

# Primer on Addressing Demand in Prostitution/Trafficking for Sexual Exploitation

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## Foreword

This Primer has been developed to assist anti-trafficking projects, challenging legalization of prostitution and focusing on demand.

The primer is an outcome of a decades work done at the police stations located in Mumbai's "Red Light Area" and the Police Consultations done by Apne Aap World Wide in 2004-05. During the past ten years everyone in the anti trafficking realm has been involved in a spectrum of activities such as training, enabling, advocating for anti trafficking and reintegration of victims.

The primer focuses on the pertinent issues of prostitution through a user-friendly format of FAQ, which gives an introduction, and overview of their sexual exploitation prevention and early intervention programs. Upon completion of this manual, participants will have developed a more comprehensive understanding of the extent of the problem of prostitution; understand the high-risk factors/behaviors for potential victims of sexual exploitation; be introduced to actual case histories that provide a realistic perspective on the issue; and, gain a more comprehensive understanding of the inherent dangers of "prostitution". This will include the ability to identify different categories of prostitution/sexual exploitation that victims face; discuss the common pathways leading them into prostitution and other related forms of exploitation; identify the roles of individuals in typical exploitative situations; and, discuss methods and safety strategies for avoiding or escaping an exploitative situations besides being informed of the debates regarding prostitution.

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## Myths & Questions about Prostitution`

In Bombay, children as young as 9 are bought for up to 60,000 rupees, or US\$2,000, at auctions where Arabs bid against Indian men who believe sleeping with a virgin cures gonorrhoea and syphilis. (Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

### 1. Prostitution safeguards women "from good families?"

By the inverted logic of patriarchy prostitution, rape and the auxiliary institution of pornography are seen as safeguards to the institution of family. By providing men with sexual satisfaction outside the family they are seen as protecting wives from unreasonable demands. This rhetoric has been denounced by many studies and statistics. It has been seen universally that majority of the men who seek the services of prostitutes tend to view women as gratifying objects and hence their satisfaction does not end with commercial sex. This when seen with increasing incidents of rapes and incest can only prove the opposite.

### 2. Prostitutes enjoy what they do

Most women are forced to into sex trade, under conditions of near or absolute slavery. If women saw this as a lucrative option they would not be desperate to send their daughters to "boarding schools" to keep them out of the client's roving eye. The very edifice of prostitution is built on the lie that "women like it". When the customer asks, "did you enjoy it?" the women in prostitution must continually lie to please the men. Furthermore, given that women in prostitution must *appear* to please their customers and that most prostituted women are under the control of pimps, traffickers and brothel owners, this lie is enforced by economic need, threats and actual violence against women.

### 3. "These women" can never be rehabilitated

It is fairly common knowledge that certain areas in the country tend to be potential areas from where women are trafficked. The source areas indicate economic distress and lack of options are the major reasons for the introduction and continuation of young women into the prostitution trade as either a child prostitute or as minor or adults. In particular, in the originating families, poor and uncertain family incomes and lack of access to marketable skills and productive resources keep them below the poverty line in important cases. Thus such families are particularly susceptible to this kind of exploitation.

Governments have to make a major effort to identifying and developing such vulnerable source areas. In India a beginning has already been made in two such areas in the country. In the districts of Murshidabad in West Bengal State, which contributes 23% of Calcutta's prostitutes, the Government of India, under the scheme of Support to Training and Employment Programme (STEP), sanctioned an integrated training-cum-income generation project in the silk yarn production sector for a group of villages from where a significant proportion of young women used to migrate into or were sold of into the prostitute trade. Under the project, being implemented by a non-governmental organization called Development Dialogue, 1230 women have been trained in a cluster of 10 villages to produce high quality yarn with a significant value added component. These women have been organized into groups and are now accessing the market on their own as well as managing their entire economic activity. This has led to a definite improvement in the economic situation of the families as a result of increased earnings per day as well as an increase in the number of days of work per month. There are indications that this has helped in arresting the migration of young women into the flesh trade from this area while at the same improving the quality of life. Similarly, under the same scheme, a State level corporation in Karnataka is training 4500 women belonging to low income socially backward communities in handloom weaving in the

State of Karnataka. Of these 4500 women, approximately 1/4th are those women who, as a matter of custom were subjected to sexual exploitation through temple based dedication. The project is also expected to focus on the children of such women and would attempt to economically strengthen such families with the objective of increasing their resistance to such institutionalized exploitation. **Thus with appropriate measures the victims can be rescued, repatriated, rehabilitated, and reintegrated beside being prevented from entering the vicious circle of prostitution.**

#### **4. Prostitution is a culturally accepted practice world over**

Prostitution is often described as "the world's oldest profession" and a necessary evil.

Prostitution has been promoted to satiate the needs of the power holders and has been cloaked under the respectability of culture and traditions. Culture and socially sanctioned practices preempt all efforts to address demand in prostitution. In the Indian society it has been proved beyond reasonable doubt that customs like Devdasi (Temple Marriage), Child Marriage, No sanction to widow remarriage actually perpetuate prostitution.

The necessity of keeping up a steady supply of 'attractive women' to keep the British soldiers contained within the cantonment was becoming a problem and the authorities used any excuse they could find to drag in young, healthy, and good looking Indian women as registered prostitutes in the cantonment bazaars who could then be physically examined. These measures became doubly necessary as the authorities generally felt the growing needs for 'commercial sex' among British soldiers. It was believed that the common English soldier recruited from the ranks of the working class lacked those moral or intellectual scruples which would make a properly bred British gentleman oppose the "exchange of sex for money". Also, the low pay of a common soldier made it impossible for him to remain within the norms of respectability by maintaining a family in India. The Indian prostitute's desirability thus depended upon a crude assessment of demand and supply. In the face of growing demands for more candidates engaged in profession of what was termed 'mercenary love' and a short supply from the native subjects, the Indian prostitute, with her ability to evade and even actually refuse approaches, offered the colonial state a challenge. In the struggle that followed between the colonial authorities and the subject population, the women's body itself became a battle site.

#### **5. Shouldn't an adult woman be free to make her own choice, and if the choice is to be a prostitute, shouldn't it be available to her?**

Studies show that most women in prostitution did not choose prostitution among a range of options. Their "options" were more in the realm of survival for themselves and their children. It would be more accurate to say that a prostituted woman complies with the extremely limited options available to her. Her compliance is required by the fact of having to adapt to conditions of inequality that are set by the customer who pays her to do what he wants her to do. Power and vulnerability in the context of choice must be understood to include power disparities based on gender, race, ethnicity and poverty

### **Cases**

Activists discovered inter-state trafficking in teenaged girls from poor families in 24 Parganas North districts. More than 300 teenagers from Deganga, Harwa and Bashirhat have been lured by false marriages to Bihar, Uttar Pradesh, and Punjab. 32 victims from six villages have been identified. After the girl was taken from her home village she would be sold for Rs 2,500 to Rs 10,000, depending on the number of middlemen involved. Those who escaped said the girls were watched all the time and not allowed to speak to anyone outside their room. Any attempt to resist resulted in brutal torture. All their "earnings" was taken away by the so-called husbands or mistresses. The "husbands" would occasionally write from fake addresses to their parents to avoid arousing any suspicion. Women organized a rally to protest the inaction of police, who they suspect knew about the trafficking. (Mumtaz Khatun, Kolsur Nari Vikas Kendra, Centre of Communication and Development, Madhyamgram, *The Times of India News Service*, 1 October 1997)

A twenty year old Bangladeshi woman escaped prostitution in Calcutta. A year before she had been sold for Rs. 10,000 to men who forced her into prostitution and tortured her. She later escaped to become a maid, then escaped from there to seek help from police. Along with others, her husband was arrested by police. She informed police that she knew a lot of Bangladeshi girls in Calcutta who were being prostituted. (Ittefak report, 8 March 1993, *Trafficking in Women and Children: The Cases of Bangladesh*, pp. 29 & 30, Ittefak, 5 March 1993, UBINIG, 1995)

13-year-old Mira of Nepal was offered a job as a domestic worker in Bombay, India. She arrived at a brothel on Bombay's Falkland Road, where tens of thousands of young women are displayed in row after row of zoo-like animal cages. Her father had been duped into giving her to a trafficker. When she refused to have sex, she was dragged into a torture chamber in a dark alley used for 'breaking in' new girls. She was locked in a narrow, windowless room without food or water. On the fourth day, one of the madam's thugs goonda wrestled her to the floor and banged her head against the concrete until she passed out. When she awoke, she was naked; a cane smeared with pureed red chili peppers shoved into her vagina. Later she was raped by the goonda. Afterwards, she complied with their demands. The madam told Mira that she had been sold to the brothel for 50,000 rupees (about US\$1,700), that she had to work until she paid off her debt. Mira was sold to a client who then became her pimp. (Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

In 1982, 13 year old Tulasa was abducted from a village near Kathmandu in Nepal and sold to a brothel in Bombay. She was dressed in European-style clothes and taken to luxury hotels to serve mostly Arab clients until a hotel manager called the police. Hospitalized, Tulasa was found to be suffering from three types of venereal disease and tuberculosis. (Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

### **6. What is the difference between trafficking and prostitution**

Trafficking takes place in several forms and prostitution is only one of them. Trafficking includes the entire gamut of activities from procurement to transportation to the final destination. Prostitution is one of the many activities in the final destination which has all the elements of trafficking.

### **7. Should commercial sex be designated sex work or prostitution**

The Protocol's definition of trafficking implicitly rejects the terminology of "sex work", "sex worker" and "clients". It prompts the use of the terms "prostitution" and "prostitute-user" The

terms “sex work”, “sex worker” and “client” wrongly suggest that prostitution, as currently practiced, does not typically fall within the category of trafficking. Calling prostitution sex work reflects a profound misinterpretation of the current practice of prostitution throughout the world. The term “sex work” was rejected in the drafting of the Protocol itself, which instead employs the term “prostitution”; and the Protocol’s sharp distinction between the “exploitation of prostitution” and “forced labor” would be conflated by use of the terms “sex work”, “sex workers” and “clients”.

#### **8. Why doesn’t the government just ban the “red light area”?**

That would not solve the problem since prostitution is no longer confined to brothels, but has taken on new forms, such as in advertisements for ‘friendship clubs’, bars, and escort services. For example, newspapers run advertisements for ‘friendships’ that advertise a phone number offering ‘mature friendship with broad-minded women’. Similarly, there are dance clubs, beauty salons and escort services which offer jobs to young girls, and act as a façade for child prostitution. Newspapers regularly run reports about police raids that uncover prostitution in places that were advertised as friendship clubs. Police officers who have conducted such raids find that prostitution occurs in these places and that in most cases, children are also found on the premises. Globalization, tourism promotion, business promotion etc. have contributed a lot to the growing demand and therefore commercial sexual exploitation (CSE) has moved out of the traditional ‘red light areas’ to tourist destinations, holiday resorts, business conclaves, etc.

#### **9. What are the different forms of prostitution?**

As already stated Prostitution today occurs in various different settings. Some of the different types are mentioned below:

- In **street prostitution** the prostitute solicits customers while waiting at street corners or walking alongside a street.
- Prostitution occurs in some **massage parlors** and in some barber shops where sexual services may be offered for an additional tip.
- Where prostitution is more out in the **open, solicitation** is done at bars, even open-air bars. Thailand is famous world-wide for these establishments.
- **Brothels** are establishments specifically dedicated to prostitution.
- Prostitution can also take place in the prostitute's apartment and in many countries this is the only legal form of prostitution. A hybrid between brothel and apartment prostitution exists in Germany, Belgium, Switzerland, China and the Netherlands: female prostitutes rent tiny one-room apartments and solicit customers from behind windows or through advertising.
- In **escort or out-call** prostitution, the act takes place at the customer's place of residence or more commonly at his or her hotel room. This form of prostitution often shelters under the umbrella of escort agencies, who ostensibly supply attractive escorts for social occasions. While escort agencies claim never to provide sexual services, very few successful escorts are available exclusively for social companionship. Even where this prostitution is legal, the euphemistic term "escort service" is common. Alternately, an escort may work independently of an agency and place advertisements on the internet or in newspapers and magazines for his or her own services, communicating with clients directly and setting up appointments on their own.
- In **sex tourism**, travelers from rich countries travel to poorer countries such as Thailand, India, Srilanka and Indonesia in search of sexual services where their currency buys more. Other popular sex tourism destinations are Cuba, Costa Rica, and former eastern bloc countries.

Research has established that trafficking of women and children has grown beyond leaps and bounds because of the demand in several places which more often take place under the facade of a legal venture. A few examples will illustrate this point.

- The advertisements in certain newspapers, which boast of massage by M/F

(Male/Female), 'young and soft', etc. are enough indication as to how these massage parlours are open invitations to exploit trafficked women. More often children are declared as adults and are stated to be serving 'of their own volition'.

- 'Tourists circuits' in many places does not mean a tourist guide accompanying for briefing and guidance. It means much more. Young women and children are 'supplied' as if there are tourist guides. The tourist 'hires' the service of such persons from the tourism operator and thereafter uncontrolled exploitation is guaranteed.
- 'Friendship clubs' is another area where trafficked women are exploited and bartered.
- Trafficking for marriage happens mostly in places where female population is much low in comparison to that of males. Infact, this is the result of years of female foeticide, female infanticide etc. The acute shortage of women in the marriageable age in these places is met with by the 'Marriage Bureaus' that have propped up. No doubt, many of them are genuine and legitimate, assisting men to get alliances from other states in India. However, under the gab of Marriage Bureaus, several 'trafficking bureaus' have started functioning. They traffic girls from interiors of many states like Assam, Orissa, etc. These girls are sold to Haryana, Punjab, etc. under the facade of marriage. The 'buyer' is under no legal obligation as the 'marriage' has no legal sanctity and he exploits the women for sometime and thereafter 'sells' her, probably at a premium. 'Business' continues till the women is 'used up'.
- Trafficking for organ transplant is happening on the quiet, where both male and female are victims of such exploitation. Traffickers and the 'organ merchants' often work in tandem with the medical professionals and para medical staff. Recent investigations in Punjab has exposed the organized nature of trafficking of several vulnerable persons, who have been exploited and yet the issues remain unnoticed for long.
- Trafficking for adoption is another sphere of activity where the traffickers conceal their crime under the facade of a legitimate activity. In this case, the documents are more often forged to show adoption, whereas young children who are shown to be adopted are exploited and thereafter left in the lurch.
- Trafficking for exploitative labour in circus, for camel racing etc. has been happening since long. However due to international pressure in certain countries against child exploitation, the indications are that the level of exploitation of children for camel racing has come down.
- The trafficking for labour related exploitation is very rampant in India. Large number of 'women and children' from the vulnerable sections of Jharkand, Orissa, Chattisgarh, etc. are being trafficked into cities and metros where there is high demand for domestic labour. Since there is a large scale migration in this sector,trafficking usually gets submerged under migration. It calls for careful investigation and a discerning eye to understand the subtle distinction. Several studies and researches have established the expanse of the problem.
- Culturally or socially sanctioned practices prevalent in certain places and communities have been instrumental in the perpetuation of trafficking of women and children from these communities. The NHRC\* study shows that despite several local and special laws like Devdasi (prohibition and dedication) Act 1982 etc, trafficking continues in several places in the country. This could be labeled as Devadasi system in Karnataka, AP etc., Yellamma in TN, Muralis in Maharashtra etc. Similarly, large scale trafficking of women, especially girl children has been reported from certain communities like Bedia, Kanjar, Gujjar, etc. wherein girl children are bartered as and when they attain puberty. Sometimes, the entire village community would get together and witness the process of 'auction' of the girl. The highest 'bidder' walks away with the girl, alongwith the 'licence' from the community, not only to exploit her with impunity, but also to 'resell' her at his will and pleasure.

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- Cyber sex and internet trafficking is a recent phenomenon. The trends indicate that young children are easily lured into the trap and trafficked. Since the research and investigation in this field are highly technical, it is certainly not within the comprehension of the existing systems of law enforcements, especially at the police station level. Therefore the intensity and extent of exploitation in this arena is not yet known, though the indications emanating from certain instances, which have come to light, are quite disturbing.

Action Research on Trafficking in Women and Children in India was carried out by NHRC (National Human Rights Commission) India in 2002-2004. The project was sponsored by UNIFEM and the study was conducted by Institute of Social Sciences. The author, PM Nair, worked in the project as the Nodal Officer of NHRC and also the Principal researcher – cum - investigation. The report has been published by Orient Longman in 2005.

## **10. What is Pimping?**

Female prostitutes, especially street prostitutes, may be subject to violence and control of a pimp, a man who lives off the proceeds of several prostitutes. Pimping is one way in which young women are recruited into sex work; the pimp will provide financial and emotional support, acting as boyfriend/friend, but eventually ask the young woman to perform sex acts for money. The relationship is volatile and dangerous to the young woman.



### **Methods and Techniques of Traffickers**

Every year between 5,000 and 7,000 Nepalese girls are trafficked into the red light districts in Indian cities. Many of the girls are barely 9 or 10 years old. 200,000 to over 250,000 Nepalese women and girls are already in Indian brothels. The girls are sold by poor parents, tricked into fraudulent marriages, or promised employment in towns only to find themselves in Hindustan's brothels. They're locked up for days, starved, beaten, and burned with cigarettes until they learn how to service up to 25 clients a day. Some girls go through 'training' before being initiated into prostitution, which can include constant exposure to pornographic films, tutorials in how to 'please' customers, repeated rapes. (Soma Wadhwa, "For sale childhood," *Outlook*, 1998)

Trafficking in women and girls is easy along the 1,740 mile-long open border between India and Nepal. Trafficking in Nepalese women and girls is less risky than smuggling narcotics and electronic equipment into India. Traffickers ferry large groups of girls at a time without the hassle of paperwork or threats of police checks. The procurer-pimp-police network makes the process even smoother. Bought for as little as Rs (Nepalese) 1,000, girls have been known to fetch up to Rs 30,000 in later transactions. Police are paid by brothel owners to ignore the situation. Girls may not leave the brothels until they have repaid their debt, at which time they are sick, with HIV and/or tuberculosis, and often have children of their own. (Soma Wadhwa, "For sale childhood," *Outlook*, 1998)

The areas used by traffickers to procure women and girls are the isolated districts of Sindhupalchow, Makwanpur, Dhading and Khavre, Nepal where the population is largely illiterate. (Soma Wadhwa, "For sale childhood," *Outlook*, 1998)

#### **11. Are all commercial sexual activities prostitution?**

No, all commercial sexual activities are generally not classified as prostitution. These include acting and modeling for pornographic materials, even if this involves engaging in sexual intercourse; exotic dancing, sexually provocative acting (involving masturbation) without physical contact with the customer; lap dancing, and commercial telephone sex. But most of these activities do exist along with prostitution

#### **12. How common is prostitution?**

The fact that the number of persons being trafficked for sexual exploitation is increasing and the concern in the international arena has been aroused because of this "ever increasing statistics" in itself answers the above question.

In cross border trafficking, India is a sending, receiving and transit nation. Receiving children from Bangladesh and Nepal and sending women and children to Middle Eastern nations is a daily occurrence. (Executive Director of SANLAAP, Indrani Sinha, Paper on Globalization and Human Rights"

India and Pakistan are the main destinations for children under 16 who are trafficked in south Asia.(Masako Iijima, "S. Asia urged to unite against child prostitution," *Reuters*, 19 June 1998)

More than 40% of 484 prostituted girls rescued during major raids of brothels in Bombay in 1996 were from Nepal. (Masako Iijima, "S. Asia urged to unite against child prostitution," *Reuters*, 19 June 1998)

In India, Karnataka, Andhra Pradesh, Maharashtra, and Tamil Nadu are considered "high supply zones"for women in prostitution. Bijapur, Belgaum and Kolhapur are common districts from which women migrate to the big cities, as part of an organised trafficking network. (Central Welfare Board, Meena Menon, "The Unknown Faces")

Districts bordering Maharashtra and Karnataka, known as the "devadasi belt," have trafficking structures operating at various levels. The women here are in prostitution either because their husbands deserted them, or they are trafficked through coercion and deception Many are devadasi dedicated into prostitution for the goddess Yellamma. In one Karnataka brothel, all 15 girls are devadasi. (Meena Menon, "The Unknown Faces")

Hundreds, if not thousands, of Bangladeshi women and children are held in foreign prisons, jails, shelters and detention centers awaiting repatriation. Many have been held for years. In India, 26women, 27 girls, 71 boys and 13 children of unknown gender are held in Lilua Shelter, Calcutta; ShehaShelter, Calcutta; Anando Ashram, Calcutta; Alipur Children's Home, Delhi; Nirmal Chaya Children's Home, Delhi; Tihar Jail, Delhi; Udavam Kalanger,Bangalore; Umar Khadi, Bangaore; Kishalay, West Bengal; Kuehbihar, West Bengal and Baharampur,West Bengal. (Fawzia Karim Firoze and Salma Ali of the Bangladesh National Women Layer Association," Bangladesh Country Paper: Law and Legislation")

Women and children from India are sent to nations of the Middle East daily. Girls in prostitution and domestic service in India, Pakistan and the Middle East are tortured, held in virtual imprisonment, sexually abused, and raped. (Indrani Sinha, SANLAAP India, "Paper on Globalization and Human Rights")

160,000 Nepalese women are held in India's brothels. (Executive Director of SANLAAP, Indrani Sinha, Paper on Globalization and Human Rights")

Approximately 50,000, or half of the women in prostitution in Bombay, are trafficked from Nepal.(Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

The brothels of India hold between 100,000 and 160,000 Nepalese women and girls, 35 percent were taken on the false pretext of marriage or a good job. (Radhika Coomaraswamy, UN Special Report on Violence Against Women, Gustavo Capdevila, *IPS*, 2 April 1997)

About 5,000-7,000 Nepalese girls are trafficked to India every day. 100,000-160,000 Nepalese girls are prostituted in brothels in India. About 45,000 Nepalese girls are in the brothels of Bombay and 40,000 in Calcutta. (Women's groups in Nepal, 'Trafficking in

Women and Children: The Cases of Bangladesh, pp.8 & 9, UBINIG, 1995)

Calcutta is one of the important transit points for the traffickers for Bombay and to Pakistan. 99% women are trafficked out of Bangladesh through land routes along the border areas of Bangladesh and India, such as Jessore, Satkhira, and Rajshahi. (*Trafficking in Women and Children: The Cases of Bangladesh*, pp.18 & 19, UBINIG, 1995)

In shelters in India, there are 200 Bangladeshi women and children who have been trafficked awaiting repatriation. (<http://www.webpage.com/hindu/daily/980220/03/03200004.htm>, 19 February 1998)

Of the 5,000-7,000 Nepalese girls trafficked into India yearly, the average age over the past decade has fallen from 14-16 years old to 10-14 years old. (CATW - Asia Pacific, *Trafficking in Women and Prostitution in the Asia Pacific*)

In Bombay, one brothel has only Nepalese women, who men buy because of their golden skin and docile personalities. (Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

2.5% of prostitutes in India are Nepalese, and 2.7% are Bangladeshi. ("Devadasi System Continues to Legitimize Prostitution: The Devadasi Tradition and Prostitution," *TOI*, 4 December 1997)

Some Indian men believe that it is good luck to have sex with scalp-eczema afflicted prostitutes. Infants with the condition, called "pus babies," are sold by their parents to brothels for a premium. (Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

## What is Trafficking?

This chapter would help the participants to understand the issue of trafficking from a broader international perspective

### Objectives

- To facilitate an understanding of international instruments of relevance to trafficking
- To understand the obligations that India has

### 1. What is trafficking in persons?

***The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, also known as the Palermo Protocol, defines trafficking as-***

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor 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) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring 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) of this article;

(d) "Child" shall mean any person under 18 years of age.

This definition establishes four elements in defining trafficking: act, means, end result and victim status. In cases where the victim is an adult, at least one of the means listed in subparagraph (a) must have been employed in order for the act to constitute trafficking. It is logically impossible under the Protocol definition to have a case of adult trafficking in which one or more of the means set forth in subparagraph (a) has not been used.

In any individual case, one or the other victim status will necessarily be fulfilled (i.e., the purported victim will be either a child or an adult). If the victim is a child, then the means element becomes irrelevant, and the question of whether trafficking has occurred will be determined solely by reference to the act and end result elements. If the victim is an adult, then the question of whether trafficking has occurred will be determined by reference to the act, means and end result elements, with the important caveat that the consent of the adult victim is irrelevant to a determination of whether trafficking has occurred.

### 2. Is this the first International Instrument on trafficking?

No, there have been instruments related as well as specific to the issue of trafficking and prostitution. (See box)

#### **International framework of laws related to trafficking**

##### **International Agreement for Suppression of White Slave Traffic, 1904**

The agreement was formulated with the intention of securing to women of full age who have suffered abuse or compulsion, as also under-age girls, effective protection against criminal traffic known as the "White Slave Traffic".

##### **International Convention for Suppression of White Slave Traffic, 1910**

This convention criminalized procurement, enticement or leading away of a woman or girl under the age of 21, even with her consent for immoral purposes irrespective of the fact that the various acts constituting the offence may have been committed in different countries.

**\_ International Convention for the Suppression of the Traffic of the Women and Children, 1921**

The treaty prohibits the enticing or leading away of a woman or girl for immoral purposes, to be carried out in another country.

**\_ Slavery Convention, 1926**

States Parties are enjoined to discourage all forms of forced labour. Slavery means control over another person, without full informed consent, for the purpose of exploitation.

**\_ International Labour Organisation Forced Labour Convention, 1930**

Article 1 of this convention calls for suppression of the use of forced or compulsory labour in all its forms within the shortest possible period.

**\_ International Convention for Suppression of Traffic in Women of full age**

This convention imposes a duty on the signing countries to prohibit, prevent, prosecute and/or punish those engaged in trafficking in women.

**\_ Universal Declaration of Human Rights, 1948**

Article 4 of the Declaration prohibits all forms of slavery and the slave trade. Article 13 recognizes the right of persons to freedom of movement and residence and Article 15 recognizes the right to nationality.

**\_ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949**

This convention is a compilation of four previous international conventions (Conventions of 1904, 1910, 1921 and 1933). This convention made procurement, enticement, etc. for purposes of prostitution punishable irrespective of the age of the person involved and his/her consent to the same (Article 1). Brothel keeping was also denounced to be illegal and punishable (Article 2). The convention provided for repatriation (Article 19) and rehabilitation (Article 20) measures. However, the 1949 Convention is limited to trafficking for prostitution and related activities.

**\_ Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices of Slavery, 1956 (Slavery Convention)**

This convention condemned a variety of slavery-like practices, including debt bondage and forced marriage. States Parties undertook to establish suitable minimum ages of marriage and registration of marriages.

**\_ Abolition of Forced Labour Convention, ILO, 1957**

Under this convention, States Parties undertook to suppress any form of forced or compulsory labour as a means of political coercion, economic development, labour discipline, or racial, social, national or religious discrimination.

**\_ International Covenant on Civil and Political Rights, 1966**

Forced labour and slavery are prohibited by Article 8 of the ICCPR. Article 24 outlines the rights of children.

**\_ International Convention on Economic, Social and Cultural Rights (ICESCR) 1966**

Article 10 of this convention stipulates that States are responsible for protecting children from exploitation and must lay down the minimum age for their employment.

**\_ Minimum Age Convention, 1973**

The aim of this convention was to prohibit and regulate child labour and restrict engagement of children in hazardous work.

**\_ Convention on the Elimination of all forms of Discrimination against Women, 1979 (CEDAW)**

Article 6 of CEDAW requires States Parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women.

**\_ United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984**

The convention provides against the expulsion or return of a person to another state if there are substantial grounds for deeming her to be in danger of torture. Victim compensation measures are also stipulated in the convention.

**\_ Tourism Bill of Rights and the Tourist Code 1985**

Adopted by the WTO, the Code enjoins that the State should preclude any possibility of the use of tourism to exploit others for purposes of prostitution.

**\_ Convention on the Rights of the Child, 1989**

Article 11 requires States Parties to take measures to combat the illicit transfer and non-return of children abroad. Under Article 34 and 35, States Parties must take appropriate national, bilateral and multilateral steps to protect the child from all forms of sexual exploitation and sexual abuse as also to prevent the abduction, sale of or traffic in children.

**\_ Convention on Protection of Rights of Migrant Workers, 1990**

This Convention seeks to put an end to the illegal or clandestine recruitment and trafficking of migrant workers and lays down binding international standards for their treatment, welfare and human rights.

**\_ The ILO Convention 182 on the Worst Forms of Child Labour (1998)**

Article 3 of this Convention defines the worst forms of child labour comprising all manifestations of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and servitude and forced or compulsory labour, etc.

**\_ Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999**

The Protocol enables individuals or groups who have exhausted national remedies to directly approach the Committee under the Protocol.

**\_ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000**

The UN Trafficking Protocol seeks to create a global language to define trafficking in persons, especially women and children, assist victims of trafficking, and prevent trafficking in persons. It supplements the **United Nations Convention Against Transnational Organised Crime, 2000**.

**\_ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography**

This process seeks to raise standards for the protection of children from all forms of sexual exploitation and abuse.

**\_ Recommended Principles and Guidelines on Human Rights and Human Trafficking:**

These standards were developed by the UN High Commission for Human Rights so as to strengthen the human rights principles and perspective of the Trafficking Protocol. The document sets down 17 Recommended Principles and 11 Recommended Guidelines, which are meant to facilitate effective implementation of the key provisions.

**3. Why should one accept the Protocol definition?**

The Protocol definition of trafficking as it stands today is the accepted international definition of trafficking. Since its establishment, the Protocol definition has been adopted verbatim into the domestic positive law of several States, and it continues to frame governmental and NGO anti-trafficking initiatives at the local, national, and international levels. The Protocol casts an extremely wide net in defining trafficking, one which arguably captures every present manifestation of prostitution. One of the many benefits of the Protocol definition is that it provides a foundation upon which anti-trafficking discussion, research, and policy development may transcend the general debate about the rights and wrongs of prostitution to a significant extent. The Protocol definition reflects an important resolution between deeply divided views regarding the acceptability of the commercial sex industry, establishes clear criteria for understanding what counts as trafficking, and makes it possible to frame anti-trafficking initiatives with consistency and clarity.

**4. When was the Palermo Protocol signed?**

It was signed by a majority of the countries which gathered in Palermo, Italy, in December 2000. (See box for details)

**Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**

**Entry into force:** 25 December 2003, in accordance with article 17 which reads as follows: "1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization. 2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later."

**Status:** Signatories: 117, Parties: 99.

**Text:** Doc. A/55/383.

**Note:** The Protocol was adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations. In accordance with its article 16, the Protocol will be open for signature by all States and by regional economic integration organizations, provided that at least one Member State of such organization has signed the Protocol, from 12 to 15 December 2000 at the Palazzi di Giustizia in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

**5. How many countries have ratified or acceded to the Palermo Protocol?**

As of July 2005 there are 99 parties to the Protocol.

**6. What is India's position on the Protocol**

India is a signatory to the Protocol.

**7. Why is there a need for such a Protocol?**

It is estimated that trafficking for sexual exploitation has become a global operation generating crores of rupees annually, involving the movement of approximately four million persons from one country to another and domestically within countries. The growing trend of organized crime groups getting involved in trafficking has made it imperative to institute a global response and action to prevent and protect the victims and prosecute the perpetrators.

**8. How can trafficking be equated to Organised crime**

Trafficking is almost always a form of organized crime and **should** be dealt with using criminal powers to investigate and prosecute offenders for trafficking and any other criminal activities in which they engage. Trafficked persons should also be seen as victims of crime. As with other forms of organized crime, trafficking has globalised. Groups formerly active in specific routes or regions have expanded the geographical scope of their activities to explore new markets. Some have merged or formed cooperative relationships, expanding their geographical reach and range of criminal activities. Illegal migrants and trafficking victims have become another commodity in a larger realm of criminal commerce involving other commodities, such as narcotic drugs and firearms or weapons and money laundering that generates illicit revenues or seeks to reduce risks for traffickers. The relatively low risks of trafficking and substantial potential profits have, in some cases, induced criminals to become involved as an alternative to other, riskier criminal pursuits. Risks are further reduced by the extent to which victims are intimidated by traffickers, both in destination countries, where they fear deportation or prosecution for offences such as prostitution or illegal immigration, and in their countries of origin, where they are often vulnerable to retaliation or re-victimization if they cooperate with criminal justice authorities.

Specifically for prostitution people are recruited, transported, harbored, or received by means of the threat or use of force, or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of one person having control over another, for the purpose of exploiting that person's prostitution. For the most part, prostitution as actually practiced in the world usually does satisfy the elements of organized crime.

The traditional networks involved in trafficking have become more complex and organized through gangs and syndicates. These operate at three levels: the village or rural level, centers of power at the national level, and the regional or international "flesh trade market". The different levels are all inter-linked and function with the collusion, if not the collaboration, of politicians, public figures, police and local authorities.

**9. Are only large syndicate's transnational traffickers?**

*The Convention against Transnational Organized Crime* states that a "structured group of three or more persons" constitutes an organized criminal group. Additionally, research has shown that husbands and boyfriends traffic their female partners into prostitution and they often may recruit a small group of people to assist in the crime.

**10. What if one agrees to be trafficked?**

A very important part of the definition is that the consent of a victim of trafficking intended for exploitation is irrelevant (Art. 3(b)). It is therefore the *harm* to the person, and not the *consent* of the person, that is the governing standard.

**11. How are trafficked persons treated under the Palermo Protocol?**

By the terms of the Protocol, trafficked persons, especially women in prostitution, are no longer viewed as criminals, but as victims of a crime.

**12. What can be done for the victims of trafficking?**

The Protocol recognizes the need for assistance to victims and encourages effective prevention, prosecution and judicial cooperation.

**13. What is the main reason for trafficking of persons?**

The greatest numbers of victims of trafficking are women and children who are trafficked into prostitution and other forms of commercial sexual exploitation. Reasons range from socio-economic, political and cultural conditions in many parts of the world which make women and children particularly susceptible to being trafficked, thereby foster the supply side of trafficking. These conditions are often ignored or even tacitly encouraged by Governments, often for the purpose of encouraging tourism within their borders.

**14. Why not keep trafficking as a separate issue from prostitution?**

Prostitution and trafficking cannot be separated. The Protocol acknowledges that most trafficking is for prostitution and other forms of sexual exploitation. The UN Protocol follows previous international UN human rights instruments that do not separate trafficking and prostitution, such as the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) and the abolitionist 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*.



**Committee on the Elimination of Discrimination against Women, Concluding Observations: India (2000).**

The representative stated the measures to address prostitution and trafficking in women had included a proposal to amend the Immoral Traffic (Prevention) Act to widen its scope and increase penalties; the appointment of special police officers; and the establishment of protective homes and child development and child-care centers for the children of sex workers. A plan of action to combat trafficking and commercial sexual exploitation of women and children and to integrate victims into society had been developed, and India had actively participated in the drafting of the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.

**15. Can trafficking take place *within* a country?**

Yes. Women and children who are trafficked for prostitution and forced labor within their own countries are also protected under these provisions. The key element is the *exploitative purpose* of the activity rather than the movement of persons either inside a country or across its borders.

The Protocol definition of trafficking does not require proof of movement of the victim across borders or otherwise. Trafficking is just as much trafficking even when it occurs in the victim's own home village, town or city. There is no difference in the violation of fundamental human rights in both local and international trafficking, and this has been reflected in the growing recognition that domestic trafficking is as serious a human rights violation as international trafficking.

**16. What actions should countries take as parties to the Protocol?**

The largest numbers of victims are trafficked for sexual exploitation – mainly prostitution. Each country has different laws on prostitution. Once the protocol is ratified it means that the countries have accepted the articles therein and they need to adopt laws that implement them.

**17. What is the difference between Trafficking, Smuggling and Migration?**

There are strong political pressures to divorce the debate on trafficking from the more general phenomenon of migration, and to treat smuggling as distinct phenomena. However, if the primary concern is to locate, explain and combat the use of forced labor, slavery, servitude and the like, *then there is no moral or analytical reason to distinguish between forced labor involving "illegal immigrants", "smuggled persons" or "victims of trafficking"*. The distinction between trafficking and smuggling may be clear to those who attach political priority to issues of border control and national sovereignty, but it is far from obvious to those who are primarily concerned with the promotion and protection of the rights of migrant workers. Many analysts have observed, policies designed to control and restrict immigration can actually fuel markets for "trafficking" and "smuggling" and contribute to the construct of irregular migrants ("trafficked", "smuggled" or otherwise) as cheap and unprotected labour. This should alert us to the existence of demand not just for cheap labour/services in destination countries, but also for opportunities to migrate for source countries.

The precise point in a continuum at which migration ends, smuggling starts, and at which smuggling ends trafficking begins will vary according to the political and moral values.

**18. Why are there no regional initiatives if the problem is as profound as stated**

At the regional level, there have been several initiatives by the governments of South Asia and Asia-Pacific regions. The Bangkok Accord and Plan of Action to Combat Trafficking in Women, 1998; Asian Regional Initiative Against Trafficking in Persons, especially Women and Children, (ARIAT) 2000; The ASEM (Asia Europe Meeting) Action Plan to Combat Trafficking in Persons, especially Women and Children, 2000; The Bali Conference Co-chair's Statement on People Smuggling, Trafficking in Persons and Related Transnational Crime, 2002; are illustrations of their concerted efforts.

**SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002**

The aim of this convention is to promote cooperation amongst member states to effectively deal with various aspects of prevention, interdiction and suppression of trafficking in women and children; repatriation and rehabilitation of victims of trafficking and preventing the use of women and children in international prostitution networks, particularly where the SAARC member countries (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka) are the countries of origin, transit and destination. The convention is legally binding on its signatory parties and is the first regional anti-trafficking treaty to emerge from the Asian continent. As of March 2004, the convention has been ratified by all member countries except Nepal and Sri Lanka.

The SAARC Convention defines 'child', 'prostitution', 'trafficking', 'traffickers' and 'persons subjected to trafficking' under Article 1. It provides for 'aggravating circumstances', which are factual circumstances that enhance the gravity of the offence (Art. 4). It also provides for the protection of victims (Art. 5), mutual legal assistance (Art. 6), training and sensitisation of enforcement officials (Art. 8), rehabilitation of victims (Art. 9). Offences under the Convention are extraditable (Art. 7). Article 8(3) requires the States Parties to establish a Regional Task Force comprising officials from the Member States, to facilitate implementation of the provisions of this Convention and to undertake periodic reviews. The main criticism levied against the SAARC Convention is its narrow definition of trafficking, which is limited to prostitution, also that it makes no distinction between women and children. Trafficking has been defined to include the moving, selling or buying of a person, but does not include recruitment, labour, transfer or receipt that does not essentially constitute buying or selling.

**Convention on Regional Arrangement for the Promotion of Child Welfare, 2002**

This Convention seeks to create regional arrangements among SAARC countries in order to promote understanding and awareness of the rights, duties and responsibilities of children and to develop the full potential of the South Asian child.

**19. If trafficking is such a grave issue why haven't there been other initiatives from other countries/**

Trafficking as an issue has been discussed in numerous conferences and it is the deliberations in these conferences which put pressure on the international community to cohesively address the issue. A few such initiatives are mentioned in Box:b

**World Conference on Human Rights, 14 – 25 June 1993, Vienna, Austria**

This conference took new steps to promote and protect the rights of women and children by supporting the creation of new mechanisms and advocating the universal ratification of the Convention on the Rights of the Child by the year 1995.

**World Congress against the Commercial Sexual Exploitation of Children, 1996**

The aims of the World Congress were to award high priority and adequate resources for action against the commercial sexual exploitation of children; promote stronger cooperation among all sectors and strengthen the role of families in protecting children; ensure the revision and enforcement of laws; and advocate the development and implementation of gender sensitive prevention and reintegration programmes.

**Amsterdam Conclusion and Oslo Conference, 1997**

The Conference affirmed that in order to eliminate the exploitation of children, poverty eradication and rehabilitation programmes must be developed, along with a sound mechanism to monitor their progress.

**\_ Second World Congress against Commercial Sexual Exploitation of Children, Yokohama, 2001**

The Conference called upon the international community to promote action towards the eradication of commercial sexual exploitation of children and address the risk factors of poverty, inequality, discrimination, violence, armed conflict, HIV/AIDS, dysfunctional families and criminality.

**\_ The Honolulu Declaration, 2002**

This Declaration recognised the need to address the structural causes of trafficking and the forms of exploitation and poverty at its roots. The mobilising of a broad coalition was envisaged, to bring together concerned agencies, organisations and individuals to combat trafficking at local, national, regional and international levels.

**\_ Brussels Declaration on Preventing and Combating Trafficking in Human Beings, 2002**

The Brussels Declaration aims at bringing about European and international cooperation, in developing concrete measures, standards, best practices and mechanisms for prevention, victim protection and assistance, and police and judicial cooperation to prevent and combat the trafficking of human beings.

## Legalization of Prostitution

### **1. How did the legalization debate start?**

It was felt that as long as prostitution is kept illegal, women will be continuously persecuted for acts which harm no one but themselves and will be subjected to brutality at the hands of misogynists and moralists. It was felt that that legalization would help overcome all discrimination and violence and stop the practice of treating prostitutes as second class citizens and in extreme cases, as less than human. But experience has shown that legalization has led to an increase in problems rather than a decreasing them.

### **2. Prostitution has always existed and wouldn't legalization be the best way to address the problem?**

It has been seen that by legalizing prostitution the problem actually becomes bigger. Legalization, decriminalization or regulation of prostitution by the State amounts to sanctioning of all aspects of the sex industry. Not only would the women's activities be legal, but also that of the buyers. Pimps would be transformed into businessmen and legitimate sexual entrepreneurs. Brothels, sex clubs, massage parlors and other sites of prostitution activities would become legitimate establishments for commercial sexual acts with few restraints. In effect, through legalization and decriminalization of the sex industry, dirty money becomes clean. Criminal acts become legal. In fact, in countries that have legalized or decriminalized the sex industry such as parts of Australia, the rates of illegal prostitution have skyrocketed because the buyers still want to purchase children, "exotic" women from abroad, and sex acts that may be off limits in the legal venues. Furthermore, many women choose to remain illegal as they do not want to register and create a permanent record of their prostitution activities.

### **3. Doesn't legalization bring the sex industry under control?**

The experience of the province of Victoria, Australia gives an accurate picture as to what legalization of prostitution does. Victoria has experienced a massive expansion of the sex industry after legalization. In addition to prostitution, other forms of sexual exploitation, such as tabletop dancing, bondage and sadomasochist centers, peep shows, phone sex, and pornography have developed and have generated enormous profits for the sex industry and the State.

### **4. Wouldn't legalization dignify the women in prostitution and their profession?**

Dignifying prostitution as work does not dignify the women, but rather the sex industry. Often people don't realize that decriminalization means the decriminalization of the whole sex industry and not just the women in it. Legalization does not erase the stigma of prostitution for the women. By having to register, they lose their anonymity and become more vulnerable to being stigmatized as "whores." Legalization of prostitution means that the State imposes regulations with which it can control one class of women as prostituted.

### **5. Wouldn't women in prostitution be better protected if prostitution were legalized?**

Studies of victims of commercial sexual exploitation show that prostitution establishments - legal or illegal - did little to protect them. A study that interviewed victims of trafficking in five countries showed that 80% of them had suffered physical violence from pimps and buyers, immaterial of whether the sex industry was legal or illegal. Usually the buyer's interests take precedence over the woman in prostitution. Also, "safety policies" in brothels do not protect women from harm. The sexual exploitation and violence in prostitution is viewed as sex and often tolerated as part of the so-called job. Under legalized conditions, the male buyers "shop" in the sex market where women must compete by engaging in sexual acts that can harm them. Even women's reproductive capacities become sellable products.

### **6. Won't prostituted women be protected against infectious diseases in a legalized system?**

A legalized system of prostitution often mandates health checks and certification for the women in prostitution, but not the male buyers. Male buyers can and do transmit disease to the women they buy. Unfortunately, the public health proposals that mandate health checks for the women seek to protect the male buyers and not the women in prostitution, or else proposals would also mandate health checks for the male buyers.

**7. Doesn't legalization help to end the exploitation of women who have been trafficked?**

On the contrary, legalization promotes sex trafficking. In the Netherlands, where prostitution is legal, a 1999 study showed that 80% of the women in the country's brothels were trafficked from other countries. And in Germany, after steps toward legalization of prostitution started in the 1980s, within about 10 years 75% of the women in sex industry were foreigners. After the fall of the Berlin Wall, 80% of the estimated 10,000 women trafficked into Germany were from the former Soviet bloc countries.

**8. Wouldn't legalization put an end to that illegal and street prostitution?**

There are many reasons why legalization would not end those practices. Some women are in street prostitution because they want to avoid being controlled and exploited by pimps. Others don't want to register or submit themselves to health checks. Some feel that they have greater control in the sex transaction by not being confined to closed spaces. Moreover, the argument that legalization would prevent the criminal elements from operating in the sex business does not hold water. The real growth in prostitution since legalization in Australia has been in the illegal sector. The number of unlicensed brothels in Victoria tripled in number in 1998-1999 and they continue to operate with impunity. In Sydney, the tripling occurred within four years, with the vast majority of brothels having no license.

**9. What do prostituted women themselves think about legalization?**

Studies and interviews with women in prostitution show that they oppose legalization. Moreover, they do not want family members and friends to have to earn money by selling themselves. It is true that groups claiming to represent women in the sex industry support normalizing prostitution as work. However, in investigating many of these groups alleging to represent women in prostitution, such as the well-known U.S. organization, COYOTE, investigators found that COYOTE provides no services for women in prostitution, has been financed by the sex industry in California, and is often a public relations front for the sex industry.

**10. But if the government can collect revenues by legalizing prostitution isn't it better that the money goes to government than to traffickers?**

The consequences would be harmful, because the government would become increasingly dependent on the sex sector. Further, if women in prostitution are counted as workers, the result would be lack of responsibility for making decent and sustainable employment available to women.

**11. If legalization and prohibition are not effective means to control prostitution, what can be done?**

An alternative legal route would be criminalizing and penalizing the demand. Men who use women and girls in prostitution have long been invisible – they have escaped examination, analysis, responsibility and penalty for their actions. They have to be brought into the picture.

**12. What are the reasons given against legalizing the use of prostituted persons?**

The alternative to criminalizing the use of prostituted persons was to allow such activity to remain or become legal. Legalizing encourages the demand side of trafficking and is therefore to be discouraged. In a study done by Coalition against Trafficking in Women it was found that people believed that: "Legalized prostitution gives new generations of men and boys the moral and social permission to engage in the exploitation of prostitution with a clear conscience. Thus "any policy which promotes the banality and inevitability of prostitution increases the demand".

**13. But what if the women want to legalize prostitution?**

Just as some people choose to take highly addictive and dangerous drugs and it is still recognized as being harmful to them. One does not seek to legalize the hazardous drugs some people take. Before

taking a stand on legalization one would have to keep in mind the vested interest in legalizing the issue. One would also have to remember that "women" is not a homogenous entity but a heterogeneous stratum with different bargaining powers. (casestudy )It has to be seen that how well informed are the women on the issue of legalization.

#### **14. In which countries is prostitution legal?**

Prostitution is LEGAL (with some restrictions) in Canada, most all of Europe including England, France, Wales, Denmark, etc., most of South America including most of Mexico (often in special zones), Israel (Tel Aviv known as the brothel capital of the world), Australia, and many other countries. It is either legal or much tolerated in most all of Asia and even Iran has "temporary wives" which can be for only a few hours. New Zealand passed in 2003 one of the most comprehensive decriminalization acts which even made street hookers legal which is causing many concerns. PRIVATE consenting adult sexwork should be illegal in the U.S.

##### **Australia**

**Prostitution itself is legal but laws vary in different states regarding street soliciting and brothels.**

##### **New Zealand**

**The Prostitution Reform Act 2003 made ALL adult prostitution and brothels a legal occupation in New Zealand but may have too many restrictions on brothels. In fact the government has online their "Brothel Operator Certificates." There are reasonable healths and safety requirements such as using condoms, local bylaws can restrict signage and brothel locations, and a provision to outlaw pimping.**

**However there is great concern that it also decriminalized street hookers and the legal situation is unclear. Section 14 of the Act allows local governments to make bylaws "regulating the location of brothels of any scale, but not extending to other businesses of prostitution." It was hoped that by making brothels legal women would choose to work from their own homes (as allowed as home business in zoning rules) and get off the streets. But after the Reform Act there are still many street hookers which it seems can't be restricted under the Act.**

**The Philippines is a good Asian example, technically prostitution is illegal but when it had U.S. military bases there was such a huge demand by U.S. military men for sex, it flourished. But to be politically correct, bargirls are "Customer Relations officers". They are required to have weekly STD checkups and quarterly HIV tests! But officially there are no sex workers, just Guest Relationship Officers who are bargirls that have to carry government issued ID badges. Sexwork is a very big industry and supports many people especially in smaller cities like Angeles. Unless it involves children there is no enforcement and no legal risk for the bargirls or their customers. It's just like secondary wives in much of Asia. It is simply accepted but often not publicly acknowledged.**

**Thailand has a very similar situation and has been known since the Vietnam war days as one of the best places in the world to go for great sexuality. For centuries brothels have just been an accepted part of the culture. Most Thai men got their first sexual education and experience in the local brothel. When sex work became so popular when the U.S. military enjoyed their rest and relaxation stops in ports, for public relations purposes, Thailand made it officially illegal due to Western pressure, but the Entertainment Places Act and "special services" exempted most all of the sex work for the military or tourists since it brings in so much cash. Consenting adult prostitution is illegal only officially in Thailand, not in practice.**

Canada is a closer example of few legal problems and more equal purchasing power. The typical \$CAN200/hr cost for 1 hour of full service with no silly tips expected is a bargain for U.S. customers since this is about \$US170. One reason prices are so reasonable compared to the U.S. is there is no legal risk and many more women choose sexwork as a profession for the right reasons and enjoy it. Canada (as in most of the world) has mostly honest sexworkers vs mostly scams, rip offs or much higher priced providers in the U.S. with the huge unmet demand for natural sexuality but fewer women willing to take the legal risks. More women get into sex work for the right reasons as a legitimate choice, when you don't have the legal risks of the U.S. Prostitution has always been legal in Canada, but its limited by the 1850 bawdy house restriction and you can't publicly solicit on a busy street or public area  
England and Scotland has gone further than Canada since "incalls" or brothels are allowed but with only one girl per flat. There are many trying to increase this limit so providers can work more safely. Of course outcall adult sex work has always been legal but not street hookers.

#### IRAN

The 1925 Penal Code stated that prostitution was not a crime in itself, but that it was a crime to advocate it, to aid or abet a woman to enter prostitution or to operate a brothel. The current regime believes that execution - by firing squad or stoning - is a more fitting penalty. Execution is common. Some Iranian feminists regard mut'ia, a form of temporary marriage where the woman has few rights, as akin to prostitution. Under mut'ia, it is possible to be `married for as little as half an hour. Men who visit prostitutes simply marry them for a few hours and it's totally legal in Iran.

### 1. What does “demand” mean?

The issue of demand is of crucial importance in addressing trafficking of women and children from a human rights perspective. The Palermo Protocol is the first UN instrument to address demand in the context of trafficking. It attempts to target the continued practice of source countries turning a blind eye to sex trafficking as well as to the debt bondage and slavery-like conditions suffered by trafficking victims within their borders and abroad. Article 9, paragraph 5, of the Protocol states as follows:

*“States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.”* Three issues deserve particular emphasis:

(a) Demand must be understood in relation to exploitation, irrespective of whether that exploitation also constitutes trafficking; (b) Demand must be understood as that which fosters exploitation, not necessarily as a demand directly for that exploitation; (c) It is not necessary for demand itself to lead to trafficking; rather, it is sufficient that the exploitation fostered by the demand leads to trafficking.

### 2. How can the problem of demand be addressed?

Law has to recognize that without male demand there would be no female supply. So till it is not acknowledged that prostitution is a form of male violence against women and children, and the purchase of sexual services is not criminalized demand cannot be addressed.

### 3. Who all constitute “demand”?

“Demand” includes all those who benefit directly as well as indirectly from trafficking. It consists of a range of benefactor such as prostitute-users and people who purchase products created through trafficked labor. Many of these also fall within the definition of “traffickers”.

There are many beneficiaries of the earnings of the prostitutes mainly Brothel Owners, Pimps, Taxi Drivers, Food and beverages suppliers, Pan (Supari, Cigarette) suppliers, Alcoholic drink suppliers, Washer men, Sweepers etc. Brothel Owners who purchase girls and put them in prostitution and makes their earnings by exploiting them sexually or otherwise. Pimps/Touts seduce or solicit customers and get their commission and they are benefited. Local Taxi Drivers who are well acquainted with prostitute dens and have hand in glove with Brothel Owners and Pimps bring a lot of customers and make huge earnings through the business of prostitution. Similarly Food and beverages suppliers, Pan (Supari, Cigarette) suppliers, Alcoholic drink suppliers, Washer men, Sweepers etc. also depends on the business of prostitution to meet their earnings.

### 4. Which article of the Protocol deals with demand in trafficking

In the context of sex-trafficking States parties have an obligation under article 9, paragraph 5, to discourage the use of prostituted persons generally. Prostitute-users are typically incapable of distinguishing and/or unmotivated to differentiate between prostituted persons who have been subjected to the illicit means delineated in article 3 (a) of the Protocol and those who have not.



The BAGONG KAMALAYAN COLLECTIVE INC., an organization of survivors in street prostitution in the Philippines, fought for the Philippine law that punishes buyers of persons trafficked to sexual exploitation. We fully support the criminalization of the demand side which includes the customers, recruiters, and people who manages the transactions of trafficking or sexual exploitation. Because of them, the lives of women are endangered.

**Women's earnings are not threatened by criminalizing the buyers. Women, in the first place are not the ones who earn from trafficking and prostitution. The police earn from protecting the system, the pimps do, and the buyers by using women's bodies in all ways they know how. We lose, we are wounded, the value of our humanity is diminished.**

For our group, the use of the term 'sex worker' is not acceptable. We cannot consider prostitution as work, because it deprives us of our humanity. This is an issue not only for women in prostitution but an issue for all women. **If we do not penalize the male perpetrators, it is like telling them that they could always have the power over us – to buy us.**

We call on the state in the Philippines to stop arrests of women. Instead, the focus of arrests should be on the pimps and the customers. Sexual exploitation or the selling of women is violence.

If we do not start with punishing the buyers, our vision of eliminating trafficking and sexual exploitation will never come to be.

Minda Pascual<sup>1</sup>  
President

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<sup>1</sup> Minda, a trafficking survivor, suffered 7 years in prostitution. She is also one of the leaders of the National Network of Survivors in the Philippines.

## 5. Why should one criminalize demand in sex trafficking

The role of the prostitute-user in sex trafficking in creating demand is subjected to more scrutiny and attracts more “criminalized attention” as:

- While the human rights of women and children are violated in many forms of trafficking, sex trafficking is a particular form of trafficking in which the human rights of women and children are violated as women and children;
- Unlike the purchaser of consumer goods produced through trafficked labor, the prostitute-user is simultaneously both the demand-creator and (by virtue of his receipt of the trafficked person) part of the trafficking chain;
- By engaging in the act of commercial sex, the prostitute-user is thereby directly inflicting an additional and substantial harm upon the trafficking victim, tantamount to rape, above and beyond the harmful means used by others to achieve her entry or maintenance in prostitution;
- There is good reason to believe that many prostitute-users are aware that the women and children they use in prostitution are subjected to the illicit means delineated in the Protocol, and that widespread cultural norms encourage the use of prostituted persons despite this knowledge;
- There is little reason to believe that any significant amount of prostitution throughout the world exists without use of one or more of the illicit means delineated in the Protocol;
- The use of force, threats, coercion, fraud, deception, abuse of power, and/or abuse of a position of vulnerability are so prevalent throughout many aspects of non-commercial sexual activity, that it is extremely unlikely that any substantial number of prostitute-users would be deterred from using prostituted persons on the grounds that the prostituted person has been subjected to these illicit means;
- Even the best intentioned prostitute-users will probably be unable to discern the difference between women who have been subjected to the illicit means delineated in the Protocol and those (if any) who have not been.

## 6. Doesn't this then imply that supply and demand drive the sex-trafficking market?

While some claim that demand for the use of prostituted persons is the “most immediate and proximate cause of the expansion of prostitution others claim that it may equally be true that “supply generates demand rather than the other way around”. This debate can be understood in one of two ways, and the distinction lies in one’s understanding of the term “supply”. If supply is understood to include all aspects of the supply side of the sex-trafficking market, then this debate presents a false choice. For, if supply includes the economic, social, legal, political, institutional and cultural conditions which make women and children vulnerable to being trafficked, then it is clear that both supply and demand drive the sex-trafficking market. In this sense, it is true that “markets cannot be understood in abstraction from the broader social, economic, political and institutional context in which they operate”, and “governments are heavily implicated in the construction of the [prostitution] market through their (often gender discriminatory) policies on employment, economic development, welfare, education and so on”. If, however, supply is understood to include only trafficking victims themselves (and not the unjust conditions which create their vulnerability) - then it must be made clear that supply does not drive the market. It would be a grave injustice to impute responsibility for driving the sex market to its victims themselves. Such a claim is tantamount to victim blaming, and constitutes a further violation of the human rights of trafficking victims. **Demand created by prostitute-users is not the only factor that drives the sex-trafficking market. However, it is the factor which has received the least attention and thought in anti-trafficking initiatives. By and large, anti-trafficking policy has been directed towards detecting, preventing and punishing the conduct of traffickers, or towards stemming the supply of victims through educational campaigns or the like.**

## 7. Still won't criminalizing both demand and supply be more effective?

The Special Rapporteur emphasizes that any criminal sanction relating to the commercial sex industry should not be used to penalize trafficked women and children. Domestic laws and policies that penalize prostituted women and children contribute to their vulnerability, and make women and children more susceptible to being victimized by sex trafficking. This point was noted in a response to the questionnaire with reference to a specific country: “as women in prostitution are punished, but not the users of sex services, it creates the demand of using sex services”.

**8. Do the women in prostitution support criminalizing demand?**

There is a mixed reaction from women. The first reactions are based on the fear of losing their only source of income, which in the first place was the reason they had to take to prostitution. But as the realisation of **the potential effects of criminalizing demand** seeps in women agree **penalization of clients would reduce the demand for sexual exploitation**. They also believe that it would reduce Street prostitution as well as the activities of procurers if the profit margins dip.

**9. Won't this push prostitution underground?**

The experience of Sweden shows that there is no indication that prostitution has gone underground, or that prostitution in sex clubs, escort agencies, and brothels has increased. In fact there are clear indications the Law has had direct and positive effects in limiting the trafficking of women for prostitution in Sweden-Needs more explanation

**10. What does criminalizing the purchase of sexual services mean?**

It means that the purchase of sexual services is prohibited and punishable by law.

**11. How will addressing demand reduce the violence inflicted on prostituted women?**

Narratives of prostituted persons have testified that the sexual acts endured are violent, degrading and abusive. Women in prostitution do not control the transaction. The prostituted woman must do what the buyer wants her to do. If the buyer is penalized the “demand” reduces which reduces the violent episodes that the prostituted person has to endure.

**12. By focusing on demand will Exploitation of Commercial Sex be eradicated?**

The problem Exploitation of Commercial Sex is complex. It has been accepted that male demand is not the only promoter of prostitution – national and international policies, globalization, the organized sex industry, countries in financial and political crisis, women in poverty preyed on by recruiters, racial myths and stereotypes, and women’s inequality contribute to the rise in global sexual exploitation. However, the male demand for the sex of prostitution is the most immediate cause of the expansion of the sex industry without which it would be highly unprofitable for pimps and traffickers to seek out a supply of women. Till date providing enabling services to women in prostitution and instituting preventive mechanisms at the source point has been the dominant way of dealing with the issue but all efforts were ineffective because of the ever increase in “demand”.

**13. What if the customs of a country do not allow criminalizing demand?**

All the countries who are a party to the protocol have to make concerted efforts to criminalize the use of prostituted persons as a way of fulfilling their obligations under article 9, paragraph 5 of the Protocol. The protocol implicitly denounces the perpetuation of such customs.

**14. What types of men constitute demand?**

Studies show that men who buy women in prostitution come from all age groups, nationalities, races, and walks of life. Most of them are married.

**15. What do the buyers demand?**

“Demand” included a range of activities, which could include anything from verbally abusing the woman, being burned with cigarettes, bodily mutilation, and sex without condoms or other forms of violence.

**16. How does the law envisage the role of the police and will it be possible to enforce the law?**

The primary purpose is to prevent the purchase of sexual services along with arrest and prosecution of the perpetrators. Initially, representatives of the police in Sweden were critical of the Law, saying that it would be difficult to enforce. In order to increase policemen’s competence and knowledge about prostitution and trafficking in human beings, the National Criminal Police in collaboration with the Division for Gender Equality and with local community groups established educational programs for police personnel. This brought positive results and the initial criticism about the Law being difficult to enforce has ceased. One year after the program began in 2003; there was a 300% increase in arrests.

**17. Which countries have criminalized “demand”?**

The Swedish law that prohibits the purchase of sexual services is a particularly apt expression against the demand side of trafficking, for it not only formally condemns the use of prostituted persons, but does so in a context which explicitly recognizes the gendered nature of the commercial sex industry: “As with all laws, the Swedish law has a normative function. It is a concrete and tangible expression of the belief that in Sweden woman and children are not for sale. It effectively dispels men’s self-assumed right to buy women and children for prostitution.” A recently enacted law in the Republic of Korea imposes tougher penalties on brothel owners and buyers, while protecting prostituted victims. It is a criminal offence under the Philippines’ Anti-Trafficking in Persons Act of 2003 to hire any person to engage in prostitution or pornography. Chile recently enacted (for the first time) a criminal law which penalizes prostitute-users who exploit prostituted children. **India has placed The Immoral Traffic (Prevention) Amendment Bill,2006 in which it has introduces a subsection of criminalizing demand. (see Annexure for details)**

**Information, Education and Advocacy Campaigns Addressing Demand**

**A variety of information, education and advocacy campaigns aimed at discouraging demand have been undertaken by governmental, non-governmental and community-based organizations in recent years.**

In Brussels, Belgium ECPAT Belgium has undertaken a widespread information campaign targeting the demand for child prostitution and encouraging the community and tourists to report suspected child sexual abuse.
In Chicago, United States of America, the Chicago Coalition for the Homeless has implemented a community based Prostitution Alternative Roundtable, which engages community members in dialogue with prostitution survivors, law enforcement and social services representatives and policymakers. This programme has educated key players on the root causes of sexual exploitation, reduced victim blaming behaviours, and targeted the demand for sexual exploitation.
In Leith, Scotland, United Kingdom, community activists have joined together to discourage prostitute users through public demonstrations, carrying placards with messages such as “You can’t get no satisfaction in Leith!”
In several states of the United States of America, the names and photographs of convicted prostitute-users are published on television, billboards, and the Internet.
In France, a number of prominent men have signed a pledge not to engage in rape or the use of prostituted persons, stressing the need to create a form of masculinity based on mutual respect
In Angola, the Government organized public sensitization campaigns against “catorzinha”, the practice of selling daughters to wealthy men as “virgin mistresses”
In Winnipeg, Canada, police have initiated “Operation Snapshot” whereby prostitute users are videotaped whilst kerb-crawling and the videos are broadcast on the Internet
In Germany, a programme entitled “Prevention and Suppression of Child Abuse by Sex

Tourists” educates German holidaymakers regarding child prostitution abroad and provides them with details of institutions and organizations to contact if they suspect sexual exploitation of children.
In Perugia, Italy, the Government has placed large cement barriers along the roadways to discourage prostitute-users from stopping along the road to purchase sex from trafficked women and girls. In both Canada and the United States, educational programmes referred to as “John Schools” have been implemented, whereby men arrested for the use of prostituted persons are required to attend classes in which they are educated about the harms of prostitution.
On Batam Island, Indonesia, poster campaigns call upon potential prostitute-users to ask themselves, “How would you feel if someone did this to your daughter?”
Military personnel in Kosovo have attended education sessions regarding sex trafficking. A list of pubs and buildings that are out of bounds for soldiers has been drawn up and is regularly updated
In Switzerland, the Government is supporting an OSCE project to raise awareness within the national tourism industry about sex trafficking. Efforts are also being made to cooperate with multinational companies to identify ways in which the private sector and authorities can cooperate to combat trafficking
In Madrid, Spain, city officials have embarked on an educational poster campaign, displaying signs which read, “Prostitution exists because you pay for it. Don’t contribute to the exploitation of human beings.”
In Mexico, the Prosecutor General of the Republic, the National Family Development System, the National Commission of Women and UNICEF have joined together to launch a campaign entitled “Open your eyes. Don’t close your mouth” which aims to eradicate the sexual exploitation of children
In Harare, Zimbabwe, police have initiated “Operation No to Prostitution”, in which undercover female police officers pose as prostituted women in order to target and discourage potential prostitute

### Prevention

#### System approach: Role of various stakeholders, Networking & Coordination.

There are various Govt. / Non Govt. agencies responsible directly or indirectly to prevent Trafficking in Human beings viz. Police, Local Bodies like Municipal Corporation, BEST/MSEB.

- a. Police agency by collecting intelligence can effectively carry out raids on prostitution dens.
- b. Municipal Corporation can have effective control on structures used for illegal purpose through their existing laws. Effective control for providing water to such illegal structure.
- c. BEST/MSEB can also have effective control for providing electricity.
- d. NGOs can play vital role by collecting & providing information to various Government agencies.

#### 03. Importance of conviction of offenders for prevention Naming & Shaming

Wide publicity should be given to the offenders of Human Trafficking through print & electronics medias. They should be defamed in such a manner that they should not raise their heads in the society and they should be socially boycotted and blacklisted.

## Prostitution in India

India is a source, transit, and destination country for women, men, and children trafficked for the purposes of sexual and labor exploitation. Indian men and women are trafficked into situations of involuntary servitude in countries in the Middle East and children may be forced to work as beggars or camel jockeys. Bangladeshi women and children are trafficked to India or trafficked through India en route to Pakistan and the Middle East for purposes of sexual exploitation, domestic servitude, and forced labor. Nepalese women and girls are trafficked to India for sexual exploitation, domestic servitude, and forced labor. India is also a growing destination for sex tourists from Europe, the United States, and other Western countries. Internal trafficking of women, men, and children for the purposes of sexual exploitation, domestic servitude, bonded labor, and indentured servitude is widespread. Numerous studies show that the vast majority of females in the Indian commercial sex industry are currently victims of sexual servitude or were originally trafficked into the sex trade. India is also home to millions of victims of forced or bonded labor.

### 1. What does the constitution say

The Constitution of India expressly prohibits traffic in human beings.

- Article 14 provides for equality in general.
- Article 15 Prohibits discrimination on the grounds of religious race, caste, sex or place of birth, or of any of them.
- Article 15 (3) provides for special protective discrimination in favor of women and child relieving them from the moribund of formal equality. It states that, “ nothing in this article shall prevent the state from making any special provision for women and children”
- Article 16 (1) covers equality of opportunity in matters of public employment.
- **Article 23 prohibits traffic inhuman beings and forced labor**
- Article 24 prohibits employment of children in any hazardous employment or in any factory or mine unsuited to their age.
- Article 38, enjoins the State to secure and protect as effectively as it may a social order in which justice – social, economic and political shall inform all the institutions of national life. It basically says provide opportunities to make equal results.
- Article 39 the state should direct its policy towards securing, among other things, a right to adequate means of livelihood for men and women equally and equal pay for equal work their age or strength
- 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.
- Article 42 protects against inhumane working conditions
- Article 45 makes provision for free and compulsory education for children, which is now well settled as a fundamental right to the children.
- Article 46 directs that state to promote the educational and economic interests of the women and weaker sections of the people and that it shall protect them from social injustice and all forms of exploitation.
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### 2. Why was this act passed in 1956 and not before or after?

India enacted the Suppression of Immoral traffic in Women and Girls Act, 1956 in pursuance of the International Convention for the Suppression of Traffic in persons and of the Exploitation of the Prostitution of Others signed in New York on 9 May 1950

**Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949**

This convention made procurement, enticement, etc. for purposes of prostitution punishable irrespective of the age of the person involved and his/her consent to the same (Article 1). Brothel keeping was also denounced to be illegal and punishable (Article 2). The convention provided for repatriation (Article 19) and rehabilitation (Article 20) measures. However, the 1949 Convention is limited to trafficking for prostitution and related activities.

**3. How many amendments has the act undergone**

SITA continued to govern the regulation, control and penalization of the offence relating to prostitution till 1978, when some minor amendments were carried out relating to the implementation of Act. In 1986, however, a major exercise was undertaken to amend the Act as a result of the suggestions made to Government by voluntary organizations working for women, advocacy groups and various individuals and this resulted in enlarging the scope of the Act, making penal provisions more stringent, and introducing a certain minimum standard of correctional treatment and rehabilitation of victims. Under the Amendments carried out in 1986, the name of the Act was changed to 'Immoral Traffic (Prevention) Act (ITPA), 1956 to widen the scope of the Act to cover all persons who are exploited sexually for commercial purposes.

At present the act has been presented in the Lok Sabha for amendment (see annexure----- for the bill)

**4. Why was the name of the Act changed?**

It was proposed to change the name of the Act to "Immoral Traffic (Prevention) Act" in view of widening the scope of the Act to cover all persons, whether male or female, who are exploited sexually for commercial purposes. The changes in the title of the act represented important conceptual as well as policy shifts, most importantly, the recognition of the range of victims was extended from women and girls to persons.

**5. Is prostitution legal or illegal in India?**

The Immoral Trafficking Prevention Act, 1986 ("ITPA"), an amendment to Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA), is the main statute dealing with sex work in India. It does not criminalise prostitution or prostitutes per se, but mostly punishes acts by third parties facilitating prostitution like brothel keeping, living off earnings and procuring, even where sex work is not coerced.

**6. If the prostitute is also gaining from the act of prostitution then isn't she a co-accused?**

No. Most women enter prostitution for reasons, which tend to be primarily economic, while some have a base in custom and tradition at times as well. Usually women are forced into this profession without having much choice as a result of economic distress, both individual and familial. The woman is first exploited and then forced to prostitute herself. Her exploitation genesis may be different i.e.: fraudulent marriage, sold by relatives, etc. Thus by all standards she is a victim of circumstances and NOT a co-accused

**7. What if the person has willingly entered prostitution?**

It is imperative for everyone dealing with the issue of prostitution to understand a choice can be made only in the presence of other choices. If the person has "chosen" prostitution as a mode of survival then it is a matter of survival and NOT choice. Also if the person has "consented" it is imperative that the mode of obtaining consent is investigated in a victim assistance manner. For this **Section 90 of the Indian Penal Code states:** 'A consent is not such a consent as is intended by any section of this Code, *if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequent of such fear or misconception; or if the consent is given by a person who, from unsoundness of mind, or*

*intoxication, is unable to understand the nature and consequent of that to which he gives his consent; or unless the contrary appears from the context, if the consent is given by a person who is under twelve (12) years of age.*

*Misconception of fact* - Consent given under a misconception is invalid if the person to whom the consent is given is aware of its existence. A consent given on the misrepresentation of fact is one given under a misconception of fact within the meaning of this section. An honest misconception by both the parties, however, does not invalidate the consent.

### **8. What is prostitution?**

Section 2 (f) of ITPA defines prostitution as the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly. Thus if any person is sexually exploited and any person gains from the process it amounts to sexual exploitation commercially. The section does not limit the place of prostitution to a brothel alone. The key defining word is "commercial sexual exploitation" in any form.

#### ***Policy and Law***

Although prostitution is legal in India, brothel keeping, living off the earnings of a prostitute, soliciting or seducing for the purposes of prostitution are all punishable offenses. There are severe penalties for child prostitution and trafficking of women. (Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

Since mid-1997 the International Monetary Fund's structural adjustment policy for India has given rise to the economic and sexual exploitation of women in export processing zones, where 70-80% of workers are young women. (Sujatha Fernandes, "Growing Women's Movement in India," *Green Left Weekly*, 20 July 1997)

The devadasi tradition, still prevalent in many parts of India, continues to legitimise child prostitution. A devadasi is a woman married to a god and thus sadasuhagan or married, and hence at all times blessed. As such, she becomes the wife of the powerful in the community. Devadasi is known by different names in different states. In the Vijapur district of Karnataka, girls are given to the Monkey God (Hanuman, Maruti), and known as Basvi. In Goa, a devadasi is called Bhavin (the one with devotion), In the Shimoga District of Karnataka, the girls are handed over to the goddess Renuka Devi, and in Hospet, to the goddess Hulganga Devi. The tradition lives on in other states in South India. Girls end up as prostitutes in Bombay and Pune. The Banchara and Bedia peoples of Madhya Pradesh also practice "traditional" prostitution. (Farida Lambey, vice-principal of the Nirmala Niketan College of Social Work, "Devadasi System Continues to Legitimise Prostitution: The Devadasi Tradition and Prostitution," *TOI*, 4 December 1997)

### **9. Is it different from SITA the previous act?**

Section 2 (f) of SITA, the old Act defined prostitution "as the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind and whether offered immediately or otherwise and the expression prostitute will be construed accordingly" The shift is in emphasis from promiscuity to exploitation, thereby doing away with any moralistic attitudes attached to prostitution.

### **10. In what other ways do the two acts significantly differ?**

The Immoral Traffic (Prevention) Act of 1986 (ITPA) amended the 1956 SITA in important ways. However, its basic goals and premises remain much the same as those of SITA.

- As mentioned before unlike SITA, ITPA recognizes that men and children can also be sexually exploited for commercial purposes, and introduces stiff penalties against those who profit from the prostitution of minors and children.



- ITPA also expands police power to prevent trafficking, but at the same time attempts to curb the potential abuse of power by the police during raids—such as verbal, physical and sexual harassment. Whereas SITA empowered a special police officer to conduct a search of any premises without a warrant, ITPA extends these powers to the accompanying trafficking police officers who enter the premises. However, ITPA prohibits male police officers from conducting a search unless accompanied by two female police officers. Interrogation of women and girls also has to be undertaken by female police officers. If this is not possible, the women and girls can be questioned only in the presence of a female member of a recognized welfare organization.
- Additionally, the act mandates rehabilitation of prostitutes in "protective homes," shelters or reformatories where education and living facilities are to be provided.
- Under ITPA a brothel was redefined broadly as any place where sexual exploitation or abuse occurred. Accordingly, under Section 3 of ITPA, the keepers of any place where sexual abuse occurred could be prosecuted. In the case of trafficked women, this would now cover the houses and room where the newly-trafficked girls underwent "training." ITPA also attempts to eliminate the loophole of lack of knowledge which SITA afforded brothel keepers and owners by placing the burden of proof on the landlord conditionally.

#### 11. Is the act Gender neutral?

No. Though the amendments ITPA made to the 1956 law endeavored to broaden the act to include both men and women as the exploited parties, and all parties involved in prostitution. But in some cases the amendments actually served to further discriminate against women in prostitution. For example, according to ITPA, whomever attempts to solicit "by words, gestures, willful exposure of her person . . . for the purpose of prostitution," shall be subject to up to one-year imprisonment (six months for a first offense) and a fine of up to Rs. 500. But a 1986 amendment to the law adds that if a man commits the offense, the mandatory sentence ranges from only seven days to three months. In the case of soliciting, women are subject to much longer terms of imprisonment than men found guilty of the same offense.

#### 12. How can the act have punishable offences if prostitution is not illegal?

As already stated the act does not criminalise prostitution or prostitutes per se, but mostly punishes acts by third parties facilitating prostitution like brothel keeping, living off earnings and procuring, even where sex work is not coerced. **This statute contains seven punishable offenses**, which are mentioned in, Section 3[**operating** a brothel, **abetting** in brothel keeping] , Section 4[**living off** brothel earnings , Section 5[**procuring** ], Section 6 [**detaining**], Section 7[**activity in vicinity** of public places]and Section 8,[**seducing** or **soliciting**].

The penal sections under ITPA can be briefly put as follows:

The offences under ITPA
S.3 ITPA: Keeping or managing (or assisting in keeping or managing) a brothel or allowing premises including vehicles to be used as a brother.
S.4 ITPA: Living on the earnings of prostitution (even partly)
S.5 ITPA: Procuring, inducing, trafficking or taking persons for the sake of prostitution. Even attempt to procure or take would constitute this offence.
S.6 ITPA: Detaining a person in any premises (brothel or any other) where prostitution is carried out.
S.7 ITPA: Any body who carries on prostitution, or any body with whom such prostitution is carried on, in the vicinity of public places (which includes hotel, vehicles, etc)
S.8 ITPA: Seducing or soliciting for the purpose of prostitution in any public place or within sight of a public place.
S.9 ITPA: Seduction of a person in custody (including causing or abetting seduction for prostitution of a person in custody).

#### 13. Which sections f the ITPA address demand?

The important provisions in the law which are useful to combat the 'demand' aspect can be briefly put as below:

- > All the penal sections of ITPA, stated above are relevant to address the demand factor, as it holds the exploiters guilty for their concerned acts. While addressing demand, the police officials should cause investigation into the entire process involved in trafficking and extend the scope of investigation to the various stake holders involved in the exploitation. The list includes the following:
  - The traffickers (i.e. the recruiters, their agents, their bosses, the masterminds, etc)
  - The transporters (those who transport, arrange transport and arrange halting places)
  - The conspirators (all those who contribute to the various steps involved in trafficking and exploitation)
  - The abettors (all those who abet the various processes through their presence, their involvement or by acts of omission/commission)
  - The financiers (all those who finance the various activities and those who contribute to the perpetration of the debt bondage of the trafficked victims in the places of exploitation)
  - The abusers (includes the 'customers', the 'clientele', the pimps, the managers or 'madams' of brothels etc, especially where exploitation takes places).

>The demand factor can be addressed by focusing attention not only at the final place of exploitation but by enlarging the scene of crime (SOC) to the larger canvas, which should include the following:

- The source point (e.g. place of recruitment)
  - The trafficking routes (including mode of transport)
  - The transit points (e.g. halting places enroute)
  - The destination point
  - The points of exploitation (e.g. brothel or places where it takes place under the façade of massage parlour, tourist lodge, etc.)
  - The places where the 'products' of exploitation were transferred to (eg. In a case where the CSE was to produce pornography, the SOC includes places where the pornographic materials were sent to, stored, transported, and places where they were sold/purchased, etc.
- > The provisions of Indian Penal Code and other special laws/local laws etc (described earlier) should be invoked as and when they apply. These substantive and special legislations can supplement the provision of ITPA.

#### 14. Which are the sections which specify police role?

Section 13 of the Act clearly delineates the role of police along with basic procedures to be followed.

<ul style="list-style-type: none"> <li>• Section 13(1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.</li> <li>• Section 13(2) The special police officer shall not be below the rank of an inspector of police.</li> <li>• Section 13(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:</li> <li>• Provided that no such power shall be conferred on-           <ul style="list-style-type: none"> <li>• Retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an Inspector.</li> <li>• 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</li> <li>• For the efficient discharge of his functions in relation to offences under this Act-</li> <li>• 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</li> <li>• the state Government may associate with the special police officer a non-official advisory body</li> </ul> </li> </ul>	<p>Section 13(1)There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.</p> <p>Section 13(2) The special police officer shall not be below the rank of an inspector of police.</p> <p>Section 13(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:</p> <p>Provided that no such power shall be conferred on-</p> <ul style="list-style-type: none"> <li>• Retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an Inspector.</li> <li>• 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</li> <li>• For the efficient discharge of his functions in relation to offences under this Act-</li> <li>• 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</li> <li>• the state Government may associate with the special police officer a non-official advisory body</li> </ul>
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consisting of not more than five leading social welfare workers of that area (including women social welfare workers, wherever practicable) to advise him on questions of general importance regarding the working of this Act

- 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

***A plain reading of Section 13 would go to show that the detection, registering and investigation of the crime have to be done by the special police officer.***

### **15. Why is the act criticized so often?**

The problem of prostitution and of trafficking in women has been sought to be tackled in India largely through enactment of this legislation and its enforcement. A number of studies have indicated that the present laws tend to penalise the prostitute (u/s 8) who is really the victim, more than the exploiters. It has been felt that the law needs to be oriented more to punishing the perpetrator and helping with the rehabilitation and welfare of the sex worker.

### **16. Which sections of the act deal with victims?**

#### **Immoral Traffic (Prevention) Act of India (ITPA, 1956):**

- To be protected from abuse by a person having custody of her (Sec. 9)
- To be removed/rescued from a brothel (Sec. 16)
- To be provided intermediate custody and ensure that victim is not kept in the custody of a person likely to cause harm over him/her (Sec. 17, 17A).  
To be kept in a protective home or provided care and protection by court upon application (Sec. 19)

### **17. What are the other acts that can be used in this context?**

The **Probation of Offenders Act, 1958** provides the framework for the probation officer in protective homes.

The **Indecent Representation of Women (Prohibition) Act, 1986** defines "indecent representation of women" as the depiction in any manner of the figure of a woman, her form of body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating of women; or is likely to deprave, corrupt or injure public morality. The Act puts a restriction on the publishing or sending by post, of books, pamphlets, etc., containing indecent representations of women, and prohibits all persons from getting involved directly or indirectly in the publication or exhibition of any advertisement containing indecent representations of women in any form.

The **Child Marriage Restraint Act, 1929** defines the terms 'child marriage', 'child', 'contracting parties', 'minors', etc. It sets down the legal age of marriage as 18 years for girls and 21 years for boys. The Act empowers the court to issue injunctions prohibiting child marriage.

The **Young Persons (Harmful Publications) Act, 1956** defines the term 'harmful publication' as "any book, magazine, pamphlets, leaflet, newspapers or other like publication which consists of stories told with the aid of pictures or wholly in pictures, being stories portraying wholly or mainly, a) the commission of offence, b) acts of violence or cruelty, and c) incidence of a repulsive or horrible nature".

The **Bonded Labour System (Abolition) Act, 1976** defines the terms 'advance', 'agreement', 'ascendant or descendant', 'bonded debt', 'bonded labour', 'bonded labour system' and provides for initiating appropriate action.

The **Child Labour (Prohibition and Regulation) Act, 1986** prohibits employment of children in the specific occupations set forth in Part A of the schedule of the Act. The Act lays down the conditions of work of the children. As per the Act, no child shall work for more than three hours before he or she has had an interval of rest for at least one hour.

**The Information Technology Act, 2000** extends throughout India and also has extra-territorial jurisdiction. Section 67 penalises the publication or transmission of any material, in electronic form, which is lascivious; or appeals to prurient interests; or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied therein.

The **Juvenile Justice (Care and Protection of Children) Act, 2000** was passed in consonance with the Convention on the Rights of the Child, to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection. The definition specifically includes the child who is found vulnerable and is, therefore, likely to be inducted into trafficking.

#### 18. Does the IPC deal with this?

IPC deals with different elements of prostitution. **The Indian Penal Code, 1860.** IPC prohibits trafficking and sale of minors. In addition, existing rape, assault, and abduction laws can be used to address the systematic abuse of women and girls in brothels. Relevant provisions of significance under the Indian Penal Code are the following Sections:

Should we give details or list or shorten???

Section 120

Section 293

Section 294,

Section 317,

Section 327,

Section 329

Section 339,

Section 340,

Section 341,

Section 342,

Section 350

Section 351

Section 354, also contains prohibitions against indecent assaults on women, Sections 359-368 deal with kidnapping, abduction, and wrongful confinement, Section 367 mandates imprisonment of up to ten years for the procurement or import of minors for the purposes of illicit intercourse, kidnapping and abduction leading to grievous hurt, slavery or subjection to "unnatural lust"

Section 359,

Section 361,

Section 362,

Section 363,

Section 365,

Section **366:** Sections 366A, which makes procurement of a minor girl (below the age of 18 years) from one part of India to another punishable and Section 366 B, which makes importation of a girl below the age of twenty-one years punishable.

Sections 366A and 366B are intended to punish the export and import of girls for prostitution. Section 366A deals with Procurement of minor girls from one part of India to another. Section 366B makes it an offence to import into India from any country outside India girls below the age of twenty-one (21) years for the purpose of prostitution. **Section 366A of the Indian Penal Code** 'Whoever, by any means whatsoever, induces any minor girl under the age of eighteen (18) years to go from one 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.' Explanation :

This section required two things: (1) inducing a girl under eighteen (18) years to go from any place or to do an act, and (2) intention or knowledge that such girl will be forced or seduced to illicit intercourse with a person.

Where a woman, even if she has not attained the age of eighteen (18) years, follows the profession of a prostitute, and in following that profession she is encouraged or assisted by someone, no offence under this section is committed by such person, for it cannot be said that the person who assists a girl accustomed to indulge in promiscuous intercourse for money in carrying on her profession acts with intent or knowledge that she will be forced or seduced to illicit intercourse.

The word 'seduced' is used in the ordinary sense of enticing or tempting irrespective of whether the minor girl has been previously compelled or has submitted to illicit intercourse.

**Section 366B of the Indian Penal Code**

*'Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one (21) years with intent that she may be, or knowing it to be 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.'*

**Section 367 of the Indian Penal Code** 'Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

Section 370,

Section 371,

Section 372'*Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen (18) 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.'*

For the purpose 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.

This section applies to males or females under the age of eighteen (18) years. It applies to a married or an unmarried female even where such female prior to sale or purchase, was leading an immoral life. It also applies where the girl is a member of the dancing girl caste.

**Section 373, Section 373 of the Indian Penal Code**

*'Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen (18) 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 purposes, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'*

This section and section 372 conjointly punish both the giver as well as the receiver of a person under eighteen (18) years for an immoral purpose. Both the sections relate to the same subject matter. In addition, Sections 372 and 373 of the IPC state that anyone who buys, sells or obtains possession of any person under the age of eighteen for prostitution, illicit intercourse, unlawful or immoral purposes, or knowing that such use at any age is likely, is subject to up to ten years' imprisonment

Section 374, provides punishment for compelling any person to labour against the will of that person.

Section 375, defines rape as the act of engaging in sexual intercourse with a woman when the act is against her will; without her consent; with her consent, when her consent has been

obtained by putting her or any person in whom she is interested in fear of death or injury; with her consent when she is incapable of understanding the consequence of her consent; or when she is under sixteen years of age. Rape laws are applicable to both brothel staff and customers.

**Section 376(1) of the Indian Penal Code**

*'Whoever, except in the cases provided for by subsection (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 (12) 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) - (e) (...)*

*(f) commits rape on a woman when she is under twelve (12) years of age; or*

*(g) (...),*

*-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 judgement, impose a sentence of imprisonment of either description for a term of less than ten years.'*

**Section 376B of the Indian Penal Code**

*'Whoever, being a public servant, takes advantage of his official position and induces or seduces, any women, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.'*

**Section 376C of the Indian Penal Code**

*'Whoever, being the superintendent or manager 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 induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.'*

**Section 376D of the Indian Penal Code**

*'Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any women in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.'*

*Section 377 'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'*

*Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section. Sex with a female under fifteen (15) years of age is considered rape, even if wedded.*

Section 496,  
Section 498  
Section 499,  
Section 506,  
Section 509,  
Section 511.

### **19. Can the sections on pornography be used?**

Definitely, but along with relevant sections of ITPA and the above mentioned IPC sections. For example if at the time of raid pornographic CD's are also seized sections Section 292 and 293 of the Indian Penal Code can also be used .

Section 292 '(1) *For the purposes of subsection (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it;*

(2) *Whoever-*

(a) *sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever; or*

(b) *imports, export or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation; or*

(c) *takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation; or*

(d) *advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person; or*

(e) *offers or attempts to do any act which is an offence under this section,*

*-shall be punished on first conviction with imprisonment of either description 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 imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.*

*Exception:*

*This section does not extend to-*

(a) *any book, pamphlet, paper, writing, drawing, painting, representation or figure:*

(i) *the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or*

(ii) *which is kept or used bona fide for religious purposes;*

(b) *any representation sculptured, engraved, painted or otherwise represented on or in:*

(i) *any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); or*

(ii) *any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.'*

Section 293 of the Indian Penal Code

*'Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty (20) years any such obscene object as is referred to in the last preceding section, or offers or attempts to do so, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.'*

### **20. Which are the relevant sections in the CRPC?**

**Criminal Procedure Code, 1973** with Section 51(2), 53(2), 98, 160, 327(2) and 357 having relevance in this context.

## **21. Does the Indian Evidence Act state trafficking?**

Sections 114 A and 151 of **The Indian Evidence Act, 1872** are relevant in this context.

## **22. What has been the practice regarding demand with police till date?**

Police as a practice claims that they have been arresting clients by applying the indecent behavior and obscenity sections of local laws, or the Indian Penal Code. For example, Section 110B of the Bombay Police Act which penalizes indecent behavior and allows for the arrest of pimps and prostitutes is much publicized example. But evidence shows that the laws are used more on the prostituted persons.

## **23. Are there any “good practices” reported in India?**

Yes besides some good initiatives taken by local police at the grassroots level there are two State Government actions that can be termed as “good practices”. They are:

*Karnataka Devadasi (Prohibition of Dedication) Act, 1982*

Mysore was the first state in pre-independent India to take steps against this practice. In 1924, the Indian Penal Code was amended. Sections 372 and 373 declared as illegal, the practice of dedicating girls for the ultimate purpose of engaging them in prostitution. The Karnataka Devadasi (Prohibition of Dedication) Act, 1982 declares unlawful, the very act of dedication, whether the dedication is done with or without the consent of the dedicated woman. Under the Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989, whosoever performs, promotes, abets or takes part in a dedication ceremony is liable to punishment with imprisonment for three years and fine.

*Goa's Children's Act, 2003*

The Government of Goa has brought out the **Goa Children's Act, 2003** notified in the official Gazette of 14 July 2003. This addresses several child rights issues in an integrated manner. Under the new legislation, the owner and manager of a hotel or other establishment will be held solely responsible for the safety of the child on the premises as well as all the adjoining beaches and parks. The owner and manager are also held accountable if any child is allowed to enter a room without registration. It provides for strong action against making children available for commercial exploitation including posing obscenely, selling or abetting sale of children even under the garb of adoption or dedication of a girl child as a Devadasi. Some of the salient features of the Act are:

- i trafficking has been given a legal definition, for the first time in Indian jurisprudence
- ii the definition of sexual assault has been expanded to incorporate every type of sexual exploitation
- iii responsibility of ensuring safety of children in hotel premises has been assigned to the owner and manager of the establishment
- iv photo studios are required to periodically report to the police that they have not shot any obscene photographs of children
- v stringent control measures have been introduced to regulate access of children to pornographic materials. Besides these, the act also provides many proactive measures

## **24. What about child prostitution?**

NGOs reveal that there is a significant commercial demand for young children, especially girls, for prostitution, and this makes these children extremely vulnerable to trafficking for sexual exploitation. Legalization of prostitution was promoted in the Netherlands as a way to help end child prostitution. Amsterdam based Child Right estimates that between 1996 to 2001, the number of children in prostitution increased by over 300%, going from 4,000 to 15,000. It estimated that 5,000 of these children were trafficked from other countries. In Victoria, Australia, child prostitution has increased dramatically in comparison to other Australian provinces where prostitution has not been legalized.

## **25. What is the state of child prostitution in India**

As in many parts of the world, children in India are being forced into prostitution, trafficked for sexual purposes, and forced into creating pornographic images in a complex number of ways.



The number of children who are commercially sexually exploited has increased, while the age of these children had decreased. A 1998 report suggests that children constituted more than 40% of the persons trafficked into commercial sexual exploitation in India. At any given time, 25 to 40% of the persons trafficked are children who are subjected to multiple rapes everyday in India.

**26. How many children are forced into prostitution?**

Although official figures provide conservative estimates about the number of children engaged in commercial sexual activity, the reality seems to be otherwise. A writ petition was filed in 1988 with the Supreme Court of India regarding protections for the rights of children in prostitution. When the petition was pending, the Supreme Court appointed an expert committee, known as the Mahajan Committee, to conduct a field study and report to the Supreme Court on the status of children in prostitution. Committee reported that at any given point in time, at least 35% of the persons in prostitution are below the age of eighteen years. In addition, increasingly younger children are being forced into commercial sexual exploitation. The Mahajan Committee found that as many as 60% of persons in prostitution are brought into prostitution as children.

**27. What is the judicial structure available to deal with such cases?**

As far as the judicial structure is concerned, Central or State Governments are empowered to consult High Courts and establish special courts for speedy trial of crimes under this Act. Some discretion is also provided to Presiding Officers of both specific and other courts to try cases summarily. Finally, the law provides for the appointment of Special Police Officers in specific areas to deal with crimes under the Act in that area. To assist the Special Police Officer, the State Governments are empowered to associate a non-official advisory body consisting of not more than 5 leading social workers of that area, including women, to advise him on the implementation of Act. Further, the Central Government is empowered to appoint Trafficking Police Officers to deal with inter-State ramifications of the trafficking and prostitution of persons.

**28. What are the problems that NGO's face during case trials?**

Trafficking cases are prosecuted by a government prosecutor, and traffickers retain private defense. This has meant that activists and human rights lawyers who follow trafficking as an issue of concern have had little access to court documents or information about the process of ongoing legal cases. Likewise, women who have made complaints against traffickers, assert that they were not kept informed about the progress of these cases.

**29. Where is India placed internationally?**

India is placed on Tier 2 Watch List for a second consecutive year for its inability to show evidence of increased efforts to address trafficking in persons, particularly its lack of progress in forming a national law enforcement response to inter-state and transnational trafficking crimes. The government also lacked a meaningful response to the significant problem of trafficking-related complicity of law enforcement officials. The central government needs to designate and empower a national law enforcement entity to carry out investigations and law enforcement operations against trafficking crimes with nation-wide jurisdiction. This major deficiency was highlighted by state-level law enforcement officials who, at a 2004 conference, pointed to the difficulty in investigating trafficking crimes across state lines and coordinating with other states' police forces in accounting for the low level of trafficking-related prosecutions and convictions in India. - *U.S. State Dept Trafficking in Persons Report, June, 2005*

**30. Why is India targeted**

According to a Human Rights Watch report, Indian anti-trafficking laws are designed to combat commercialized vice; prostitution, as such, is not illegal. Brothels are illegal in theory but in practice they are restricted in location to certain areas of any given town and thus

although the profession does not have official sanction, little effort is made to stamp it out or to take action to impede it.

Trafficking in human beings and the abuses associated with it are explicitly prohibited under many of India's domestic laws, including the Indian Constitution, specific anti-trafficking acts, the Indian Penal Code, and in state and local ordinances. The problem, therefore, lies not in absence of legal sanctions but in the lack of consistent enforcement.

#### **Actions of NGOs**

A major trafficking network was discovered by the Karnataka State Commission for Women (KSCW), smuggling 12-18-year-old girls from various impoverished districts to contractors who run brothels in Goa. The contractors pay the parents for their girl children under false pretenses. (Seethalakshmi S., "Karnataka girls being sold to Goa brothels," *Time of India*, 28 May 1998)

The exploitation of Nepalese women and girls may never end. "[F]or some there is too much easy money in it, for others there's nothing to be gained by lobbying for its abolition. But surely, for now, it can be monitored. Its magnitude can be lessened," says Durga Ghimire, chairperson of a 98-NGO-strong pressure group National Network Groups Against Trafficking. She feels that the alarmingly low rates of female literacy, coupled with the traditionally low status of the girl-child in Nepal have to be addressed to tackle the problem. Gauri Pradhan of Child Workers in Nepal Concerned Centre (CWIN) emphasizes the need for collaboration by the two governments on this issue. (Soma Wadhwa, "For sale childhood," *Outlook*, 1998)

There are several shelters run by various Katmandu-based NGOs working against trafficking and towards rehabilitation of girls who manage to escape or are rescued from Indian brothels. This is not easy work. Relatives of the rescued girls generally don't want them back and Nepal's government is worried about the spread of HIV, as many of the trafficked girls have contracted HIV while enslaved in India. (Soma Wadhwa, "For sale childhood," *Outlook*, 1998)

#### **Official Response and Action**

After raiding Kamathipura, Mumbai's largest red district, Mumbai police 160 women were sent to the St Catherines Rescue Home. Many women were HIV positive and a large number were pregnant or already had children. (Sister Shiela, Mitu Varma, "India: Children of a Lesser God," *InterPress Services*, 27 October 1997)

In Goa, India there are at least 400 children in prostitution. After Ms. Mohini Giri, chair of the National Commission for women, visited and declared there to be rampant child prostitution in the area, police have conducted some raids in order to find prostituted children. Although police conduct raids, brothels receive tip-offs and hide the minors before raids are conducted. (Meena Menon, "Tourism and Prostitution," 1997)

In 1992, Bombay, India, police intercepted the traffic of 25 Bangladeshi children, 5 to 8 years old. The children and trafficker were held in the same jail. Three years later, 12 of the children were returned to their homes. (Fawzia Karim Firoze & Salma Ali of the Bangladesh National Women Layer Association, "Bangladesh Country Paper: Law and Legislation")

#### **Official Corruption and Collaboration**

In Bombay, top politicians and police officials are in league with the mafia who control the sex

industry, exchanging protection for cash payoffs and donations to campaign war chests. Corruption reaches all levels of the ruling Congress Party in New Delhi. Many politicians view prostitutes as an expendable commodity. (Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

The mafia kidnapped a Dutch doctor compiling an ethnographic study for the World Health Organization. He was released three days later and warned to stop probing the links among politicians, the mob and prostitution. (Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

Underage girls are rarely found in brothels because the pimps and owners receive tip offs from police about impending raids. (Meena Menon, "Tourism and Prostitution," *The Hindu*, 14 February, 1998)

In one brothel in Bombay, the police receive weekly bribes called *haftas* from the madams. Cops harass the girls, take their money, and demand free sexual services. (Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

South Central Bombay is home to the biggest organized crime family in Asia, run by Dawood Ibrahim. In 1992, 40 candidates in Bombay's municipal elections, and 180 of 425 legislators in Uttar Pradesh had criminal records. Shantabai, Bombay's most powerful madam controlled as many as 10,000 pimps and prostitutes' votes in a 1985 election. Bombay's sex industry has evolved into a highly efficient business. It is controlled by four separate crime groups: One in charge of police payoffs, another controlling money laundering, a third maintaining internal law and order, and the fourth procures women through a vast network stretching from South India to the Himalayas. Of the four mafia groups in Bombay, the most powerful is Mehboob Thasildar, the procurer of women. Thasildar opened a restaurant on the ground floor of a two-story, blocklong brothel he also owned, one of the biggest in Bombay, with more than 50 prostituted women. (Indian government sources, Robert I. Freidman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation*, 8 April 1996)

## THE DOS AND DONTs IN THE VARIOUS STEPS OF LAW ENFORCEMENT IN ADDRESSING 'DEMAND' ARE AS FOLLOWS:

### INTELLIGENCE COLLECTION:

- Developing partnership and networks with the civil society is a good means of intelligence collection.
- Community policing pays lot of dividends.
- Careful interviewing of trafficked victims can give information and intelligence on the persons who cause/perpetuate demand.
- The PRIs (Panchayat Raj Institutions) and other local bodies can be effectively utilized to arrive at the grass roots intelligence on demand.
- Close follow up of missing persons can lead to information on the demand systems (*The NHRC study, "Trafficking in women and children in India" by Orient Longman, 2005*), has established the direct linkage between 'trafficking' and 'missing' persons.
- Surveillance on suspects and convicted persons is another tool for intelligence collection.
- Careful and sustained interrogation of suspects is one of the best known methods of giving intelligence of their gangs.

### CRIME REGISTRATION:

- A concerted effort should be made to ensure complete registration and Zero-Suppression.
- Victims and their well-wishers should be facilitated to come over and report crimes.
- Network with the civil society members and help lines to ensure information reaches on time so that crimes are registered.
- If no victim or well-wisher turns up, the police officer should register the crime on his statement and commence investigation.
- The demand factors should be necessarily incorporated in the FIR. The contact persons, the recruiters, the transporters, the transferors, the sellers and buyers, the agents, the brothel owners, the managers, the financiers, the sexual exploiters, the intimidators, the abettors and all conspirators, to the extent possible, should be brought into the ambit of the FIR.
- It is quite possible that the traumatized victim may not be able to recall the entire demand scenario in one go. Therefore she should be given time to compose herself. This requires Psycho-social support, starting with validation of the crime committed against her and empowering her with a sense of security and confidence. She should be made to feel that she is only a victim and never an accomplice. She need be reassured that she is never a party to any act of commission or omission.

### INVESTIGATION:

- **Celerity, Certainty and Gravity** of punishment to the exploiters is *the sin-qua-non* in addressing demand. The investigation on 'demand' requires aggressive law enforcement with a view to bring to book all offenders and to ensure maximum punishment as early as possible. The list of exploiters is a long one (refer discussions in the earlier chapter).
- Investigation should be carried out to establish the network and the linkages between the various stake-holders. Role of each one should be specifically described and discussed in the case diary by citing witnesses/documents and other circumstantial evidence.
- The investigation should necessarily be led into all dimensions of the 'demand'. The provisions of the substantive law (eg. IPC) and all special laws/local laws should be invoked and investigation caused. For eg., if the victim is under 18 years of age, the accused should also be booked under the rage law.

- A trafficking map should be developed and kept as part of the case diary. The map should link up the source-transit-demand places.
- Documents at the SOC: Investigation should be caused into the records maintained in the various SOC (e.g., the register in the brothel regarding income, expenditure and persons involved). Role of the various exploiters whose names may find mention in the register are to be investigated and evidence extracted against them. These documents have tremendous value, informatory and evidentiary, if investigated properly.
- Photograph/video graph of the SOC: Electronic documents can make a visible impact of the extent and intensity of exploitation and therefore, are advisable. Care should be taken to see that the photographs and video graphs do not violate the rights of the victims. (e.g., avoid exposing the identity of the victims).
- Linkages with the prosecutors is essential to ensure that the documentation is proper and adequate. Their advice should be taken and acted upon. Any missing linkages in the chain of evidence should be addressed before the case is referred to the court.
- Interaction of the suspects should be done carefully to bring out the 'demand aspect' in its entirety. This will open up the trafficking trends, the dimensions and extent. It will also give inputs about earlier crimes which may not have been reported at all. One should not fail in registering fresh FIR if information about previous unreported crimes, howsoever old they are, is received through interrogation.
- Criminal antecedents of the accused/suspects would be required for the prosecutor to seek enhanced punishment after conviction. Therefore this has much relevance in addressing demand.
- Asset verification and tracing of the 'fruits of crime', i.e. the illegally acquired assets is one of the most important steps in the investigation and prosecution of trafficking crimes. "Ending human trafficking will require more than even the most aggressive law enforcement can do ..... Governments need to drive up the risk and down the reward that traffickers get from the human trade". (Moises Naim, "*Illicit*", William Heinemann, London, 2005). All efforts should be made to locate the illegal assets, trace them, and with the permission of the court, freeze and confiscate them.

#### **PROSECUTION:**

The common myth that the prosecution of the case is the sole responsibility of the prosecutor and that police has no responsibility in this field has to be erased from minds of the law enforcement officials. Police has a major role to in effecting prosecution of the case. One of the important reasons for the success of prosecution by CBI is the fact that the prosecutors have complete cooperation of the investigators and police supervisors. There is regular monitoring of the progress of trial by the SP of CBI and other higher formations. It is a fact that prosecution, after the amendment of CrPC, is a separate entity, which is not administratively under police. However, this does not mean that there should be no partnership. Effective prosecution calls for foolproof synergy between police and prosecution. The police officials should monitor the progress of the work in the court on a day to day basis, ensure victims and witnesses turn up for evidence, that their rights are protected, that adequate security is extended to them, that the documents and the exhibits are produced in the court at the appropriate time, and that the summons and warrants are served without delay etc. The prosecutors need to be oriented and sensitized to the 'demand factor' as the crucial element in perpetuating trafficking of women and children. Therefore the prosecution has to be aggressive and effective against all the stake holders involved in trafficking. In this context, attention needs to be oriented to the following issues:

- More often prosecutors do not have proper training and orientation. Training and refresher courses need to be regularly carried out.
- There is acute shortage of law books and Case Digests, like the Supreme Court rulings etc. More often important decisions of the Supreme Court do not reach the prosecutors at the ground level even after years. Therefore there is a crying need for

regular refresher course and orientation to the prosecutors on the latest developments across the world in the legal regime as well as the legal interpretations. It would be appropriate to provide computer systems with internet facility so that such developments across the world can be accessed. Moreover reward and punishment for successful investigation and prosecution are essential, especially in ensuring accountability. The official agencies and civil society agencies like NGOs, UN agencies who are working in this field should institute awards, rewards, commendations, public appreciations, etc. for successful work. This should be published adequately.

- The accountability of the law enforcement agencies, including police and prosecution, is another requirement. The civil society agencies working in this field could function as Ombudsman in this regard. They should be 'whistle blowers' at the right time so that things do not go wrong. The golden rule is that bad elements need to be fixed while the good ones should be appreciated and commended.
- Media has an important role in this field. Therefore there is a need to involve the media, especially to expose the demand factor, the shocking nature of extent of trafficking, the human rights violation, etc. '**Naming**' and '**shaming**' of exploiters, especially after conviction in the media can be a powerful tool in addressing demand.
- While addressing demand, it should be kept in mind that section of the exploiters, though may be a small portion, and are children who are misguided. The NHRC study has shown that among the interviewed 'clienteles' there were a few adolescents. They had ventured themselves as 'clienteles' basically because of misdirection, emanating from their lack of awareness, understanding and appreciation of child rights and women rights. There is a need to sensitize them to human rights and gender issues and make them accountable to themselves. This will go a long way in reducing 'demand'. Therefore law enforcements agencies should network with educational institutions, youth clubs and civil society agencies to create public awareness among the adolescents on this issue. While addressing the adolescents, the linkage of trafficking of various diseases especially HIV should be specifically brought out so that it will have the desired impact.
- No prevention is possible if there is no proper linkage between 'prosecution' of offenders and protection of victims/survivors. Undoubtedly an integrated P-P-P Model is the best in any given situation.
- The armada of NGOs and CBOs has been instrumental in putting trafficking on the national agenda. Therefore if law enforcement on 'demand' has to be effective, the partnership between government agencies and NGOs has to be institutionalized. The initiative has to come from the law enforcement officials.

## Victim Care and Protection

### GENDER RESPONSIVE Ways of HANDLING OF CASES

**In addressing the demand side of trafficking, the task of protecting victims should not rest on social workers and NGO's alone. While law enforcers, prosecutors and judges should call the attention of the Social Welfare Department and accredited NGOs, the formers tasks of investigation, arrest and prosecution of the demand side would necessarily include dealing with the victims at the before, during and after operations.** Moreover, if the law enforcers seek the cooperation of victims in prosecuting the demand side, the victims/survivors' psychosocial needs have to be known and responded to. Thus, the development of skills and attitudes that is gender-responsive and child-friendly should be a primary consideration of all sectors. Victim care and protection are important 'aspects' while addressing demand. The exploiters will try their best to hoodwink/harass/intimidate and scare the witnesses and victims, more often making them traumatized so much that they are silenced. However their sounds of silence speak volumes if the investigator is sensitive and professional. There are several success stories in India in this context. Counseling of the victim is important to help her come out of the trauma and speak out. A competent investigator, who is sensitive and professionally empowered, can succeed in breaking the culture of silence of the victim during investigation and even during trial of the case.

In this context, some of the certain Dos and Don'ts in ensuring victim care and protection during trial are enlisted below:

- Victims are vary of the court ambience. Do orient and counsel them. Assure them that their rights will not be violated and that their truthful version of all facts is essential for delivery of justice which is in their interest and also in the larger public interest.
- Victim requires briefing on the facts of the case, especially to recall the events in a logical way. This should be done before she is put in the witness box.
- Prosecutors ought to ensure that the defense-side does not violate the rights of the victim. Embarrassing questions need to be avoided. Intervention of the court should be sought immediately to prevent any such violations.
- All efforts should be made to ensure the anonymity of the victim. Anonymity provides strength and confidence to the victim.
- Move the court for allowing in-camera trial. The Supreme Court of India (*Refer Judgement dated 26 May 2004, in 'Sakshi Vs Union of India'*) has directed that in-camera trial should be extended to all cases of sexual assault on children. A screen has to be provided in the trial court so that the child victim is not exposed to the suspect and accused persons. A child counselor should be provided to assist in the court. Adequate recess should be allowed during trial proceeding, so that the child victim gets rest. This is a landmark judgement in ensuring child rights and, therefore, needs to be implemented in letter and spirit. The police and prosecutors should move the trial courts for the same.
- Video conferencing is an ideal mechanism to prevent victimization of the trafficked victim. It should be done whenever possible. The Supreme Court, in its land mark decision, in *State of Maharashtra Vs Dr.Praful B.Desai 2003 4 SCC.601* has underscored the validity of video conferencing and enumerated the safeguards to be ensured during the trial of cases.
- Depute a sensitive liaison officer with the victim, preferably a WPO, for escort, security, safe passage and comfort.

- Orient the victim, well in advance, to the court scenes
- Debrief the victim immediately thereafter
- Follow up on the debriefing and make required amendments.
- If the victim speaks a different language, make arrangements for appropriate translators.
- Ensure transportation of the victim to and fro
- Provide for contingency expenditures
- Take care to return the victim to the concerned destination
- Do look after other logistics and contingencies such as providing facility for rest, easement, etc.
- Do not forget to thank the victim/witnesses, besides all those who assisted in getting the victim to the court. Do ensure their safe and comfortable return.



## Towards a Victim-Friendly Perspective

### **1. Develop a deep understanding and appreciation of the nature and dynamics of Violence Against Women and Children (VAWC), particularly trafficking in persons**

- That women are vulnerable to gender-based violence due to unequal power relations between sexes
- That children are vulnerable to trafficking, because of inability to protect themselves & non-recognition of their human rights
- That victims' vulnerability are compounded, while belonging to the group of women and/or children, they may also be poor, belonging to discriminated ethnic groups, castes, coming from the rural areas, victims of incest and other forms of gender-based violence
- That harms they have been suffering are physical, psychological, sexual, that may last for a lifetime
- That they also suffer from shame and fear that may be inflicted even by persons other than their traffickers.

### **2. Know and Appreciate the Rights of Victims**

**These are enshrined under the UN Anti-Trafficking Protocol:**

- All victims are protected, not just those who can prove force (Art. 3a and b)
- Consent is irrelevant (Art. 3b)
- Victim will not bear the burden of proof (Art. 3b)
- Key element is exploitation, not movement across border (Art. 3a)
- Address the demand, shift in accountability (Art. 9.5)

### **3. Understand the Nature of Crisis and VAWC such as Trafficking, as Trigger to Crisis**

- A serious event that is brought about by stress, emergency and predicament.
- May be brought about by a series of events that happen repeatedly
- Leads to a situation wherein one's problem-solving capacities and mechanisms have broken down
- An occasion that can present both opportunity and danger
- Is not a permanent state. It is a part of human nature to relieve the pain, stress and anxiety that a person experiences.  
E.g. trafficked persons – holds the knife by the blade to save family from poverty (socio-cultural crisis); upon leaving, she encounters situational crisis due to grave abuse & helplessness; transitional through her change of environment

## **Gender-Responsive Approaches**

Believe that helping women does not only consist of providing assistance for her development, recognition of her integrity, strength and rights but also encouraging her to be involved in changing her situation together with the crisis worker. Crisis intervention and management is done in partnership with the victim-survivor, with the latter as the ultimate decision maker in her life.

The main source of women's experiences of violence is social rather than personal. One should avoid victim-blaming. Still, the focus on society as the root of women's issues should not be used as a means to escape individual responsibility; women must take charge of their own lives. Women must work towards economic and psychological independence, with the state enabling this. Women's relationship with other women and men should be equal in personal power.

### **1. Establish an atmosphere of trust and respect with victim during initial contact**

- Talk to her in a place where there is privacy. Make her safety a priority.
- Guard against unnecessary exposure of the victim.
- Make proper introduction of yourself.
- Assure her that any information that she will give, will be kept confidential. Respect her if she chooses not to put any information on the record.
- Focus her energies.
- Allow her to tell her story and verbalize her feelings at her own pace.
- Give her your undivided attention and make her feel important.
- Assure her that you believe her. Listen actively to her story.
- Validate her feelings and experience. Let her know that she is not the only person who experienced it.
- Let her know that she is not to be blamed for what had happened to her. Help her direct the responsibility to her abuser.
- Keep your message clear and simple.
- Reassure her that seeking help is a positive step she had taken. Respect her timing and ability to digest new information you have provided.
- Help her recognize her inner strengths.
- Give her realistic feedback on what she's told you.
- Respect and support whatever actions she will make after the session, depending on your agency's mandate.
- Avoid sounding judgmental.
- Talk to her and her significant others with sensitivity.
- Share information on the issue.
- Work at reducing her level of anxiety to allow rational decisions.

### **2. Deal with the practical aspects of the crisis**

- Assess the immediate danger to the victim and her loved ones.
- Assess her need for medical examination and treatment.
- Explore her support system.
- Determine her access to resources.
- Assess her need for emergency shelter.
- Assess her need for police intervention or legal assistance.
- Provide her with all information necessary to enable her to make decisions.

- Assist her in making a plan to address her situation.
- Based on her decision, refer or accompany her to a sensitive doctor, lawyer, counselor or shelter.
- Establish ongoing contact.
- Document your findings and observations.
- Make sure that she is treated, interviewed in a sensitive way by the people whom you have referred her to.
- Do not allow the system to re-victimize her. Be tactful and diplomatic, but firm regarding her rights.

### **Child-Friendly Handling of Cases**

#### **1. Presumption of Age:**

Where the age of the trafficked person is uncertain and there are reasons to believe that he/she is a child, the presumption shall be that the trafficked person is a child and observe the appropriate protocol.

#### **2. Initial Contact**

- The State shall adopt procedures for the expeditious appointment of a guardian for a child, especially in cases where the parent is directly or indirectly involved in the trafficking incident or cannot be located within a reasonable time. The guardian shall have the initial responsibility of looking after the best interest of the child during all stages of initial contact.
- Upon identification of a child or possible child, the investigator/officer shall immediately contact the local social welfare office, accredited NGOs, or the parent/guardian (if not party to abuse) of the child to assist in responding to the immediate needs of the child.
- The investigator/officer, social services provider, parents/guardian shall protect the child's right to privacy and prohibit tri-media exposure and interviews.
- Initial questioning of the investigator/officer will only be for the purpose of collecting biographical data.
- Assist the child in retrieving his/her personal belongings before leaving the establishment.
- Whenever, applicable, the guidelines shall also cover children who are conceived and subsequently born of victims/survivors of trafficking in persons.
- The child or possible child victim/survivor shall be removed from the establishment and brought to a safe location, preferably managed or licensed by the social welfare/women and child department) or entrusted to the care and custody of the parent/guardian or trusted adult of the child's choice.
- At no time should the child be placed in the same room or in direct contact with the traffickers or suspected trafficker.
- For safety and security of the child and the direct service providers, the location of the child shall be kept confidential.

#### **3. Child-Sensitive Interviewing**

- The law enforcement agencies and other direct service providers shall come up with a standard interview guide and mechanism that will integrate all the necessary information that may be needed by all agencies in handling the case.
- The investigator/officer should respect the child's right to privacy and acquire the expressed consent of the child and his/her parent/guardian or social service provider prior to the conduct of the interview. The use of any recording equipment such as audio tape recorder, video

camera to record the interview, must also be with the expressed and prior consent of the child.

- Allow the child time to rest and stabilize before conducting the interview. However, for criminal cases subject of inquest proceedings, the interview may be conducted within the period provided by law, if it does not run counter to the best interest of the child.

- As much as possible, the investigator/officer, should be of the same gender as the child, dressed in civilian clothes and trained in administering child friendly and gender sensitive interviews and knowledgeable about the issue of child trafficking.

- Prior to the interview with the child, the investigator/officer should inquire whether any other direct service provider has already conducted prior interviews, and if so, acquire the results from such prior interview. This will help avoid repetition of the same questions.

- The interview must be conducted in the language spoken and understood by the child and in accordance with his/her mental ability. A professional/proficient translator should be provided, whenever the language of the child is different from that of the interviewer.

- The child should be interviewed in the presence of the representative of the social service provider and parent/guardian or trusted adult of his/her choice provided said parent/guardian or trusted adult is not directly or indirectly involved in the trafficking case.

- The child should be interviewed in a child friendly and gender sensitive environment that will warrant confidentiality of proceedings and protection of the right to privacy.

*The intent of the Anti-Trafficking in persons Act of 2003 in the Philippines is primarily to protect and assist victims of trafficking while penalizing their perpetrators so certain measures should be taken to guarantee that key implementers adhere to this intent. The following guidelines will help us as service provider organizations to better take part in the enforcement of the law in Quezon City.*

### **PROPOSED PROTOCOL IN RESCUE AND INTERVENTION**

1. Ensure that Department of Social Welfare and Development (DSWD), SSDD and/or an NGO accompany the arresting team, whenever possible, to extend the necessary services immediately. Otherwise, turn over the victims to the said agency after operations. There should be close coordination between the law enforcers and the service providers.
2. If possible, do not allow media in rescue operations but if it cannot be avoided, do not allow media to take pictures/ video of the victims. As part of the rescue preparations, orient the media on the do(s) and don't(s) of the rescue and explain to them that charges may be filed if they don't adhere to the rules and guidelines (as stated in RA 9208, our anti-trafficking law).
3. Ensure that victims are not arrested and that they know this. Explain to the victims what is happening, where they will be taken and why, to avoid victims experiencing fear and trauma. In instances where victims rescued are naked give them time to get dressed; in cases where presence of media is unavoidable, cover their bodies until they can find a safe and secure room/ space to get dressed.
4. Assess what immediate services they need (e.g. medical, legal, etc.) In case victims need urgent medical treatment, ensure that they will be treated first before anything else. Otherwise, they can undergo medico legal examination before the inquest.
5. If possible, do not transport them in the same vehicle where the perpetrators are being transported.
6. Once in the station, find a safe and secure room for the victims before intervention counseling and taking the victims' statement; and ensure that the victims stay in a separate room from that of the perpetrators'.
7. When the victims have been familiarized with the services available for them, let them go home to get a rest; or in cases where their safety is at risk or the victims are minor, provide a shelter for them. Whenever possible, service providers should coordinate in advance provision of shelter before the rescue.
8. Ensure that the police don't hold the victims more than the time needed in giving out statement and inquest.
9. Service providers should be ready with the following in case the victims need them: decent clothing, food, water, extra money for victims' fare (if possible, payment for the medico legal), and toiletries.
10. If possible, a lawyer is present from the start of the operations until charges are filed in court.
11. Be sensitive. Respect their space.
12. Always follow protocol in gender-responsive and child-friendly counseling.

#### **Sources:**

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2. Hoff, L.A. People in Crisis: Understanding and Helping, Jossey – Bass, Inc., 1995
3. Margaret W. Matlin: The Psychology of Women, 1987
4. National Seminar-Workshop on The Philippine Guidelines on the Protection of the Rights of Children Victims of Trafficking organized by Asia Against Child Trafficking (Asia ACTs) and the Inter-Agency Council Against Trafficking (IACAT) held on August 29 – September 1, 2005

## 5. CATW Training on Trafficking, Philippines



## International Terminologies

This chapter aims at raising the participant's awareness about the nature of international instruments. This chapter supplements Chapter II and examines how responses from within a country are connected to the international level. The aims and the nature of international instruments including the basic principles that responsible parties have to follow are shared. This would enable the participants to place India in a comparative framework.

### Objectives:

- Explain the objectives and differences in international instruments.
- 

As a responsible member state the Government of India has signed and ratified a number of international instruments. This process of signing and ratifying and accession to international instruments is a way of indicating a country's interest and commitment to the issues raised in the instruments and measures identified to address them. Through this mechanism it is easy to discern the level of interest, concern and the will to work on the issue. In short the international instruments set international standards, principles to deal with the issue, and monitor states compliance with their obligations. They also aim to strengthen the systems within the state to deal with the issue.

### 1. What are international agreements?

This introductory note seeks to provide a basic - but not an exhaustive - overview of the key terms employed in the United Nations Treaty Collection to refer to international instruments binding at international law: treaties, agreements, conventions, charters, protocols, and declarations, memoranda of understanding, modus vivendi and exchange of notes. The purpose is to facilitate a general understanding of their scope and function.

Over the past centuries, state *practice has developed a variety of terms to refer to international instruments by which states establish rights and obligations among themselves*. The terms most commonly used are the subject of this overview. However, a fair number of additional terms have been employed, such as "statutes", "covenants", "accords" and others. In spite of this diversity of terminology, no precise nomenclature exists. In fact, the meaning of the terms used is variable, changing from State to State, from region to region and instrument to instrument. Some of the terms can easily be interchanged: an instrument that is designated "agreement" might also be called "treaty".

The title assigned to such international instruments thus has normally no overriding legal effects. The title may follow habitual uses or may relate to the particular character or importance sought to be attributed to the instrument by its parties. The degree of formality chosen will depend upon the gravity of the problems dealt with and upon the political implications and intent of the parties.

Although these instruments differ from each other by title, they all have common features and international law has applied basically the same rules to all of these instruments. These rules are the result of long practice among the States, which have accepted them as binding norms in their mutual relations. Therefore, they are regarded as international customary law. Since there was a general desire to codify these customary rules, two international conventions were negotiated. The 1969 Vienna Convention on the Law of Treaties ("1969 Vienna Convention"), which entered into force on 27 January 1980, contains rules for treaties concluded between States. The 1986 Vienna Convention on the Law of Treaties between States and International

Organizations or between International Organizations ("1986 Vienna Convention"), which has still not entered into force, added rules for treaties with international organizations as parties. Both the 1969 Vienna Convention and the 1986 Vienna Convention do not distinguish between the different designations of these instruments. Instead, their rules apply to all of those instruments as long as they meet certain common requirements.

Article 102 of the Charter of the United Nations provides that "every treaty and every international agreement entered into by any Member State of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it". All treaties and international agreements registered or filed and recorded with the Secretariat since 1946 are published in the UNTS. By the terms "treaty" and "international agreement", referred to in Article 102 of the Charter, the broadest range of instruments is covered. Although the General Assembly of the UN has never laid down a precise definition for both terms and never clarified their mutual relationship, Art.1 of the General Assembly Regulations to Give Effect to Article 102 of the Charter of the United Nations provides that the obligation to register applies to every treaty or international agreement "whatever its form and descriptive name". In the practice of the Secretariat under Article 102 of the UN Charter, the expressions "treaty" and "international agreement" embrace a wide variety of instruments, including unilateral commitments, such as declarations by new Member States of the UN accepting the obligations of the UN Charter, declarations of acceptance of the compulsory jurisdiction of the International Court of Justice under Art.36 (2) of its Statute and certain unilateral declarations that create binding obligations between the declaring nation and other nations. The particular designation of an international instrument is thus not decisive for the obligation incumbent on the Member States to register it.

It must however not be concluded that the labeling of treaties is haphazard or capricious. The very name may be suggestive of the objective aimed at, or of the accepted limitations of action of the parties to the arrangement. Although the actual intent of the parties can often be derived from the clauses of the treaty itself or from its preamble, the designated term might give a general indication of such intent. A particular treaty term might indicate that the desired objective of the treaty is a higher degree of cooperation than ordinarily aimed for in such instruments. Other terms might indicate that the parties sought to regulate only technical matters. Finally, treaty terminology might be indicative of the relationship of the treaty with a previously or subsequently concluded agreement.

## **2. What are the key terms used in the UN Treaty Collection**

The following terms are used in international agreements:

- Treaties
- Agreements
- Conventions
- Charters
- Protocols
- Declarations
- Memoranda of Understanding
- Modus Vivendi
- Exchange of Notes

### ○ **Treaties**

The term "treaty" can be used as a common generic term or as a particular term which indicates an instrument with certain characteristics.

(a) Treaty as a generic term: The term "treaty" has regularly been used as a generic term embracing all instruments binding at international law concluded between international entities, regardless of their formal designation. Both the 1969 Vienna Convention and the 1986 Vienna Convention confirm this generic use of the term "treaty". The 1969 Vienna Convention defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation". The 1986 Vienna Convention extends the definition of treaties to include international agreements involving



international organizations as parties. In order to speak of a "treaty" in the generic sense, an instrument has to meet various criteria. First of all, it has to be a binding instrument, which means that the contracting parties intended to create legal rights and duties. Secondly, the instrument must be concluded by states or international organizations with treaty-making power. Thirdly, it has to be governed by international law. Finally the engagement has to be in writing. Even before the 1969 Vienna Convention on the Law of Treaties, the word "treaty" in its generic sense had been generally reserved for engagements concluded in written form.

(b) Treaty as a specific term: There are no consistent rules when state practice employs the terms "treaty" as a title for an international instrument. Usually the term "treaty" is reserved for matters of some gravity that require more solemn agreements. Their signatures are usually sealed and they normally require ratification. Typical examples of international instruments designated as "treaties" are Peace Treaties, Border Treaties, Delimitation Treaties, Extradition Treaties and Treaties of Friendship, Commerce and Cooperation. The use of the term "treaty" for international instruments has considerably declined in the last decades in favor of other terms.

- **Agreements**

The term "agreement" can have a generic and a specific meaning. It also has acquired a special meaning in the law of regional economic integration.

(a) Agreement as a generic term: The 1969 Vienna Convention on the Law of Treaties employs the term "international agreement" in its broadest sense. On the one hand, it defines treaties as "international agreements" with certain characteristics. On the other hand, it employs the term "international agreements" for instruments, which do not meet its definition of "treaty". Its Art.3 refers also to "international agreements not in written form". Although such oral agreements may be rare, they can have the same binding force as treaties, depending on the intention of the parties. An example of an oral agreement might be a promise made by the Minister of Foreign Affairs of one State to his counterpart of another State. The term "international agreement" in its generic sense consequently embraces the widest range of international instruments.

(b) Agreement as a particular term: "Agreements" are usually less formal and deal with a narrower range of subject-matter than "treaties". There is a general tendency to apply the term "agreement" to bilateral or restricted multilateral treaties. It is employed especially for instruments of a technical or administrative character, which are signed by the representatives of government departments, but are not subject to ratification. Typical agreements deal with matters of economic, cultural, scientific and technical cooperation. Agreements also frequently deal with financial matters, such as avoidance of double taxation, investment guarantees or financial assistance. The UN and other international organizations regularly conclude agreements with the host country to an international conference or to a session of a representative organ of the Organization. Especially in international economic law, the term "agreement" is also used as a title for broad multilateral agreements (e.g. the commodity agreements). The use of the term "agreement" slowly developed in the first decades of this century. Nowadays by far the majority of international instruments are designated as agreements.

(c) Agreements in regional integration schemes: Regional integration schemes are based on general framework treaties with constitutional character. International instruments which amend this framework at a later stage (e.g. accessions, revisions) are also designated as "treaties". Instruments that are concluded within the framework of the constitutional treaty or by the organs of the regional organization are usually referred to as "agreements", in order to distinguish them from the constitutional treaty. For example, whereas the Treaty of Rome of 1957 serves as a quasi-constitution of the European Community, treaties concluded by the EC with other nations are usually designated as agreements. Also, the Latin American Integration Association (LAIA) was established by the Treaty of Montevideo of 1980, but the subregional instruments entered into under its framework are called agreements.

- **Conventions**

The term "convention" again can have both a generic and a specific meaning.

(a) Convention as a generic term: Art.38 (1) (a) of the Statute of the International Court of Justice refers to "international conventions, whether general or particular" as a source of law,

apart from international customary rules and general principles of international law and - as a secondary source - judicial decisions and the teachings of the most highly qualified publicists. This generic use of the term "convention" embraces all international agreements, in the same way as does the generic term "treaty". Black letter law is also regularly referred to as "conventional law", in order to distinguish it from the other sources of international law, such as customary law or the general principles of international law. The generic term "convention" thus is synonymous with the generic term "treaty".

(b) Convention as a specific term: Whereas in the last century the term "convention" was regularly employed for bilateral agreements, it now is generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of states. Usually the instruments negotiated under the auspices of an international organization are entitled conventions (e.g. Convention on Biological Diversity of 1992, United Nations Convention on the Law of the Sea of 1982, Vienna Convention on the Law of Treaties of 1969). The same holds true for instruments adopted by an organ of an international organization (e.g. the 1951 ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted by the International Labour Conference or the 1989 Convention on the Rights of the Child, adopted by the General Assembly of the UN).

- **Charters**

The term "charter" is used for particularly formal and solemn instruments, such as the constituent treaty of an international organization. The term itself has an emotive content that goes back to the Magna Carta of 1215. Well-known recent examples are the Charter of the United Nations of 1945 and the Charter of the Organization of American States of 1952.

- **Protocols**

The term "protocol" is used for agreements less formal than those entitled "treaty" or "convention". The term could be used to cover the following kinds of instruments:

(a) A Protocol of Signature is an instrument subsidiary to a treaty, and drawn up by the same parties. Such a Protocol deals with ancillary matters such as the interpretation of particular clauses of the treaty, those formal clauses not inserted in the treaty, or the regulation of technical matters. Ratification of the treaty will normally ipso facto involve ratification of such a Protocol.

(b) An Optional Protocol to a Treaty is an instrument that establishes additional rights and obligations to a treaty. It is usually adopted on the same day, but is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish among themselves a framework of obligations which reach further than the general treaty and to which not all parties of the general treaty consent, creating a "two-tier system". The Optional Protocol to the International Covenant on Civil and Political Rights of 1966 is a well-known example.

(c) A Protocol based on a Framework Treaty is an instrument with specific substantive obligations that implements the general objectives of a previous framework or umbrella convention. Such protocols ensure a more simplified and accelerated treaty-making process and have been used particularly in the field of international environmental law. An example is the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer adopted on the basis of Arts.2 and 8 of the 1985 Vienna Convention for the Protection of the Ozone Layer.

(d) A Protocol to amend is an instrument that contains provisions that amend one or various former treaties, such as the Protocol of 1946 amending the Agreements, Conventions and Protocols on Narcotic Drugs.

(e) A Protocol as a supplementary treaty is an instrument which contains supplementary provisions to a previous treaty, e.g. the 1967 Protocol relating to the Status of Refugees to the 1951 Convention relating to the Status of Refugees.

(f) A Procès-Verbal is an instrument that contains a record of certain understandings arrived at by the contracting parties.

- **Declarations**

The term "declaration" is used for various international instruments. However, declarations are not always legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. An

example is the 1992 Rio Declaration. Declarations can however also be treaties in the generic sense intended to be binding at international law. It is therefore necessary to establish in each individual case whether the parties intended to create binding obligations. Ascertaining the intention of the parties can often be a difficult task. Some instruments entitled "declarations" were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage. Such was the case with the 1948 Universal Declaration of Human Rights. Declarations that are intended to have binding effects could be classified as follows:

(a) A declaration can be a treaty in the proper sense. A significant example is the Joint Declaration between the United Kingdom and China on the Question of Hong Kong of 1984.

(b) An interpretative declaration is an instrument that is annexed to a treaty with the goal of interpreting or explaining the provisions of the latter.

(c) A declaration can also be an informal agreement with respect to a matter of minor importance.

(d) A series of unilateral declarations can constitute binding agreements. A typical example are declarations under the Optional Clause of the Statute of the International Court of Justice that create legal bonds between the declarants, although not directly addressed to each other. Another example is the unilateral Declaration on the Suez Canal and the arrangements for its operation issued by Egypt in 1957 which was considered to be an engagement of an international character.

- **Memoranda of Understanding**

A memorandum of understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification. They are entered into either by States or International Organizations. The United Nations usually concludes memoranda of understanding with Member States in order to organize its peacekeeping operations or to arrange UN Conferences. The United Nations also concludes memoranda of understanding on cooperation with other international organizations.

- **Modus Vivendi**

A modus vivendi is an instrument recording an international agreement of temporary or provisional nature intended to be replaced by an arrangement of a more permanent and detailed character. It is usually made in an informal way, and never requires ratification.

- **Exchange of Notes**

An "exchange of notes" is a record of a routine agreement that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval.

### **3. What is the difference between ratifying, being a signatory of a Convention?**

Each action of the state relating to Treaty actions has different connotations in its binding and actions. It also defines to an extent the intention as well as the liability of the state towards the issue. The following are the actions that states normally resort to. This list is not exhaustive.

1. Adoption
2. Acceptance or Approval
3. Accession
4. Act of Formal Confirmation
5. Amendment
6. Authentication
7. Correction of Errors
8. Declarations
9. Definitive Signature
10. Deposit
11. Entry into Force

12. Exchange of Letters/Notes
13. Full Powers
14. Modification
15. Notification
16. Objection
17. Provisional Application
18. Ratification
19. Registration and Publication
20. Reservation
21. Revision
22. Signature ad referendum
23. Signature Subject to Ratification, Acceptance or Approval

- **Adoption**

"Adoption" is the formal act by which the form and content of a proposed treaty text are established. As a general rule, the adoption of the text of a treaty takes place through the expression of the consent of the states participating in the treaty-making process. Treaties that are negotiated within an international organization will usually be adopted by a resolution of a representative organ of the organization whose membership more or less corresponds to the potential participation in the treaty in question. A treaty can also be adopted by an international conference which has specifically been convened for setting up the treaty, by a vote of two thirds of the states present and voting, unless, by the same majority, they have decided to apply a different rule.

[Art.9, Vienna Convention of the Law of Treaties 1969]

- **Acceptance and Approval**

The instruments of "acceptance" or "approval" of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. In the practice of certain states acceptance and approval have been used instead of ratification when, at a national level, constitutional law does not require the treaty to be ratified by the head of state.

[Arts.2 (1) (b) and 14 (2), Vienna Convention on the Law of Treaties 1969]

- **Accession**

"Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. The Secretary-General of the United Nations, in his function as depositary, has also accepted accessions to some conventions before their entry into force. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty. A treaty might provide for the accession of all other states or for a limited and defined number of states. In the absence of such a provision, accession can only occur where the negotiating states were agreed or subsequently agree on it in the case of the state in question.

[Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]

- **Act of Formal Confirmation**

"Act of formal confirmation" is used as an equivalent for the term "ratification" when an international organization expresses its consent to be bound to a treaty.

[Arts.2 (1) (b bis) and 14, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986]

- **Amendment**

The term "amendment" refers to the formal alteration of treaty provisions affecting all the parties to the particular agreement. Such alterations must be effected with the same formalities that attended the original formation of the treaty. Many multilateral treaties lay down specific requirements to be satisfied for amendments to be adopted. In the absence of such provisions, amendments require the consent of all the parties.

[Art.40, Vienna Convention of the Law of Treaties 1969]

- **Authentication**

The term "authentication" refers to the procedure whereby the text of a treaty is established as authentic and definitive. Once a treaty has been authenticated, states cannot unilaterally change its provisions. If states which negotiated a given treaty do not agree on specific procedures for authentication, a treaty will usually be authenticated by signature, signature ad referendum or the initialling by the representatives of those states.

[Art.10, Vienna Convention on the Law of Treaties 1969]

- **Correction of Errors**

If, after the authentication of a text, the signatory and contracting states are agreed that it contains an error, it can be corrected by initialling the corrected treaty text, by executing or exchanging an instrument containing the correction or by executing the corrected text of the whole treaty by the same procedure as in the case of the original text. If there is a depositary, the depositary must communicate the proposed corrections to all signatory and contracting states. In the UN practice, the Secretary-General, in his function as depositary, informs all parties to a treaty of the errors and the proposal to correct it. If, on the expiry of an appropriate time-limit, no objections are raised by the signatory and contracting states, the depositary circulates a proces-verbal of rectification and causes the corrections to be effected in the authentic text(s).

[Art.79, Vienna Convention on the Law of Treaties 1969]

- **Declarations**

Sometimes states make "declarations" as to their understanding of some matter or as to the interpretation of a particular provision. Unlike reservations, declarations merely clarify the state's position and do not purport to exclude or modify the legal effect of a treaty. Usually, declarations are made at the time of the deposit of the corresponding instrument or at the time of signature.

- **Definitive Signature**

When the treaty is not subject to ratification, acceptance or approval, "definitive signature" establishes the consent of the state to be bound by the treaty. Most bilateral treaties dealing with more routine and less politicized matters are brought into force by definitive signature, without recourse to the procedure of ratification.

[Art.12, Vienna Convention on the Law of Treaties 1969]

- **Deposit**

After a treaty has been concluded, the written instruments, which provide formal evidence of consent to be bound, and also reservations and declarations, are placed in the custody of a depositary. Unless the treaty provides otherwise, the deposit of the instruments of ratification, acceptance, approval or accession establishes the consent of a state to be bound by the treaty. For treaties with a small number of parties, the depositary will usually be the government of the state on whose territory the treaty was signed. Sometimes various states are chosen as depositaries. Multilateral treaties usually designate an international organization or the Secretary-General of the United Nations as depositaries. The depositary must accept all notifications and documents related to the treaty, examine whether all formal requirements are met, deposit them, register the treaty and notify all relevant acts to the parties concerned.

[Arts.16, 76 and 77, Vienna Convention on the Law of Treaties 1969]

- **Entry into Force**

Typically, the provisions of the treaty determine the date on which the treaty enters into force. Where the treaty does not specify a date, there is a presumption that the treaty is intended to come into force as soon as all the negotiating states have consented to be bound by the treaty. Bilateral treaties may provide for their entry into force on a particular date, upon the day of their last signature, upon exchange of the instruments of ratification or upon the exchange of notifications. In cases where multilateral treaties are involved, it is common to provide for a fixed number of states to express their consent for entry into force. Some treaties provide for additional conditions to be satisfied, e.g., by specifying that a certain category of states must be among the consenters. The treaty may also provide for an additional time period to elapse after the required number of countries have expressed their consent or the conditions have been satisfied. A treaty enters into force for those states which gave the required consent. A

treaty may also provide that, upon certain conditions having been met, it shall come into force provisionally.

[Art.24, Vienna Convention on the Law of Treaties 1969]

- **12. Exchange of Letters/Notes**

States may express their consent to be bound by an "exchange of letters/notes". The basic characteristic of this procedure is that the signatures do appear not on one letter or note but on two separate letters or notes. The agreement therefore lies in the exchange of both letters or notes, each of the parties having in their possession one letter or note signed by the representative of the other party. In practice, the second letter or note, usually the letter or note in response, will typically reproduce the text of the first. In a bilateral treaty, letters or notes may also be exchanged to indicate that all necessary domestic procedures have been completed.

[Art.13, Vienna Convention on the Law of Treaties 1969]

- **13. Full Powers**

"Full powers" means a document emanating from the competent authority of a state designating a person or persons to represent the state for negotiating, adopting, authenticating the text of a treaty, expressing the consent of a state to be bound by a treaty, or for accomplishing any other act with respect to that treaty. Heads of State, Heads of Government and Ministers for Foreign Affairs are considered as representing their state for the purpose of all acts relating to the conclusion of a treaty and do not need to present full powers. Heads of diplomatic missions do not need to present full powers for the purpose of adopting the text of a treaty between the accrediting state and the state to which they are accredited. Likewise, representatives accredited by states to an international conference or to an international organization or one of its organs do not need to present full powers for the purpose of adopting the text of a treaty in that conference, organization or organ.

[Art.2 (1) (c) and Art.7 Vienna Convention on the Law of Treaties 1969]

- **14. Modification**

The term "modification" refers to the variation of certain treaty provisions only as between particular parties of a treaty, while in their relation to the other parties the original treaty provisions remain applicable. If the treaty is silent on modifications, they are allowed only if the modifications do not affect the rights or obligations of the other parties to the treaty and do not contravene the object and the purpose of the treaty.

[Art.41, Vienna Convention on the Law of Treaties 1969]

- **15. Notification**

The term "notification" refers to a formality through which a state or an international organization communicates certain facts or events of legal importance. Notification is increasingly resorted to as a means of expressing final consent. Instead of opting for the exchange of documents or deposit, states may be content to notify their consent to the other party or to the depositary. However, all other acts and instruments relating to the life of a treaty may also call for notifications.

[Arts.16 (c), 78 etc., Vienna Convention on the Law of Treaties 1969]

- **Objection**

Any signatory or contracting state has the option of objecting to a reservation, inter alia, if, in its opinion, the reservation is incompatible with the object and purpose of the treaty. The objecting state may further declare that its objection has the effect of precluding the entry into force of the treaty as between objecting and reserving states.

[Art.20-23, Vienna Convention on the Law of Treaties 1969]

- **Provisional Application and Provisional Entry into Force of Treaties**

- 1. Provisional Application**

The growing use of *provisional application* clauses in treaties is a consequence of the need felt to give effect to treaty obligations prior to a state's formal ratification of/accession to a treaty. The obligations relating to provisional application are undertaken by a conscious voluntary act of the state consistent with its domestic legal framework.

Provisional application of a treaty that has entered into force

The provisional application of a treaty that has entered into force may occur when a state undertakes to give effect to the treaty obligations provisionally although its domestic

procedures for ratification/accession have not yet been completed. The intention of the state would be to ratify/accede to the treaty once its domestic legal requirements have been met. Provisional application may be terminated at any time. In contrast, a state which has consented to be bound by a treaty through ratification/accession or definitive signature, is governed by the rules on withdrawal specified in the treaty concerned (Arts. 54, 56, Vienna Convention on the Law of Treaties 1969).

[Art. 25, Vienna Convention on the Law of Treaties 1969]

Provisional application of a treaty that has not entered into force

Provisional application of a treaty that has not entered into force may occur when a state notifies that it would give effect to the legal obligations specified in that treaty *provisionally*. These legal obligations are undertaken by a conscious voluntary act of the state consistent with its domestic legal framework. Provisional application may be terminated at any time. In contrast, a state which has consented to be bound by a treaty through ratification/ accession or definitive signature, is governed by the rules on withdrawal specified in the treaty concerned (Arts. 54, 56, Vienna Convention on the Law of Treaties 1969).

Provisional application may continue even after the entry into force of the treaty in relation to a state applying the treaty provisionally until that state has ratified it. Provisional application terminates if a state notifies the other states among which the treaty is being applied provisionally of its intention of not becoming a party to the treaty.

[Art. 25 (2), Vienna Convention on the Law of Treaties 1969]

## **2. Provisional Entry into Force**

There are also an increasing number of treaties which include provisions for *provisional entry into force*. Such treaties provide mechanisms for entry into force provisionally, should the formal criteria for entry into force not be met within a given period. Provisional entry into force of a treaty may also occur when a number of parties to a treaty which has not yet entered into force, decide to apply the treaty as if it had entered into force. Once a Treaty has entered into force provisionally, it is binding on the parties which agreed to bring it into force provisionally.

The nature of the legal obligations resulting from provisional entry into force would appear to be the same as the legal obligations in a treaty that has entered into force, as any other result would create an uncertain legal situation. It is the criteria for formal entry into force that have not been met but the legal standard of the obligations remains.

[Art. 25 (1), Vienna Convention on the Law of Treaties 1969]

### **o Ratification**

Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, ratification is usually accomplished by exchanging the requisite instruments, while in the case of multilateral treaties the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty.

[Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]

### **o Registration and Publication**

Article 102 of the Charter of the United Nations provides that "every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it". Treaties or agreements that are not registered cannot be invoked before any organ of the United Nations. Registration promotes transparency and the availability of texts of treaties to the public. Article 102 of the Charter and its predecessor, Article 18 of the Pact of the League of Nations, have their origin in one of Woodrow Wilson's Fourteen Points in which he outlined his idea of the League of Nations: "Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always openly and in the public view".

[Art.80, Vienna Convention on the Law of Treaties 1969]

### **o Reservation**

A reservation is a declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that state. A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations can be made when the treaty is signed, ratified, accepted, approved or acceded to. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made.

[Arts.2 (1) (d) and 19-23, Vienna Convention of the Law of Treaties 1969]

- **Revision**

Revision has basically the same meaning as amendment. However, some treaties provide for a revision additional to an amendment (i.e., Article 109 of the Charter of the United Nations). In that case, the term "revision" refers to an overriding adoption of the treaty to changed circumstances, whereas the term "amendment" refers only to a change of singular provisions.

- **Signature ad referendum**

A representative may sign a treaty "ad referendum", i.e., under the condition that the signature is confirmed by his state. In this case, the signature becomes definitive once it is confirmed by the responsible organ.

[Art.12 (2) (b), Vienna Convention on the Law of Treaties 1969]

- **Signature Subject to Ratification, Acceptance or Approval**

Where the signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory state to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.

[Arts.10 and 18, Vienna Convention on the Law of Treaties 1969]

#### **4. What does it mean to be a party to international instruments?**

Being a party to international instruments makes it obligatory for the participating state to ensure the realisation of the instrument subject to its action. Thus the states agree to conduct their affairs according to the established code of conduct, norms and standards within the global system. It provides mechanisms to enable states to cooperate, collaborate on issues considered important by the international community. In short it binds the state to the obligations and responsibilities drafted in them as well as deliverance of tangible results of its compliance. It also binds the international community to ensure effective implementation and to institute monitoring systems to assess the states compliance to the instrument.

#### **5. What are the basic principles of the instruments?**

There are four basic principles of the instruments namely: Universality, indivisibility, interdependency and interrelatedness.

**Universality** of the instruments implies that the issue being dealt with is a global phenomenon.

**Indivisibility** ensures that articles included in the instrument are not selectively applied.

**Interdependency** ensures coherence within the instrument and thus the articles in one instrument reinforce each other.

**Interrelatedness** of the instruments to other instruments gives the unique freedom to the international fora to have different instruments related to each other.

#### **6. What does TIER 2 - WATCH LIST mean?**



Using a system of 'tiers', countries are allocated to a particular tier based on their efforts to update or establish new laws and mechanisms in combating trafficking. The US can effectively place sanctions on any state that does not comply with their required standards. According to the Department of State: "The U.S. Government may withhold non-humanitarian, non-trade related assistance. Countries that receive no such assistance would be subject to withholding of funding for participation in educational and cultural exchange programs. ...such governments would also face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development- related assistance) from international financial institutions such as the International Monetary Fund and multilateral development banks such as the World Bank". India is on the Tier 2 - Watch List

### **The Tiers**

**Tier 1:** Countries whose governments fully comply with the Trafficking Victims Protection Act's minimum standards.

**Tier 2:** Countries, whose governments do not fully comply with the act's minimum standards, but are making significant efforts to bring themselves into compliance with those standards.

**Tier 2 Watch List:** Countries, whose governments do not fully comply with the act's minimum standards but are making significant efforts to bring themselves into compliance with those standards, and:

- a. The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; or
- b. There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or
- c. The determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

**Tier 3:** Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so. Six European and Eurasian countries moved up from Tier 3 status in the 2004 Trafficking Report: Bosnia and Herzegovina, Georgia, Kazakhstan, Turkey and Uzbekistan.

50 million girls and women are missing from India's population, the result of systematic sex discrimination, such as abortion of female fetuses, which is officially banned. (United Nations report, Sonali Verma, "Indian women still awaiting independence," Human Rights Information Network: *Indi News Network Digest*, Volume2, Issue1648, 16 August 1997)

In 1990, more than 50 widows were burnt alive when their husbands' bodies were cremated in a ritual known as "sati," based on the belief that a Hindu woman has no existence independent of her husband. (Sonali Verma, "Indian women still awaiting independence," Human Rights Information Network: *Indi News Network Digest*, Volume2, Issue1648, 16 August 1997)

Although dowry is legally banned, at least 5,000 women are victims of "dowry murders," in which they are killed by their husband or his family because of "insufficient" dowries. At least 12 women "die" every day from brazier kitchen fires, which are typically concealed dowry murders. The dowry system has also led to an inflating female infanticide, especially among very poor families. Few of these cases are ever even brought to trial. (UNICEF, *United Press International*, 23 July 1997)

A very large percentage of marriages are arranged. "The custom of arranged marriage is a legitimized institution. In a majority of cases the bride has little or no say. She and the bridegroom are virtual strangers. In many rural communities the bridegroom does not even attend his own wedding. The sex act (between the two) is nothing but a rape. The Indian woman's acceptance of the inevitable has, sanctified this abhorrent practice, and, subsequently legitimized it." (Sudhir Vaishnav, "Legal Indian Rape: The new bride can be an unsuspecting victim of a legal rape," *Femina*, 17 September 1997)

More than 5,000 women are murdered each year as the result of dowry killings in India. (Mindelle Jacobs, "Abuse of Women is Sadly Common," *Edmonton Sun*, 11 July 1998)

In 1993, in-laws killed about 16 women every day for dowry, although the government declared accepting dowry illegal in 1961. Women's groups say the number of cases reported is a fraction of the real figure. (Sonali Verma, "Indian women still awaiting independence," Human Rights Information Network: *Indi News Network Digest*, Volume2, Issue1648, 16 August 1997)

During the armed conflict in Kashmir, Punjab and other Northeastern states women are victimized, raped, tortured, sexually abused and violated by military personnel, militants or insurgents, para-military units, rebel groups, religious sects, fundamentalist armed groups, warlords, state security forces, armed opposition groups, or terrorists and peace-keeping forces. (Indrani Sinha, executive director, "Paper on Globalization and Human Rights," SANLAAP)

In 1997, there were reports of Indian armed forces arresting, torturing and molesting women and girls in Kashmir. Every day the local newspapers report such incidences. (KASHNet, *Human Rights Information Network*, 14 August 1997)

Women and girls have been systematically brutalized and raped by Indian forces in house to house searches in Kashmir between October 1996 and December 1997. ("Rape and Molestation: A Weapon of War in Kashmir," The Institute of Kashmir Studies," 1998)

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