



राष्ट्रीय विधिक सेवा प्राधिकरण
National Legal Services Authority

REPORT OF NATIONAL LEGAL SERVICES AUTHORITY

**Submitted to the Hon'ble Supreme Court of India
in the Writ Petition (C) No. 56/2004 titled Prajwala v. Union of India and Others**

Report of National Legal Services Authority

1. The present report is being filed by the Member Secretary, National Legal Services Authority (NALSA). This Hon'ble Court by order dated 28.02.2005 directed that NALSA be impleaded as a party in the present writ petition being Writ Petition (C) No.56 of 2004. The NALSA filed an affidavit dated 4.04.2006 with regard to the role which can be played by it as well as State Legal Services Authorities(SLSAs) in respect of monitoring and functioning of shelter homes under the Immoral Traffic Prevention Act, 1956. Thereafter, a joint proposal regarding the protocol of victim protection during pre-rescue, rescue and post-rescue was also filed on 15.09.2006. However, in view of the fact that much time has lapsed and there are several new developments, new policies and laws that have been passed, a committee was constituted by the Hon'ble Executive Chairman, NALSA to examine the issue afresh.
2. The Committee so constituted is headed by Hon'ble Mr. Justice A.K.Sikri, Judge, Supreme Court of India. Hon'ble Dr. Justice S.Muralidhar, Hon'ble Mr. Justice Manmohan and Hon'ble Mr. Justice Rajiv Sahai Endlaw, Judges of the Delhi High Court, Shri Kumar Alok, Joint Secretary, MHA, Shri Taj Hassan, Special CP(Crime), Ms. Ashwani Lal, Joint Director, WCD, Ms. Dipa Dixit, former member, NCPCR, Dr. Savita Bhakhry, Joint Director (Research), NHRC, Ms. Akhila Sivadas, Executive Director, CFAR, Ms. Bharti Ali, HAQ Centre for Child Rights, Shri Bhuwan

Ribhu, Bachpan Bachao Andolan, Shri Ravi Kant, President, Shakti Vahini and Ms. B. Sunita Rao, Advocate, are the members of the Committee. The Petitioner Dr. Sunita Krishnan, Founder, Prajwala and her counsel in the present petition Ms. Aparna Bhat are also members and have actively participated in the deliberations.

3. The Committee drew the Terms of Reference that are attached as **Annexure - 'A'**. On the basis of the said Terms of Reference, three sub- committees were constituted which submitted reports on the following:

- I. Concepts and definitions;
- II. Identification of strengths and gaps in legislation, schemes, practices, processes and existing protocols, including in judgments;
- III. Preparation of comprehensive protocols on prevention, pre-rescue, rescue, post- rescue, and rehabilitation.

The preliminary report was filed by the NALSA on 17/03/2015 on the basis of the deliberations of the Committee, and the same may be read as part of this Report. The Preliminary Report is annexed to this report as **Annexure-'B'**. The Reports of the Sub-Committees are annexed to this report as **Annexures 'C', 'D' and 'E'** and same may be read as part of this Report.

4. The inputs of the Sub-Committees were considered by the Core-Committee comprising of Hon'ble Mr. Justice A.K.Sikri, Judge, Supreme Court of India. Hon'ble Dr. Justice S. Muralidhar,

Hon'ble Mr. Justice Manmohan and Hon'ble Mr. Justice Rajiv Sahai Endlaw, Judges of the Delhi High Court, Shri Kumar Alok, Joint Secretary, Ministry of Home Affairs, Representative of Ministry of Women and Child Development, Ms. Dipa Dixit, former Member, NCPCR and Shri Bhuwan Ribhu, Bachpan Bachao Andolan and this final report is being submitted. The Committee has set out the problem and suggested the roles of the various stakeholders in the prevention, rescue and rehabilitation of victims of trafficking for commercial sexual exploitation. NALSA is placing on record the recommendations of the Committee before this Hon'ble Court.

THE PROBLEM

5. Women and children are vulnerable to sexual exploitation. In India, there are communities who are engaged in prostitution. Women and children in these communities would be particularly vulnerable. Areas affected by unrest, instability, conflict or natural disasters are also vulnerable areas for trafficking for sexual exploitation. There are some neighbouring countries from where women and children are trafficked into this country. Trafficking also occurs due to gender imbalance. Vulnerable areas would also include transit areas such as bus stations, railway stations, airports and international borders.
6. Sexual exploitation could take different forms, including without overt trafficking, such as in traditional or community based

prostitution. Others could be brothel based. Both could involve inter generational prostitution.

7. Emerging forms of sexual exploitation are child pornography, child sex tourism, massage parlour, friendship clubs, escort agencies, placement agencies, dance bars and moving theatres (*nautanki in mela*), circuses, etc.
8. There is a strong linkage between ‘trafficking’ and ‘missing persons’. The Supreme Court has held that whenever a child goes missing, it should be presumed to be a case of kidnapping or trafficking(*BBA Vs. Union of India W.P.(C) No.75/2012*).
9. Trafficking in human beings is one of the largest organised crimes in the world. Trafficking in human beings may be for sexual exploitation, other forms of slavery including forced labour, and organ trade. Trafficking for sexual exploitation, one of the many forms of trafficking is a complex phenomenon within the trafficking process.
10. It must be borne in mind that trafficking is a continuing offence, and commercial sexual exploitation must be understood in the context of involuntary entry into the profession through trafficking, and the years spent thereafter entailing a continuum of exploitation.
11. As at present, there has been little attention paid to the prevention of trafficking. There is need to identify vulnerable groups and

causes and to develop a policy of prevention through appropriate interventions and casting of safety nets. It is seen that young women and children particularly girls are especially vulnerable to trafficking. Girls may be lured to elope and marry potential traffickers who may sell the girls after gaining their trust. The vulnerable areas geographically would need special attention to prevent trafficking occurring in such areas. Another significant challenge would be to prevent re-trafficking after rescue.

12. The Government has several schemes for women empowerment, protection of children, poverty alleviation and skill development. The need would be to channelize these efforts in areas that are vulnerable, and having vulnerable populations. The existing machinery under the various schemes of the Central Government and the State Government should be made use of, to prevent trafficking. The programme implementing agencies should be held accountable if they fail to deliver services as required of them under the various schemes.

13. It is submitted that even at present rescue operations are being conducted. However, often these raids and rescues lead to the penalizing of the victims themselves. The rescue operations are conducted in an adhoc manner without effective planning and rescue strategies which are not victim friendly. There is no differentiation in rescue operations relating to trafficked victims in brothel-based and street based prostitution and child victims of sexual exploitation. There is neither inter-State co-ordination, nor inter departmental collaboration. The advisories of the Ministry of

Home Affairs,(MHA), and other protocols including of the Ministry of Women and Child Development (MWCD) are not being strictly followed. Scant regard is paid to the dignity and human rights of the sex workers and victims rescued. Thus the rescue operation itself is a traumatic experience for the victims which would tend to re-enforce the antagonism towards law enforcement agencies ingrained in their minds by their exploiters.

14. A victim could be any woman, child or even a man, a trafficked person irrespective of nationality, age or sex and a person who has not completed age of 18 in all cases. The perpetrator of the crime must be identified by a close scrutiny of the process of trafficking. Thus the recruiter, agent of the recruiter, the buyer and seller of the trafficked person, the transporter, the conspirators and abettors, the pimp, brothel madams and managers, customers, financiers of the brothel, the facilitators who provide the space, premises or building for commercial sexual exploitation, the advertisers including massage parlours and escort agencies, the persons who run these massage parlours and escort agencies, placement agencies, parents and guardians who induct their children into commercial sex work and willingly sell or hand over their children to traffickers, anyone who provides shelter to the trafficker, including keeping the trafficked victim, and generally anyone who knowingly commits an act or omission in the entire process of trafficking, are all to be dealt with as offenders under law. Presently, they are not being prosecuted.

15. It is submitted that since trafficking is an organized and highly profitable crime, invariably the perpetrators would try to reach the rescued victims with the aim to re-traffic them or, threaten them from pursuing the criminal cases. Trafficked victims normalize their experiences at the hands of the traffickers, and view the rescue as unwarranted. Therefore, even before rehabilitation work commences victims require psychological counselling.
16. It is submitted that presently the Homes prescribed under ITPA have either not been set up, or have highly inadequate infrastructure and facilities which do not fulfill the intent and purposes of the ITPA. There are no facilities for addressing the mental and physical health of the rescued victims. There are no counselors or psychologists to help the victims to recover.
17. It is submitted that the views of the victims will be important in deciding the nature of rehabilitation to be provided to the victim such as repatriation or restoration. This will also depend on whether the rescued person is a voluntary sex worker, or is a trafficked victim. The ultimate aim should be of social reintegration of both. Presently, there is no provision for age compatible formal education to the victim, nor is any vocational training given. In cases where rescued victims have remained for a long period in child care institutions, they are suddenly left to fend for themselves on attaining the age of 18. Aftercare homes and further hand holding of such children till they reach adulthood and attain independence is totally absent.

18. It is submitted that many victims are foreign nationals who have been trafficked for sexual exploitation in this country and who would need to be repatriated to their home countries. This requires special efforts and coordination with foreign countries and facilitation for deposition during trial. Presently these nationals are often times prosecuted for visa violations in this country.
19. The MHA has also signed an MOU with Bangladesh and created a Task Force of India and Bangladesh for addressing various issues relating to prevention of trafficking, victim identification and repatriation. A draft MoU has also been sent to the other SAARC nations. India has also ratified the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. A Regional Task Force has also been constituted and efforts are on for adoption of an SOP by all SAARC members.
20. The Anti Human Trafficking Unit (AHTU) has a nodal cell at the national level at the MHA which acts as a focal point for communicating various decisions and follow up on action taken by the State Governments to combat the crime of human trafficking. The Cell is responsible for identifying problem areas and analyzing causes for their being source/transit/destination areas. The MHA conducts periodic co-ordination meetings of the nodal officers of the AHTU not only to monitor the implementation, but also outline various action areas to each State to work on. The MHA has also developed a web portal on anti human trafficking which is used for sharing of information and cooperation between law enforcing agencies and concerned government departments.

THE EXISTING STATUTORY REGIME

21. In 1950, the Government of India ratified An International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others. Under Article 23 of the Convention, traffic in human beings is prohibited and any contravention of the prohibition is an offence punishable by law. Thus a central law was found necessary even though a few States had some legislation governing prostitution.

22. The Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) was the first central Act to deal with suppression of immoral traffic and prevention of prostitution. By an amendment in 1986, the nomenclature of this Act was changed, and with effect from 26th January, 1987 the Act is known as The Immoral Traffic (Prevention) Act, 1956 (ITPA).

23. The ITPA defines prostitution in Section 2 (f) as follows:

“2(f) “Prostitution” means the sexual exploitation or abuse of persons for commercial purposes, and the expression “prostitute” shall be construed accordingly;”

24. Section 3 of the ITPA prescribes punishment for keeping a brothel or allowing premises to be used as a brothel, and a person who keeps or manages, or acts or assists in the keeping or management of a brothel shall be punished with rigorous punishment for not less than 1 year, and not more than 3 years for the first offence and with a fine upto Rs. 2,000/-. The term of imprisonment will be not

less than 2 years, and not more than 5 years, and fine upto Rs. 2,000/- in case of a second or subsequent offence. A person who permits the use of premises in his possession as a tenant, lessee, owner, landlord etc. as a brothel will also be liable for punishment with imprisonment upto 2 years for the first offence with fine upto Rs. 2000/-, and to rigorous imprisonment for upto 5 years with fine for the second or subsequent conviction.

25. Section 4 ITPA provides for punishment for living on the earnings of prostitution. Section 6 makes it punishable with imprisonment from 7 years upto life term, or 10 years with fine, for detaining any person with or without consent in any brothel, or for sexual intercourse with a person not a spouse. Under Section 7 a person who carries on prostitution and a person with whom such prostitution is carried on within a notified area shall be punishable with imprisonment for varying terms depending on the aggravated conditions such as using a child. Seducing or soliciting for the purpose of prostitution is punishable with imprisonment and fine under Section 8. A very important provision of the ITPA is Section 5 which is rarely used.

26. Section 5 relates to the offence of procuring, inducing or taking a person for the sake of prostitution, and reads as under:

“5. Procuring, inducing or taking person for the sake of prostitution. –

(1) Any person who -

(a) procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or

(b) Induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a person to carry on prostitution,

Shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if a the person in respect of whom an offence committed under this sub-section,-

(i) is a child, the punishment provided under this sub-section shall extend to rigorous

imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

(3)An offence under this section shall be triable –

(a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

27. Thus it can be seen that while prostitution in itself has not been made punishable, activities surrounding the act of prostitution have been made punishable with imprisonment of varying terms.

28. There are other provisions in the ITPA which deal with rescue and post rescue handling of the rescued persons in protective homes and corrective institutions. It also provides for closure of a brothel.

29. The provisions of the IPC dealing with trafficking are as below:

Section 370 IPC defines trafficking as under:

“Trafficking of person- (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by-

First- using threats, or

Secondly- using force, or any other form of coercion, or

Thirdly- by abduction, or

Fourthly- by practicing fraud, or deception, or

Fifthly- by abuse of power, or-

Sixthly- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1- The expression ‘exploitation’ shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or, forced removal of organs.

Explanation 2- The consent of the victim is immaterial in the determination of the offence of trafficking.”

Section 370A IPC provides for more severe punishment for sexual exploitation of a victim of trafficking, as under:

“370A. Exploitation of a trafficked person.- (1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.”

30. Other relevant provisions in the IPC which have a bearing on prostitution are:

- i) Procuring of minor girl(section 366-A IPC)
- ii) Importation of girl from foreign country (Sec. 366-B IPC)
- iii) Selling minor for purposes of prostitution, etc. (Section-372 IPC)
- iv) Buying minor for purposes of prostitution (Section -373 IPC)

LACUNA

31. The Committee in the course of its discussions identified the following lacuna and gaps:

- (1) There is no definition of “sexual exploitation” in the ITPA or the IPC. While ITPA says that prostitution means sexual exploitation or abuse for commercial purposes, the IPC merely provides for more severe punishment if a trafficked person particularly a minor is engaged for sexual exploitation in any manner.
- (2) The Protection of Children to Sexual Offence Act, 2012 (POCSO) has defined sexual offences and their aggravated forms; but again there is no definition of commercial sexual exploitation.
- (3) There is a lacuna in the legislation regarding the definition of sexual exploitation, which is required to be filled.
- (4) As noticed above there is no provision relating to prevention under the ITPA.
- (5) The government has not mapped the vulnerable areas and groups which are prone to trafficking for commercial sexual exploitation.
- (6) There has been no focused roll out of government schemes targeting these vulnerable areas, and vulnerable groups, in order to prevent trafficking.
- (7) The provision for rehabilitation is also inadequate in as much as emphasis is on correction and detention rather than empowerment and re-integration. The ITPA does not provide for, nor prescribes the facilities and services, such as continuing education, vocational training and treatment for

health and addiction problems. The Committee felt that there were also large gaps in the implementation of the provisions in the legislation, regarding setting up of protection homes and their infrastructure.

- (8) There are a number of SOPs that have been developed by the MHA and other Departments. The MWCD has formulated a protocol for pre-rescue, rescue and post rescue operations of child victims of trafficking for the purpose of sexual exploitation. Similarly, the Ministry of Labour and Employment has developed and circulated to all States and UTs a protocol on prevention, rescue, repatriation and rehabilitation of trafficked and migrant child. The Ministry of Railways has recently issued an SOP in accordance with the JJ Act and related Rules for better care and protection of the “child in contact with Railways”. Advisories have also been issued by the MHA regularly. The UNODC has also developed an SOP for Prosecutors. The existing SOPs are annexed as **Annexure-‘F’** colly.
- (9) The MHA has established Anti Human Trafficking Units, and released funds to them for their efforts. The MHA has also issued several advisories to the States with regard to human trafficking including prevention. Advisories are annexed as **Annexure-‘G’** colly.
- (10) These advisories and SOPs have, however, not been very effective, for various reasons. Some of the reasons are as below:

- Lack of dedicated manpower
 - Absence of financial resources
 - Absence of defined roles
 - Absence of accountability
 - Absence of coordination amongst different government departments
 - Working of various stakeholders in silos
 - Absence of knowledge about the SoPs and Advisories
 - Absence of knowledge of latest laws and decisions of the High Courts and Supreme Court
 - Lack of sensitivity and having a callous and prejudiced attitude
 - Lack of skill in understanding the magnitude of an event such as a missing child or elopement or movement of people from conditions of distress and want
- (11) The Committee felt that there were other gaps such as inter agency coordination and intelligence sharing and data collection.
- (12) The Committee noticed that law enforcers lose vital clues and evidence of trafficking during the raids and rescue operations which enures to the benefit of the trafficker who escapes scot free.

- (13) Moreover, raids are conducted in an ad hoc manner without any understanding of the numbers of rooms and shelter homes required for rehabilitation and shelter of rescued victims.
- (14) There is no provision for their food, medicines, or psychological treatment post rescue.
- (15) There is no victim/witness protection protocol.
- (16) In the absence of witness support programmes such as the Delhi Vulnerable Witness Programme, witnesses are not able to testify against the traffickers and trial suffers. There is also poor conviction rate, despite the seriousness of the offence. In the case of foreigners who are victims, they are required to be detained to enable them to appear in the court as witness causing them great hardship.
- (17) The threats from traffickers and pressure from the exploiters often compel witnesses to turn hostile or fail to appear in the court.
- (18) There is no provision for victim compensation, or at uniform rates across the country for a victim of trafficking for sexual exploitation.
- (19) The Committee was of the view that there was a gap in institutional framework for investigating and dealing with trafficking crimes in as much as there was no single investigating agency such as the Narcotics Control Bureau, to deal with organised crimes such as trafficking. The AHTU

handling trafficking cases is not an independent or exclusive agency, and is dependent on existing police for manpower.

- (20) There is also no separate budget for dealing with trafficking or rescue and rehabilitation.
- (21) There have been lapses in the proper verification of the antecedents of the applicant who seek the release of the victim. Thus there have been instances where the victims have been released to the traffickers/exploiters.
- (22) There is a gap in the capacity of the judicial system, be it the judicial officers, the lawyers, the legal services lawyers or the prosecutors which results in miscarriage of justice most inadvertently.
- (23) With regard to foreigners, who have been trafficked to India for commercial sexual exploitation, the Passports Act, 1967 and the Foreigners Act, 1946 need to be applied more compassionately and not merely as a violation of visa laws calling for prosecution. The Committee noted that presently there are no such exceptions recognised.

SUGGESTIONS

32. The Committee has given the following suggestions in order to fill the lacuna as highlighted above:

Re: Lacuna in Legislation

- (1) The Committee felt that ‘Sexual Exploitation’ (SE) includes a situation where a person under coercion and absence of free

will is sexually used or abused, or explicitly portrayed, either physically, or through media (print, electronic, internet) in a sexual manner, for the benefit of another person(s), either through monetary gains, or compensation, or favours, or any other arrangement, causing unlawful gain as a result of such act to any person and includes brokering relationships that are coerced.

- (2) The Committee has felt that the stakeholders need to be given defined roles and made accountable in order that the gaps are filled. The Committee was of the view that the Government of India must give serious consideration to amend the ITPA, since it neither addresses prevention, nor effective rehabilitation and nor does it provide for a witness protection protocol, despite being an Act specifically on trafficking for immoral purposes.

Re: Gaps in Data

- (3) The MHA has already taken steps to collect data regarding trafficking, and particularly of sexual exploitation and forced labour. Crime and Criminal Tracking Network and Systems (CCTNS) proforma has been prescribed to all Police Stations for uploading data, and the data is to be sent to the NCRB directly. The proforma utilized by the AHTU also categorizes data as under ITPA, ITPA and IPC, Labour Laws and IPC, Sex trafficking, Labour trafficking and other types of trafficking. The maintenance of this kind of data would go a long way in mapping vulnerable areas and groups which in turn would help

strengthen intervention for prevention of trafficking and prevention of vulnerability to trafficking. Therefore, the Committee recommends that there must be strict adherence in reporting information in the prescribed common proformas.

Re: Lacuna in Rescue Operations

- (4) The Committee suggests that for an effective rescue operation, information must be gathered effectively, and a network of informers developed.
- (5) There must be proper identification of victims of sexual exploitation.
- (6) There may be women who have opted for the profession of sex work voluntarily when they were adults, and are continuing in it by choice. This distinction has to be borne in mind while addressing issues of prevention, rescue and rehabilitation. For the voluntary sex worker, her right to dignity, other civil and human rights, rights to access government programmes, etc. would be of paramount importance.

The issues would however be different for rescued victims of trafficking, whether adult or child and whether recently trafficked or trafficked in the past, whose rehabilitation would require protective care, including witness protection. Protection must be specifically rendered to the victims of trafficking, adult or child, to make it difficult for the traffickers or exploiters to re-establish contact them. Thus, distinct approaches will be

required while dealing with voluntary sex workers, and trafficked victims.

- (7) There must be complete confidentiality maintained about the identity of the victim at all times, right from the rescue till rehabilitation and conclusion of the trial.
- (8) While custodial detention is not the aim, nevertheless, there must be security guards at the Shelter Homes, at all hours to prevent escape.
- (9) Furthermore, there must be a strict policy for visitors' access, telephone facility and contact with external world, particularly soon after the rescue.
- (10) The media should not be permitted access to the shelter home in view of the sensitive nature of the issue of trafficking for sexual exploitation.
- (11) The Committee felt that the recruitment of staff in the shelter homes must be done after conducting a detailed and thorough scrutiny of the antecedents and qualifications of the applicants. On appointment, they must be required to undergo orientation and sensitization training, to handle inmates and their issues with compassion and firmness.
- (12) The Committee suggests that the Shelter Home itself must be so designed that it seems a welcoming and warm place, and not a custodial centre. The staff at the shelter home must make the rescued victim comfortable. The Shelter Home must be equipped to take care of the immediate personal needs of the rescued victim.

- (13) Proper infrastructure must be provided at the shelter homes. The building should be airy and well lit, and should not be a dingy place. It should have a kitchen and area for dining, earmarked sleeping areas or bedrooms/dormitories with mattresses and cots and blankets. There should be some reading material, indoor games and TV/Radio for entertainment.
- (14) It is suggested that the Shelter Home must have adequate health and medical support for immediate health check up, referral support, psychiatric assistance, de-addiction centre and hospitalization facilities. There should be adequate and trained care givers to handle difficult cases involving substance abuse, addiction or psychiatric illness.
- (14) The additional medical needs must be immediately identified by the staff so that prompt action can be taken to have the victims medically examined for continuation of medication, particularly, ART for HIV/AIDS patients, and the treatment for the same as also opportunistic infections must be commenced forthwith with her informed consent.
- (15) The welfare/security staff in the Shelter Homes must ensure that sharp objects, hazardous material, such as kerosene, petrol and other inflammable objects, acids, cleaning liquids etc. are securely kept, so that no attempt to suicide can be made.
- (16) The Committee felt that counseling and therapeutic support must be provided to all rescued victims, both by professionals as well as bare foot volunteers. This would be inclusive of life

skill training for anger management, conflict management, socialization/sexualisation, grooming, self-defence, and possibly leadership.

- (17) The Committee suggests that Shelter Homes must be managed and run with the participation of the residents. Committees could be formed for decision making with respect to diet and facilities. This would help integrate the rescued victims into an ordinary life schedule. Special care would be required to factor in the diet requirement of HIV positive persons, physically ill persons, lactating mothers and children.

Re: Rehabilitation

- (18) It is suggested that all activities of the Shelter Home must be recorded and documented. The case of every rescued victim must be documented and tracked both for the legal aspects, as well as for the personal development of the victim with complete and strict confidentiality and authenticity. A victim tracking registry could be maintained, and the victim followed regularly for at least 3 years from the date of rescue.
- (19) Vocational training should be provided at the Shelter Homes and to rescued victims, who may not be residing in the protective home/corrective institution or a private shelter home for a prolonged period, keeping in view the market demand, employability, aptitude, sustainability and viability. Thereafter, efforts should be made to give them employment, or assistance in the marketing of their products.

- (20) Adequate number of Aftercare Homes must also be set up so that a child victim who comes out of the Children's or Protection Home at the age of 18, is not left alone without any support, and thus become an easy prey for re-trafficking.
- (21) Foreign nationals must be provided a temporary shelter till their case is processed for repatriation, and they are actually sent home.

Re: Legal Assistance and Trial

- (22) It is submitted the Shelter Homes must provide for access to free legal services in coordination with the local Legal Services Authority. The legal assistance should commence from the time of rescue to the conclusion of the trial. Legal assistance must also be provided at the time when the application is moved for release from the shelter homes. The victim should be helped by Para Legal Volunteers (PLVs) of the local legal services authorities to obtain and preserve the necessary documents establishing his/her identity such as aadhar card, ration card, election card, birth certificate, domicile certificate, caste certificate, school leaving certificate etc.
- (23) The counselor at the Shelter Homes/ PLVs/ legal services lawyer, should provide the victim all information regarding legal recourse, rehabilitation options and welfare schemes she/he could access.
- (24) Prosecutors must also be sensitized about how to handle cases of the trafficked victims and traffickers.

- (25) The Judicial Officers, Prosecutors as well as the Legal Services Lawyers should be vigilant so that the victim does not fall into the hands of the traffickers through the court process.
- (26) Trafficking offences should be given the utmost priority by the judicial officers and the statement of the victim(s) recorded at the earliest.
- (27) No rescued victim should be released without background check of the applicant and nor should the court be in any urgency to send back / repatriate the victim to her home/ family without the court being satisfied about her mental and physical health and her consent (except foreign nationals). The court should seek the assistance of the District Task Force (when set up) in this regard.
- (28) The court should also refer the victim to the District Legal Services Authority for determination and release of compensation under Section 357A CrPC.

Re: Victims/Witness Protection Protocol

- (29) It is essential to provide video conferencing facilities in the courts, so that victims of trafficking are able to testify through video conferencing from the nearest point to their residence, and far away from the presence of the traffickers.
- (30) The Vulnerable Witness Protocol in Delhi which is **Annexure-‘H’** may be adopted throughout the country to ensure safe and encouraging environment to the vulnerable witnesses to testify against their exploiters.
- (31) A Witness Protection Protocol should be put in place to

protect the identity of the witnesses in cases against traffickers.

- (32) The Victims Compensation Schemes throughout the country should include compensation for victims of trafficking.

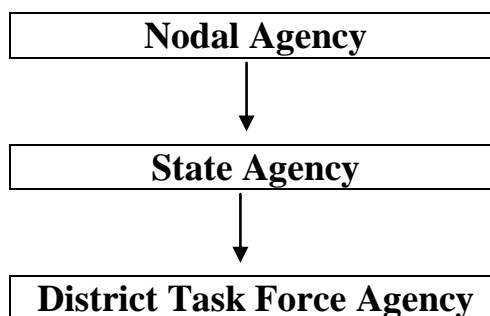
Re: Investigations

- (33) The Committee suggests that the Government must set up an exclusive and specialized agency for investigating organized crime which could be called Organised Crime Investigation Agency. Separate budgetary provisions must be made for this agency.
- (34) The Committee suggests that in order to strengthen the AHTU till such specialized agency is created, as suggested above, the AHTU should be declared as 'Thana' for facilitating registration and investigation of cases.
- (35) The Committee felt that till the above suggestions are implemented the Police should work in close co-ordination with the District Task Force for rescue of victims. They should immediately act on receipt of complaint and should follow the appropriate protocol/SoPs for pre-rescue planning, rescue and post rescue support for the victims of trafficking. They must initiate investigation in an organized crime approach. They must co-ordinate with Immigration Authorities, Boarder Security Force, Railways and other Transport Authorities, etc. for supporting and rescuing victims. They must produce child victims before the Child Welfare Committee. They must separate and protect victims from traffickers. They must allow the victims time to come out of their trauma before recording

their statement and must not hurry them up. The Police must ensure that as soon as the victim is ready her statement is recorded under Section 164 Cr.P.C. They Police must register FIR after guidance from the legal team of the legal services authorities and initiate thorough investigations so that the offenders are convicted after trial.

Other suggestions

- (31) The Committee felt that it was necessary to have a complete structure of agencies dealing with the issue of prevention, rescue and rehabilitation of rescued sex workers and victims of trafficking. For this, it suggests the setting up of a Nodal Agency at the national level, a State Agency at the State level and a District Task Force at the district level.



I. Nodal Agency at the Central Level

- i) The Committee suggests that a Nodal Agency should be constituted at the Central level under the Chairpersonship of Secretary, MWCD with members from all the concerned ministries such as MHA, Ministry of Human Resources Development, Ministry of Labour and Employment, Ministry of

Overseas Indian Affairs, Ministry of Panchayati Raj, Ministry of Tribal Affairs, Ministry of Rural Development and the Ministry of Social Justice and Empowerment, Ministry of Health, Ministry of Railways, Ministry of I & B, and national bodies such as the NCW, NHRC, NCPCR and NALSA.

- ii) The Nodal Agency at the Central level will meet once in three months.
- iii) The Nodal Agency will facilitate convergence and co-operation amongst all stakeholders at the national and the state levels and review action taken at the state level, inter state and inter department coordination and intelligence sharing etc., suggest remedial measures and monitor compliance on the suggestions.
- iv) The Nodal Agency will also oversee the issues of cross border trafficking , rescue and rehabilitation and repatriation of foreign nationals.
- v) The Nodal Agency will be responsible for policy and evaluation of implementation of the policy.
- vi) The Nodal Agency will receive the funds provided under the budget for prevention, rescue and rehabilitation for rescued sex workers and victims of trafficking. It will be the Nodal Agency which will release funds to the State Agencies and the Organised Crime Investigating Agency (when created) or AHTU to support implementation and seek utilisation certificates from the State Agencies.

II. State Agency

- i) The State Agency would comprise of Principal Secretary, Women & Child Department by whatever nomenclature called locally, the Principal Secretaries Education, Law, Finance, Health, Home, Rural & Urban Development, SC/Tribal Affairs, Social Justice, Chairperson or nominee of the SCPCR and Chairperson or nominee of the State Commission for Women, Chairperson or nominee of SHRC, I.G. Police/Joint Commissioner, Incharge of Anti Human Trafficking, Representative of the State Legal Services Authority and one nominee of the Juvenile Justice Committee of the High Court, representative of NGOs nominated by the Chief Secretary of the State.
- ii) The State Agency should meet once in three months.
- iii) The State Agency will implement the policy and decisions of the Nodal Agency, draw up plans of action for the State, review action taken in the State and responses to the issue of human trafficking for sexual exploitation. The State Agency will assess the shortfalls that have been thrown up in the implementation of the policy and state plans of action. The State Agency will also monitor and evaluate the work of the District Task Force. It shall suggest remedial measures and also ensure that remedial action on the lines suggested is actually taken.
- iv) The State Agency shall fix responsibility wherever The District Task Force has been found wanting in their response to action

required to be taken for prevention, rescue, post rescue and rehabilitation. The State Agency will recommend departmental action either by itself or on the recommendation of the District Task Force to the disciplinary authority concerned against the officer/official who has failed in his duty. This will ensure accountability.

- v) The State Agency will make suitable record of appreciation in the confidential reports of officials either by itself or on the recommendations of the District Task Force.
- vi) The State Agency will conduct training programmes for police, rescue personnel and staff of Shelter Homes so that they are sensitive while handling trafficked victims during the rescue and the post- rescue stages.
- vii) The State Agency shall also act as advisor to the District Task Force and the police.

III. District Task Force

- i) There shall be a Task Force at the District level which shall also cover the rural areas and not merely the urban areas.
- ii) The District Task Force will be headed by the District Collector or equivalent rank. The members will also be responsible officers in the District such as Panchayati Raj functionaries, high level police officers particularly those concerned with Anti Human Trafficking, the nominees of the District Child Protection Units, NGOs including community workers,

Directors/Superintendents of Shelter Homes and nominee of the District Legal Services Authority. Since the local level administration may vary from state to state the membership is not more specifically spelt out.

- iii) The District Task Force should be held responsible for the implementation of the policy and decisions of the Nodal and State Agencies and for co-ordinated efforts in prevention, rescue and rehabilitation at the ground level.
- iv) The District Task Force should constitute separate teams to oversee prevention of trafficking, pre rescue action, rescue and rehabilitation. These teams should be comprised of members of the District Task Force and if necessary other officials and NGOs working in the field. They could also take the services of the PLVs nominated by the District Legal Services Authority on the request of the District Task Force.
- v) The roles of the separate teams constituted by the District Task Force being stakeholders can defined in five areas: (i) prevention, (ii) pre-rescue, (iii) rescue (iv) post rescue and (v) rehabilitation. It will be the duty of the District Task Force to ensure that the teams/stakeholders perform their functions in these five areas diligently and with commitment.
- vi) The District Task Force will fix responsibility and accountability for failure to discharge delegated functions and recommend to the State Agency for appropriate action against the defaulters including disciplinary action.

vii) The District Task Force will make suitable record of appreciation in the confidential reports of officials either by itself or recommend the same to the State Agency.

IV. Functions of the District Task Force

The following are the detailed actions that need to be taken by the District Task Force. However, these are illustrative and not exhaustive, as every District may have its own peculiarities in respect of the problem.

- (1) The District Task Force should survey the areas and population to identify source, transit and destination areas.
- (2) The District Task Force must through the police and NGOs working in the field, collect information about vulnerable population which could become source areas.
- (3) Based on the data so collected by the District Task Force and the interactions with the community the District Task Force will draw up an action plan for the prevention and protection of communities vulnerable to trafficking.
- (4) The District Task Force will assign the action plan for prevention and protection to the designated team who shall amongst other things, connect the vulnerable communities to the various government schemes meant for the marginalised and below poverty communities and groups and make the benefits accessible to them.
- (5) The District Task Force must coordinate, through other special/ designated teams constituted in this regard, with

schools, anganwaris, Sarva Shiksha Abhiyan functionaries, health workers, village sarpanchs etc to keep a close watch on children who are covered by the various schemes and who have stopped accessing the schemes and recommend to the AHTU/Organised Crime Investigating Agency (when set up) to investigate cases of missing children and adolescents without delay.

- (6) It should also collect through similar surveys in the area information about the existence of destination points such as brothels. For this they could engage with community self help groups particularly in respect of minor trafficked victims.
- (7) The District Task Force must draw up a clear plan for rescue by assessing from the information received the number of victims likely to be rescued.
- (8) The District Task Force must constitute a team of rescuers from the police, the NGOs/CBOs, doctors/trauma counsellors/ mental health professionals, para legal volunteers/lawyers.
- (9) The District Task Force must ensure that the police gives protective cover to the rescue team.
- (10) The District Task Force must arrange for adequate number of vehicles.
- (11) The District Task Force must through the District Administration/NGOs provide adequate number and proper shelter homes for the rescued victims.
- (12) The District Task Force must make arrangement for food for the victims immediately after rescue.

- (13) The District Task Force must arrange to produce minor victims of trafficking before the child welfare committee immediately to seek orders for age determination and orders for keeping the rescued minors in safe homes.
- (14) The District Task Force must ensure not only First Aid but also that the District hospitals have a dedicated ward to immediately carry out the medical requirement post rescue.
- (15) The District Task Force must constitute rescue teams who are properly trained for the actual rescue.
- (16) The rescue team must ensure that the victims are immediately separated from the perpetrators and the traffickers, procurers pimps and brothel keepers do not have any access to them during rescue or there after.
- (17) The rescue teams must help the victims to recover her personal belongings, her documents and other records that may be relevant for the prosecution, her medicines, her children, etc.
- (18) The District Task Force must ensure the production of children rescued immediately before the Child Welfare Committees so that orders regarding their welfare and protection can be obtained. Assistance of the PLVs/ Panel lawyers of the local legal services authority can be taken for this purpose.
- (19) The District Task Force must take steps for getting the statements of the victims recorded under Section 164 Cr.P.C. They may take the assistance of the PLVs or panel lawyers of

the legal services authority when the victim is to be produced in the court.

- (20) The District Task Force should ensure that whether adult or child the rescued person is treated as victim and not a criminal accused and the anonymity and privacy of victims are protected throughout the rescue and post rescue operations.
- (20) The District Task Force should ensure that thereafter the protocol for the rehabilitation and protection of the victim as suggested by the Committee is strictly followed to ensure that there is no re-traumatization or re-victimization.
- (21) The District Task Force shall take appropriate action for immediate protection of the rescued victims and shall bear in mind differences in process with respect to adult male, female and child victims.
- (22) The District Task Force will pay particular care on the treatment of rescued victims during the raids and rescue operations so that there are no human rights violations.
- (23) The District Task Force must make efforts to see that the victims are not bundled with the traffickers to the police station. The victims must be taken as far as is possible to a more friendly and comfortable environment so that they can give cogent statements after they overcome the confusion or even trauma of the rescue efforts and are ready to give their statements.
- (24) The District Task Force must provide a legal team with the assistance of the local legal services authorities to assist the

police / victims in drawing up the FIRs so that all material facts are properly recorded. The police should maintain the confidentiality of the identity of the victims and if need be the FIR should be recorded through an NGO/CBO as the complainant.

- (25) The District Task Force should ensure that rescued victims are given appropriate post rescue support and must be informed about post rescue protocols such as medical examination and HIV screening and her informed consent taken.
- (26) The District Task Force shall be responsible for shelter for victims keeping in mind vulnerability towards re-trafficking. The location of the shelter home must be confidential with no identification marks or boards to suggest that it is a shelter home.
- (27) The District Task Force must ensure existence of sufficient infrastructure and support staff before the rescue is conducted. At the same time it should also ensure as a long term measure that adequate physical infrastructure, facilities and staff are available in all protection and shelter homes.
- (28) The District Task Force will also ensure that the staff appointed to the shelter homes are sensitive and capable of handling the rescued victims and their issues, i.e. they are compassionate yet firm, while dealing with the rescued victims.

- (29) The District Task Force must ensure that rescued victims with substance abuse, addiction or mental health issues are given immediate treatment and care including at the government hospitals.
- (29) The District Task Force shall ensure that proper livelihood training including for developing entrepreneurial skills are provided at the protective and shelter homes.
- (30) The District Task Force shall liaise with organisations and industries, including under the CSR, for providing employment and supporting entrepreneurial ventures where the victims choose to engage in independent work. The District Task Force should also facilitate the availability of credit to such entrepreneurs.
- (31) The District Task Force must also connect the rescued victims to all Government schemes, particularly those for women, BPL families, the Schedule Castes/Schedule Tribes and the backward and minority communities. The District Task Force must also ensure that other civic benefits accrue to the rescued victims such as housing, ration card, health card, aadhar card, education for the children etc.
- (32) The District Task Force should coordinate with the legal services authorities and the prosecution for facilitating the recording of the testimony of the victims including by setting up video conferencing centres near the residence of the victim and coordinating with other States or even countries for recording of the testimony of the victims of trafficking through

video conferencing so that the trafficked victims are not detained only for this purpose and are able to go back to their homes and families. This will further ensure a high conviction rate in trafficking offences.

- (33) The District Task Force shall also make public the positive action and efforts taken by the concerned authorities and assist various line departments in ensuring implementation of awareness generation programmes against trafficking for commercial sexual exploitation and towards ensuring that people have faith in the system.
- (34) The District Task Force must bear in mind the difference in treatment post rescue of adult, mature women who are in sex work voluntarily and the victims of trafficking. The District Task Force should extend the benefits of all government welfare schemes for marginalized and backward groups to women in sex work so that over a period of time they are able to give up voluntarily sex work and are reintegrated into society.
- (35) The District Task Force will ensure the effective and proper implementation of the schemes such as the ICPS, Kishori Shakti Yojna, Kasturba Gandhi Balika Vidhyalaya, National Child Labour Project and the Swadhar Yojna and other similar and existing Government Schemes for, prevention and protection of vulnerable communities from trafficking for commercial sexual exploitation.

- (36) The District Task Force should also ensure that vulnerable and marginalized groups are included and get the benefit of MGNREGA, NRHM and NRLM to counter the socio-economic pull of trafficking and to ensure societal re-integration of survivors of trafficking.
- (37) The District Task Force must take all steps to protect the interests of foreign nationals who have been trafficked for sexual exploitation as presently they face prosecution for visa violations though they are victims of trafficking.
- (38) The District Task Force must ensure that all departments responsible for rolling out government schemes do not exclude vulnerable populations such as sex workers and trafficked victims of commercial sexual exploitation.

V. Role of Legal Services Authorities

It is submitted that the Legal Services Authorities at different levels can play an effective role, if so directed. The role of the legal services authorities as set out in the preliminary report is reiterated as follows:

- (a) Provide legal assistance to the victims of trafficking and sexual exploitation at the time of rescue and thereafter during trial.
- (b) Facilitate the accessing of the District Legal Services Authorities(DLSAs) for award of victim compensation under Section 357A Cr.P.C

- (c) To monitor and act as social auditors of the existing facilities available for rehabilitation of rescued victims of sexual exploitation and trafficking.
- (d) DLSAs can spread awareness in the community through the panel lawyers and para-legal volunteers about the issues of trafficking particularly in vulnerable areas and among vulnerable groups.
- (e) Dedicated paralegal volunteers will be appointed in all districts to counsel and assist survivors of trafficking into sexual exploitation and other stakeholders.
- (f) The DLSAs can act as converging nodes to ensure that the government schemes meant for the marginalized actually reach them as such access to the government support does have a positive impact in preventing trafficking and falling prey to traffickers.
- (g) Initiate steps to sensitize the corporate world to support rehabilitation measures for trafficked victims including skill building and employment under the head of CSR.
- (h) SLSAs can also assist in the training and sensitization of stakeholders, like police, lawyers including legal services lawyers, prosecutors, government servants and the judiciary.
- (i) SLSAs may also collaborate with the local educational institutions and civil society organisations and NGOs working in this field.

VI Role of the Government

It is submitted that the various ministries have very significant schemes including under laws such as the Right to Education Act, MGNREGA, The Panchayati Raj Act and various schemes such as Sarva Sikha Abhiyan, Integrated Child Protection Scheme, One Stop Crises Centres, National Rural Health Mission, SABLA, Beti Bachao Beti Padhao, Jan DhanYojna, Pradhan Mantri Surakshya BimaYojna etc. All these schemes and enactments are actually safety nets which could help prevent trafficking for commercial sexual exploitation, or for any other purpose provided they are implemented with zeal. The Committee recommends that the authorities who are obligated to implement the schemes must be made accountable for their non-implementation.

RECOMMENDATIONS

In the context of the above suggestions of the Committee, the NALSA places the following recommendations for consideration of the Hon'ble Court:

- (1) This Hon'ble Court may consider all the suggestions of the Committee as enumerated above, and may issue appropriate directions, it deems fit.
- (2) This Hon'ble Court may consider recommending to the Legislature the need to define sexual exploitation and in the interregnum, this Hon'ble Court may amplify the definition of Sexual Exploitation as : 'Sexual Exploitation' (SE) includes a situation where a person under coercion and absence of free will

is used or abused, or explicitly portrayed, either physically, or through media (print, electronic, internet) in a sexual manner, for the benefit of another person(s), either through monetary gains, or compensation, or favours, or any other arrangement, causing unlawful gain as a result of such act to any person and includes brokering relationships that are coerced.

- (3) This Hon'ble Court may while issuing directions in this case consider the directions issued in the case of *Budhadev Karmasker v. State of West Bengal* AIR 2011 SC 2636 wherein a Committee appointed by the Hon'ble Supreme Court of India has submitted a detailed report on rehabilitation of sex workers, and the same may be considered in this case as well.
- (4) There is a strong linkage between 'trafficking' and 'missing persons'. The Supreme Court has held that whenever a child goes missing, it should be presumed to be a case of kidnapping or trafficking (*BBA Vs. Union of India W.P.(C) No.75/2012*). It is submitted that the Hon'ble Supreme Court of India has issued directions for developing an SOP for handling cases relating to missing children. The same SOP may be suitably adopted in this case if considered appropriate.
- (5) This Hon'ble Court may consider it appropriate to appoint a committee to look into all SOPs and advisories (**Annexures 'F' and 'G'**) and develop a short and comprehensive SOP for all stakeholders.
- (6) This Hon'ble Court may issue directions to the Government to set up the Nodal Agency at the national level and State

Agencies at the state level with the roles as specified hereinabove.

- (7) This Hon'ble Court may issue directions for the setting up of the District Task Force headed by the District Collector. This Hon'ble Court may direct the States to set up the District Task Force with responsible officers depending on the administrative set up in the district and also comprising the members as suggested hereinabove.
- (8) This Hon'ble Court may also issue directions to all implementing agencies of Government schemes to coordinate with the District Task Force and Legal Services Authorities for effective inclusion of vulnerable populations and trafficked victims to the benefits of the schemes.
- (9) This Hon'ble Court may issue directions accepting the roles of the Nodal Agency, State Agency and the roles and functions of the District Task Force as explained above.
- (10) This Hon'ble Court may be pleased to appoint a Grievance Redressal body/Ombudsman to ensure the implementation of the suggestions and recommendations and to address failure in the delivery of service and recommend penal consequences after fixing responsibility.
- (11) This Hon'ble Court may be pleased to issue directions that data be collected and maintained using the CCTNS and including the categorization of crimes by the AHTU, so that there would be one comprehensive source for data on missing children and all trafficked persons.

- (12) This Hon'ble Court may be pleased to include the directions of the Hon'ble Delhi High Court in *Bachpan Bachao & Ors Vs. Union of India & Ors. W.P.(Crl) No.82 of 2009*, dated 24.12.2010 to deal with placement agencies and to prevent exploitation and trafficking, as a part of the directions in this case. The orders dated 24.12.2010 of the Hon'ble Delhi High Court are annexed to this report as **Annexure-‘I’**. Pursuant to the aforesaid orders, the Government of NCT of Delhi has issued Delhi Private Placement Agencies (Regulation) Order, 2014. A copy of the said notification dated 25.9.2014 is annexed to this report as **Annexure-‘J’**.
- (13) This Hon'ble Court may be pleased to issue directions to the Central Government for making budgetary provisions for prevention of trafficking, rescue, protection, rehabilitation, repatriation and integration of trafficked victims and to further direct that this fund should be placed with the Nodal Agency for distribution to the State Agencies, the AHTU/Organised Crime Investigation Agency (when set up) and the District Task Force through the State Agencies.
- (14) This Hon'ble Court may be pleased to issue directions to the Central Government to set up an Organised Crime Investigation Agency in order to have the cases of human trafficking and organised crime cases investigated. The Hon'ble Court may direct the setting up of a Committee by the Central Government to work out the modalities of setting up such a specialized agency.

- (15) This Hon'ble Court may direct that till such time an Organised Crime Investigation Agency is set up, the AHTU may be declared as a "Thana" for facilitating registration and investigation of cases.
- (16) This Hon'ble Court may be pleased to issue directions for providing dedicated staff to the Nodal Agency, State Agencies, District Task Force and AHTU/Organised Crime Investigation Agency (when set up).
- (17) It is the suggestion of the Committee that in order to test the effectiveness of its recommendations, pilot projects in 5-6 districts, connecting source and destination States be chosen in consultation with the Ministry of Women and Child Development and Ministry of Home Affairs. Depending upon the success and experience from these pilots, further directions and modifications may be issued by this Hon'ble Court from time to time for implementation of this project in the Country.

The National Legal Services Authority prays that the present report may kindly be taken on record.

Submitted please.

(Asha Menon)
District & Sessions Judge/
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12/11, Jam Nagar House,
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