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## ABOUT THE AUTHORS

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# Home Enquiry and the Rehabilitation of Trafficking Survivors

## ABSTRACT

Human trafficking remains a highly acute issue in India and rehabilitation efforts must be stepped up to make sure that those rescued from these hazardous situations are given a chance to rejoin mainstream society. However, various loopholes exist in the judicial and executive processes involved in the country's rehabilitation systems. This paper describes such problems evident in the process of home enquiry for the rescued victims: fraught with errors and subject to negligence, the process often leads to unfavourable decisions for rehabilitation. The authors examine these concerns and offer recommendations.

## INTRODUCTION

Human trafficking is a multi-billion industry in India, with sex trafficking generating roughly \$9 billion per annum.<sup>1</sup> In 2007, the Ministry of Women and Child Development reported the presence of over three million female sex workers in India, with 35.47 percent of them entering the trade before the age of 18. Prostitution is not the only occupation that child victims of trafficking are forced into. Bonded or forced labour, often under hazardous work conditions, entraps a much larger number of Indian children. The 2011 Census pegs the number of working children in the age group of 5-14 years at a massive 4,353,247.<sup>2</sup> In addition, around 2.4 million adolescents (14-18 years) are employed in hazardous industries, as identified by the International Labour Organization's (ILO) latest 'World Report on Child Labour'.<sup>3</sup>

During discussions on the amendment to the Child Labour (Prohibition and Regulation) Act of 1986, passed in early 2015, plenty was said about ensuring that children remain away from labour and complete their schooling. However, little attention has been paid to the processes that facilitate the return of the trafficked or enslaved children to a life of dignity. This paper attempts to highlight the lacunae in the existing home enquiry process, often leading to depriving the rescued victims of available family or institutionalised support. Also, failure in identifying risk factors within the family puts them in danger of being re-trafficked.

## HOME ENQUIRY: A BACKGROUND

Home enquiries are conducted under various circumstances, including: (a) prior to allowing adoption; (b) by Vigilance Cells, while determining caste/tribe claims; (c) while deciding on the custody of a child; and (d) while reintegrating victims trafficked into bonded or other forms of labour, sexual exploitation and servitude. This paper examines the need for standardisation of the process of home verification and preparation of care plans for those in the last category.

The most obvious benefits of a properly conducted home enquiry and well-drafted care plan are twofold:

- (a) It can identify victims who are vulnerable to continued exploitation and abuse and ensure that they are provided safe and adequate shelters. Steps can be taken to protect them against further harm.<sup>4</sup>
- (b) It can ensure that those able to avail proper care within the family setting do not languish in institutions for protracted periods.

It is imperative that victims who are in a position to be reunited with their families are speedily restored to them. Enough evidence exist to show that institutionalisation may not always be in the best interest of the child, given the standard of care in many of such institutions.<sup>5</sup> It is thus preferable that the child be reunited with their family and reintegrated into the community, whenever possible.

To assist Child Welfare Committees (CWCs) (in the case of minor victims) and Magistrates (in the case of adults), entrusted with the responsibility of determining whether the child/victim should be institutionalised or restored to family, it is critical that this assessment be undertaken with utmost seriousness. All possible vulnerabilities that occasioned the trafficking of the child in the first instance are to be accounted for. Ideally, therefore, the home study report should be penned by an independent social worker or voluntary organisation and provide the CWC and court with objective information regarding the home conditions of the victim. Other facts and observations relevant to the welfare of the child should be included, enabling the CWC and the court to reach an informed decision. Unfortunately, in practice, these reports rarely capture information beyond the actual physical existence and location of the victim's home. Often, the reports are prepared after consultation with the child alone. Visits to parents and community are rare, especially when the residence is in a different district, on account of poor inter-state or inter-district coordination between CWCs, the unavailability of Welfare Officers and dwindling budgetary allocations.

Legislative provisions require that a child be transferred to the competent authority having jurisdiction over the place of residence of the child. But poor coordination or lack of adequate shelters in the child's home jurisdiction makes this impossible. State governments are further required to establish rules for ensuring effective linkages between government, non-government, corporate and other community organisations for facilitating rehabilitation and social reintegration of children. In reality this is rarely done. All this proves detrimental to the victim's proper rehabilitation as orders are passed without sufficient information at the court or CWC's disposal. This significantly increases the risk of re-trafficking.

The following sections will discuss the existing legal safeguards designed to improve home assessments, the preparation of care plans, and the victims' rehabilitation.

- (a) The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act)
- (b) The Immoral Traffic (Prevention) Act, 1956 (ITPA).

The paper will then examine the provisions elaborated in certain policy instruments and protocols drafted on various occasions by experts to serve as guides for anti-trafficking organisations undertaking such home enquiries. Lastly, using a case study, the paper will demonstrate ground realities and barriers to successful implementation of legal and policy aspirations and offer recommendations for standardisation that may ease difficulties at the ground level.

## **CURRENT LEGAL ENVIRONMENT**

### **JJACT PROVISIONS**

According to Section 31 of the JJ Act, the CWC shall have the final authority to dispose of cases relating to the care, protection and rehabilitation of children and providing for their basic needs and protection of their human rights. Section 33 of the JJ Act states that the CWC or any police officer shall hold an enquiry and the Committee, either on its own or based on the report of any person or agency, can pass an order to send the child to a children's home for speedy enquiry by a social worker or child welfare officer. The enquiry should be completed within four months of receipt of the order, or within such shorter period as may be fixed by the Committee. After the completion of the enquiry, if the Committee is of the opinion that the child has no family or ostensible support, it may allow the child to remain in the children's home or shelter home until suitable rehabilitation is found for them or until they attain the age of 18. Section 50, meanwhile, establishes the requirement for every CWC to be satisfied with the enquiry before taking a decision to send a child out of their jurisdiction and back to a relative or fit person willing to receive the child at their place of residence. Section 45 of the JJ Act requires state governments to establish rules for ensuring effective linkages between government, non-government, corporate and other community organisations for facilitating rehabilitation and social reintegration of children. It is important to apply the provisions of the JJ Act judiciously as they guide the rules framed in pursuit thereof.

Rule 28 of the Juvenile Justice (Care and Protection of Children), Rules, 2007 (JJRules)<sup>6</sup> states that the Committee shall assign the case of each child

to a social worker, or case worker, or child welfare officer of an institution, or any recognised agency for conducting the enquiry. The Committee shall inform the concerned person about the details to be enquired into for developing an individual care plan and suitable rehabilitation. It further states that all enquiries shall be according to the format prescribed in the Rules and should provide a detailed assessment of the family situation of the child. It should be explained in writing whether it will be in the best interest of the child to restore them to their family. Rule 65 of the JJ Rules requires the order for restoration to be made taking into consideration the report of the agency which was directed to conduct the home enquiry and any other relevant document made available. Every restoration order shall be planned as part of the individual care plan prepared by the case workers. Rule 65 is interrelated to Rule 78 on Transfer and Rule 79 on procedure to be followed for sending a child outside the jurisdiction of the competent authority, all of which emphasise the need to make enquiries into the fitness and willingness of the relative or person who receives the child in their place of residence.

### ***ITPA PROVISIONS***

The right of a trafficked victim to restoration has been spelt out in Section 17 of the ITPA,<sup>7</sup> which provides that a rescued person shall not be restored to or placed in the custody of a person who may be a harmful influence. More specifically, a mandatory duty is cast upon the Magistrate under Section 17(2) of the ITPA to order an in-depth enquiry of various factors, including the potential influence of home conditions on the victim. A final decision on the rehabilitation of the rescued person must be based on this enquiry. Direction may also be given to the Probation Officer (under the Probation of Offenders Act, 1958). Both the Magistrate and the Probation Officer can entrust this duty to voluntary organisations, thus conferring upon them the legal right to be involved in the process. Such involvement is detailed in Section 17(5) of the ITPA which states that the Magistrate should summon a panel of five respectable persons, three of whom should be women, to assist in the making of decisions relating to home verification and rehabilitation of the rescued person. Section 17-A of the ITPA stipulates the conditions to be observed before placing rescued persons with parents or guardians. It states that the



magistrate making an enquiry may, before passing an order for handing over any person rescued to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by seeking an investigation by a recognised welfare institution or organisation.

### **JUDICIAL DECISIONS**

The need to uphold the best interest of the child and maintain a child-centric approach in trials concerning child victims of sexual abuse and trafficking is now firmly entrenched in the country's judicial decisions. However, there are also several judgments that talk about the need to look upon trial as a first step in the victim's journey that ends in rehabilitation and successful reintegration. They talk about a multidisciplinary approach to investigating, prosecuting, preventing trafficking and rehabilitating the victims of such crimes.

The Delhi High Court, in *Delhi High Court Legal Services Committee v. UOI* (Crl. Rev. No. 443/2009 & Crl.M.A.No.3071/2010), directed that, “a person under the age of eighteen years, if found involved in any aspect of trafficking or prostitution, within the meaning of the expression in the Immoral Traffic(Prevention) Act, 1956, or is rescued in police action cannot be treated as a 'juvenile in conflict with law' and has to be treated as a child 'in need of care and protection'. Further, notwithstanding the provisions of Section 17 and 17(A) of the Immoral Traffic (Prevention) Act, 1956 by virtue of Section 31(1) and 39(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000, it is only the Child Welfare Committee constituted under Section 29 of the enactment which has the final authority in respect of the custody and restoration of a child victim – a child in need of care and protection. If a person rescued by the police under the Immoral Traffic (Prevention) Act, 1956 and produced before the Magistrate appears to be under 18 years of age, such person must forthwith be transferred to the CWC which shall proceed in the matter in accordance with the provisions of Sections 30, 31, 33 and other relevant provisions. If the child is found to be hailing from a place outside the jurisdiction of the Committee, the Committee shall ensure compliance with the provision of Section 38 of the JJ Act, 2000”. The judgment underscores

the important role of home enquiries in cases of trafficking and establishes a clear role of the CWCs in doing so before restoration. It further clarifies that Judicial Magistrates have no role in restoration of trafficked children as these children are in need of care and protection and hence their restoration is covered under the JJ Act.

Other judicial decisions have similarly reinforced the importance of home assessments and proper conduct of procedure prescribed under the JJ Act. In *Prerana v. State of Maharashtra 2003*, the Bombay High Court observed that, if the rescued victims were minors and were not involved in any offence, they should not have even been described as “juveniles in conflict with the law”. They were children in need of care and protection as per the provisions of the JJ Act and ought to have been produced before the Child Welfare Committee once their minor status was confirmed. Assuming that they could have been produced before the Juvenile Justice Board, there was no warrant for the board to release them because the record before the Board clearly indicated that the girls were minors. The Board could have released them without conditions only if they were adults. Because they were minors, the Board was duty bound to follow the procedure prescribed under the JJ Act. The Board ought to have given due consideration to the request of the probation officer that they should not be released because she was awaiting information about them from the states from which they had come. This request was obviously made to explore the possibility of finding their parents so that their custody could be entrusted to them with some conditions.

The Board released them on condition that they shall not enter into the jurisdiction of the local social welfare branch. The relevant provisions of the JJ Act make it evident that both a juvenile in conflict with law and a child in need of care and protection – have to be dealt with keeping in mind the possibility of their reformation and rehabilitation. The JJ Act provides for Protection Homes or Special Homes where such girls have to be kept for safe custody, because the fear is that they may be driven back to the brothels. The Board should have been alerted to this. The learned Magistrate presiding over the Board observed that he had personally asked the girls and they had shown eagerness to be released. There is no provision under the JJ Act where the Board can release minor girls because they want to be released, without giving a thought to their rehabilitation or the possibility of their re-entry into brothels.

Based on these observations, the court directed that any juvenile rescued from a brothel under the ITPA or found soliciting in a public place, should only be released after an enquiry has been completed by the Probation Officer. The said juvenile should be released only to the care and custody of a parent or guardian after such parent or guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile. If the parent or guardian is found unfit, the procedure laid down under the JJ Act should be followed for the rehabilitation of the rescued child. No advocate can appear before the CWC on behalf of a juvenile rescued under the ITPA or found soliciting in a public place. Only the parent or guardian of such juveniles are permitted to make representations before the CWC themselves or through an advocate.

Following its decision in the *Prerana case*, the Bombay High Court once again reiterated in *Munni v. State of Maharashtra*, (Criminal Writ Petition No. 227/2011), that CWCs have the final say in disposing of the cases relating to the care, protection, treatment, development and rehabilitation of children as well as providing for their basic needs, protection and restoration to their families.

Thus, judicial pronouncements have vested CWCs with immense responsibility as well as the final authority to determine the fate of children rescued from trafficking. This decision should be taken by the CWCs in strict adherence to the JJ Act provisions, keeping in mind the best interests of the child and the international standards for child protection that India is obliged to adhere to, flowing from its treaty obligations. This makes the home enquiry process a crucial factor in the rehabilitation and restoration of the victim and must be accorded utmost priority by the CWC.

## **MHA ADVISORIES**

The Advisories issued by the Ministry of Home Affairs on human trafficking, comprise an important set of executive directions that govern action to be taken in preventing and combating human trafficking. Some of these advisories also provide guidance on conducting home enquiries.

The Advisory dated 9 September 2009, titled *Advisory on Preventing and Combating Human Trafficking in India states*, “Police should work with other

agencies and stakeholders to ensure that those who are rescued or who choose to return are not re-trafficked; this should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children)". The advisory further talks about the need for identifying "support services" and referring victims or potential victims to "specialist NGOs and safe accommodation", where these are available. Therefore home assessments should also include an overview of support services available to the child once the child is restored.

The Advisory dated 12 August 2013, titled *Standard Operating Procedure to Handle Trafficking of Children for Child Labour- Measures to be Taken for Rescue of Trafficked Child Labourers and Action Against the Traffickers/Employers*, states that there should be an enquiry for home verification under the JJ Act before repatriation and the CWC in the concerned home district of the child shall be responsible for the child's well-being. The repatriation of the child should be a prime objective in the investigation to ensure that the child goes back to safety. It further directs that during and after rescue, the SOP for investigating the crime on trafficking for forced labour and the Protocol for prevention, rescue, repatriation and rehabilitation issued by the Ministry of Labour and Employment be followed.

The Advisory, dated 1 May 2012 on *Preventing And Combating Human Trafficking In India - Dealing With Foreign Nationals*, also provides for reporting of details of foreign nationals who are victims of human trafficking to the Ministry of External Affairs (Consular Division), so as to ensure that the person concerned is repatriated to the country of their origin through diplomatic channels. It insulates foreign victims of trafficking against prosecution under the Foreigners Act. This provides a degree of protection to foreign victims of trafficking, too. During the home assessment and repatriation process, they are required to be given proper institutional support.

## **POLICY INSTRUMENTS AND PROTOCOL DOCUMENTS**

While several protocol documents have been drafted on occasion by consultative bodies, they lack the force of legislative direction and sanction. Unless a part of the advisories issued by MHA, they cannot even be treated as

administrative directions or recommendations. This makes enforcement problematic, in the absence of specific legislative provisions that mirror the directions in the protocols.

Some of the extant policy instruments are: (a) *The Trafficking of Women and Children for Sexual Exploitation, Handbook for Law Enforcement Agencies in India*, 2007;<sup>8</sup> (b) the Government of India and UNODC, *Standard Operating Procedures on Investigating Crimes of Trafficking for Commercial Sexual Exploitation*, 2007; (c) Ministry of Labour and Employment, Government of India, *Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked & Migrant Child Labour*, 2008; (d) Department of Women and Child Development and UNICEF, *Manual for Social Workers, Dealing with Child Victims of Trafficking and Commercial Sexual Exploitation*; and (e) Department of Women and Child, Government of Maharashtra and UNICEF, *Standard Operating Procedures for Child Welfare Committees*, 2009.

Most of these protocols elaborate and build upon the provisions enumerated in the existing legislations such as the JJ Act and ITPA, aiming to identify and solve the problems encountered from the practitioners' perspective while putting law into action. They exhort NGOs to be part of the justice delivery process, as is their legal right. Besides NGOs, the SOPs also urge the Police, Investigating Officers and Magistrates to take a proactive role in the process of home verification. They urge stakeholders to adopt a victim-sensitive approach at all times. They further caution stakeholders to remain vigilant against fake parents as well as premature release of victims without conducting home enquiry. From the police to the magistrate and CWC members, the protocols repeatedly urge stakeholders to insist on strict documentation. They also advocate involvement of community partners such as *panchayats* in the consultation and homes assessment process. All the protocols lay down fairly detailed provisions for home verification and subsequent rehabilitation.

Certain protocols and manuals are particularly detailed and espouse an extremely grassroots approach such as the DWCD and UNICEF joint manual for social workers on *Dealing With Child Victims of Trafficking and Commercial Sexual Exploitation*.<sup>9</sup> It sets out extracts from notes detailing best practices, followed by independent organisations such as Prerana and NACSET's "Draft Preliminary Note on Home Study Report" which instruct the social worker

about: (a) who may ask for a home study report to be conducted; (b) the steps involved – ascertaining name and location of child, collecting relevant factual data about his family, community, subjective opinions, objective assessment of family, community, support systems, assess potential sources of danger and future plans of family members vis-à-vis the child; (c) the legal need for a home study report; (d) the resources that may be used in the home enquiry process; (e) what information should be collected; and (f) what documents should be seen. It also provides various tips to the social worker on probable red flags and common danger signals.

Even in cases of group rescues, the protocols state that every child's case must be reviewed individually. Thus, even when the place of rescue or the original home location may be similar among children rescued in a group, the home assessment and care plan must be formulated in a manner that considers the individual needs of each child.

For rehabilitation of children rescued from forced labour, the protocols advocate that the home addresses be verified by the State Resident Commissioner/Labour Department officials of the State to which the child belongs, or the district administration as the case may be, before these children are repatriated to their home states. Protocols dealing with child labour rehabilitation and reintegration further advocate a multidisciplinary approach involving the social welfare as well as labour departments, as well as tapping into existing welfare programmes such as the National Child Labour Project (NCLP) Scheme or special bridge centres under Sarva Shiksha Abhiyan (SSA) for educational needs of the child and economic rehabilitation for the family to be effected, by covering the family under various developmental schemes of the Government in convergence with the other concerned departments.<sup>10</sup>

With respect to the care plan, the policy instruments state that, the plan for the child shall be the primary responsibility of the Probation Officer (PO),<sup>11</sup> Voluntary Officer or agency designated to undertake the same task. This care plan has been envisioned as a team effort involving the parents as far as possible. The final decision of the CWC shall be based on the detailed home enquiry report that makes an assessment of the specific circumstances of the child and their family, as well as the care plan. CWC must make sure that children are released to parents or caregivers after determining their capacity,

since some parents are responsible for their children's exploitation or abuse, to begin with. After necessary investigation, the CWC would first need to determine whether or not the child can be reintegrated with their biological family. This would depend on whether the child is willing to go back to their family and the circumstances within the family that determine whether it is a safe environment. The rehabilitation of the child could include non-institutional alternative care services and other referral services such as counselling, adoption, foster care, sponsorship and legal aid. Institutional care should be selected as a last resort.

## CASE STUDY

An anti-trafficking, non-government organisation called Justice and Care, in partnership with state governments, was involved in the process of rehabilitation of 217 out of some 265 boys rescued from bangle-making units in Telangana. This grassroots intervention provided an opportunity to introspect on systemic issues faced in rehabilitation of victims in the South Asian and specifically, Indian context. For the purposes of the paper, however, the focus will remain only on the issues identified during the home enquiry process.

With approval from the Director, Social Welfare, Government of Telangana and CWCs across the state, Justice and Care actively engaged in post-intervention rehabilitation of each of the children and designed a long-term strategy for involvement. This included meticulous home safety assessments and individual care plans for each child, keeping in mind the two-pronged focus: education and economic rehabilitation of the family. A task force was constituted by the Social Welfare Director to deliberate upon the immediate and long-term needs of the children and Justice and Care was invited to participate. A series of priorities emerged from the initial discussions, including interim compensation and linkage to social welfare schemes, which the key stakeholders decided to act upon. These stakeholders included the Department of Labour and Employment, Education, Minority Affairs, Social Welfare Department and in partnership with civil society.

On account of the large-scale nature of the activity, several recurrent issues in the process of conducting home enquiries and designing individual

care plans emerged, some of which are discussed in the following sections. Other issues highlighted during home investigations conducted previously are also discussed.

## ***OBSERVATIONS AND RECOMMENDATIONS***

1. It is to be noted that the home study report aims to capture not only objective information but the social worker's subjective assessment as well. It is not meant to be a superficial record, rather an in-depth analysis of perceived ground realities. Therefore observations on the community, its attitude to prostitution or child labour, are relevant information. The home enquiry report also captures anthropological clues such as the behaviour of family members at the time of interaction and whether the child was being 'tutored' to tell a story.

In order to carry out an effective home enquiry, it is important to exercise diligence from the time of filling intake sheets. In some remote villages in the case-study area, for example, where caste-based social exclusion is still in practice, tracing the home proved extremely difficult in cases when the name and caste of the victim's father is not known. It is further important to guide case workers on correct messaging and choice of words and phrases, for instance, when recording birthmarks or distinguishing features of the victim.

2. While home enquiry formats (Form XIII, JJ Rules) provide sufficient guidelines on the information to be recorded, it would also be beneficial to provide a checklist of questions to be asked that might elicit the responses to be recorded, as often social workers need to ask questions that are beyond the scope of entries in the forms prescribed under the JJ Act. For instance, it may be natural for the social worker to try to ascertain the nutritional deficiencies of the child as part of her subjective assessment of the home and family conditions. Therefore, when probing the dietary intake of the family, it is important to ask how many times they eat and what is cooked as opposed to how many times food is cooked. Similarly, a direct line of questioning may not



adduce necessary facts required to determine the nature of companions and their influence on the victim. It may be useful to set the tone on detailed interactions by first asking general questions such as, “How does the child spend his/her days at home typically?”

3. Children victims often suffer from a trust deficit due to their circumstances. They may, therefore, not disclose full details of their families or home locations at the first instance, or they may have been tutored to provide false information. It is necessary to be persistent in following up and to be prepared to go back a second time, or more when needed. Sometimes victims are trafficked when they are visiting friends/grandparents and inform counsellors of that address when filling intake sheet details. This causes confusion as this is not their place of permanent residence. The procedure for home investigation must therefore allow sufficient time for such gaps in information gathering and followup visits. If reported incorrectly, it might lead to the victim being wrongly placed in a shelter/children's home when they could have had an opportunity to be restored to their family.
4. It is also beneficial to capture which government benefits and social welfare schemes being currently availed by the family. This will help in designing the individual care plan for rehabilitation. This practice is not prevalent at present.
5. Certain vital information set out in the enquiry report format (Form XIII), JJ Rules, requires ascertaining various matters such as the mental state of the victim, propensity for truancy and emotional factors that may impact the CWC's decision. This is best done by a counsellor or clinical child psychologist. A pocket guide to how to determine the mental and emotional state of the victim and behaviour patterns may be a useful aid for any untrained welfare or Probation Officer who is required to take up this task.
6. While Form XIII, Form XX and Form XXI of the JJ Rules set out a fairly detailed format, capturing the important heads of information to be

recorded while preparing individual care plans as well as conducting home enquiries, some formats that are actually employed by personnel on the field are less than satisfactory and stop at mere verification of address of the victim. It is of prime importance that stakeholders engaged in conducting home enquiries be urged to adhere to the guidelines and formats in the JJ Rules.

7. The social worker should endeavour to collect multiple documents required for a single purpose. For instance, for adducing proof of age, both school certificate and birth certificate should be obtained (whenever possible) as one must accommodate the possibility that sometimes documents are manipulated, especially when the family is involved in trafficking. Additionally, states prescribe specifications with respect to individual documents. For instance, some states require a certificate from the first attended school (Delhi for example), while some others require the Class X certificate. Therefore, it is important that the social worker should try and collect both.
  
8. There have been some instances when, at the time of submitting home enquiry reports, CWC members request for changes in certain sections or conclusions. For example, in a report which found that the victim was harbouring suicidal tendencies, the CWC member requested this information be deleted from the report. The member believed she was acting in the best interest of the child as the shelter home would be non-receptive of such children if the truth of their condition was known. In another instance, the CWC released the child prior to submission of home assessment on account of poor health and disability of parents and lack of earning member. CWC members should be oriented towards identifying what constitutes as the 'best interest' of the child, failing which the standard remains very subjective. This is not to say that a prescriptive checklist should be provided as that would prove counter-productive.

The litmus test for determining the best interest of the child is to determine whether the action or inaction of the CWC will violate or

deny the child her/his basic right to survival, development and protection. Even the right to participation is guided by this very rule. A child may insist on going back home and the right to participation demands that respect be given to the child's views. But this cannot be at the cost of other basic rights. As all rights are interdependent and interlinked, rules of harmonious construction and interpretation must apply and all CWC members must be trained on such legal aspects.

Further, it is not only the issue of determining the “best interest of the child” but also a question of how to determine whether the family is “fit” or not. Declaring a family unfit, however, should not imply denying them the opportunity to be reunited. In fact this should lead to the next step of ensuring necessary linkages to support the child and the family through sponsorship programmes and linking with poverty alleviation or income generation schemes. It should be mandatory for every order of restoration to include specific directions to concerned authorities for assisting the child and family in the rehabilitation process.

9. When questioning parents on what led to the child leaving home, often the social workers find that the parents do not realise their culpability. In the most vulnerable sections of society, living amidst extreme poverty and deprivation, sending children out to work is a way of survival and is not perceived as a criminal activity. On other occasions, parents state that the child ran away or was kidnapped. It is important not to alienate the parents, given that the law specifically contemplates their involvement during the formulation of the care plan. It is also important not to immediately dismiss them as unfit parents. What is important to gauge is whether they are aware of the consequences of the child's being trafficked and are willing to shelter the child from trauma and abuse in the future by opening up channels like education or vocational training. The voluntary agency's tendency to sit in judgment on the parents while conducting home enquiries must be checked. However, it is also their duty to verify the steps taken

by the parents to retrieve the child, including lodging of police complaint, and to note the absence of any such efforts, if indeed there were none. At this juncture, it is important to ascertain whether reluctance to approach authorities was on account of the helplessness and ignorance of the family or on account of suspected complicity. Once again, therefore, it is important to assess whether the family is “fit” and even if declared unfit, whether an opportunity still exists for reunification through linking the family with existing state support systems should be assessed.

10. In case of certain vulnerable communities such as the Maha dalits, parents might be willing to receive the child and school her, but are unable to do so due to social ostracism and exclusion. Socio-political influences, therefore, need to be recorded in the home assessment report. The situation is even more convoluted in the case of communities such as the Bedias or the Nats, where womenfolk have traditionally been pushed into prostitution as an accepted way of life. They encounter severe resistance from the community when attempting to reintegrate themselves and adjust to a different way of life. Home assessment reports need to reflect all these complex socio-cultural realities.
11. While defining the “fitness” of the family and its capacity to look after the child, the “fitness” of the community may also need to be assessed. A vulnerability impact assessment should be undertaken in any large scale incidence of trafficking from within a community/geographic area. Unless these vulnerabilities existing within the entire target group are addressed, economic upliftment of the individual victim and his/her family will not mitigate the risk of re-trafficking. For instance, after gathering and analysing data from home assessment reports, it may be found that victims belonging to a particular caste/minority community are facing social or economic exclusion. In this situation, rehabilitation plans designed subsequently must include a way to link the entire community/target group to functional social welfare schemes and government benefits. It should also be ensured that they

have access to such information in future. Different ways to end their marginalisation have to be devised.


Attempts should also be made to identify the most vulnerable age groups, as well as their literacy levels and existing livelihood options within the community (whether they are seasonal or erratic). These will serve as indicators of how vulnerable the community is to future cases of trafficking as well as re-trafficking of present victims.

12. It is also pertinent to mention the importance of the home assessment report in courtroom proceedings. Unless relevant points are extensively recorded, the home study report cannot be effectively used in court, to contest parents challenging the CWC order declaring them unfit to retain custody of the child.
13. Since ensuring justice and breaking the trafficking nexus by prosecuting offenders is an equally important aspect of successful rehabilitation and social reintegration of trafficked victims, home assessments should ideally also include a section on the legal status of the case to ascertain the status and stage of the victim's trial – whether the child's examination-in-chief and cross examination have been recorded; whether the accused are absconding or have been released on bail and if there is a likelihood of the victim or their family facing threats from the accused; and, whether ends of justice will be met or defeated if the child is restored to their family. Rule 78 (1) (iii) of the JJ Rules 2007 require that a child should be transferred to their home state/district only after completion of evidence and cross-examination that may be required in a legal proceeding involving the child.
14. It should further be noted, that home investigation takes on added dimensions when it involves repatriation of foreign victims of trafficking. Coordination among NGOs of the country of origin as well as the country to which the victim has been trafficked is essential. Foreign victims are often scared that any statement they make will land them in trouble with the authorities. Consequently, they do not

confide easily when asked to narrate details of their origin, or home address, which leads to incorrect or delayed information being recorded. The information noted by local NGOs is then used for the purpose of home investigation by NGOs in the country of origin of the victim. The role of the latter NGOs is crucial as they need to interact with the victim's family, verify antecedents and obtain nationality documents or birth certificates (given that most victims are found without any documents at the time of intervention). It must be noted that the observations of the NGO doing the home investigation impact the decision to repatriate.

Upon completion of the home study, if it is found that conditions are not conducive, or victims show great reluctance to return to their home country, civil society should advocate that provisions of the Palermo Protocol<sup>12</sup> be observed. Article 7.1 of the Protocol states that the receiving states will make provisions to permit victims of trafficking to stay in the receiving state permanently. Article 8(2) states that the safety of the person and legal proceedings in the country should inform the decision and that repatriation should be voluntary. This is often not the position espoused by the government, causing endless hardship to the victim.

Having examined the legal and policy considerations behind mandating the recording of such extensive information during the home verification process, it is easy to understand why a mere physical verification of existence of the victim's home does not meet the objectives of the lawmakers. In order to ensure that the victim is not re-trafficked or left vulnerable, thereby subverting the purpose of the entire exercise of rescue and restoration, it is crucial that home safety assessments be accorded utmost priority. Sensitisation of personnel involved in the process as well as training and capacity building is a must, therefore, to ensure that the objectives are clear before such an exercise is undertaken and the obstacles are smoothed. There is also an urgent need to invest adequate human and financial resources in making effective home assessments possible and preventing re-trafficking. By investing in training, skills development of staff as well as in financing the

travel of social workers to the victims' homes, it can be ensured that the vicious cycle of trafficking is broken and state resources are most efficiently utilised. 

**ENDNOTES:**

1. Masoodi, Ashwaq. "The Human Cost of Sex Trafficking." *Live Mint*, 5 September 2014.
2. Ministry of Labour & Employment. "Census Data on Child Labour for 2011", <http://labour.gov.in/content/division/census-data-on-child-labour.php>.
3. R, Aditi. "24 Lakh Adolescents Work in Hazardous Industries in India: ILO." *New Indian Express*, 11 June 2015.
4. These obligations upon state governments find mention in several international/regional instruments. See, Recommended Principles and Guideline on Human Rights and Human Trafficking, U.N. ESCOR, Comm'n on Hum.Rts., 2002 Substantive Sess., Provisional Agenda Item 14(g), U.N. Doc. E/2001/68/Add. 1(2002), Principles 2, 8; See also, SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, adopted 5 Jan. 2002, Article IX(3).
5. Ministry of Women and Child Development, Study on Child Abuse: India, 2007, available at <http://wcd.nic.in/childabuse.pdf>
6. These Rules refer to the Central Model Rules framed under the JJ Act in 2007.
7. Relevant parts of section 17 of the ITPA have been extracted as follows: Intermediate custody, of persons removed under Section 15 or rescued under Section 16— (1) No person shall be restored to or placed in the custody of a person who may exercise a harmful influence over her. (2) When the person is produced before the appropriate Magistrate ...he shall, after giving her an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the person and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home, and, for this purpose, he may direct a Probation Officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the person and the prospects of her rehabilitation. (3) The Magistrate may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the safe custody of the person. Provided that where a person rescued under Section 16 is a child, it shall be open to the magistrate to place such child in any institution established or recognised under any Children Act for the time being in force in any State for the safe custody of children: Provided further that no person shall be kept in custody for this purpose for a period exceeding three weeks from the date of such an order, and and no person shall be kept in the custody of a person likely to have a harmful influence over her. (4) Where the Magistrate is satisfied, after making an inquiry as required under sub-section (2),— (a) that the information received is correct; and (b) that she is in need of care and protection, he may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three, as may be specified in the order, in a protective home, or in such other custody, as he shall, for reasons to be recorded in writing, consider suitable..... (5) In discharging his functions under sub-section (2), a Magistrate may



summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in persons.

8. P.M Nair, *Trafficking of Women and Children for Sexual Exploitation, Handbook for Law Enforcement Agencies in India*, 2007, available at [http://www.unodc.org/documents/human-trafficking/India\\_Training\\_material/Handbook\\_for\\_Law\\_Enforcement\\_Agencies\\_in\\_India.pdf](http://www.unodc.org/documents/human-trafficking/India_Training_material/Handbook_for_Law_Enforcement_Agencies_in_India.pdf); See also, UNODC and Government of India, *Compendium on Best Practices on Anti-Human Trafficking by Law Enforcement Agencies*, 2007, available at <http://www.unhcr.org/50ab4d2bf.pdf>
9. <http://wcd.nic.in/swmanual.pdf>
10. Some of such Schemes could be NREGA, Schemes for BPL families, other poverty alleviation Schemes, Pension Schemes, Schemes for setting up of SHGs under DRDA and DUDA, Indira AwasYojana, Swaran Jayanti ShahariRozgarYojana, Swavlamban, Swadhar, etc. Panchayati Raj institutions should invariably be involved in monitoring the rehabilitation efforts in general and tracking these children and their families in particular for their educational and economic rehabilitation. To prevent children from getting into the workforce, the families of these children, who are migrating or are trafficked for labour need to be effectively covered under the poverty alleviation and income generation Schemes and Programmes of the Government through convergence of various such Schemes under different Ministries/ Departments. In this direction, every State need to constitute a Core Committee on Child Labour (CCCL) under the State Chief Secretary for providing policy level convergence and State Monitoring Committee (SMC) for Elimination of Child Labour under the State Labour Secretary for convergence in implementation of various programmes and schemes at the state level.
11. The child's case study is the responsibility of the PO and should include the information given by the child about her/his situation and circumstances that had put her/him into vulnerability or exploitation and the history and duration of the vulnerability and exploitation. The child's own views about what she/ he wants protection from, her/his views about the family and other adults in her/his life and what the child wants in the present and future. The case study report should contain the periodic progress of the child on all fronts – physical in terms of health, emotional/psychological and social in terms of how the child has settled the relationship with other children and peers.
12. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime*, G.A. Res 55/25 of 15 November 2000.

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