% had not told their families what their profession was, however on probing they admitted that they had taken some member of the family in confidence. The common perception of the families was that the women were working as domestic workers or in an export house. One of the CSW who also is running the brothel admitted that sometimes their children were suspicious as to the source of income however, they never discussed it. Specially since the women had no husbands and did not talk about their work, nor did they bring their children to Delhi. 46% of the CSW were unmarried, out of which 9 had 1 child, 14 had 2 children and 6 had 3 children. In case the child came to Delhi it was put up in a guest house/hotel in another area.



All the women interviewed did not want their daughters to enter this trade, even those for whom this was a traditional profession. Infact among the women for whom this was a traditional profession, a very high level of frustration was visible. As has been stated before the girls belonging to this group were the most educated, but did not have the freedom to exercise a choice over their profession, since family pressures and observance of custom took precedence over their own desire.

It is pertinent to mention here that most of the women who replied in the affirmative that their families were aware of their profession, were those for whom this was a traditional profession, while for the others their families saw them as the “golden goose” to be exploited economically (FIG 6). This reiterates the results of the NHRC survey where 160 Traffickers were interviewed (both male and female traffickers with the ratio being approximately 50-50) and 39.6% held family members or relatives responsible.

Aspirations : The present research also attempted to study how the CSWs viewed their future. On being asked whether they would like to continue in this profession, 78% answered in the affirmative. However they did not want their children to follow their mother’s professions, even those for whom it was a traditional profession. This affirmation to continue in the profession arises due to stark acceptance of reality and lack of alternative sources of employment/livelihood option. But the women had great hopes for their children and put great stress on their education. They wanted to keep them away from this atmosphere and sent them to hostels. Rarely did a CSW keep her child with her in G.B.Road after reaching the age of 7years or being capable of understanding the intricacies of the profession.

As a health problem

The common perception of CSWs using drugs was overturned. None of the women interviewed was dependent on drugs and only 15% had a limited intake of pan, gutka, tobacco and liquor. Infact on days when they are fasting or other religious days they not only abstained from liquor but also sex. This practice largely depended on the culture of the brothel and the brothel owner. The concern that alcohol or drug dependency may prohibit a prostitute from leaving this life since she will require greater sums of money to support the drug habit, is totally unfounded.

A more recent concern is that CSWs are prime carriers of AIDS. However, again studies have shown that CSW are actually lower risk HIV carriers than their customers. In general, studies tend to point to needle use, not prostitution as the main source of AIDS transmission. Infact the CSWs (unlike their clients) are very particular about safety precautions. All the women interviewed admitted to using condoms. Condom usage has "risen considerably" and most CSWs

now ask the men to wear condoms. Infact the condom awareness is very high despite the fact that 20% do not have knowledge of AIDS and the balance 80% knowledge is limited to the fact that AIDs is a dreaded and incurable disease. Some men comply without demur and even bring their own "branded" ones. The women candidly stated that they try to explain to

“First we used to have frequent abortions and the use of condom was not popular, but now we refuse a customer if he does not use protection” – No12

-BOX 8

a customer the advantages of safe sex, and in case he refuses to use protection or tries to slip some extra money, he is firmly shown the door. Only 2 women said that after explaining if the customer still insists, then they don't refuse for fear of losing him to another worker.

When there is shortage of supply of free condoms by the government the women along with local NGOs have even approached the authorities. This strengthens the view that CSWs should be recognized as "workers" and given appropriate legal status, but if they are forced to go underground or operate alone AIDS cases will increase. "They are an integral and important part of the national campaign against HIV/AIDS and there is no way in which their concerns can be overlooked" (NACO Director, Sujatha Rao). Although local NGOs claimed that women who tested HIV positive just disappear. What really becomes of her, and whether it spells an end to her career, or does she simply shift base from one city to another, no one knows. **This "disappearance" could have serious consequences.**

The women appeared in a good mentally condition and all those interviewed claimed to go for regular medical check-ups. Most of them went to the local government hospital (Girdharilal) and were quite familiar with it. The CSWs prima facie appeared cheerful and had harmonious relations with their colleagues in the same brothel and lived like a large family. Undoubtedly there were little skirmishes, which is but natural when so many members are living together in a highly competitive profession. The women stated that they were quite confident that once a customer came to them he went back satisfied. Though all men came for sexual pleasures, a large number also came to experience sex for the first time., which accounts for the large number of young boys. Some customers

even spent time talking to the women. What is most amazing is that customers are the source of the women's awareness on political, economical, social and other issues (all in 15 minutes).

It also needs to be pointed out here that besides legislative efforts one can also think about an alternative collective effort by the active involvement as health workers, the peer educators. There is a HIV/STD control Project that has been running in Sonagachhi since 1992. The project provided the initial space for building mutual support, facilitating reflection and initiating collective action among sex workers.

The Sonagachhi Project, clearly recognized that even to realize the very basic project objectives of controlling transmission of HIV and STD, it was crucial to view the problem in totality. It is essential to view the CSWs as complete persons with a range of emotional and material needs, living within a concrete and specific social, political and ideological context which determine the quality of their lives and their health, and not see them merely in terms of our sexual behaviour. In a short small spell of five years, the programme was successful in extending its approach from a medical intervention project to wider sociological issues associated with the AIDS question. A lesson can be learned from such projects, which when replicated in other parts of the country can provide a lot of support to sex workers in their fight against vulnerabilities and exploitation.

As a labour problem

Economists and governments do not recognize CSW as workers and do not incorporate the value of their labor into calculations of a country's gross domestic product, instead there is a tendency to treat the women as deviants. These laws and regulations are universally abused by police entrusted to enforce them. SAFMA rejects morality as a legitimate basis for depriving women who are not harming anyone of the right to work.

Some of the CSW interviewed stated that they make more money selling sex than they could ever earn in a "straight" job. They pointed out the exploitation of women is often worse in factories than in brothels. The only difference between a woman who works for exploitative wages under exploitative conditions in a factory and the woman who works for exploitative wages and under exploitative conditions in a brothel, is the nature of the work. Women in both occupations are "victims" in the sense that they live in a patriarchal, sexist society that channels women to the lower end of the socio-economic ladder and into exploitative working conditions. However, it is unfair that society should treat them differently; being willing to fight for the rights of the factory workers while it refuses to accept the rights of the CSWs.

Rights should not be determined by morality, with women making the "immoral" choice having to suffer the consequences. Alternately, at the same time, young women are bombarded with promotions for consumer goods and glamorous lifestyles and are tempted to join in the "good life." Thus, many women choose to work in the commercial sex industry where they have the opportunity of making more money, working fewer hours

under conditions that are no more or even less dangerous or dehumanizing than in the factories, living in better accommodations, and having more personal freedom.

Although the concept of trafficking is defended as protecting people against violence and abuse, in practice anti-trafficking measures are being used to justify repressive measures against CSWs which only further stigmatise, marginalise or criminalise them. As also stated by the Ministry of Labour, it is in this context that a need has been felt to extend the status of workers to the sex workers and the International Labor Organization (ILO), the official labor agency of the United Nations, had urged for economic recognition of the sex industry and enact laws which would protect them from their vulnerabilities (ILO, 1998). By looking at commercial sex as work, and at the conditions under which that work is performed, sex workers can be included and protected under the existing instruments which aim to protect all workers in a general way, all persons from violence, children from sexual exploitation, and women from discrimination. “An examination of international human rights and labor standards reveals that most issues of concern to sex workers could be subject to the international instruments already developed to protect the rights of others. This approach contrasts with the historic treatment of prostitution at international level.”

Therefore, to effectively counter trafficking, policy interventions should focus on the forced labour and slavery-like practices which are the outcomes of trafficking no matter how the women have arrived in that situation. These practices, as reflected in the voices of the women

interviewed, are the result of the poor legal and social position of women: women as workers and as migrants.

It is a fact that “the intention behind increasing penalties in prostitution laws may be to discourage participation in the sex trade and thereby reduce health risks. In reality, however few prostitutes are discouraged by tougher laws. Instead such laws make them even more vulnerable.” It is imperative to recognise the work of the CSWs (being in the informal sector) as legitimate work and remove the moral bias that separates prostitution from any other work. CSWs should be protected by labour law aimed at improving working conditions: basically the same mechanisms and instruments that have been employed since the beginning of the previous century to combat exploitation and abuse in other labour sectors, that is, labour law and civil law. Our focus should change from the development of “new” instruments to combat trafficking to the application of “old” instruments to women’s work in the informal female-designated labour sectors. For presently the well-intentioned anti-trafficking initiatives are compounding discrimination against women and further endangering the precariously held rights of individuals working in prostitution.

As a problem of organized crime

Trafficking denotes the requirement, transportation, transfer etc. of human beings for the purpose of exploitation which may be sexual exploitation, slavery, involuntary servitude or even removal of organs. Persons who are in the business of trafficking use the trafficked persons as personnel for other criminal activities, such as illicit work, organized beggary, drug trafficking and other forms of sexual exploitation. Thus the horizontal interdependency is particularly profitable for those trafficking in persons; since organized crime yields profits both from the traffic itself and from the exploitation of the trafficked persons as manpower for other criminal purposes.

As the title suggests The Immoral Traffic (Prevention) Act, 1986 aims to inhibit or eradicate the trafficking of persons, namely women, men and children. The ITPA is not only a penal legislation but also a social welfare legislation with the aim of rehabilitation and correction. The aim is not to render prostitution “per se” a criminal offence or to punish a woman merely because she is a prostitute. Trafficking has been defined as a problem of the criminal law and the criminal justice system, but **unfortunately combating prostitution has become equated with combating**

“ I was raped and kidnapped by a sadhu and dalal and then brought to GB Road. The police lodged a FIR on my complaint and arrested two women. However they both have been acquitted and the real culprits the two men are free to destroy other girls lives” –

FIR 109

-BOX 9

organized crime. The fact is that instead of catching the trafficker who continues to elude the police it is the women who becomes the target. Apart from the risk of secondary victimisation, criminal proceedings expose women and their families to the risk of retaliation from the perpetrators, harassment by the authorities or stigmatising exposure to her home village community.

Buying and selling of minors for the purposes of prostitution ie. trafficking, is a grave offence, under the Indian Penal Code (IPC), sections 372¹¹ & 373¹² , and merits maximum punishment of 10 years. The same quantum

¹¹ **Section 372. Selling minor for purposes of prostitution, etc.**—Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage, or by any union or tie which though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

¹² **Section 373. Buying minor for purposes of prostitution, etc.**—Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II.—"Illicit intercourse" has the same meaning as in section 372.

of punishment is awarded under Section 366¹³ which deals with kidnapping a woman to compel her to marry or is forced to illicit intercourse. Sections 342, 352, 360, 362, 365 368 and 506 deal with punishment for wrongful confinement, punishment for assault or criminal force otherwise than on grave provocation, kidnapping from India, kidnapping from lawful guardianship, abduction, kidnapping or abducting with intent secretly and wrongfully to confine person, wrongfully concealing or keeping in confinement, kidnapped or abducted person and punishment for criminal intimidation respectively. Though it has been often suggested that trafficking networks are widespread and highly organized, operating underground out of reach of the legal system; but the results of the study by the SAFMA team do not appear to prima facie show the presence of any organized network. Infact on the contrary it was seen that the system survives on unconnected individuals who acts as suppliers like pheriwalas, small shop keepers, workers, domestic servants etc. who are in contact with the CSW for different reasons (refer to the Trafficking Cycle). On being questioned as to suggest ways in which they could help society in eliminating trafficking and commercial sexual exploitation of women and children, most had no answer since they also indulged in

¹³ **Section 366. Kidnapping, abducting or inducing woman to compel her marriage, etc.--** Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

Section 366A. Procuration of minor girl.--Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

trafficking, mainly in order to alleviate their financial situation. However the recent raids and sealing/closure of brothels had made them conscious of the gravity of their actions.

However, the laws are ultimately harmful to both the CSWs and public because they reinforce and encourage negative double standards regarding what is or is not acceptable female behaviour. Acceptable female sexual behaviour is much more narrowly defined than male sexual behaviour and reflects societal bias against sexually promiscuous women as opposed to our tolerance of sexually promiscuous men.

Out of the 110 cases studied most of the cases had been charged under section 363¹⁴ and in 21 cases the FIRs were charged under section 376¹⁵

¹⁴ **Section 363. Punishment for kidnapping.**--Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹⁵ **Section 376. Punishment for rape.**--(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,- (a) being a police officer commits rape-

- (i) within the limits of the police station to which he is appointed; or
- (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
- (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

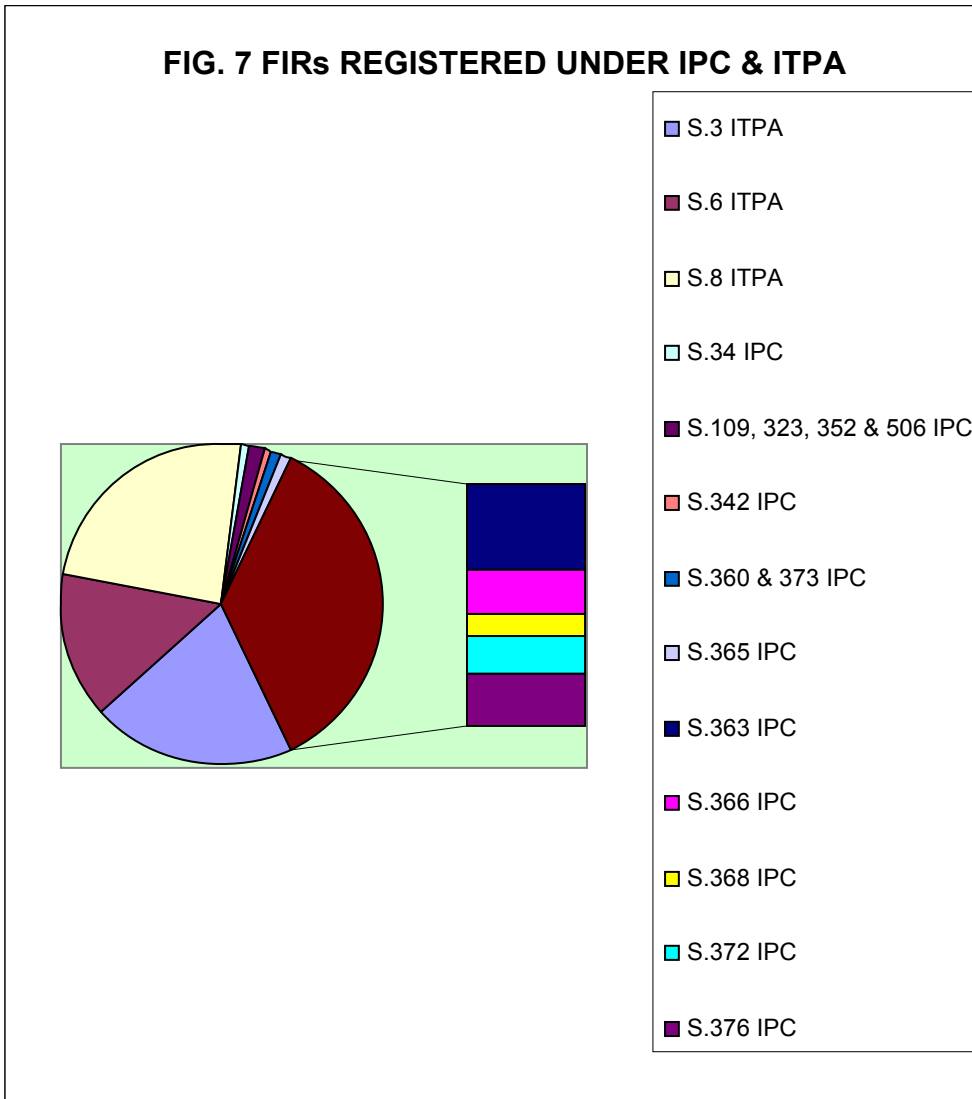
(f) commits rape on a woman when she is under twelve years of age; or

which deals with rape. Out of these there were 13 convictions, 4 acquittals and 3 cases were still pending adjudication. However on the basis of this sample it is not possible to comment on the acquittal rate or vice versa on rate of conviction. It was observed that the accused persons were often habitual offenders since they had been also named accused in other FIRs of the same nature. Mostly the accused were women, in fact one Shakuntala had been implicated in as many 10 FIRs since 1983 to 2004, and had been convicted in 7 cases and acquitted in 3. Mostly the conviction ranged from rigorous imprisonment of 5 to 7 years and fine of Rs. 20,000/-.

The police network of informers was seen to be efficient since most of the cases registered in Kamla market Police Station related to trafficking of minor girls. Mostly the FIRs were registered on the basis of secret information and raids carried out in which minor and innocent girls were rescued, who subsequently became the prosecutrix. The girls had been lured from the village to Delhi on the false pretext of getting them a job, some had been picked up by a dalal wandering at a railway station, while some had been sold by known persons to a dalal. The police in Delhi claim to have adopted policies that show greater care for trafficking victims; and they normally do not arrest women involved in prostitution for

(g) commits gang rape,
shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:
Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.
Explanation 1.-Where a women's is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

solicitation unless there is a complaint and they are creating a public nuisance.



The IPC takes strict action against traffickers. The ITPA was meant to complement it in order to curb trafficking, but it has in fact further criminalized prostitution. Furthermore, under the ITPA, prostitution is not a

crime; the ITPA criminalizes only solicitation or engaging in sex acts in or near a public place. This ambiguity, which was intended to protect trafficking victims, instead is used to exploit them. The law on it is divided into two segments: those which are meant to protect prostitutes from third parties (e.g. those laws dealing with procuring, living on the avails of prostitution (section 4), running, keeping brothel or allowing premises to be used as brothel (section 3); and those laws meant to protect the public from the "nuisance" effects of prostitution (e.g. the law against public solicitation, section 8 and removal of prostitute from any place section 20). Unfortunately, however neatly we might categorize the legislation, it does not change the fact that the criminal provisions do not act in isolation from each other. Section 8, while meant to focus solely on "protecting" the public has the unintended affect of endangering prostitutes, thereby defeating the goals of section 3 and 4. In general sections 8 and 20 have tended to increase the vulnerability of prostitutes. Despite assurances from the police that they view the CSWs as victims, yet large number of FIRs are registered under section 8 (refer to FIG. 7). First of all, prostitutes' working conditions have worsened because fear of arrest places the emphasis on avoiding detection rather than on health and safety.

Section 8 cannot protect the public from the supposed negative side effects of prostitution (disease, crime and rising sexual frustration) because prostitution is not in fact the cause. Section 8 goes beyond general nuisance laws in that it **allows a prostitute to be charged whether or not they are creating a public disturbance/nuisance.** Normally the police makes an arrest based solely on an exchange

between the decoy customer and the prostitute targeted. It was observed that some of the FIRs studied were lodged by complainants who complained of seduction and appeared to be decoys since the name of one Ram Singh and one Sanjay appeared repeatedly in many FIRs. While most undercover police will try to get the prostitute to be the one to mention price and "menu" first, charges have been laid when the prostitute has merely nodded in answer to questions regarding services and price. Most of the FIRs have the same statement of the prostitute saying "I will give you sex better than you have ever had before". Presumably then, the idea is that the very existence of prostitution, regardless of its public manifestation, is a criminal offence. In fact the women who indulge in trafficking and are habitual offenders jump bail becoming proclaimed offenders, and possibly start operating under a new identity in another area.

From the facts it is clear, criminalization doesn't work. It entrenches rather than reduces prostitution, and is detrimental to the control of violence in society in that it takes money and officers away from controlling serious crime. As a result it is the CSWs who become the targets rather than the traffickers.

The expense of enforcing prostitution laws drains resources for the prevention of other more serious crimes. Not only is it an ineffectual method of "protecting" the public from the dangers of prostitution, it also inhibits the ability of law enforcement officials generally to protect the public from other, arguably more serious forms of crime. There are as well court or incarceration costs. However, even in cases where the accused plead guilty it takes almost a year to conclude the case. If the hourly costs

are calculated the expenses would be phenomenal. Should a conviction result in a jail sentence, there are potential incarceration costs. The average cost for keeping an adult inmate in judicial custody needs to be calculated. The accused are kept in Tihar jail, which is already over crowded, while awaiting a bail hearing, or if bail has been refused while awaiting trial. Infact in most cases studied the accused were kept in judicial custody till the final decision of the case. In cases where bail has been granted, often the accused women did have someone who would stand guarantee for them and as a result they continued to languished in jail.

Then to be taken into account is the cost of police officers testifying. Officers required to testify spend virtually 5 hours in court and their statement may not be taken that day. In most cases there are more than 20 witnesses and in some cases there are even upto 50 witnesses, and still the culprits and accused persons get away. This however, results in entire shifts being detailed for court, leaving no one for patrol duty. It also cuts back on the amount of available backups. Every prostitute arrested and processed through the system means there will be one less police officer available for your protection should you need them. Unfortunately even though the Apex Court has called them victims but has passed moral judgement on them by categorising them as “fallen women”.

CHAPTER 4

CONCLUSION & RECOMMENDATIONS

RECOMMENDATIONS

Incorporated in the recommendations are the silenced voices of these legally and dismissively disempowered women which need to be heard, demythologizing public perceptions and ensuring that the special knowledge and experience of CSWs is reflected in the development of any laws relating to them. Without the input of the CSWs, all attempts to create a legal framework within which the rights of CSWs can be protected are bound to fail. Therefore, the goal is twofold:

1. Firstly, to empower women through the elimination of abusive laws; and
2. Secondly, to punish persons who abuse and exploit the true victims.

In the hope of improving the CSW access to the justice system and helping ameliorate the prevalence of maltreatment / violence against them perpetrated by police and other organs of the state the following **legislative, administrative and human rights approaches** are suggested:

LEGISLATIVE

A. AMENDMENTS IN THE ITPA

- i. The Act does not provide for a clear and precise definition of “prostitute”. **The word “prostitute” should be replaced with the term “commercial sex workers”** in the ITPA Act and the term “commercial sex workers” to be specifically defined, thus reorienting the frame of reference away from the world of morality embedded in the term "prostitute" and towards the commercial nature of the work.

For purposes of this Act "commercial sex work" should mean any consensual sexual activity among or between adults whether for money or any other consideration.

For purposes of this Act, nonconsensual sex acts, whether perpetrated by fraud, threat of force, or force, as well as any sex acts perpetrated against minors would not be considered as "commercial sex work" and should be referred to instead as "criminal sexual acts," collectively.

- ii. **Section 8** which prohibits “soliciting” should be repealed. In any case if a CSW is making creating a public nuisance, she can be charged with section 268 of the IPC dealing with public nuisance.

Solicitation should be legalized, except when it takes place within 200metres of any place of religious worship, school or

hospital etc, which in any case is protected by Section 7. This would help reduce the confusion over where solicitation could take place and also limit the discretionary powers of the police to harass prostitutes.

This is in harmony with the recommendation No. 19 of the Committee on the Elimination of All Forms of Discrimination against Women, which pinpoints the role of economic factors and seems to distinguish between women who enter as a result of economic factors and women who are trafficked or otherwise forced into the industry. It also acknowledges that victimization can arise as a result of the negative and marginalizing effect of laws that force women to work illegally. By implication, if repressive laws are changed and women can work legally, then women will be less vulnerable to violence and abuse.

The present Act clearly intends to deprive CSWs of the ability to work because, if the law is implemented perfectly, women cannot work in brothels and they cannot solicit on the street. They are left to find clients by some other means not involving solicitation. This was in line with the misguided underlying premise of the International Convention was that if the operation of the commercial sex industry is criminalized, the industry will collapse. The message is clear that: contracting parties agree to punish "any person who, to gratify the passions of another, procures, entices or leads away, for purposes of prostitution, another person" or otherwise "exploits the prostitution of another person," even if the person selling sexual services consents.

Unfortunately by rejecting the possibility of non-coercive consent, it rejects the ability of women willingly to sell sexual services, hire agents (pimps), or enter brothels. It conjures up a world of ignorant, misguided, or perhaps base women and girls who have to be saved from themselves. The Trafficking Convention creates a dissonance and a human rights problem because it recognizes the lawful ability of CSWs to ply their trade while, at the same time, depriving CSWs of the right to have their consent recognized as legitimate or to choose their conditions of work.

- iii. Amendment should be made in the last part of the definition of brothel given in **Section 2(a)**, from “ or for the mutual gain of two or more prostitutes” to “...or for the mutual gain of **more than two** prostitutes/commercial sex workers”; Often it is not safe for a single girl to live alone, so two girls should be allowed to live in the same premises and carry on their trade.
- iv. **Section 4** which relates to punishment for living on the earnings of prostitution should be deleted. The "living on the earnings" charge demeans not only the individual against whom it is made, but also the prostitute concerned, inferring that they are emotionally incapable of normal relationships and intellectually incapable of handling their own money. As seen from the study 85% of the women send their income home and support their families, and normally the mother is aware of the source of the income.

The law should respect the right of adult women to choose a way to make a living. It should not treat CSWs, or brothel owners, or anyone else "living off the earnings of" CSWs as criminals unless they use violence (e.g., assault), force (e.g., false imprisonment), or non-economic coercion (e.g., blackmail). It will empower the women to control the conditions of their labour.

- v. Strict penalties for perpetrators of trafficking and **specific offence of trafficking to be incorporated** in the Act in keeping with the criminal law.

The definition of trafficking has been incorporated in the Act, however there is no reference to trafficking anywhere else in the Act. No offence of trafficking has been created and the prosecution continues to invoke provisions against brothel keeping, earning from prostitution, procuring and detaining, which are all related to sex work.

- vi. Strict implementation of **Section 13(4)** which authorizes the appointment of a centralized anti-trafficking force with interstate jurisdiction.
- vii. The CSW should not be treated on the same footing as the other offenders who exploited them and were guilty of aggravated form of offences under the Act. **Section 20 should be repealed** which unilaterally empowers a Magistrate to

remove a prostitute from any place within the local limits of his jurisdiction.

- viii. **During raid /rescue operations** the presence of Special Police Officers, social worker or NGOs or person from the community should be legalized through the enactment of law.
- ix. Court procedures should be hastened and legal formalities to be made as uncomplicated as possible. There is provision for setting up Special Courts and summary trial. The Act should specifically mention the **time period for final disposal of cases** under this Act.
- x. The Act should make provision for the **regularization, control and supervision of the activities of the corrective institutions and protective homes**. Though the 1996 amendment provides for records and documents to be kept on every inmate, the Act does not specify any regular or supervisory body to monitor the activities or keep a check on the running of such institutions. Most of these institutions lack provisions for bare human facilities and necessities and also operate as dens of vice themselves despite provisions of section 21(10) which provides a paltry punishment of fine upto RS1,000/- for first offence and a punishment of a period of upto 1 year on subsequent offence.
- xi. The Act does should make provisions of **shelter** for those women and girls who are in vulnerable situations or likely to fall victims. In fact, runaway cases or cases without any proper

references are refused admission in the homes on the grounds of rules and regulations.

xii. All categories of offenders, under-trials, convicts, first timers, habitual brothel- keepers, flesh traders, should **not be clubbed** together in the 'homes' under the Act without any segregation or differentiation.

xiii. A **State Level Board** should be established in each State to review and assess the steps taken to curb trafficking and the progress in the matter of rescue and rehabilitation of the trafficked persons, especially women and children who are required to be rescued and rehabilitated as per the provisions of the said Act.

- The CSWs to be represented on the Board and made members. To encourage local officials to take prostitutes' groups seriously the CSWs must be given some sort of official acknowledgement (at the state and district level) of their legitimacy.

- The Board should have the power to issue licenses and inspect premises for health and safety violations. Should a violation be discovered, the Board should have the discretionary power to revoke the offender's licence. It is also envisaged that the Board would be able to receive and arbitrate complaints from workers and managers

- xiv. Establishment of **District Level Boards** to inform, by suitable publications, posters or handbills in the localities involved, the women and girls working as prostitutes, about their right to make application under Section 19 for being kept in a protective home/ corrective institution and also about the facilities available in such homes and institutions under the various provisions of the State Governments Rules; particularly drawing their attention to the provisions showing the facilities that are required to be made available in such homes/institutions, such as medical examination of inmates, daily routine of inmates, diet to inmates, supply of clothes etc., living space for inmates, religious and moral instructions to inmates, libraries for protective homes/institutions, and similar ameliorative provisions.
- xv. It should be obligatory on the part of the police officer and the magistrate dealing with such cases under the ITPA to ensure that the trafficked persons, including other victim CSWs and the traffickers and persons committing offences in respect of the Act, including those who are involved in controlling and exploiting trafficked persons and other victim CSWs are duly identified. The law is required to be strictly enforced against traffickers and those involved in controlling and exploiting CSWs and committing offences in respect of CSWs.

It would be highly inadvisable to add Section 5C in the ITPA, an amendment which is being contemplated. This amendment intends to make customers liable by punishing a person visiting or found in a brothel. This amendment will have the effect of further criminalizing prostitution in view of the fact that "sex is a natural instinct and has a way of coming out one way or the other."

- xvi. The proposed new definition of trafficking in Section 2(k) is completely erroneous¹⁶. It continues to equate trafficking with sex work, which as has been said earlier also may be the outcome of trafficking but is not the core cause of it and certainly not trafficking itself.

In fact, sub-clause (b) of the definition negates individual autonomy and consent. The clause is redundant since in any case under the present law, it is impossible to consent to something when such consent has been obtained by threat, force, coercion, fraud or deception. However, sub-clause (b) when read together with "*position of vulnerability*" (a term not

¹⁶ a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion or abduction or fraud or 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;
b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph a) shall be irrelevant where any of the means set forth are used
c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph a)

having a clear legal meaning) and *"giving and receiving of payments or benefits to achieve consent"* as set out in sub clause (a), may result in categorizing all recruitment into sex work, even when it is non coercive, as trafficking.

The term *"exploitation of prostitution of others"*, when read conjointly with the existing definition of prostitution under section 2 (f) *"prostitution means the sexual exploitation or abuse of persons for commercial purposes"* can be construed to mean that all adult consensual sex work amounts to trafficking. Such a construction of the law, will further subvert rights of CSWs, whose practice may be prohibited in the name of intercepting trafficking.

It is suggested that a total review of the ITPA needs to be undertaken, distinguishing between laws relating to sex work and to trafficking, rather than a piecemeal approach. As Hon'ble Justice B.N. Sri Krishna, Judge Supreme Court delivering the key note address at the Conference organized by Justice Sunanda Bhandare Foundation on "The Problems Faced by Sex Workers", rightly equated the situation to a leaking boat "where you plug one leak and another appears elsewhere".

Even though the Trafficking Protocol is binding on India as a signatory, however lawmakers have overlooked the flexibilities permitted under it. The obligations under the Protocol are without prejudice to how State parties address prostitution in their respective domestic laws, implying that a non-punitive legal approach to sex work may not, be in conflict with or contrary to the international law on human trafficking.

ADMINISTRATIVE

A. REGULATION

It may not be possible to altogether eradicate commercial sex work, but it is definitely possible to regulate it. Brothels should also be subject to appropriate regulations on a nondiscriminatory basis.

Prohibitory approach which has been the standard norm so far pushes CSWs into the hands of criminals because the illegal nature of the work necessitates the women's need for protection. Regulation (sometimes known as legalization) permits prostitution in certain forms, usually through zoning (confinement to certain areas) or licensing (licensing a limited number of prostitutes to work in certain areas of a city). The aim being not eradication so much as control -- the goal being to keep CSW limited to areas of town which can be done by the process of regulation. It would be the responsibility of the state government to ensure that municipalities honoured these arrangements and did not unduly obstruct licensing. **Private operations of one to two women would not require licensing of any kind and accordingly the definition of brothel should be amended .**

B. IMPROVING WORKING CONDITIONS/LABOUR STANDARDS

- i. Sale of sexual services, without the use of force or non-economic coercion, is work. Firstly, the definition of labour should be expanded to **recognize the labor**

performed by adult CSWs. Then the next step would be towards protecting the human rights of these workers just as the human rights of all other workers are protected.

- ii. Attempts should be made to **improve working conditions**. Labour standards should be regulated by way minimum wages, improvement in working conditions etc. Women workers who are economically coerced to become CSW should not be deprived of the right to choose one form of work over another. They should not be forced to accept the exploitative factory job instead of the exploitative brothel. Exploitation is the problem in both instances, not the work *per se*. Exploitation then is the harm that should be addressed and not the profession itself. Improvement in the social and legal position of prostitutes would impede traffic in women and slavery-like practices, and would give women instruments to defend themselves against such practices, similar to workers in other labour sectors.
- iii. CSW should **not be deprived of their fundamental rights**, namely the right to freedom of association with other CSWs, the right to work collectively in their own brothels or with agents (pimps), or as employees in a brothel. It also deprives CSWs, who have a legal right to sell sexual services, of equal protection of the laws because, for example, no labour, health, or other law applies to their particular form of work. Even laws

regarding assault and rape are less likely to be applied in the case of a CSW as law enforcers, including the judiciary, see CSWs as less worthy of legal protection than "moral" women.

- iv. Women who work as CSW need to be accorded “**legal protection**”, not “saved”. They should be given all legal rights and benefits conferred on workers in other sectors and treated the same as anyone else who is marginalized by poverty. Since 78% of the women interviewed said they would prefer to remain working in this trade.
- v. CSWs, should be **treated like other workers**. They should be able to hire agents and work for others or themselves, in the same manner as any other worker. They would be able to form trade unions and organize their own brothels. Brothels should be taxable associations and CSWs would also pay taxes. Labour, occupational, health and safety laws, and other laws should be enforced in brothels and the government would issue business licenses in an impartial and nondiscriminatory manner.
- vi. Departments responsible for labour, health and welfare, and employment, at all levels of government, should **develop programs** to provide start-up and core funding to community-based agencies providing integrated,

holistic programs accessible to male and female prostitutes wishing to leave the trade.

B. SENSITIZATION & AWARENESS PROGRAMMES FOR LAW ENFORCING AGENCIES

- i. **Sensitization** of the law enforcement agencies, judicial officers and specific government officers, specifically through training to be made mandatory.
- ii. Preparation of a **rights based manual** in consultation with NGOs for use by both CSW and law enforcing agencies.
- iii. Stress on **counselling** of the victims.
- iv. **'Raid' and 'rescue' to be differentiated**: raid is not rights sensitive and is mostly victim centric, whereas rescue is process centric.
- v. **Presence** of a Special Police Officer, social worker, NGO or person from the community in the rescue operation. And immediately after rescue counselling of the girl to give statement to the police against traffickers, whether kotha owners, pimps, factory owners, etc.

vi. All public officials suspected of being involved in trafficking are required to be investigated, tried and, if convicted, appropriately punished.

C. CREATION OF SPECIALIZED INFORMATION TECHNOLOGY PACKAGE TO TRACK TRAFFICKED/WOMEN/CHILDREN.

D. BORDER SECURITY FORCES TO BE ALERT TO TRAFFICKING

In border areas the BSF should be alert to trafficking from Nepal and should investigate the people crossing the border. Certain small roads, chor rastas, used by smugglers and traffickers need to be closely monitored.

E. In addition **PUBLIC AWARENESS CAMPAIGNS should be initiated**, specially in states like Andhra Pradesh and Uttar Pradesh where due to poverty and other socio-economic conditions girls/women are vulnerable to being trafficked. The public awareness campaign should also highlight the penalties and punishment imposed for trafficking. This will serve a dual purpose, firstly by creating awareness of the problem among the vulnerable target group, and the same time act as deterrent by creating fear in the minds of the perpetrators of the crime specially the families of the vulnerable girls/women.

HUMAN RIGHTS APPROACH

- A. Psychological, physical, social and economic needs of the victims to be fulfilled.
- B. Post-rescue rehabilitation should be coupled with counselling. Sustained counselling should be given to the girl rescued till the perpetrators of crime are punished and the girl is finally reintegrated with society. Mental health services to be provided to the traumatized woman, in addition to addressing her basic needs.
- C. Rescued girls who have been abandoned by their families or are homeless should be trained in economically viable vocational trades to ensure economic rehabilitation
- D. Attempts to be made to shift from custodial care to community based care. Section 19 of the ITPA enables the woman to make an application to the magistrate having jurisdiction for an order that she may be kept in a protective home or provided care, protection by court. Included in this section in sub section 3(ii) are the words corrective institution, which are derogatory. There should be an attempt to shift away from custodial/institutional care towards the more therapeutic non-custodial drop-in shelters and community based care.
- E. Explore the possibility of making alternative arrangement of protective homes for rescued girls, and utilizing Institutions run by voluntary organizations by way of certification; under S.21

which confers powers on the State Government to establish protective homes. The section specifically provides that no person or authority other than the State Government shall establish or maintain any protective home except under license issued by the State Government.

- F. Separate institutions to be set up for minors - less than 18 years and adults - 18 and above.
- G. Combined efforts should be made by the Police and NGOs to locate addresses for repatriation of the victims.
- H. **REPATRIATION** - Repatriation is defined as the restoration, sending back or return of rescued victims to place of origin and/or residence. There should be a healthy and strong collaboration and networking between Governments, Judiciary and concerned NGOs to facilitate the repatriation of the trafficked women and children. Shortage of manpower to repatriate the victims cannot be accepted as an excuse used by the police to escape their responsibility. To be avoided are returning girls to the families who are themselves the perpetrators or abusers or returning them to families and societies not willing to accept them back and where they are likely to suffer further stigma and abuse.

Repatriation should be based on:

- i. Human rights principles of freedom of movement, decisions, safe and unthreatening environment.

- ii. Proper social investigation and home study to be conducted before repatriation to ensure that the family is willing to accept the survivor back.
- iii. Counseling to be provided for families along with sensitization initiatives to facilitate easy acceptance of the repatriated survivors.
- iv. Developing and establishing comprehensive guidelines for repatriation.
- v. Legal mechanisms to be clear and uncomplicated to ensure speedy repatriation of survivors – those willing and fit to be repatriated.
- vi. Developing a monitoring system as a follow up to repatriation.
- vii. Ensuring safe repatriation with proper entrustment. For example, by providing police escorts to survivor on their way back home.