

# PROTECTION AND REHABILITATION OF VICTIMS OF HUMAN TRAFFICKING IN INDIA: NEED OF MULTIDISCIPLINARY APPROACH

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## **I. Introduction**

Human trafficking is the largest organised crime after drugs and the arms trade across the globe. Human trafficking is one of the major problems in India. Till date no concrete study has been conducted so far to know the exact number of trafficked kids in India. As reported over the last five years, India is a source, destination, and transit country for men, women, and children subjected to forced labour and sex trafficking. Forced labour constitutes India's largest trafficking problem; men, women, and children in debt bondage, sometimes inherited from previous generations, are forced to work in brick kilns, rice mills, agriculture, and embroidery factories. Most of India's trafficking problem is internal, and those from the most disadvantaged social strata like *Dalits*, members of tribal communities, religious minorities, and women and girls from excluded groups, are most vulnerable. Within India, some are subjected to forced labour in sectors such as construction, steel, and textile industries, wire manufacturing for underground cables, biscuit factories, pickling, floriculture, fish farms, and ship breaking. Thousands of unregulated work placement agencies reportedly lure adults and children under false promises of employment into sex trafficking or forced labour, including domestic servitude. In addition to bonded labour, some children are subjected to forced labour as factory and agricultural workers, carpet weavers, domestic servants, and beggars. Begging ringleaders sometimes maim children to earn more money. Some NGOs and media report that girls are sold and forced to conceive and deliver babies for sale. The seriousness of the problem lies in the fact that the victims of human trafficking generally are from lower strata of society and are so oppressed and exploited that there are none to help them out and on the other hand the criminal are much organised. The manner in which the crime syndicate works across inter-state, inter-regional throughout the world it makes the government helpless in dealing with the crime.

Combating and preventing human trafficking requires holistic approach by all by all stakeholders and integrated actions on prosecution, prevention and rehabilitation. A humble attempt is made in this article how to protect and rehabilitate the victims of different forms of human trafficking under the existing Indian legal system.

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## II. Victims of Human Trafficking

Victims of human trafficking can be young children, teenagers, men and women. They can be Indian or foreign nationals, and they can be found in urban, suburban, and rural areas. Minors (under the age of 18) who are induced to perform commercial sex acts are victims of trafficking, regardless of whether their traffickers used force, fraud, or coercion. A victim could be a man who does not speak English or Hindi who is suspiciously injured “on the job” and shows signs of old bruising. A victim could be an abused woman who doesn’t know what city she is in when brought to the emergency room, and who is accompanied by a controlling companion who insists on speaking for her. A victim could be a fearful individual who quietly slips in and out of a local church on Sunday morning, or a child who lives in the neighborhood, yet doesn’t go to school or play outside<sup>2</sup>. Human trafficking may occur in the following situations:

- Prostitution and escort services;
- Pornography, stripping, or exotic dancing;
- Massage parlors;
- Sexual services publicized on the Internet or in newspapers;
- Agricultural or ranch work;
- Factory work or sweatshops;
- Businesses like hotels, nail salons or home-cleaning services;
- Domestic labor (cleaning, childcare, eldercare, etc. within a home);
- Restaurants, bars, or cantinas; or
- Begging, street peddling, or door-to-door sales. Victims of human trafficking may exhibit any of the following:
  - Evidence of being controlled either physically or psychologically;
  - Inability to leave home or place of work;
  - Inability to speak for oneself or share one’s own information;
  - Information is provided by someone accompanying the individual;
  - Loss of control of one’s own identification documents (ID or passport);
  - Have few or no personal possessions;
  - Owe a large debt that the individual is unable to pay off; or
  - Loss of sense of time or space, not knowing where they are or what city or state they are in.

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<sup>2</sup> <https://www.acf.hhs.gov/>, Identifying Victims of Human Trafficking Fact Sheet,

A human trafficking victim may develop a mind-set of fear, distrust, denial, and conflicting loyalties. Foreign victims of trafficking are often fearful of being deported or jailed and, therefore, they may distrust authority figures, particularly law enforcement and government officials. Similarly, traffickers may convince sex trafficking victims, if they report their traffickers to the police, the police will jail the victim for prostitution while the traffickers, pimps, or johns will go free. Many victims of both sex and labour trafficking fear that if they escape their servitude and initiate investigations against their trafficker, the trafficker and his associates will harm the victims, the victims' family members, or others. Psychological and Behavioural Clues Being able to recognize the psychological and emotional consequences of human trafficking can also be helpful in identifying victims. Victims often develop general feelings of helplessness, shame, guilt, self-blame, and humiliation and suffer from shock and denial, or display symptoms of post-traumatic stress disorder, phobias, panic attacks, anxiety, and depression. They suffer from sleep or eating disorders and become addicted to drugs and/or alcohol as a way to cope with or "escape" their situation, or as a method of control used by their traffickers. Victims experience "trauma bonding" with the trafficker, positively identifying with the trafficker and believing that, despite repeated abuse, the trafficker is a loving boyfriend, spouse, or parent.

### **Physical Effects of Human Trafficking**

While not all victims of trafficking have physical indicators that aid identification, many victims suffer serious health issues, some of which may include the following:

- Signs of physical abuse, such as bruises, broken bones, burns, and scarring;
- Chronic back, visual, or hearing problems from work in agriculture, construction, or manufacturing;
- Skin or respiratory problems caused by exposure to agricultural or other chemicals;
- Infectious diseases, such as tuberculosis and hepatitis, which are spread in overcrowded, unsanitary environments with limited ventilation;
- Untreated chronic illnesses, such as diabetes or cardiovascular disease; or
- Reproductive health problems, including sexually transmitted diseases, urinary tract infections, pelvic pain and injuries from sexual assault, or forced abortions.

### III. Anti Trafficking Laws in India

Human trafficking in India has reached a crisis level. A prominent headline in *The Hindu* last week declared<sup>3</sup> “An unsavoury fact: India tops global slavery index.” The U.S. State Department report estimates that up to 65 million people were trafficked into forced labour, both into and within India. More recently, research reveals that India has the highest number of people trapped in modern slavery, with over 18 million people enslaved. This is five times more than any other country in the world. Meanwhile, according to Indian government data, there were just 5,500 cases of human trafficking reported in India in 2014. This clearly reveals that, despite efforts by the government and civil society groups to gather data on trafficking, there is still no conclusive data available, either official or unofficial, that accurately captures and documents the extent to which human trafficking takes place in the region. The laws dealing with human trafficking includes the Indian Penal Code, 1860, the Immoral Traffic (Prevention) Act, 1956, the Transplantation of Human Organs Act, 1994, Child Labour (Prohibition and Regulation) Act, 1986, Juvenile Justice Care and Protection of Children Act, 2015.

The Indian government last year stated that trafficking was the third largest organised crime and time has now come to deal with it through a single comprehensive Act. “The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016” aims to create a strong legal, economic and social environment against trafficking of persons and related matters. The draft Bill plugs loopholes in existing laws and brings within its fold additional crimes pertaining to trafficking which don’t find a place in the existing laws. It also envisages creation of a fund for rehabilitation of victims of trafficking, she said. Under the Bill, an institutional mechanism is also sought to be set up to deal with this highly specialized subject which will also include members from Civil Society Organisations. The draft Bill has taken into account the various aspects of trafficking and its punishments as defined in section 370- 373 of Indian Penal Code, 1860 and aims to include other offences/ provisions which are not dealt with in any other law for the purpose of trafficking, such as (1) penal provisions for the disclosure of identity of the victim of trafficking and witness (2) use of narcotic drug or psychotropic substance or alcohol for the purpose of trafficking (3) use of chemical substance or hormones for the purpose of exploitation. The draft Bill has also taken into its ambit the ‘placement agencies’ by making mandatory for them to also register for the purposes of this Act. The draft Bill provides for mandatory reporting within 24 hours by a police officer, public servant, any officer or employee of protection home or special home having custody of the victim of trafficking to the district anti-trafficking committee or in case of child victim to the child welfare committee. The

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<sup>3</sup> <https://asiafoundation.org/2016/06/08/indias-new-anti-human-trafficking-law>

draft Bill proposes a 10-year punishment for those engaging in "aggravated forms of trafficking" while seeking life imprisonment for repeat offenders. A bill to identify various forms of trafficking, including for the purposes of bonded labour, sexual exploitation, pornography, removal of organs and begging, has proposed severe punishment for those engaging in the heinous crime<sup>4</sup>. The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2017, initiated by the Women & Child Development Ministry. As per Seventh Schedule of the Constitution of India, Police is a state subject and as such prevention of human trafficking is primarily the responsibility of states. However, Centre has taken various steps to combat trafficking and has issued several advisories to the State/ UT from time to time.

The Bill proposes the establishment of a national anti-trafficking bureau, which shall be entrusted with the gamut of issues aimed at controlling and tackling the menace under various forms. These include coordination, monitoring and surveillance of illegal movement of persons and their prevention. The bureau will also be entrusted with increasing cooperation and coordination with authorities concerned and organisations in foreign countries for strengthening operational and long-term intelligence for investigation of trafficking cases, and driving in mutual legal assistance. Listing out the 'aggravated forms of trafficking', the bill speaks about offences such as forced labour, or bonded labour, by using violence, intimidation, inducement, promise of payment of money, deception or coercion. Also, it mentions trafficking after administering any narcotic drug or psychotropic substance or alcohol, or for the purpose of marriage or under the pretext of marriage. The aggravated form also includes trafficking for the purpose of begging or forcing those who are mentally ill or are pregnant. "Whoever commits the offence of aggravated form of trafficking of a person shall be punished with rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to life imprisonment and shall be liable to fine that shall not be less than Rs 1 lakh," the bill proposes. For repeat offenders, it suggests imprisonment for life "which shall mean imprisonment for the remainder of that person's natural life", apart from a fine that will not be less than Rs. 2 lakh.

The government increased law enforcement efforts, although investigations, prosecutions, and convictions remained low for the scale of human trafficking in India. Section 370 of the Indian Penal Code (IPC) prohibits slavery, servitude, and most forms of sex trafficking and prescribes penalties ranging from seven years to life imprisonment, which are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. Section 370 does not define the "prostitution

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<sup>4</sup> <https://timesofindia.indiatimes.com>. Visited on 17<sup>th</sup> January, 2018

of children” younger than age 18 as an act of human trafficking in the absence of coercive means, although other statutes criminalize the “prostitution of children.” Section 370 criminalizes government officials’ involvement in human trafficking, prescribing sentences up to life imprisonment. Bonded labour is specifically prohibited under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which prescribes sufficiently stringent penalties of up to five years imprisonment, and the Bonded Labour System (Abolition) Act (BLSA), which prescribes penalties of up to three years imprisonment that are not sufficiently stringent. The Child Labour (Prohibition and Regulation) Act, the Juvenile Justice Act, and other provisions of the IPC prohibit many forms of forced labour; however, these provisions were unevenly enforced and their prescribed penalties are not sufficiently stringent, allowing for only fines or short prison sentences in some cases.

In 2015<sup>5</sup>, police investigated 4,203 trafficking cases, including 3,363 cases of sex trafficking, 77 cases of bonded labour, and 763 trafficking cases under article 370 where further case details were not published to clearly categorize the cases between sex or labour trafficking. This was an increase from the investigation of 3,056 trafficking cases in 2014, including 2,604 cases of sex trafficking, 46 cases of bonded labour, and 406 cases under article 370. During 2015, the government completed the prosecutions of 2,387 traffickers, including 2,180 alleged sex traffickers, 16 alleged labour traffickers, and 191 traffickers under article 370, compared with the completion of prosecution of 2,596 alleged traffickers in 2014. In 2015, courts convicted 815 traffickers and acquitted 1,556 individuals with an additional 16 persons discharged. This was an increase from 577 traffickers convicted in 2014, 1,990 persons acquitted, and 29 persons discharged. The acquittal rate decreased from 77 percent in 2014 to 65 percent in 2015. The courts’ convictions under the BLSA remained notably low at only four in 2015, although bonded labour offenders may also be convicted under the Prevention of Atrocities Act and those statistics were not reported. The government did not report sentences for convictions. Indian media commented the figures reported by the NCRB did not reflect the large scale of human trafficking crimes in India, as many cases were not registered by police or were settled at the complaint stage. Inconsistent application of the law across jurisdictions, corruption among officials, and a lack of awareness or capacity in some parts of the country resulted in incidents of inaction on trafficking crimes by police and prosecutors.

In December 2015, the Supreme Court directed the government to establish an organized crime investigative agency by December 2016 to

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<sup>5</sup> National Crime Record Bureau, 2017

investigate human trafficking cases and rescue and rehabilitate victims; the establishment of such an agency was pending the passage of the draft anti-trafficking bill, although the Ministry of Home Affairs (MHA) had allocated 832 million Indian rupee (INR) (\$12.3 million) to fund the agency. AHTUs continued to serve as the primary investigative force for human trafficking crimes. At the beginning of the reporting period, of the more than 600 districts, 226 had active AHTUs; it is unknown if additional AHTUs were established during the reporting period. State and local governments partnered with NGOs and international organizations to train AHTU officers. Some NGOs reported significant cooperation with AHTUs on investigations and police referral of victims to NGOs for rehabilitation services. However, others noted some AHTUs continued to lack clear mandates, which created confusion with other district- and state-level police units and impeded their ability to proactively investigate cases. Coordination across states remained a significant challenge in cases where the alleged trafficker was located in a different state from the victim—jurisdictional barriers prevented confessions from one state being used as evidence in another. NGOs noted some police offices were overburdened, underfunded, and lacked the necessary resources, such as vehicles and computers, to combat trafficking effectively. Some police used AHTU resources and personnel for non-trafficking cases. NGOs noted prosecutors and judges did not have sufficient resources to properly prosecute and adjudicate cases.

Official complicity in human trafficking occurred at varying levels of government. The government did not report comprehensive data on investigations, prosecutions, or convictions of government officials complicit in human trafficking offenses. In May 2016, a member of the Goa legislative assembly was arrested under IPC Section 370 for allegedly purchasing a girl from her mother and raping her; both the legislator and the girl's mother were released on bail, and at the end of the reporting period, the Goa police continued to investigate the case. However, media also reported allegations of a few complicit officials whom the government did not investigate and who remained in government. Some corrupt law enforcement officers reportedly protected suspected traffickers and brothel owners from law enforcement action, received bribes from sex trafficking establishments and sexual services from victims, and tipped off sex and labour traffickers on forthcoming raids. There were no reports of investigations into such cases of complicity.

## **IV. Protection and Rehabilitation of Victims**

### **Rights of the Victims of Human Trafficking**

Victims of human trafficking are entitled to all rights granted to each person under the Constitution of India. Their rights are therefore, to be protected at every stage of the criminal justice system by the police, the prosecutors and the judiciary. Trafficking in human being is a grave violation of human right. The right to live is violated in the case of trafficking of human being. It deprives and demolishes the dignity of the trafficked person. The Constitution of India vide Article 23 prohibits both trafficking in human beings and forced labour. An enumeration of some of the victim's rights during rescue, post rescue and during trial is provided. The prosecutor may not necessarily have a role to play at the stage of rescue of the victims. However, post rescue and during trial the prosecutors need to ensure protection of victim's rights<sup>6</sup>.

### **During Rescue**

- I. The rescued persons are to be treated as victims and not as offenders or accused. Victims should be treated with compassion, respect and dignity.
- II. Victims are entitled to access to justice and prompt redress, as provided for by national legislations, for the crimes of trafficking inflicted upon them and the resultant abuse and exploitation.
- III. All procedural formalities as outlined in the Immoral Traffic (Prevention) Act and other laws need to be complied with during search and rescue of victims.
- IV. The victims are to be segregated from the offenders as soon as they are rescued to prevent the offenders from threatening them.
- V. During rescue, the victim should be allowed time to collect her children and belongings.

### **Post Rescue**

- I. The victims are not to be treated as accused or offenders.
- II. The victims are not to be placed in the same room/transport along with the offenders, as there is a possibility that the victim would undergo trauma at the sight of the perpetrators or that they may be threatened.

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<sup>6</sup> Paper Published by the United Nations Office on Drugs and Crimes, Regional Office for South Assia, New Delhi.

- III. The statement of the victim is to be taken in the presence of a social worker or any woman police official<sup>7</sup>.
- IV. The investigation Officer should not pressurize the victim, if the victim is not in a position to give evidentiary statement. It is imperative that the victim's statement should be recorded at the earliest instance. However, if it seems that the victim is in a state of mental shock then it is inadvisable to coerce her to give a statement. In such a cases, as a alternative the police authorities can be requested or instructed to take the statement of the victim when she is in the rehabilitation or in shelter home.

### **Victim's Rights During Medical Examination**

The prosecutor may pray to the court to ensure the following when the victim is sent for

Age verification/medical examination:-

1. The victim is accompanied at all times by a women police official or female representative of an NGO.
2. The accused and the victim should be segregated whilst being sent for their respective medical examinations.
3. The victim has a right to be examined only in the presence of trained medical staff and that the presence of those who are not essential to the process should be avoided.
4. The victim has a right to refuse invasive tests. However, there may be times when it is required that a test for determination of sexual abuse be conducted. In these situations the NGO representative/ counsellor may counsel the victim appropriately.
5. The victims are to be taken to a shelter Home/protective Home/Children Home after medical examination.
6. Testing for HIV/AIDS must not be done without the persons consent. Willingness of the victim is mandatory and if such tests have been already undergone, then their status and their identity is a subject matter of confidentiality<sup>8</sup>. The National AIDS Control Organization (NACO) guidelines may be referred to by prosecutors.

The government increased efforts to protect victims. In 2016, the Ministry of Women and Child Development (MWCD) published SOPs for

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<sup>7</sup> Section 15 (6A) of Immoral Traffic (Prevention) Act, 1956

<sup>8</sup> Public at Large v. State of Maharashtra, 1996

cases of missing children, mandating the transfer of cases not resolved within four months to an AHTU. MWCD and MHA implemented Track Child, a system to identify missing children nationally. MWCD continued to support the national Child line hotline, an emergency phone service for children in need of assistance, including child victims of forced labour and sex trafficking. State- and district-level law enforcement continued to carry out operations to rescue and rehabilitate missing and exploited children, some of whom may have been subjected to forced labour or sex trafficking. Some state- and district-level law enforcement actively partnered with NGOs to identify, rescue, and provide rehabilitation services to victims; however, other police officers undertook rescue operations without further investigating or charging suspects. In other cases, police arrested and charged alleged traffickers, but in some cases some of the alleged traffickers posted bail and while awaiting trial purportedly intimidated witnesses and subjected new victims to trafficking<sup>9</sup>.

## **V. Multidisciplinary Approach**

The problem of human trafficking in India is more severe not only because 35% of its population lives below poverty line but also because India is surrounded by poor countries such as Nepal, Bangladesh. The fact that India has open boards with these countries provides a boon to the traffickers and the lack of strict vigil on Indo Bangladesh borders further aggravates the problem<sup>10</sup>. The problem of Human Trafficking is so serious that it cannot be combated unless we adopt a multidisciplinary approach.

**Human Rights Approach:** Trafficking in human being is a grave violation of human rights, one that deprives and demolishes the dignity of the trafficked person. Therefore, it is critical that response systems are rights-bases and human rights oriented. The officials who deal with the victims should be empathetic and understand the concerns from the victim's perspective. Decision making about the victim should emanated from and based on the best interest of the victim. Victim has a right to be protected, consulted and informed of all actions being taken on their behalf<sup>11</sup>.

**Victim Friendly Procedure:** Any action initiated by the law enforcement agencies should ensure that the victim is the pivotal or focal point. This requires that the victim of trafficking is:

1. Not treated as an offender
2. Not re-victimised

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<sup>9</sup> National Crime Report Bureau Report, 2017

<sup>10</sup> A I R 2013 Journal pp. 135-139

<sup>11</sup> United Nations Office on Drugs and Crime, Government of India, New Delhi

3. Not branded as a soliciting person
4. Not arrested
5. Not stigmatized
6. Extended all help and assistance as a matter of right<sup>12</sup>

**Gender Issue:** Though the victim could be any person, research shows that the majority of victims of commercial sexual exploitation are females. An inadequate response to the trafficked victim by various agencies further exacerbates gender discriminations and violations that already exist in society. Hence, gender sensitivity is an essential requirement in addressing Human Trafficking. The procedure and steps undertaken by the responders should conform to gender rights<sup>13</sup>.

**Child Right Issue:** Research has shown that there exists a high demand for children for purposes of commercial sexual exploitation. Being more vulnerable, children are subjected to extreme violations during and after trafficking and an improper response aggravate the harm already inflicted on them. Therefore, the law enforcement response has to be specifically oriented to their specific rights.

**Sensitization of Law Enforcement Agencies:** Police, Border Guards, Railway Police, Immigration Officer, Prosecutor and the Judiciary may be sensitized through their training, seminars and workshop for the effective implementation of provisions of the Indian Penal Code, 1860, the Prevention of Corruption Act, 1988 and other relevant State Legislations. This should be done with the specific purpose of dealing with the menace of Human Trafficking<sup>14</sup>.

**Organised Crime Approach:** Trafficking is an n organised crime extending beyond national and state boundaries. It is it is multidimensional because it involves the elements of several crimes, like selling, buying, selling, sexual abuse and exploitation, criminal confinement, abduction etc. the scene of crime extend from the source area through the Transit area to the Destination area. It entails multiple abuses and abuses, which are networked and organised. It is a continuing offence starting with recruitment or procurement and continues till the victim is rescued<sup>15</sup>.

**Local Intelligent Units:** State government should consider setting up local intelligent units in all districts against organised crime to gather intelligence and ensure that it is disseminated. Priority should be given to the database

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<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Ibid

on trafficking and their network. Their profiling and surveillance can be an effective tool for intelligent collection and for prevention of trafficking<sup>16</sup>.

A comprehensive knowledge of trafficking requires to be understood from a process-centric perspective. Human trafficking entails several acts of commission or omission involving multiple offenders. Accordingly, the response to trafficking requires simultaneous attention by various agencies mandated to carry out different tasks, viz, police agencies, other government departments, prosecutors, counsellors, NGOs, etc. all of whom perform several functions in the process of Anti Human Trafficking. Therefore, the law enforcement agencies need to coordinate with these stakeholders to develop a synergy and partnership with them.

## **VI. Conclusion**

In addition to the laws made by Parliament, the various judgments of the High Courts and the Supreme Court have provided further legal strength to the law enforcement agencies. However, research<sup>17</sup> shows that the existing response to human trafficking is uneven and requires immediate attention especially in areas of knowledge, skills, attitude and resources. India's efforts to protect victims of trafficking vary from state to state, but remain inadequate in many places. Victims of bonded labour are entitled to ₹ 10,000 from the central government for rehabilitation, but this programme is unevenly executed across the country. Government authorities do not proactively identify and rescue bonded labourers, so few victims receive this assistance. Although children trafficked for forced labour may be housed in government shelters and are entitled to ₹ 20,000, the quality of many of these homes remains poor and the disbursement of rehabilitation funds is sporadic. Some states provide services to victims of bonded labour, but non-governmental organisations provide the majority of protection services to these victims. The central government does not provide protection services to Indian victims trafficked abroad for forced labour or commercial sexual exploitation. Indian diplomatic missions in destination countries may offer temporary shelter to nationals who have been trafficked. Once repatriated, however, neither the central government nor most state governments offer any medical, psychological, legal or reintegration assistance for these victims. Because most law enforcement authorities lack formal procedures to identify trafficking victims among women arrested for prostitution; some victims may be arrested and punished for acts committed as a result of being trafficked. Some foreign victims trafficked to India are not subject to removal. Those who are subject

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<sup>16</sup> A I R 2013 Journal p. 138

<sup>17</sup> Trafficking in Women and Children, National Human Rights Commission, Orient Longman, 2005

to removal are not offered legal alternatives to removal to countries in which they may face hardship or retribution.

The government needs to work on the triple strategies of prevention, protection and prosecution. The government should open more and more shelter home so that victims can be accommodated. It should also provide financial assistance to the victims of human trafficking. At last I must say that the problem of Human Trafficking must be tackled by our common and conscious efforts and it is not the law alone by which we can protect women and children from being trafficked.