Human Trafficking: dimensions, challenges and responses

Judicial Academy, Chennai, 14 02 14

Dr P M Nair

Chair Professor, TISS

nairpm@hotmail.com

The International scenario

Organized Crimes = borderless crimes.

- Drugs trafficking
- Human trafficking
- Arms trafficking
- Cross border infiltration
- Terrorism
- Narco terrorism
- Money laundering
- Cyber crimes
- Counterfeiting
- Smuggling of migrants

- Trafficking in human organs
- Trafficking in cultural property
- Trafficking of endangered species
- Credit Card frauds
- Intellectual property violations
- Piracy
- Trafficking in nuclear material.

UNODC: Trans National Organized Crime

- UN: features of OC
- Extensive use of violence
- Corruption: fundamental issue
- Penetration into legitimate economy
- Activities in three or more countries
- Cooperation among criminal groups
- Multiple activities

Colossal revenue / profit in TOC

Drug trafficking

321 billion USD (retail level)

Human trafficking

10 - 15 billion USD

Illicit arms trafficking :

2 – 10 billion USD

A constitutional mandate against HT

Article 23

Article 23 of our Constitution prohibits trafficking for any exploitation...

Constitutional mandate

Addressing entire humanity in the country

Constitutional right against HT

Violation is deprivation of the Right

Prevention is FD

Accountability of all of us...

The National / Regional Scenario

types...

TRAFFICKING for

- Commercial Sexual Exploitation
- Exploitative Labour
- Other forms of Exploitation

Trafficking for exploitative labour

- Labor- domestic/ industrial/ agricultural
- Entertainment (circus) etc
- Camel racing
- Illegal adoption
- * Begging, etc.....

Trafficking for other types of exploitation

- Illegal adoption
- False marriage "mailorder bride"
- Organ trade
- Organized crime
 - Drug courirer / arms courier/ counterfeiting courier
- Militancy
- Naxalism

Trafficking for commercial sexual exploitation

TRAFFICKING FOR CSE

- > Brothel-based
- Non brothel based
- **E-based**

- > Sex tourism
- Pornography/Cyber Sex
- > Façade of
 - Massage parlour
 - **Beauty parlour**
 - Tourist circuit
 - Friendship club



Human Trafficking for organ trade

- Decried as neo-cannibalism by leading experts
- Reveals the dark complexities of humanity, medical ethics, and law in the global economy.
- Fuelled by increasing demand and supplies by donors coerced through force, the threat of force, or the promise of payment.
- Though primarily centered on kidneys, also includes the sale of liver, heart, pancreas, lungs, cornea, and human tissue.

- The kidney is the most transplanted organ with a global estimates of 68,500 transplants performed a year.
- This is followed by liver, heart, lungs and pancreas.
- Illegal kidney trade generally flows from poor underdeveloped countries to rich, developed ones.

A GIRL CHILD TRAFFICKED INTO COMMERCIAL SEXUAL EXPTN

Set us listen to her....

- DISPLACED (ABDUCTED?)
- CRIMINALLY CONFINED
- CRIMINALLY RESTRAINED FROM THOUGHT / ACTION
- PHYSICALLY & MENTALLY TORTURED // INJURED
- SOLD
- PURCHASED
- MODESTY OUTRAGED
- RAPED REPEATEDLY

VICTIM OF SEXUAL PERVERSIONS SERVITUDE DEBT BONDAGE PRIVACY DENIED ACCESS TO JUSTICE DENIED - NO REDRESSAL CRIMINAL CONSPIRACY MULTIPLE ABUSE & ABUSERS **ORGANIZED CRIME***

THE HR VIOLATION OF THOSE TRAFFICKED, esp. ACROSS THE BORDERS

- 1. DEPRIVATION OF RIGHT TO LIFE (SLAVE LIKE CONDITIONS)
- 2. DEPRIVATION OF RIGHT TO SECURITY (PHYSICAL & ECON)
- 3. DEPRIVATION OF RIGHT TO PRIVACY (BONDED LAB)

- 4. DENIAL OF ACCESS TO HEALTH SERVICES
- 5. DENIAL OF RIGHT TO SELF DETERMINATION (RESOLD)
- 6. DENIAL OF RIGHT TO RETURN TO OWN COMMUNITY "STATELESS"
- 7. DENIAL OF RIGHT TO REPRESENTATION (STATELESSNESS)
- 8. DENIAL OF RIGHT TO BE HEARD BEFORE DECISION MAKING

HT vs Other related issues

- HT vs ILLEGAL MIGRATION
- HT vs HUMAN SMUGGLING
- HT vs MISSING PERSONS
- HT vs PROSTITUTION
- HT vs MIGRANT LABOUR

basket of crimes & HR violations

- DISPLACED FROM COMMUNITY
- TRANSPORTATION
- COERCION / DECEIT
- EXPLOITATION
- COMMERCIALIZATION
- COMMODIFICATION
- SERVITUDE
- VIOLATION OF HUMAN DIGNITY
- EXPLOITATION OF VULNERABILITY
- ORGANISED CRIME

Film 1

D:\P.M NAIR DOCUMENTS\AHT\FILMS on AHT\UNODC FILMS\TRAFFICKING ENGLISH FILM by PM NAIR

ACTION RESEARCH

on

TRAFFICKING IN WOMEN & CHILDREN

by the

N.H.R.C

UNIFEM

INSTITUTE OF SOCIAL SCIENCES

Guidance of
Hon'ble Justice JS Verma
and

Supervision of

Hon'ble Justice (Mrs) Sujata Manohar

by

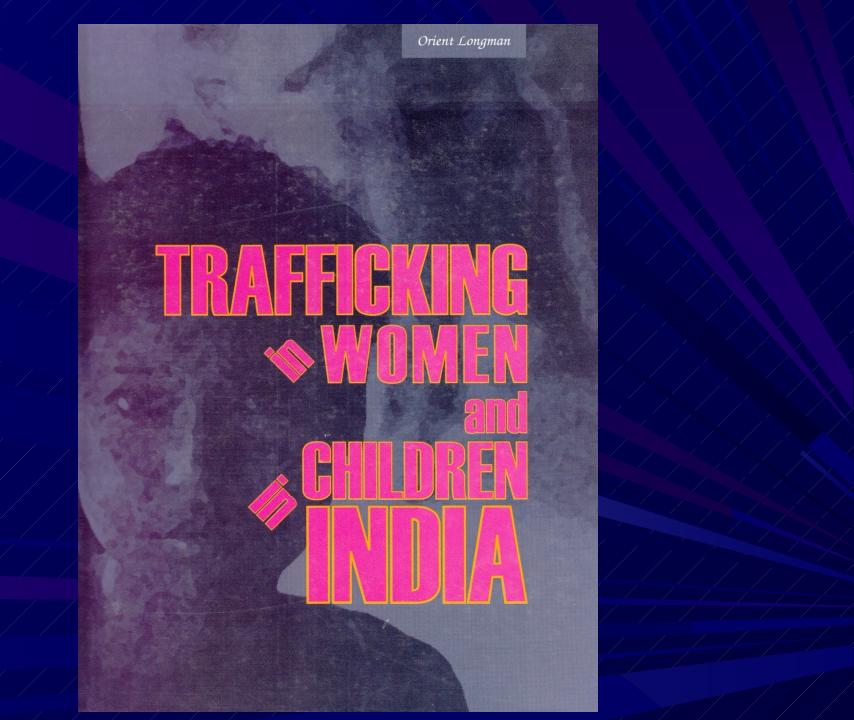
Dr PM Nair

Principal investigator-

cum-researcher-cum author

DATA COLLECTED THRU INTERVIEWS: 4006

SURVIVORS	561
- VICTIMS OF CSE	929
- CHILD LABOURER	510
BROTHEL OWNER	412
- TRAFFICKER	160
- POLICE OFFICIAL	852
- CLIENTELE	582



VICTIMS (929) and SURVIVORS (561)

- > 70% from socially deprived sections of society
- > 62% pushed into CSE when they were under 16 yrs
- > 58% "arrested" earlier
- First sexual experience:
 - > 74% under 18 years of age
 - > 46% under 16 years of age

"Clients" (582)

- AGE 16-25 26.6% 26-30 - 26.5%
- 45.5% MARRIED
 72.9% STAYING WITH SPOUSE
- 82.3% WITH WIFE BELOW 35 YRSOF AGE

- * 85% CLIENTS ARE LOCALS
 93.8% ARE FREQUENTERS
- * FIRST SEXUAL EXPERIENCE 7.6% DURING 10-15 YRS 33% DURING 16-18 YRS **34.2% AT HOME** 35.7% IN BROTHEL

PREFERENCE PATTERNS

39.2% DEMAND ONLY YOUNG GIRLS

REASONS:

33.8% FEAR OF AIDS

REST: SCOPE OF EXPLOITATION

NON-BROTHEL BASED EXPLOITATION
VERY HIGH

82.6% NEVER ENCOUNTERED POLICE
IN BROTHELS

BROTHEL OWNERS (412)

- 67.2% WERE 'SEX WORKERS'
 BEFORE
- **50.5% HAD NO OPTION**
- **393 BO HAD 2702 VICTIMS IN CSE**
 - AVERAGE 7 PER B.O.
- 860 CHILDREN IN CSE
- 82 BO HAD 245 GIRLS <16</p>
- 198 BO HAD 615 GIRLS 17-18

traffickers (160)

- ♦ linkage of source to transit to destination
- selection of target: capitaize vulnerability
- **SUPPLY DICTATED BY**
 - → DEMAND,
 - PROFIT,
 - * ANONYMITY and
 - → POOR LAW ENFT

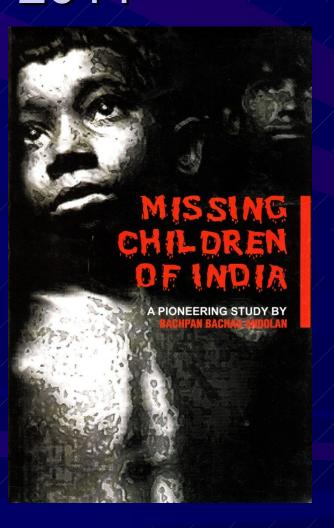
MISSING PERSONS vs. TRAFFICKING

- CASE STUDIES OF DELHI, MUMBAI, CHENNAI, AP
- LINKAGES OF TRAFFICKED VS.
 MISSING PERSONS
- NATIONAL DATA OF MISSING
 PERSONS
- UNIQUENESS OF DATA

Annual all - India data of missing persons: Average of 6 years – 1996 to 2001

Category	Persons	Not	% Not
	Reported Missing	Returned	Returned
Women	22480	5452	24.3
Children	44476	11008	24.8

BBA Research 2011



- Data sought from 640 Dists under RTI
- Data received from 392 Dists.
- 117480 children missing in 2 years (2008 + 2009)
- 41546 remain untraced
- On an average almost one lakh children go missing every year with 33000 remaining untraced.

SUPREME COURT Orders
Jan 2013 (BBA vs UOI)

MHA Advisory

MCA Project of PLAN International

- > The project
- The purpose
- Technology integration
- Regional linkage
- Comprehensive package
 - Missing children + trafficking issues
- Expected outcome

POLICE RESPONSE (852)

* TRAFFICKER'S NOT ARRESTED

NO INTELLIGENCE
NO SHARING of info, NO PROFILING

"CLIENTS" NOT ARRESTED

NOT AWARE
NOT INVESTIGATED

ARRESTED VICTIMS ARE BAILED OUT
MOSTLY BY BROTHEL KEEPERS,
TRAFFICKERS OR PIMPS

- * 40% NOT AT ALL AWARE OF TRAFFICKING
- * PROBLEMS & CHALLENGES
 - * SHORTAGE OF WOMEN POLICE
 - * NOTIFICATION OF SPL POLICE
 - * MEDICAL EXAM & AGE VERIFICATION
 - * NO GUIDELINES & PROTOCOLS
 - * LACK OF TRAINING: ONLY 6.6% POLICE OFFICERS WERE TRAINED ON AHT WORK

- Challenges in prosecution, age verification, women component in staff ...
- linkage with govt depts & NGO, lack of public cooperation
- No mandatory requirement of rehab by anybody
 - Attitudinal issues

Action research...

- Demystified concepts in trafficking
- Established organized nature of HT crimes
- Demand factor as main cause
- Brought out the new dimensions/trends
- Identified the challenges in response
- Highlighted the victimization of victim
- Recommended remedial actions
 - Capacity building, comprehensive action

ground scenario:

islands of excellence vs
exploitative ambience n
dysfunctional response

Registration of crimes

- Crimes not being reported
 - Lack of access of victims to police
 - Long and difficult redressal mechanisms
 - Lack of awareness of victims
 - "Culture of Silence"
- Not recorded/registered by police
- Not investigated
- Question of accountability?
- Check & Balance Mechanisms?

Understanding HTthe prostitution-oriented mind-set

VICTIM OR ACCOMPLICE?

- Presumption of complicity of victim
 - Lack of understanding from the victim's perspective
 - Who sees the "mind of the survivor" ?
- Victimization of victim
- Especially in trans-border cases
 - Nationality of victim
 - Enforcing Immigration laws*

- Human Rights approach
- Victim-oriented investigation
- Centrality of HT as the core offence
- Comprehensive investigation and holistic prosecution
- Integrated approach in AHT

HOLLISTIC and INTEGRATED functioning is essential

PREVENTION

P-P-P MODEL

PROTECTION

PROSECUTION

Organised Crime perspective

- Multiple crimes
- Multiple criminals
- Continuing offence
- Beyond limitations of time
- Beyond borders / jurisdictions
- Multiple violations/harm
- well organized/ nexus...

Listening to the victim

- Repeated interviews
 - o"jaldi karo, jaldi karo"
 - "Victim is not cooperative"
 - "Victim is changing statements"
 - o"She (victim) refuses to speak despite all my efforts"- "hum itna poochte haim, magar voh javab nahim deti hai"
 - o "empty tank theory"

rescue: why and how of it

- Rescue vs Raid
- Who can rescue
- Is it only by a Special police officer?
- If no SPO available, what to do
- Powers of NGO / Anybody
- Challenges in rescue by NGO
- Court suo moto ordering rescue
 - (S/16: where a Magistrate has reason to believe from
 - information recd from Police or "otherwise")

Beware of "self-styled guardians"

- A major challenge in LE
- Is "Home Verification" done
- If so how/who/when it is done
- Whom should the rescued person be handed over to?
- Protocols

Crime Scene Investigation

- * Is it the place of rescue
- Or transit
- Or source
- Are they being investigated
- What needs to be done
- Best practices available

Addressing the trafficking process

- Process vs. persons-
 - manifest vs. latent
- In law enforcement/ justice delivery
- Reasons
- How to move forward
- The impact
 - Prevention
 - investigation
 - rehabilitation

Why trafficking?

- Is it lack of education?
- Is it lack of awareness?
- Is it due to lack of livelihood?
- Is it child sexual abuse?
- Is it poverty?
- Is it due to poor law enforcement?
- Is it demand?
- What are the vulnerability factors



Addressing Demand

- Push and pull factors
- Demand Supply syndrome
- Importance of containing demand
 - Who demands
 - How to control / prevent.



Who are the "customers"

- 73% were living with spouses
- 32% never used condoms

Why chose young girls-

- 53% as they were submissive,
- **■34%** due to fear of AIDS

Investigating into all the linkages of traffickers?

- SPOTTER, RECRUITER,
- SELLER, PURCHASER,
- TRANSPORTER,
- ABUSER, EXPLOITER,
- FINANCIER,
- CUSTODIAN, KEEPER,
- PIMP, CONTRACTOR,
- OTHER CONSPIRATORS...

THE NEW INDIAN EXPRESS 26 September 2012 kochi

CB Receives Vital Info on Dubai Sex Racket Case

important issues in the case study

- Sex racket in Dubai
- 120 girls trafficked from India, SL to Dubai
- In the guise of house maids
- Going on for 5 years
- Arrested woman is an AGENT & PAST VICTIM
- Using fake passport thru airport
- Help of officials incl immigration
- Racket has big network in India-SL-Dubai ...

....

INTERPOL help sought.

Post rescue scenario: is it victim-friendly?

- Human Rights orientation
- Accused intimidating victim
- Being kept at the same place
- Victim's belongings
- Victim's child

Addressing psychosocial issues

- Victimization of victims
- Harm reduction vs harm escalation
- How to appreciate psychosocial harm
- How to address psychosocial issues
- Who can counsel
- Role of law enforcement agencies
 - Interviewing victims: do's and don'ts
- Role of court and prosecutors

Medical exam: challenges

- If no female doc available?
- If no female nurse available
- Can female NGO help?
- Assessment of age
- Is the medical report final?
- How to proceed if there are discrepancies?

Services of female police officer

- Need for female police official
- For interviewing the rescued woman
- If not available
- Associating female NGO

Availability of NGO?

- Not available in the district: how to co-opt NGOs from other places?
- Unwilling NGO (15-3 ITPA) u/s187IPC
- Legal support to NGOs:
 - interview(15-6A-ITPA),
 - Home Verification (17-5, 17 a ITPA),
 - Advisory body (13-3-b ITPA)
 - No liability of crl /civil proceedings s.15(6)

Comprehensive law enforcement

- Stringent punishment
- Confiscation of illegal assets
- Cancellation of bails
 - Discretion of the Court in favour of victim?
- Cancellation of license of industrial establishments/ hotels where exploitation takes place
- Surveillance of traffickers
- Eviction of places of exploitation
 - After conviction
 - Before conviction

EVICTION

of places of exploitation:

an effective tool in cutting out the source of earnings of exploiters

EVICTION after conviction

- Can trial Court order eviction?
- No notice required to be given.
- Which court?
- The trial court. S.18(2)
- Where does the appeal lie? ...

Is eviction possible before conviction?

- > It is possible before conviction?
- > Which court?
- DM or SDM- notice to be given + hearing the party.

Due

process to be followed.

- Where does the appeal lie?
- NO APPEAL NOR STAY AGAINST ORDER OF EVICTION BY THE COURT or MAGISTRATE S.18(3)

Supreme Court rulings

- AN Roy, COP Vs Suresh Sham Singh, AIR 2006 SC 2677
- AC Aggarwal, SDM Delhi Vs Mst Ram Kali, AIR 1968 SC 1:
 - S/3,7 deals with guilty persons; S/18 deals with premises;
 - in the former prosecution has to proveintention or knowledge, but in the latter, they are not necessary.

SC rulings contd...

- Chitan Vaswani Vs West Bengal, AIR 1975 SC 2473:
 - -S18(1) is a preventive section
 - It envisages summary procedure
 - -S 18(2) operates not merely on places within the offending distance of 200 mtrs, but on all places where prostitution is being conducted

Sunny Kamalsingh Mathur Vs COP Greater Mumbai; AIR 1968 SC1, CrLJ 2009, 1465 (Bom)

- S 18(1) is preventive in nature
- Can be exercised by a DM or SDM
- Show cause/ opportunity ti be heard before passing order
- Reasons must be recorded
- Action be taken irrespective of whether action u/s 3 or 7 is taken or pending in the Trial Court
- S 18 (2) is punitive
- Can be passed by a Court not inferior to MM or JM I Class
- Only when a person is convicted u/s 3 or 7 ITPA
- Open to the Court to pass order even without further notice

Empowering the responders

- UN tools
- UNODC Manual for training LE Agencies
- UNODC-MHA India Project
 - Resource materials

- Handbooks, Manuals, SOPs, Protocols...
- Films *



Posters



Evaluation tools

contd...







Compendium on Best Practices

On Anti Human Trafficking by Law Enforcement Agencies

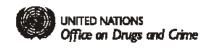
COMPENDIUM OF BEST PRACTICES

ON ANTI HUMAN TRAFFICKING BY NON GOVERNMENTAL ORGANIZATIONS









Journey to Justice

Manual on Psychosocial Intervention

Protocol on Inter State Rescue and Post Rescue Activities

Relating to Persons Trafficked for Commercial Sexual Exploitation









Manual for Training Police

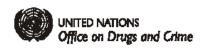
On Anti Human Trafficking

Training Manual for Prosecutors

On Confronting Human Trafficking









Standard Operating Procedures (SOP)

on Investigation of Crimes of Trafficking for Forced Labour

Standard Operating Procedures (SOP)

On Investigating Crimes of Trafficking for Commercial Sexual Exploitation









Synergy in Action

Protocol on the Structure and Function of the

Integrated Anti Human Trafficking Unit (IAHTU) in India

Resource Book on the Legal Framework

on Anti Human Trafficking



TRAFFICKING

Women and Children for Sexual Exploitation

Handbook for Law Enforcement Agencies in India

Dr. P.M. Nair





ट्रैफिकिंग

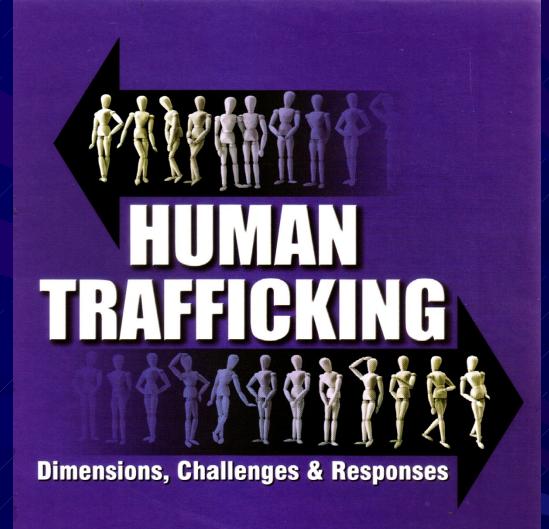
यौन शोषण के लिए स्त्रियों और बच्चों का व्यापार

भारत में कानून प्रवर्तन एजेंसियों के लिए मार्गदर्शक पुस्तिका

डॉ. पी. एम. नायर







P.M. NAIR

Judicial Manuals

MANUAL FOR TRAINING JUDICIAL OFFICERS by MAHARASHTRA JUDICIAL ACADEMY, 2012

PRACTIONERS, 2010

Victim/witness protection

- do we have provisions?
 - Anonymity
 - ■In camera trial
 - ■Video conferencing
 - ■Free atmosphere in court
 - Legal representation
 - ➤ Never accomplice
 - Cross exam by accused- how?
 - Compensation

Victim/witness protection contd...

- Delayed reporting
- ➤ Defective investigation
- Victim not examined.
- Character & antecedents
- ➤ Reliability
- Corroboration

Victim/witness protection

- ➤ Discrepancy
- > Medical report
- ➤ Expeditious trial
- Participative role of the Court
- ➤ Witnesses to turn up
- Right to be rescued.
- Right to restoration to safe place

Rehab: Whose business is it?

- Is rescue linked to rehab?
- Are the agencies linked? Who can bell the cat
- The impact of no rehab vs impact of rehab
- Best practices: plenty
 - Court-led
 - Government-led
 - NGO-led
 - Corporate-led
- The role of Welfare/ Relief departments
- What can be done by judicial officers?

Rehab Models

please see
youtube
nairpm, empowerment
nairpm, capacity building



MHA INITIATIVES

- **✓** MHA advisories
 - Topical issues, ncluding related issues like Missing Children
 - Corrective/ guidance/orientation/facilitative
- **✓ Nodal Officers in States**
- **✓** Facilitating synergy with other stake holders
- **✓ IGNOU Cert Course on Anti Human Trafficking**
- ✓ Synergy of Law Enforcement Agencies + NGOs
 - ✓ List of competent NGOs available: use them
- ✓ Utilizing CSR of Corporates for Rehab

AHTU

- First 9 AHTUs set up in AP Jan 2007
 - in MHA-UNODC Project by pmnair
- > Impact assessment
- > MHA replicated it to > 300 districts
- > Synergy of stake holders:
 - LE agencies + NGOs +....
- > How Judiciary can take it forward
- > AHTU in the rulings of Hon'ble Supreme Court

a paradigm shift in justice delivery

Disposal by the Special Court of ITPA Mumbai

year	disposal	acquittal	convicted	committe d	victims	%
2008 (16.8.08)	283	255	25	3	411	8.8
2009	438	335	81	22	388	18.5
2010	424	336	72	16	276	17
2011	176	132	44	16	411	25

total cases instituted 1612

total disposed off 1312

pending 291

Cases more than 10 years nil

conviction u/s 8 ITPA NIL

Repatriated to Bangladesh (thru MEA) 35

(in the year 2013, as per order of Honble High Court,

109 women/girls were repatriated to BD)

repatriated to Nepal 35 girls

Repatriated to other Nations 11

taking an extra step forward in ensuring child/women rights:

Video Conferencing by Mumbai Court

laws, rulings, administrative orders in support

Judicial intervention has led to

- > CONTROL ON DEMAND
 - ✓ STRINGENT PUNISHMENT TO TRAFFICKERS
 - ✓ " CONSPIRATORS
 - ✓ " EXPLOITERS
 - ✓ " SO CALLED CLIENTS
- > EXEMPLARY FINE
- EVICTION / CLOSING DOWN PLACES OF EXPLOITATION

Judicial intervention has also led to:

- > VICTIM PROTECTION
- > WITNESS PROTECTION
- > PREVENTING HR VIOLATION
- > REDRESSING GRIEVANCES
- > COMPENSATION
- > REDUCING "HARM"

- FACILITATING REHAB
- > SYNERGIZING RESPONDERS
- > NETWORKING DEPARTMENTS
- > INTEGRATING CORPORATE + NGO + GOVT.
- > PREVENTING HT
- ENSURING RULE OF LAW
- > FACILITATING GOOD GOVERNANCE

TISS plan for new

ACTION RESEARCH on TRAFFICKING

- > With NHRC
- Starting soon
- Comprehensive
- Surveying all new dimensions/ challenges/ responses and to come up with suggestions
- Welcome to join the mission

Issues which need attention

- Victims being released on PR bond w/o verification
- Medical exam of victim not ordered immediately (mandatory under 15 ITPA for age, injury, HIV
- Fake parents manage to get release of the girl
- Lawyers appearing for the victim may be allowed to assist prosecutor (310 CrPC)

Issues which need attention contd...

- Careful usage of phrases: Rights-perspective
 - ∞ "rescued victim" vs "arrested victim"?
 - ∞ "rescued woman" vs "rescued prostitute"?
 - ∞ "child prostitute" ??
 - ∞ "woman brought from red light area"?
- Release of victim to guardian before HVR
- Releasing victims to the applicant based only on an affidavit
- Possible to give opportunity to hear the NGO who rescued/runs the shelter, before decision on release of the rescued person

JUDICIAL SUPERVISION OVER POLICE INVESTIGATION

- > STATE of GUJARAT vs KISHANBHAI etc
- ORDERS OF SUPREME COURT OF INDIA ON JANUARY 7, 2014
- WHAT THE HON'BLE SC SAID
- > WHAT WE NEED TO DO

NEED TO TAKE IT FORWARD WITH CELERITY + CERTAINTY

Film 2

D:\P.M NAIR DOCUMENTS\AHT\FILMS on AHT\UNODC FILMS\TRAFFICKING HINDI FILM by PM NAIR

thanks for your kind attention

Dr. P.M. Nair nairpm@hotmail.com 9910621515

http://ahtmission.org