CHAPTER VI

DEFICIENCIES, EXISTING FRAME WORK & FURTHER RE COURSE
Identified Deficiencies:

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation. Moreover, a strong legal framework would also ensure an effective law enforcement response.

As of now, individuals are reluctant or unable to report traffickers or to serve as witnesses because they lack confidence in the police and the judicial system and/or because of the absence of any effective protection mechanisms. These problems are compounded when law enforcement officials are involved or complicit in trafficking. Strong measures therefore need to be taken to ensure that such involvement is investigated, prosecuted and punished.

Law enforcement officials must also be sensitized to the paramount requirement of ensuring the safety of trafficked victims. The Government of India having ratified the Convention on the Elimination of All Forms of Discrimination against Women.
**Existing Framework**

The Constitution of India, the fundamental law of the land, forbids trafficking in persons. *Article 23* of the Constitution specifically prohibits “traffic in human beings and begar and other similar forms of forced labour”. *Article 24* further prohibits employment of Girl Children below 14 years of age in factories, mines or other hazardous employment. Other fundamental rights enshrined in the Constitution relevant to trafficking are *Article 14* relating to equality before law, *Article 15* that deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, *Article 21* pertaining to protection of life and personal liberty and *Article 22* concerning protection from arrest and detention except under certain conditions.

The Directive Principles of State Policy articulated in the Constitution are also significant, particularly *Article 39* which categorically states that men and women should have the right to an adequate means of livelihood and equal pay for equal work; that men, women and Girl Children should not be forced by economic necessity to enter unsuitable avocations; and that Girl Children and youth should be protected against exploitation. Further, *Article 39A* directs that the legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. In addition to
this, Article 43 states that all workers should have a living wage and there should be appropriate conditions of work so as to ensure a decent standard of life.

The commitment to address the problem of trafficking in human beings is also reflected in various laws/legislations and policy documents of the Government of India. The Indian Penal Code, 1860 contains more than 20 provisions that are relevant to trafficking and impose criminal penalties for offences like kidnapping, abduction, buying or selling a person for slavery/labour, buying or selling a minor for prostitution, importing/procuring a minor girl, rape, etc.

The Immoral Traffic (Prevention) Act, 1956 (ITPA), initially enacted as the ‘Suppression of Immoral Traffic in Women and Girls Act, 1956, is the main legislative tool for preventing and combating trafficking in human beings in India. However, till date, its prime objective has been to inhibit/abolish traffic in women and girls for the purpose of prostitution as an organized means of living. The Act criminalizes the procurers, traffickers and profiteers of the trade but in no way does it define ‘trafficking’ per se in human beings. The other relevant Acts which address the issue of trafficking in India are the Karnataka Devdasi (Prohibition of Dedication) Act, 1982; Girl Child Labour (Prohibition and Regulation) Act, 1986; Andhra Pradesh Devdasi (Prohibiting Dedication)

The judiciary too has played an active role in preventing and combating trafficking by pronouncing some landmark judgments in “Public Interest Litigations”. Prominent among them are the 1990 case of Vishal Jeet v. Union of India and the 1997 case of Gaurav Jain v. Union of India. In the former case, on the directions given by the Supreme Court, the Government constituted a Central Advisory Committee on Girl Child Prostitution in 1994. Subsequently, State Advisory Committees were also setup by State Governments. The outcome of the latter case was constitution of a Committee on Prostitution, Girl Child Prostitutes and Girl Children of Prostitutes to look into the problems of commercial sexual exploitation and trafficking of women and Girl Children and of Girl Children of trafficked victims so as to evolve suitable schemes in
consonance with the directions given by the Apex Court. These and subsequent case laws thereafter have influenced Government policies, programmes and schemes, as well as law enforcement.

**Role of Ministry of Women and Girl Child Development**

Based on the Report of the Central Advisory Committee on Girl Child Prostitution, the recommendations of the National Commission for Women and the directions of the Supreme Court of India as well as the experiences of various non-governmental organizations working in this area, the Ministry of Women and Girl Child Development, the Nodal Ministry in the Government of India dealing with issues concerning women and Girl Children drew up a National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Girl Children in the year 1998. A Central Advisory Committee under the chairpersonship of Secretary, Ministry of Women and Girl Child Development has also been constituted with members from Central Ministries like the Ministry of Home Affairs, Ministry of External Affairs, Ministry of Tourism, Ministry of Health, Ministry of Social Justice and Empowerment, Ministry of Information Technology and Ministry of Law and Justice to combat trafficking in women and Girl Children and commercial sexual exploitation as well as rehabilitate victims of trafficking and Commercial Sexual Exploitation and improve
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legal and law enforcement systems. This Committee meets once in every three months wherein senior representatives of State Governments where the problem of trafficking is found to be rampant are also invited. Other invitees to the meetings of the Central Advisory Committee are representatives of prominent NGOs and international organizations working in the area of trafficking, National Commission for Women, National Human Rights Commission, Central Social Welfare Board, National Crime Records Bureau, Border Security Force, Intelligence Bureau, Central Bureau of Investigation, Sashastra Suraksha Bal, etc.

The Ministry of Women and Girl Child Development has requested all Secretaries of the Department of Women and Girl Child Development in the States and Union Territories to hold regular meetings of State Advisory Committee constituted under the 1998 National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Girl Children and monitor initiatives being undertaken by them with regard to prevention, rescue, rehabilitation, reintegration and repatriation of victims of trafficking.

The Ministry of Women and Girl Child Development has also undertaken a study in collaboration with UNICEF on Rescue and Rehabilitation of Girl Child Victims Trafficked for Commercial Sexual Exploitation. The Report of this study was released to the public in 2005.
The Ministry of Women and Girl Child Development, in 2005, also formulated a Protocol for Pre-Rescue, Rescue and Post-Rescue Operations of Girl Child Victims of Trafficking for Commercial Sexual Exploitation. This Protocol contains guidelines for State Governments and a strategy for Rescue Team Members for pre-rescue, rescue and post-rescue operations concerning Girl Children who are victims of trafficking and were sexually being exploited for commercial reasons. The Ministry of Women and Girl Child Development in collaboration with UNICEF and various other organizations has developed three manuals – the “Manual for the Judicial Workers on Combating Trafficking of Women and Girl Children for Commercial Sexual Exploitation”, “Manual for Medical Officers for Dealing with Girl Child Victims of Trafficking and Commercial Sexual Exploitation”, and “Manual for Social Workers Dealing with Girl Child Victims of Trafficking and Commercial Sexual Exploitation”. The Manual for Judicial Workers has been developed in collaboration with the National Human Rights Commission.

**Role of National Human Rights Commission**

In view of the existing trafficking scenario and at the request of the UN High Commissioner for Human Rights as well as on the recommendations of the Asia Pacific Forum of National Human Rights Institutions, the National Human Rights Commission nominated one of
its Members to serve as a Focal Point on Human Rights of Women, including Trafficking in 2001.

Further, to prevent cross-border trafficking, the National Human Rights Commission requested the Directors General of Police of Uttar Pradesh, Bihar and West Bengal to be vigilant about the issue. The National Human Rights Commissions of India and Nepal have prepared a Memorandum of Understanding (MoU) to prevent and check cross-border trafficking. However, the draft MoU is still pending with the Ministry of External Affairs, Government of India.

To spread awareness on prevention of sex tourism and trafficking, the Commission in collaboration with the UNIFEM and an NGO organized a one-day Sensitization Programme on Prevention of Sex Tourism and Trafficking in the year 2003. The main objective of the programme was to sensitize senior representatives of the hotel and tourism industry on various issues relating to sex tourism and trafficking.

**Role of Ministry of Home Affairs**

The Ministry of Home Affairs is also concerned with the problem of trafficking in human beings. It organized a two-day National Seminar on Trafficking in Human Beings in collaboration with the National Human Rights Commission and the United Nations Office on Drugs and Crime (UNODC) at the India Habitat Centre, New Delhi on 27 and 28 October.
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2005. The recommendations that emanated out of this Seminar have been sent to all concerned for compliance. In August/September 2006, the Ministry of Home Affairs set up a Nodal Cell for Prevention of Trafficking. The main function of this Cell is to coordinate, network and provide feedback to the State Governments and other concerned agencies on a sustained and continuous basis so as to prevent and combat trafficking in human beings. This Cell has also been made responsible to document ‘best practices’ in preventing and combating trafficking in human beings as well as share data inputs with other stakeholders. In order to review the overall status of trafficking in the country, the Cell proposes to convene regular meetings every quarter with all stakeholders.

Role of National Commission for Women

The National Commission for Women is also dealing with the problem of trafficking in women and Girl Children. In late 90s, it undertook two studies entitled ‘The Lost Girl Childhood’ and ‘Velvet Blouse – Sexual Exploitation of Girl Children’. In 2001, it undertook another study entitled ‘Trafficking – A Socio-Legal Study’. Later in 2004, a study on ‘Coastal Sex Tourism’ was carried out by it. Along with these research studies, it has organized various seminars, training programmes and conferences on the subject of trafficking. Based on the above, it
suggested amendments to ITPA in order to have a comprehensive law on trafficking.

The Ministry of Women and Girl Child Development, the Ministry of Home Affairs and the National Human Rights Commission have requested all Chief Secretaries and Directors General of Police to sensitize the subordinate functionaries at the cutting edge on trafficking as well as other issues related to trafficking so that perpetrators of trafficking and its allied activities are severely dealt under the relevant provisions of law. The Ministry of Women and Girl Child Development, the Ministry of Home Affairs, the National Human Rights Commission and the National Commission for Women on their own and in collaboration with the civil society are sensitizing the judicial officers, police officers, government officers and various other stakeholders on issues related to trafficking in human beings for various purposes.

Further Recourse

Integrated Plan of Action to Prevent and Combat Human Trafficking

Most of the initiatives and activities in combating the Human Trafficking have come out with their own recommendations and Plans of Action. The result being that all are working in isolation rather collectively on the same issue. In order that these
recommendations/Plans of Action are properly acted upon, the Ministry of Women and Girl Child Development, Ministry of Home Affairs, National Human Rights Commission and National Commission for Women have decided to work in unison and draw up an Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Girl Child below 18 and Women. This, would guide and facilitate uniform action on the part of all concerned so that trafficking is eliminated from its roots. The Integrated Plan of Action outlined below consists of action points grouped under:

- Ensuring Human Rights Perspective for the Victims of Trafficking
- Preventing Trafficking
- Emerging Areas of Concern in Trafficking – Their Patterns and Trends
- Identification of Traffickers and Trafficked Victims
- Special Measures for Identification and Protection of Trafficked Girl Child Victims
- Rescue of Trafficked Victims Especially in Brothel-Based and Street-Based Prostitution with Special Focus on Girl Child Victims
- Rehabilitation, Reintegration and Repatriation of Trafficked Victims with Special Focus on Girl Child Victims
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- Cross-Border Trafficking: National and Regional Cooperation and Coordination
- Legal Framework and Law Enforcement
- Witness Protection and Support to Victims
- Training, Sensitization, Education and Awareness
- Methodology for Translating the Action Points into Action

The ultimate objective of the Integrated Plan of Action is to mainstream and reintegrate all victims of trafficking in society.

1. **Ensuring Human Rights Perspective for the Victims of Trafficking**

   Violations of human rights are both a cause and a consequence of human trafficking. Accordingly, it is essential to place the protection of human rights at the center of any measures taken to prevent and end trafficking. Anti-trafficking measures in no way should adversely affect the human rights and dignity of persons who have been trafficked. The overall machinery deployed by the Central Government/State Governments/Union Territories should consider:

   1. Taking steps to ensure that measures adopted for the purpose of preventing and combating human trafficking do not have
an adverse impact on the rights and dignity of trafficked persons.

2. Developing standard minimum guidelines for all officials and service providers with regard to pre-rescue, rescue and post-rescue operations including rehabilitation, reintegration and repatriation of trafficked victims. These guidelines should be gender-responsive and should also provide further referral to other service providers in order to prevent revictimization. These could be prepared in the form of information kits/booklets/handbooks/do’s and don’ts or be made part of the rules issued under the concerned law and should specify the accountability of the agencies concerned in providing services. This would enable all officials and service providers -- judicial officers, prosecutors, lawyers, law enforcement officials, medical and psycho-social professionals, functionaries manning homes/agencies of different kinds and others, to discharge their functions and duties effectively.

3. Taking particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensure that such measures are not applied in a discriminatory manner.
4. Ensuring that trafficked Girl Children, including girl Girl Children, are dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interest of the Girl Child should be of prime consideration in all actions concerning trafficked Girl Children. Steps to be initiated to ensure that Girl Children who are victim of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.

2. **Preventing Trafficking**

   Preventing trafficking should take into account both demand and supply as a root cause. Central Government/State Governments/Union Territories should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice. Effective prevention strategies should be based on existing experience and accurate information.

   1. Analysing the factors that generate demand and supply for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.
2. Empowering the vulnerable sections living in remote corners of country by extending to them various welfare, development and anti-poverty schemes of the Government of India, such as, Swadhar, Swayamsidha, Swa-Shakti, Swawlamban, Balika Samridhi Yojana, Support to Training and Employment Programme for Women (STEP), Kishori Shakti Yojana, etc. This would provide scope for ample economic opportunities for the women and other traditionally disadvantaged groups in their native place itself so as to reduce their vulnerability to trafficking.

3. Improving Girl Children’s access to schools and increasing the level of school attendance, especially of those affected or dependants, including the girl Girl Children, especially in remote and backward parts of the country. Efforts should also be made to incorporate sex-education and gender sensitive concerns in the school curriculum, both at the primary and secondary levels.

4. Generating awareness and spreading legal literacy on economic rights, particularly for women and adolescent girls should be taken up. Presently, there seems to be insufficient knowledge and information among the people to make
informed decisions that affect their lives. This would not only enable them to know about their rights but also inform them about the risks of illegal migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal, non-exploitative migration.

5. Developing information campaigns for the general public aimed at promoting awareness about the dangers associated with trafficking. Such campaigns should be informed by an understanding of the complexities surrounding trafficking and of the reasons as to why individuals may make potentially dangerous migration decisions.

6. Reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect especially with regard to unskilled labour and woman.

7. Examining ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration on the whole should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.
8. Giving focused attention to the adolescents, who are both potential victims and clients. It would be useful if appropriate information and value clarification is given to them on issues related to ‘sexuality’ and ‘reproductive health’. This exercise would be beneficial in view of the growing evidence of increased pre-marital sexual activity among adolescents and the looming threat of HIV/AIDS within this group.

9. Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking. This would include ensuring that law enforcement agencies comply with their legal obligations.

10. Devising necessary mechanisms for concerted coordination between the judiciary, police, government institutions and non-governmental organizations/civil society groups with regard to prevention and combating strategies. This kind of a government-public network would involve and make the non-governmental organizations/community responsible to act as watchdogs and informants on traffickers and exploiters.
11. Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.

12. Setting up of a national database/web portal under the aegis of National Crime Records Bureau. The main purpose of this kind of a mechanism is to create a help desk in providing information on missing persons including women and Girl Children, alert notice on suspected traffickers, anti-trafficking networks, do’s and don’ts to be followed while dealing with victims of trafficking, etc.

13. Addressing culturally sanctioned practices like the system of devadasis, jogins, bhavins, etc. which provide a pretext for trafficking of women and Girl Children for sexual exploitation.

14. Giving adequate publicity, through print and electronic media including ‘Girl Child lines’ and women ‘help lines’ across the country about the problem of trafficking and its ramifications.
3. Emerging Areas of Concern in Trafficking – Their Patterns and Trends

India is a country of vast dimensions. The formidable challenge is the enormity of the problem, both in number of trafficked persons and increasing number of locations. Of late, there is an expanding market for commercial sexual exploitation through non-brothel based modalities where the trafficked persons are made to pose as attendants, masseurs and as bartenders. Girl Child pornography is another area that requires concerted attention. Sex tourism is also growing whereby India is emerging as a major tourist destination. Central/State Governments, where appropriate, non-governmental organizations and the civil society at large should consider:

1. Evolving a comprehensive integrated approach for prevention and protection of trafficked victims, especially Girl Children of both sexes who are pushed into non-brothel based prostitution. Simultaneously, there is also need to evolve a strategy to prosecute all those who indulge in exploitation of these kinds.

2. Strengthening/Amending existing laws on trafficking related to non-brothel based prostitution.

3. Spreading awareness about non-brothel based prostitution by organizing campaigns, training/sensitization programmes for
staff and other functionaries in the hotel and tourism sector as well as Girl Children in schools, adolescents and youth groups.

4. Giving special attention to vulnerable areas like massage parlours, escort services, party hostesses, attendants, companions, etc. so as to prevent linkage between trafficking and non-brothel based prostitution.

5. Developing and distributing brochures and flyers in international/domestic flights for addressing the international/domestic tourists on the legal repercussions of non-brothel based prostitution. Besides, in-flight videos/films could also be prepared for showing on national and international flights.

6. Developing and distributing different kinds of awareness material like posters, hoardings, etc. on trafficking linked to non-brothel based prostitution.

4. **Identification of Traffickers and Trafficked Victims**

Trafficking means much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from other kinds of clandestine movement of persons is the presence of force, coercion and/or deception throughout or at some stage in the process – such deception, force
or coercion being used for the purpose of exploitation. It is therefore very essential to keep a watch on all kinds of movements. Besides, the Central Governments, State Governments and Union Territory Administrations should not only identify and target the traffickers only but also those who are involved in controlling and exploiting trafficked victims. For example, those who are recruiters, transporters, those who transfer and/or maintain trafficked persons in exploitative situations, those involved in related crimes and those who profit either directly or indirectly from trafficking, its component acts and related offences.

1. Developing guidelines and procedures for relevant State authorities and officials such as police, border security personnel, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of traffickers and trafficked victims, including Girl Children.

2. Providing appropriate training to relevant State authorities and officials in the identification of traffickers and trafficked victims, including Girl Children and correct application of the guidelines and procedures referred to above.
3. Ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification of traffickers and trafficked victims and provision of assistance and support to trafficked victims. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.

4. Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.

5. Ensuring that all traffickers are arrested, prosecuted and punished with stringent penalties for their deeds. One way could be of confiscating their assets and proceeds of trafficking which could be used for the benefit of victims of trafficking. In no way, the trafficked victims should be prosecuted for the activities they are involved in as a result of their situation. It should be ensured that protection of trafficked victims as well as the confiscation of assets and proceeds of the trafficker for the benefit of trafficked victims are built into the anti-trafficking legislation itself. In fact, consideration should be given to the establishment of a
Compensation Fund for victims of trafficking and the use of confiscated assets should finance such a fund. The protection offered to the victims in no way should be made conditional upon the willingness of the trafficked victim to cooperate in the legal proceedings.

5. Special Measures for Identification and Protection of Trafficked Girl Child Victims

The physical, psychological and psychosocial harm suffered by trafficked Girl Children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the Girl Child must be a primary consideration in all actions concerning trafficked Girl Children, whether undertaken by courts of law, government authorities, legislative bodies or non-governmental organizations. Girl Children who are victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs. The Central Government/State Governments/Union Territory Administrations/inter-governmental and non-governmental
organizations, should consider, in addition to the measures outlined under serial no. IV:

1. Ensuring that definitions of trafficking in Girl Children, in both law and policy, reflect their need for special safeguards and care, including appropriate legal protection. In particular, and in accordance with the 2000 Palermo Protocol, evidence of deception, force, coercion, etc. should not form part of the definition of trafficking where the person involved is a Girl Child. The mere presence of a Girl Child with a trafficker of any kind should connote that the Girl Child is trafficked or is being trafficked.

2. Ensuring that procedures are in place for the rapid identification of Girl Child victims of trafficking.

3. Ensuring that Girl Children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.

4. In cases where Girl Children are not accompanied by relatives or guardians, steps should be taken to identify and locate family members. Measures should also be taken in consultation with the Girl Child to facilitate the reunion of
trafficked Girl Children with their families where this is deemed to be in their best interest.

5. In situations where the safe return of the Girl Child to his or her family is not possible, or where such return would not be in the Girl Child’s best interests, establishing adequate care arrangements that respect the rights and dignity of the trafficked Girl Child.

6. In both the situations referred to at serial no. 4 and 5 above, ensuring that a Girl Child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affective him or her, in particular, concerning decisions about his or her possible return to the family, the views of the Girl Child be given due weightage in accordance with his or her age and maturity.

7. Adopting specialized policies and programmes to protect and support Girl Children who have been victims of trafficking. Girl Children should be provided with appropriate physical, psychosocial, legal, educational, housing and healthcare assistance.
8. Adopting measures necessary to protect the rights and interests of trafficked Girl Children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.

9. Protecting, as appropriate, the privacy and identity of Girl Child victims and taking measures to avoid the dissemination of information that could lead to their identification.

10. Taking measures to ensure adequate and appropriate training, in particular, legal and psychological training, for persons working with Girl Child victims of trafficking.

6. **Rescue of Trafficked Victims, Especially in Brothel-Based and Street-Based Prostitution with Special Focus on Girl Child Victims**

   The process of trafficking cannot be broken without giving proper attention to the rights and needs of those who have been trafficked. Appropriate measures need to be specifically devised for trafficked victims, especially in brothel-based and street-based prostitution, including Girl Children who have been trapped in this without discrimination. The Central Government/State
Governments/Union Territory Administrations/inter-governmental/non-governmental organizations should consider:

1. Taking effective measures for planning and devising a rescue strategy specifying victim-friendly provisions and structures for trafficked victims who have been forced into brothel-based and street-based prostitution.

2. Creating a specialized cell for rescuing them at the Centre/State/Block/District/Village level. This kind of paraphernalia would also facilitate in coordinating with other relevant departments and non-governmental organizations (intra and inter) for rescuing trafficked victims caught in brothel-based and street-based prostitution including Girl Children who have been trapped.

3. Creating a confidential database on traffickers including probable traffickers, brothel owners, madams, gharwalis, etc. at all levels.

4. Cultivating a network of informants who will provide specific information about trafficked women victims including Girl Child victims below 18 years who want to be rescued from brothels.
5. Ensuring that rescue team should consist of both men and women police officers and representatives of non-governmental organizations/local inhabitants. Each member of the rescue team should be told about his/her role in the rescue operation and how the same is to be executed. They should also be told to maintain confidentiality and secrecy of the entire rescue operation.

7. Taking due care by all concerned to ensure that trafficked women, particularly Girl Children, are not unnecessarily harassed or intimidated during the course of rescue operations. Adoption of humane and rights-based approach would go a long way in building the faith of the victims in the criminal justice system. This would also facilitate the overall rehabilitation, reintegration of the victims.

8. Ensuring, in partnership with non-governmental organizations, that trafficked victims, including Girl Children, are provided access to legal, medical and counselling services. It should also be ensured that they are treated with dignity and not humiliated by the police, medical personnel or the court.
9. Ensuring that any victim, including a Girl Child, who is rescued, is examined by a Registered Medical Practitioner for the purpose of age and for the detection of injuries/diseases. Trafficked victims should not be subjected to mandatory testing for diseases, including HIV/AIDS.

10. Ensuring that, in cases where the victim rescued is not a Girl Child, she should not be *prima facie* treated as a criminal accused of soliciting clients. Steps should be taken to ensure that correct provisions of law are applied and that the FIR is not stereotyped.

11. All efforts should be made to ensure anonymity and privacy of the victims during and after rescue.

7. **Rehabilitation, Reintegration and Repatriation of Trafficked Victims with Special Focus on Girl Child Victims**

   The rehabilitation, reintegration and repatriation of victims of trafficking being a long process must be planned, taking into account the specific short and long-term needs of individual victims. Efforts must be non-punitive and aimed at protecting the rights of the victims. All stakeholders should therefore consider:
1. Taking into account the specific short and long-term needs of each individual victim based on their age, education, skills, etc., the rehabilitation, reintegration and repatriation package for victims of trafficking should be worked out.

2. Keeping in view the paucity of government run institutions as well as the deteriorating conditions of these institutions, there is need to identify names of fit persons and fit institutions for providing safe custody to victims of trafficking. This list should be made available to the police, courts, non-governmental organizations and civil society at large for information.

3. Providing access to legal, medical and counselling services to all trafficked victims in order to restore their self-confidence and self-esteem. Special provision should be provided to those who have contracted HIV/AIDS.

4. Enabling victims of trafficking to access both formal and non-formal education structures. Formal education should be made available to those victims who are still within the school going age, while non-formal education should be made accessible to adults.
5. Providing gender sensitive market driven vocational training in partnership with non-governmental organizations to all rescued victims who are not interested in education. Government and non-governmental organizations should also work together to develop partnership with public and private sector employers in order to provide training/facilitate work placement as part of the reintegration process. Due care should be taken to give ample choice to victims so that rehabilitation and reintegration becomes a holistic process, which respects their human rights.

6. Involving the community in the rehabilitation, reintegration and repatriation process of trafficked victims. This means involving the families of victims and the community by enhancing their awareness about trafficking in general and the impact of trafficking on the individual.

7. Monitoring the rehabilitation, reintegration and repatriation of rescued victims with the help of non-governmental organizations.

8. Making available to rescued victims various developmental and anti-poverty schemes meant for the general population, both in the rehabilitation and reintegration phase.
9. Upgrading the conditions and capacities of institutions/homes run by the Government and an increase in the number of such institutions/homes not only in the cities, but also at the district and taluka levels, are of utmost necessity.

10. Recruiting adequate number of trained counsellors and social workers in institutions/homes run by the government independently or in collaboration with non-governmental organizations.

11. Appointing trained social workers and counsellors at police stations, courts and homes/institutions of different kinds meant for accommodating victims of trafficking.

12. Anti-trafficking cells/units should be set up at the Centre, State, Block District and Village levels to facilitate and monitor the process of rescue, rehabilitation, reintegration and repatriation.

8. Cross-Border Trafficking: National and Regional Cooperation and Coordination

Trafficking is a regional and global phenomenon. Enormous trafficking takes place not only within the country but also across
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borders, especially between the neighbouring countries. A coherent approach is therefore required to tackle the problem of cross-border trafficking which cannot be dealt with at the national level alone. A strengthened national response can often result in the operations of traffickers moving elsewhere. International, multilateral and bilateral cooperation can play an important role in preventing and combating trafficking activities. States should thus consider:

1. Adopting bilateral agreements with neighbouring countries in order to prevent trafficking and protecting the rights and dignity of trafficked persons and promoting their welfare.

2. Using the Palermo Protocol and relevant international human rights standards as a baseline and framework for elaborating bilateral agreements mentioned at serial no. 1 above.

3. Adopting labour migration agreements, which may include provision for work standards, model contracts, modes of repatriation, etc. in accordance with existing international standards.

4. Developing cooperation arrangements to facilitate the rapid identification of trafficked victims including the sharing and
exchange of information in relation to their nationality and right of residence.

5. Establishing mechanisms to facilitate the exchange of information concerning traffickers and their methods of operation.

6. Developing procedures and protocols for the conduct of proactive joint investigations by law enforcement authorities of different concerned countries.

7. Ensuring judicial cooperation between countries in investigations and judicial processes relating to trafficking and related offences. This cooperation should include assistance in: identifying and interviewing witnesses with due regard for their safety; identifying, obtaining and preserving evidence; producing and serving the legal documents necessary to secure evidence and witnesses; and the enforcement of judgments.

8. Ensuring that requests for extradition for offences related to trafficking are dealt with by the authorities of the requested countries without undue delay.
9. Establishing cooperative mechanisms for the confiscation of the proceeds of trafficking. This cooperation should include the provision of assistance in identifying, tracing, freezing and confiscating assets connected to trafficking and related exploitation.

10. Encouraging and facilitating cooperation between non-governmental organizations and other civil society organizations in countries of origin, transit and destination. This is particularly important to ensure support and assistance to trafficked victims who are repatriated.

9. **Legal Framework and Law Enforcement**

Amendments that are required:

1. Amending or adopting national legislation in accordance with international standards in order to address all forms of trafficking and these should also be criminalized. Along with this, the content of domestic trafficking legislation should also strictly criminalize traffickers, including agents or middlemen, brothel owners and managers, as well as institutional networks that are used in the crime of trafficking.
2. Enacting legislation to provide for the administrative, civil and, where appropriate, criminal liability of legal persons for trafficking offences in addition to the liability of natural persons. The Government should also review current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage bureaux, employment agencies, travel agencies, hotels and escort services.

3. Making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals). Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in Girl Children or offences committed or involving complicity by State officials.

4. Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking would be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a Compensation Fund for
victims of trafficking and the use of confiscated assets should finance such a fund.

5. Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for they are victims of situation beyond their control. Likewise, it should be ensured that protection of trafficked victims is built into the anti-trafficking legislation itself. The protection offered in no way should be made conditional upon the willingness of the trafficked victim to cooperate in the legal proceedings.

6. Providing legislative protection for trafficked victims who voluntarily agree to cooperate with law enforcement authorities.

7. Legal reform should also incorporate a gender and rights-based perspective, having regard to the fact that women are, in most cases, marginalized. For example, property and inheritance laws and procedures should be reviewed and adjusted to ensure that they do not include provisions which have a discriminatory impact on women and their livelihood options.

8. Making effective provision for trafficked victims whereby they are given legal information and assistance in a language
they understand as well as appropriate other supportive measures. The Government should ensure that entitlement to such information, assistance and support is not discretionary but is available as a right for all persons who have been identified as trafficked.

9. Ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law.

10. The services of nodal officers – one representing the police department dealing with investigation, detection, prosecution and prevention of trafficking and the other representing the welfare agencies dealing with rescue, rehabilitation and economic/social empowerment of the victims and those at risk – appointed by the State Governments/Union Territories at the behest of NHRC should be utilized for all purposes.

11. Ensuring that law enforcement personnel of all ranks are provided with adequate training in the investigation and prosecution of cases of trafficking.

12. Establishing specialist Anti-Trafficking Units (comprising both women and men) in order to promote competence and professionalism. Besides, law enforcement authorities should be provided with adequate investigative powers and
techniques to enable effective investigation and prosecution of suspected traffickers.

13. Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked victims at risk of being punished for offences committed as a consequence of their situation.

14. Encouraging law enforcement authorities to work in partnership with non-governmental organizations and the community at large in order to ensure that trafficked victims receive necessary support and assistance. For very little can be achieved without the involvement of the community in fighting trafficking.

10. **Witness Protection and Support to Victims**

   As mentioned at serial no. IX above, an adequate law enforcement response to trafficking is dependent on the cooperation and support of trafficked victims and other witnesses. In many cases, individuals are reluctant or unable to report traffickers or to serve as witnesses because of the fear that they would not only be harassed but also ill-treated. In order that the trafficked victims and other witnesses shed their fears, the Government should consider:
1. Guaranteeing protection for witnesses and support to victims in law.

2. Making appropriate efforts to protect individual trafficked victims and other witnesses (including their families) during the investigation and trial process and any subsequent period when their safety so requires. Appropriate protection programmes may include some or all of the following elements: access to independent legal counsel; protection of identity during legal proceedings; in-camera trials.

11. **Training, Sensitization, Education and Awareness**

Training, sensitization, education and awareness on the issue of trafficking, particularly its adverse impact on human beings, is an important element of prevention as well as eradicating trafficking. This being so, all round efforts should be made to train, sensitize, educate and raise awareness among all at all levels. In doing so, focus should be on:

1. Deepening knowledge and understanding through sensitization and training programmes for judicial officers, law enforcement personnel (police, immigration, border control, customs officials, medical professionals/ personnel and labour inspectors) and other concerned government
officials on the issue of ‘trafficking’ as well as ‘gender and human rights’. These training and sensitization programmes could be organized in conjunction with the Ministries of Home Affairs, Women and Girl Child Development, Labour, the National Human Rights Commission and the National Commission for Women.

2. Ensuring uniformity and quality in these sensitization and training programmes by developing specialized modules for each category of officials taking into consideration their different roles and responsibilities.

3. The module on anti-trafficking should form a core component of the curriculum of National Police Academy, Hyderabad; Lal Bahadur Shastri National Academy of Administration, Mussoorie and all police training institutes. This would enable all probationers to know about the problem of trafficking and its ramifications.

4. Building up and strengthening the capacity of non-governmental organizations that are currently involved in rescue, rehabilitation, reintegration and repatriation work.
12. **Methodology for Translating the Action Points into Action**

1. Till such time, a new law to deal with the problems of trafficking is framed or amendments are made in the existing law, the police officers, prosecutors and lawyers should be sensitized to invoke provisions of the Immoral Traffic (Prevention) Act, 1956 in conjunction with the Indian Penal Code, the Juvenile Justice (Care and Protection of Girl Children) Act, 2000 and other laws.

2. Developing training material consisting of good practice models, applicable treaties and laws, important judgments, rescue procedure, case studies on rehabilitation of victims, etc. to ensure that the knowledge, information imparted in various training/sensitization programmes is of uniform nature.

3. Maintaining records regarding the officials/personnel who have been trained and the type of training received, so that later refresher courses could be organized for them to update them on latest information and techniques.

4. Organizing mass scale information campaigns on the issue of trafficking for the general public at large. The tourism industry including airlines, hotels, travel agencies, beer bars,
holiday resorts, etc. should also be sensitized to the problem of trafficking.

5. Educating school and college level students on the issue of trafficking as well as human rights and gender sensitive concerns.

6. The media should play an important role in informing and educating the public through newspaper, radio and other modes of communication, and should be targeted as a key partner in preventing and ending trafficking. It would be ideal if media practitioners were first sensitized about the issue of trafficking and its complexities, as this would ensure appropriate reporting on facts rather than sensationalizing the issue.

7. NGOs and human rights activists are left to fill the void of the government’s negligence. Without a significant amount of funds, how much of an impact can NGOs have? On individual lives their impacts are huge, but when you look at society as a whole the crisis is too big, the Indian government must step up and address this issue.

8. Government should come forward by allocating funds to NGOs so that they can make a big impact through their services.