

# Legal Aid to Women Trafficking and Prostitution

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## Abstract

Legal aid constitutes giving access to free legal aid, right to protection, information, period for decision making, compensation for inflicted injuries, temporary residence, asylum, privacy and safety, interpreter if a foreigner, guardian if a minor and ensuring mental and physical well-being. Legal aid holistically tries to encompass all aspects from rescue to rehabilitation for the victims who have been trafficked or pushed into prostitution. Ujjawala scheme as proposed by the Government of India and implemented since April 1<sup>st</sup> 2016 focuses on Prevention, Rescue, Rehabilitation and Reintegration and Repatriation wherever required. Various agencies like the NGOs and Government bodies work towards providing free legal aid to the victims. Nonetheless, the success rate of rehabilitating the victims is far from satisfactory. The trauma, emotional disturbance and stigma the victims have to face are tremendous and more often than not they are not even accepted by their families and social milieu. However, the results show that rehabilitation is still a distant dream as the state machinery and NGOs are inadequately equipped to help the victims.

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## **Introduction**

Women trafficking and prostitution are as old as known history of civilization. It was a recognized problem when India gained freedom so much so that a provision was made for it in the Constitution. The Article 23 of the Constitution of India on Right against exploitation says, "*Traffic in human being and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law*". Later many laws like The Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) and The Immoral Traffic (Prevention) Act, 1956 tried to safeguard women by making the offence punishable with seven years imprisonment. Special laws, Child Labour Act and Juvenile Justice Act were made to prevent exploitation of children and adolescents.

Certain provisions were made under Indian Penal Code as punishable that involved the acts of kidnapping, abducting and inducing a woman to compel marriage (Section 366), procuring a minor girl (366A) and Importation of a girl below 21 for sexual exploitation (366B). Certain concrete changes were suggested in The Anti-Trafficking Bill, 2016, that proposed to mobilize the scheme of prevention, rescue, protection and rehabilitation of the trafficked victims. The Bill has made the following actions punishable as "whoever recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of: (a) threat or use of force or coercion, abduction, fraud, deception. (b) abuse of power or a position of vulnerability and (c) giving or receiving of payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons". The bill also proposed to provide medical care, psychological assistance and skill development. However, there were many loopholes in the bill itself which made it appear somewhat vague and unstructured.

Despite the continuous revision of laws, stricter punishments and concerted efforts by the governmental and non-governmental bodies, trafficking and prostitution still flourish. In fact it is the third largest organized crime in the world. Indian soil is still being used as a source, destination and transit to traffic women and children. Keeping in view the gravity of the situation, currently, the Government of India has approved the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 proposed by the Ministry of Women and Child Development. This bill has emphasized the importance of formation of National Anti-trafficking Bureau, recruitment of officers, stricter punishment for the perpetrators, speedy court trials, repatriation of the victim and above all rehabilitation.

## **Review of Literature**

The United Nations (UN) in 2000 in Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children tried to define the word trafficking as follows:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

This is an accepted definition that is acknowledged by a majority of countries world over, including India. Based on this definition the estimated number of trafficked women and children was 1.5 to 1.8million in 2009 to an even higher number in 2012 of which 55 to 60% were women for sex trade to 4.5 million in 2015. The quantum leap in 6 years suggest the fast growing and difficult to control situation that has developed world over. India, too, shows a relatively high number of trafficking rate and is a destination country for women trafficked from neighbouring countries like Nepal, Bangladesh and Afghanistan and even far flung countries like Russia, Ukraine, Serbia, Kazakhstan, Azerbaijan and Uzbekistan. The Ministry of Women and Child Development gives an estimate of 3 million as women and children who are into forced prostitution (2013). It has also been seen that most women were brought into the flesh trade while being underaged.

The root causes of trafficking and prostitution in India can be sub-divided into socio-cultural and economic. Since India is by and large a patriarchal society, the worth of girl child and women is considered less than men. A single woman whether unmarried, widowed or divorced is considered worthless, a burden and an object for sexual gratification. Though, this logic is flawed but in rural and semi-urban areas and even in the big cities, the status of women is considered to be less than those of men. The major and more important factor is economic difficulties of the women. Most trafficked women come from poverty stricken families or economically depressed areas. Even after being rescued and rehabilitated these women are vulnerable for re-trafficking, especially those who go back to the same impoverished background.

Rehabilitation appears to be still in infancy stage in our country. Some organizations concentrate only on physical needs of the victims with emphasis on food and temporary shelter. Some organizations do take care of the medical difficulties especially in case of serious diseases like Sexual Transmitted Diseases. Very few look after the mental health of the victims and realize the need of recognizing the symptoms of depression, helplessness, hopelessness and suicidal tendencies.

## **Methodology**

### **Aim**

The aim of the study is to analyse the efficacy of the rehabilitation process proposed by Ujjawala Scheme.

### **Objective**

The objective of the study is to see whether the victims are actual beneficiaries of the aid proposed for them.

### **Type of Study**

It is an expo facto study based on secondary data provided by the government agencies and NGOs available on various websites.

## **Defining the Concepts**

### **Concept of Legal Aid in Trafficking and Prostitution**

Legal aid constitutes giving access to free legal aid, right to protection, information, period for decision making, compensation for inflicted injuries, temporary residence, asylum, privacy and safety, interpreter if a foreigner, guardian if a minor and ensuring mental and physical well-being. To elaborate further, it involves giving free legal aid to a woman either as a victim or a witness, a right to seek protection and information from the police, the prosecutor's office or judiciary, a right to seek time for decision-making, a right to seek compensation for inflicted injuries, a right to temporary residence, a right to seek asylum, a right to privacy and safety and a right to guarantee physical and mental well-being. Provisions have also been made for children for granting them a right to a guardian and for foreigners, a right to an interpreter. Legal aid holistically tries to encompass all aspects from rescue to rehabilitation for the victims who have been trafficked or pushed into prostitution.

### **Ujjawala Scheme**

The Ujjawala Scheme has tried to evolve a more holistic program for trafficked women and children and prostitution. The scheme has the following main components: (1) Prevention, (2) Rescue, (3) Rehabilitation, (4) Re-integration and (5) Repatriation.

1. Prevention has been conceptualized as forming Community Vigilance groups where women from the community are recommended or nominated to be part of the group. Sensitization workshops and seminars are organized at community level and awareness is spread through mass media, kalajathas, street plays, puppetry and other traditional art forms.
2. Rescue operations involve information gathering through police, NGOs, women and youth groups, panchayats, hotel and tour operators etc about vulnerable families and suspicious persons. Actual rescue operations involve decoying customers/informers, initial documentation. Relief is provided to the victim by taking care of immediate needs like food, clothing and shelter and medical and psychological interventions as and when required.
3. Rehabilitation is a multi-pronged scheme which encompasses setting up of protective and rehabilitative homes. Basic amenities such as food, clothing and other personal usage items are provided. Medical care is provided that includes the doctor's fee, hospitalization, and treatment of both physical and mental traumas by registered medical practitioners. Legal aid is given to the victim that includes court work and documentation so that the victim is able to exercise her rights to property, maintenance and custody of her children. Administrative costs are also borne by the project. Education or vocational training is given to rehabilitate the victim and the basic necessities like books, stationary, uniforms and other expenses are taken care of.
4. Re-integration involves provision for half-way homes and restoring the victim to her family, village or town and the expenses borne by the project. Half-way homes are for those victims who are gainfully employed.
5. Repatriation includes both the process and actual deliverance of the victim with an escort to cross-border countries. Her expenses are borne by the project itself.

The scheme is well conceived and thinks holistically of the victim's welfare from her rescue to rehabilitation and reintegration in the family and the society.

### **Sample Data**

Secondary data provided by the Government of India, Ministry of Women and Child Development and from Prajwala (NGO).

### **Results**

Despite extensive research meagre amount of data is available regarding rehabilitation of trafficked women.

**Table 1: Number of Women and Children Trafficked in 2 years**

	2015		2016	
States	Women	Children	Women	Children
Bengal	2064	1792	3559	3113
Rajasthan	909	2387	975	2519
Maharashtra	1379	295	1066	172
Tamil Nadu	761	143	1064	317
Karnataka	643	178	786	332

Courtesy: Press Information Bureau, Government of India

**Discussion**

The data is of states where highest number of women and children were trafficked. There is a disturbing upward trend of trafficking of both women and children.

Under the Ujjawala scheme 273 projects have been sanctioned that includes 151 Protective Homes. These rehabilitative centres provide the following:

1. Financial support for
  - A) Food
  - B) Clothing
  - C) Medical care
  - D) Legal aid
2. Education for children
3. Vocational Training
4. Income generation for alternative livelihood

However, there is no concerted effort seen to record the number of beneficiaries or a follow-up whether they continue to lead dignified lives or have been re-trafficked and pushed back in the same traumatic situations again. There are only anecdotal case studies that do not give a holistic view of the number of beneficiaries.

**Table 2: The number of beneficiaries that can be provided shelter State/Union Territory wise is as mentioned below:**

Sl. No.	Name of The State	Beneficiaries
1.	Andhra Pradesh	600
2.	Arunachal Pradesh	25
3.	Assam	1025

4.	Bihar	50
5.	Chhattisgarh	75
6.	Delhi	50
7.	Karnataka	1100
8.	Kerala	150
9.	Maharashtra	750
10.	Manipur	600
11.	Madhya Pradesh	25
12.	Mizoram	100
13.	Punjab	50
14.	Nagaland	25
15.	Rajasthan	275
16.	Orissa	725
17.	Tamil Nadu	200
18.	Uttar Pradesh	300
19.	Uttarakhand	150
20.	West Bengal	100
21.	Gujarat	75
22.	Haryana	100
	<b>Total</b>	<b>6350</b>

Courtesy: Press Information Bureau, Government of India

### **Discussion**

Different states have different beneficiary schemes depending upon the gravity of the situation.

Rehabilitation, according to Prajwala, can be clubbed into three basic components as psychological/medical, economic and civic. Psychological/medical component addresses the mental and physical well-being of the victims. Many victims complain of physical problems like backache, body pain to serious diseases like HIV/AIDS and STD. Psychologically too they experience from mild problems like irritability, anger to serious mental disorders like depression, suicidal attempts, post-traumatic stress disorder and severe anxiety. Adequate medical facilities and provision of psychological therapeutic sessions would help the victims. Economic rehabilitation would involve inculcating skills and vocational capacities to support

themselves with dignity. Civic rehabilitation would involve providing housing, ration and electoral photo identity cards.

**Table 3: Role of Prajwala in providing Rehabilitation (Lakshami,M.R. & Kumar, V.D.:IMJ, [2014] Vol 6(1), 71-78):**

Age of Victim	Psychological	Economic	Civic
10-14	12	8	5
15-18	9	10	6
19-25	9	11	5
26-35	8	10	7

Courtesy: Prajwala Scheme

**Discussion**

Prajwala scheme though localized in Andhra Pradesh, Telangana and Odisha and having 30 plus NGO partners have done significant work in rehabilitating the victims.

Despite extensive research on various internet websites, there is no data available either from Government of India or NGOs under Ujjawala Scheme on the rehabilitation of trafficked women. The Government of India has only revealed the amount of funds allocated to the states for the Ujjawala Scheme.

**Conclusion**

We have seen that the ground reality of giving legal aid to trafficked victims is still significantly inadequate. There are too many lacunas that make the feasibility of implementation of any scheme difficult. There is lack of basic infra-structure, paucity of statistics about identification and subsequent beneficiaries, misuse of law and law machinery by unscrupulous persons, lack of speedy trial courts, lack of will of enforcement authorities and political apathy all of which make the exercise from identification of the victim to rescue, rehabilitation and reintegration a daunting task. Hence, the Ministry of Women and Child Development widened its scope of what constitutes legal aid under Ujjawala Scheme for Trafficked women and children and Prostitution.

**Recommendations**

At the current juncture there are many suggestions that can be recommended.

1. Laws and guidelines need to be more specific and tangible.
2. The need to be stricter in deciding the quantum of punishment for the perpetrators of trafficking.

3. Specific guidelines to identify the victims without compromising with their dignity as the ultimate beneficiary of monetary compensations given by the Government of India.
4. A year to year data management pertaining to number of rescued women, type of rehabilitation, follow-up after the person is relocated in the social milieu and relevant job opportunities and self-sustaining prospects would in the long run reflect upon how relevant and effective are the laws pertaining to trafficked women.
5. A few dedicated NGOs all over our country cannot carry the mantle of burden of execution of generating awareness, providing medical and psychological support, aiding in legal advice and court appearances, helping in skill development and do a follow-up to assess the welfare of the victims.
6. Sodedicated teams need to be build up to carry the letter and spirit of the laws once they are framed.
7. Forming a network of pro bono legal support to assist human rights violations.

Rehabilitation, thus, should be made State's obligation and a statutory right to be exercised by the victims. Also, effective machineries manned by the sensitive people must be put in place for effective implementation of such law. Insensitive and indifferent people and machineries, even with the best piece of legislation, cannot bring the desired results. The law and its enforcing machineries alone cannot ameliorate the plight of victims unless the mission has the backing of socio-economic reforms.