



## **ROLE OF DISTRICT ADMINISTRATION IN PREVENTING AND COMBATING HUMAN TRAFFICKING**

By

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## FOREWORD

When our Nation is on a fast track in development, the social security systems should also get equal attention. As Gandhiji said, India still lives in villages. The children, the women, the weaker and vulnerable and the challenged persons deserve special attention. As it stands, district administration is the kingpin in the developmental process. All the well-conceived policies and plans land up at the doorstep of the district administration for implementation.

In this context, the law makers had envisaged a greater role for the district administration in preventing and combating human trafficking, one of the gravest violations of human rights and human dignity. Perhaps this role has not been advertised and recognized, as it tends to get subsumed in the midst of several activities that take priority, even though this is the area which deserves high priority.

In order to draw focussed attention to the role of the district and sub-divisional administrators in this important task of nation building, Dr P.M. Nair has authored this booklet. It is a clear road map of what is to be done, how it is to be done and even how to check the impact. This is a booklet which can indeed be an asset to the DMs/SDMs, most of whom are in these responsible and powerful positions at a very young age. This booklet will educate and guide them in the entire process of addressing human trafficking for not only sexual exploitation, but also forced/bonded/

child labour. I am sure this is a much required tool that should find a place in the pocket and action table of all administrators.

Dr P.M. Nair has been espousing the cause of anti-human trafficking since 1982, when he rescued 133 children from child labour. His contributions in NHRC, in Government, in UNODC, etc. and in research, action, law making, law implementation, investigation, prosecution, rescue, post-rescue care, capacity building of stakeholders, etc. are indeed unique and unparalleled in India and the region. As Chairperson of the nascent Centre of Police Studies and Public Security, he is continuing his mission of anti-human trafficking. This booklet is a small but great effort in this direction.

S. Parasuraman  
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## FOREWORD

The constitutional concern for protection of children from trafficking is manifestly expressed in Article 23 of the Indian Constitution by criminalising the act of trafficking in persons and begar and other similar forms of forced labour even prior to UN Protocol on Trafficking in persons especially women and children. Trafficking primarily occurs in two forms, the commercial sexual exploitation of women and girls and the continuing feudal practice of ‘Bonded labour’ in the labour sector. The legal framework for prevention of exploitation of persons is reflected in two umbrella legislations such as: *Suppression of Immortal Traffic Act, 1956*, amended in 1986 and *Bonded Labour (Abolition) Act, 1976*. The development of science and technology resulted in emergence of new forms of trafficking in the name of trade in human organs. Of late, trafficking has become multi dimensional with new forms such as illegal adoption, organ trade, begging, force labour, sex tourism and so on.

Over a period of time, globalization and industrialization has created demand for labour in the unorganized sector resulting in large scale of human trafficking to different destinations within the country and also outside the country. The inhuman conditions and slavery like practices triggered the adoption of UN Protocol in 2000 to prevent, suppress and punish trafficking in persons, especially women and children. The definition of trafficking in UN Protocol influenced in passing of the Criminal

Law (Amendment) Act in 2013 incorporating it in Section 370 of the Indian Penal Code.

Considering the vulnerability of victims of trafficking and their plight, National Law University Odisha (NLU Odisha) organized Eastern Regional Conference-cum-Training on Trafficking in Persons in April 2016 to sensitize the stakeholders. Followed by the Conference, series of programmes were organized for Public Prosecutors, Police officers in-charge of Anti-human trafficking Unit and also to Judicial Officers. During these programmes, Dr. P.M. Nair advocated for pro-active role by **District Magistrates and Sub-Divisional Magistrates** in prevention of trafficking. I admire the continuing interest and concern of the author to develop the current Handbook in simple and lucid language. It is a user-friendly Handbook helpful to all stakeholders who are concerned in the prevention of Trafficking in persons.

The Handbook would enable the law enforcing officers and other individuals and institutions involved in effective implementation of prevention of trafficking in India. The author has also underscored the the need for 'cultural and spiritual software' required from the District Magistrates and Sub-Divisional Magistrates in active engagement in prevention of trafficking, intervention and post-rescue intervention assistance, and victim support. It a valuable guide to criminal justice functionaries and civil society activists and all concerned in creating humane society.

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## PREFACE

District administration is pivotal in matters of public security. Enough and more powers and responsibilities lie on the shoulders of the head of the civil administration in the District, the District Collector cum District Magistrate (DM) and, in the subdivision, with the Sub Divisional Magistrate (SDM). While the Nation expects them to deliver the best, there is a need to strengthen and empower them in all respects.

While recollecting the younger days when I was the Superintendent of Police and my better half was the DM, both serving in the same District in Bihar, we were indeed looking for models and modules, good practices and innovations, guidelines and SOPs so that one could find a panacea for the various issues and challenges in public administration. Perhaps, we could not get many, as despite there being several tall leaders, who could be role models, yet there was not much documentation. The DM and SDM will be able to serve better if the procedures and protocols are made available as a manual.

Working against human trafficking, the ultimate form of human exploitation, for almost four decades, several stakeholders did raise this idea, suggesting to me to bring out capsules to help their functioning. While addressing more than one hundred DMs in a training session at the Lal Bahadur Shastri National Academy of Administration (LBSNAA), they also suggested that I bring out a capsule exclusively for them. The idea of this booklet was germinated.

The Tata Institute of Social Sciences gave me the opportunity to continue to work against human trafficking after retirement from Government. Dr Parasuraman, eminent and emeritus as he is, has promoted the work in every manner. Prof. Krishna Deva Rao, the Vice Chancellor of the National Law University Odisha (NLUO) Cuttack, another dynamic and erudite professor, asked me to conduct capsule courses for the law students and different stake holders and this opportunity gave me impetus to complete this booklet. I received tremendous technical and academic support from colleagues at the International Justice Mission. Ms Sreya Banerji and Ms Vartika Sharma helped immensely in making the manuscript readable. I am grateful to UNICEF and Mr Kannayiram for having linked up all concerned to support the publication.

The victims of trafficking and the vulnerable who are likely to be trafficked are the real heroes in the mission. Starting from 1982, I had the great opportunity to physically rescue and/or facilitate the rescue of more than fifty thousand women and children. Each one has a saga behind them. This saga is my fuel in the mission. More than fifty thousand stakeholders have been trained by me in three decades, in the various aspects of preventing and combating human trafficking and the lessons I learnt in this process have given me strength and guided me to produce this volume.

I am sure this booklet will be of immense help and support to the DMs and SDMs as well as all related stakeholders including the civil society agencies and activists in the mission of ending human slavery.

Dr P.M. Nair

Mumbai, October 2017

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# ROLE OF DISTRICT ADMINISTRATION IN PREVENTING AND COMBATING HUMAN TRAFFICKING

- 1. Constitutional Mandate for all:** Article 23 of the Constitution of India prohibits human trafficking in every form. The Preamble to the Constitution states that our Constitution is given by “we the people of India” to “ourselves”. Therefore, it becomes incumbent on each citizen in the country to work towards terminating human trafficking. It is a constitutional duty of us all. Human Trafficking is an organized and continuous crime without boundaries of time and space. It is indeed a ‘basket of crimes,’<sup>1</sup> as human trafficking includes in itself several crimes like sale, purchase, illegal confinement, exploitation, deprivation of rights, servitude, slavery, debt bondage, denial of right to redressal, criminal conspiracy and so on. Traffickers have no boundaries whatsoever. It is a crime where the traffickers make huge profit at low cost and in a short time. It is a crime where the predators deprive and violate vulnerable persons of their rights and dignity, while commoditizing and subjecting them to crass commercialization. It is a type of modern-day slavery in its worst form which deprives and dehumanizes its victims.

1 Nair PM, *Human Trafficking: Dimensions, Challenges & Responses*, 2010, Konark Publishers, New Delhi

Therefore, preventing human trafficking is and should be a constitutional duty and an obligation for us all.

2. Under both substantive and special laws, the executive magistrates have been empowered to combat and prevent human trafficking.<sup>2</sup> There are specific and definite roles envisaged with respect to commercial sexual exploitation, exploitative labour and other types of trafficking. Further, the District Magistrate (DM) and the Sub-Divisional Magistrate (SDM) being the coordinator and representative of the different wings and agencies of the government at the District and Sub-divisional level, respectively, a host of services depend on them. The menu of services expected of the DM/SDM includes the following:
  - a. DM/SDM can and should, under **Section 16** ITPA, direct the rescue of any person who has been trafficked and any person who is likely to be trafficked. DM/SDM can act on the statement/report of a police officer or any other source including that of an NGO. When any such information comes to SDM/DM from some NGO or the police or from elsewhere, they are obligated to act and direct any police officer of the rank of Sub-Inspector (SI) and above, even if the officer is not notified as Special Police Officer under S.13 of ITPA, and ensure rescue of the person.
  - b. The police have to present the rescued person before the magistrate who ordered the rescue. Therefore, the DM/SDM has a responsibility to ensure post-rescue care and attention of the rescued person. The victim's care should be prioritized to ensure their protection. Therefore, the victim needs to be informed and made aware of the dynamics of post-rescue care and attention, the options

2 Ibid, pages 223-5

available and thereupon an objective and balanced view needs to be taken.

- c. The SDM/DM is empowered to evict/close down a place of exploitation, vide powers u/s 18(1) ITPA. This is an important step in the Law for eradicating trafficking. The provisions are stringent too. Any place where a trafficked person is being sexually exploited can be closed down and all the persons in possession or occupation of the building can be evicted by the SDM/DM under this provision of the Law. The law does prescribe certain simple procedures and once those procedures are complied with, the order of the DM/SDM becomes final, vide S.18(3) ITPA. No Court, Civil or Criminal, can set aside or stay the order of the SDM/DM. There is no stay or appeal if the procedures have been properly complied with.

### **What should the SDM/DM do?**

- **Cause of action:** The SDM/DM can start the proceedings on a report from the Police or otherwise {see S.18(1) ITPA}. If there is no report from anywhere and the SDM is convinced that any place is being used for commercial exploitation of women or children, the SDM can *suo moto* start the proceedings. However, if the matter is registered as a crime in a police station (PS) or an Anti Human Trafficking Unit (AHTU), the task becomes easy as the Investigating Officer can collect, collate and marshal the evidence and present it to the SDM. Thereafter the SDM can issue a notice to the party concerned and ask for their defence, if any.
- **Time Frame:** The Law also prescribes a time limit of seven days when the concerned party has to respond to the SDM and present his defence, if any. If the party has

not responded, it is fair to give them more chances or some more time, but within reasonable limits.

- **Hearing the Parties:** The SDM has to hear the party before taking a final decision. The law says, “after hearing the persons concerned”. This means not only the person on whom the charge has been made, but also others that he/she may produce in their defence as well as the investigating police officer(s). It is important to give adequate opportunity for the parties concerned to present their case and argue out their version. Though it cannot be stretched beyond reasonable limits, the details of providing such an opportunity must be recorded and documented well.
- **Finality of proceedings:** Section 18(3) ITPA clearly lays down as follows:

“Orders passed by the magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal and the said orders shall cease to have validity after the expiry of one year or three years, as the case may be: Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.”

Since this rigid rule is a reality in law, the order of the DM/SDM has to be sound and proper. It has to be drafted with due care. It should be self-contained and with discussion on facts and law. This means that it should be a speaking order.

- **Speaking Order:** There should be a speaking order by the SDM/DM concerned. This means that the facts in question must be well laid out; the evidence described and discussed, the arguments for and against are weighed, thereupon a balanced and cogent view taken, which should be put down in writing; in clear terms and in a cogent manner. The law point shall be discussed and the evidence to support the law needs to be explicitly stated.
- **Defining Public Place:** An issue which usually comes up in law enforcement is whether the location where the crime or exploitation takes place, is within 200 m of any public area. The Supreme Court of India has held that “S.18(2) operates not merely on places within the offending distance of 200 meters, but on all places where prostitution is being conducted”<sup>3</sup>. With respect to the concept of ‘public place’, the Supreme Court ruling<sup>4</sup> has given a broader definition to include “any place intended for use by or accessible to the public”. “It is not necessary for it to be public property, but even if it is, it is sufficient that the place is accessible to the public”. Therefore, it includes hotels, public conveyance, and so on.
- **Can eviction go simultaneously** along with trial court proceedings? Can it be done even before the judicial trial starts? The proceedings by the DM/SDM can start and conclude even if the crime is still pending trial in a judicial forum. Therefore, the judicial proceedings on the charge-sheet against the accused as well as the quasi-judicial proceedings before the SDM/DM for eviction

3 Chitan Vaswani Vs West Bengal, AIR 1975 SC 2473

4 Gaurav Jain Vs UOI, AIR 1997 SC 3021

can go simultaneously. Both are independent and will have no influence on the other. Therefore, even while the charge-sheet in the crime is being filed, or being contemplated, the proceedings before the SDM/DM can commence and conclude. Some of the important decisions by the Supreme Court on this issue are relevant here as it helps to strengthen the hands of the SDM/DM in enforcing the law.

“Section 3 and 7 ITPA deal with persons (*offenders*), whereas S.18 deals with premises. In the former, prosecution has to prove intention or knowledge, but in the latter, they are not necessary”<sup>5</sup>.

“S.18(1) is a preventive section. It envisages a summary procedure”<sup>6</sup>.

Wherever the task of the DM is assigned to the Commissioner of Police, the notification should be made in a way that it is legally valid. This was clarified by the Supreme Court in a case in Mumbai, where the Police Commissioner ordered closure of several places of exploitation.<sup>7</sup>

“Since S.18(1) is preventive in nature, can be exercised by a DM or SDM; that shows cause must be given before passing order; that opportunity of hearing be given; that reasons must be recorded by the DM/SDM concerned while passing the order”<sup>8</sup>.

Drawing the distinction between an order by the DM/SDM u/s 18(1) ITPA and by the trial court u/s 18(2) ITPA, the Supreme Court observed that S.18(2) is

5 A.C. Aggarwal, *SDM Delhi Vs Mast Ram Kali*, AIR 1968 SC 1

6 *Chitan Vaswani Vs West Bengal*, AIR 1975 SC 2473

7 A.N. Roy, *COP Vs Suresh Sham Singh*, AIR 2006 SC 2677

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

punitive in nature, 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 of ITPA. And that it was open to the Court to pass such an order even without further notice to the accused.<sup>9</sup> This is a pointer to all the trial courts to ensure this step. This is also a pointer to the prosecutors to ensure that they bring it up before the trial court at the right time.

- Therefore, S.18 ITPA is a **stringent provision in the law** to address the issue of commercial sexual exploitation of women and children. Closing down the place of exploitation means that the offenders have to close 'businesses'. This is indeed a firm, strong and effective step to disrupt and choke trafficking. Further, it is a proactive step in preventing trafficking. Hence, the DM/SDM should utilize this section effectively to address human trafficking.
- **Rehabilitation plan** should be ready: When the DM/SDM enforces eviction under such a stringent provision of the law, which is focused against the main offender who makes commerce out of the trafficked person, there is another dimension to the act. There may be one or more persons who are dependent on the business and they may not be part of the crime or may have been lured or coerced into the act. It is essential that such persons are rehabilitated and not abandoned. For example, when a massage parlour is being evicted, the male and female employees that become unemployed should be rehabilitated with alternate, dignified and sustainable jobs. Several schemes by the government are in place, which are in the domain of the DM. If rehabilitation is

9 Ibid.

not undertaken simultaneously, however well-intended and executed the eviction may be, it can create exacerbation of the vulnerability of the evicted persons. One must remember that the act of eviction is against the person who is making 'commerce' out of the lives of the women and children under subjugation and not against the subjugated persons. Therefore, the eviction of the premises and action against the offenders shall go hand in hand with the rehabilitation of the rescued and the vulnerable persons. The Commissioners of Police that undertake evictions have no authority or mandate with respect to welfare and development programmes of the Government. However, since they have the magisterial powers in most of the metro cities, they should collaborate their process of eviction with the District Collector for simultaneous rehabilitation of those needing this.

3. Under the S.13ITPA, The DM has the powers to appoint special police officers from retired police and retired army officers, when there is a shortage. In most of the states, shortage of regular police officers is a major impediment in addressing human trafficking. Here is an opportunity, scarcely known and seldom utilized.
4. The DM has wide power under Preventive sections of the CrPC., like S. 107–116 CrPC. and other Preventive Detention laws. These are effective legal provisions for taking deterrent action against the likely exploiters and known/habitual predators.
5. Section 133 CrPC. provides wide and vast powers for the DM to address the issue of misuse of public places. If a trafficker is exploiting or violating anybody and the place happens to be a public place (which more often is true), the power under S.133 CrPC can be easily invoked. This again is a stringent provision in addressing the issue at the initial



stages. The orders of the DM, when completed properly following the procedures, cannot be called in question by a Civil court. (There are several examples of this initiative in Telangana State.) The DM/SDM often delegates these powers to an Executive Magistrate having jurisdiction and competence.

6. Powers to rescue and cause rescue: The DM/SDM has powers under various special and local laws, including labour laws, to take action to rescue any child labour, any person trafficked for labour or any person subjected to hazardous labour. The DM/SDM has powers to initiate punitive action against all those who are involved in exploitative labour and call for criminal action against them by the police.
7. Under the Bonded Labour System (Abolition) Act 1976 (BLSAA), the DM has wide powers and responsibilities, including the following:
  - a. To undertake identification,<sup>10</sup> release<sup>11</sup> and rehabilitation<sup>12</sup> of bonded persons.<sup>13</sup>

10 Accountability – *Bandhua Mukti Morcha V. UOI* (1984)3 SCC 160 at 207 (Para 24); Labourer need not prove existence of Advance – *Bandhua Mukti Morcha V. UOI* (1984)3 SCC 160 at 204,206 (Para 21,24); Owner should not be present while enquiring labourers – *Bandhua Mukti Morcha V. UOI* (1984)3 SCC 160 at 210 (Para28), *Neeraja Chaudhary v. State of M.P* (1984)3SCC 242, at 252 (Para4); The Government shall conduct bonded labour investigation when an NGO reports BL and include the NGO in the rescue – *Bandhua Mukti Morcha V. UOI* (1984)3 SCC 160 at 208 (Para25), *Neeraja Chaudhary v. State of M.P.* (1984)3 SCC at 251–252 (Para4).

11 Involvement of NGO in identifying & Releasing – *Bandhua Mukti Morcha V. UOI* (1984)3 SCC 160 at 208 (Para 25); *Neeraja Chaudhary v. State of M.P.*(1984)3SCC 242, at 251–252 (Para 4).

12 States are obligated to rehabilitate bonded labourers – *Bandhua Mukti Morcha V. UOI* (1984)3 SCC 160 at 209 (Para26), *Neeraja Chaudhary v. State of M.P.* (1984)3 SCC 242, at 255 (Para5); *Public Union for Civil Liberties V. State of Tamil Nadu* 1994 Indlaw SC 1552; (1994) 5 SCC 116, at

- b. To cause inquiry into the prevalence of bonded labour or any form of forced labour and take steps to eradicate the same. This means there is a duty and authority to rescue any person subjected to bonded labour.
- c. As per the BLSAA, the DM heads the Vigilance Committee<sup>14</sup> at the District level and the SDM at the subdivision level, and this Committee is tasked with the duty to enforce the law.
- d. The DM can delegate her/his powers to another officer; it mostly lies with the SDM.
- e. On receipt of information about bonded labour, the DM/SDM shall get a First Information Report (FIR) registered. Police officers shall register an FIR on receipt of information from any source whatsoever. Further, trafficking being a continuing offence, an FIR can be registered at any Police Station falling in the source or transit or destination area. Even if the complaint has been received at a different PS, the concerned PS is bound to register an FIR and start investigation; and once it is clear that the jurisdiction is with another PS, the case documents be transferred to the new PS, which

116 (Para 2); Upendra V.State of Madhya Pradesh 1986 Indlaw SC 515; 1986 (S) SCC 558: at 559 (Para 1) ;

13 Pg. 15, pt. 4.1, United Nations Office on Drugs and Crime and Government of India, Standard Operating Procedures (SOP) on Investigation of Crimes of Trafficking for Forced Labour, 2008: “Step 3: Rescue team should, wherever possible, be accompanied by a Sub Divisional Magistrate (SDM), who is the implementing authority under the Bonded Labour System (Abolition) Act, 1976 and officers of the labour department, so that the Child Labour (Prohibition and Regulation) Act, 1986 may also be utilized wherever applicable.”

14 Sec 13, 14 of Bonded Labour System (Abolition) Act, 1976.

will register a new FIR and continue with the investigation. The former PS will transfer all case materials and documents to the latter PS and then the former PS will close the case from their records with a closure report to the Court concerned.<sup>15</sup>

- f. In case of urgency, the police can conduct rescue even without waiting for the registration of an FIR, after making an entry in the General Diary accordingly. Further, the FIR can be registered on the complaint of anybody and if nobody is willing, the police official shall *suo moto* be the complainant and get the FIR registered on his/her statement.
- g. Once the person has been identified as a bonded labourer, the DM/SDM has to get the person released and issue a certificate<sup>16</sup> of release<sup>17</sup>. The release should take place immediately after identification; and

15 For details, see Pg. 18, United Nations Office on Drugs and Crime and Government of India, Standard Operating Procedures (SOP) on Investigation of Crimes of Trafficking for Forced Labour, 2008.

16 *Roscann Rajan v. Taluk Supply Officer WP.No.992 of 2015* decided by the Madras High Court dated 12.03.2015: “One of the measures suggested as per the Annexure to the Letter to facilitate the access to rehabilitative benefits is at Serial No.2, which provides that a copy of the bonded labourer’s release certificate be considered as the identity proof to issue them the entitled benefits.” “We see no difficulty in implementing the aforesaid and there can be little doubt that the scheme being rehabilitative measure, it would apply across the board to all the bonded labourers detected prior or after the issuance of the communication.”

17 *Bonded Labourers must be issued Release Certificates simultaneously at the time of their release and each bonded labourer shall be issued an individual Release Certificate – Santhal Pargana Antyodaya Ashram v. State of Bihar 1987 Supp(1) SCC 141, at 141–142 (Para 1); T. Chakkalackal v. State of Bihar and Ors., 1993 Supp(4) SCC211*

rehabilitation measures should commence immediately thereafter.<sup>18</sup>

- h. Rehabilitation should include all aspects of welfare as well as sustained livelihood of the person released from bondage. This entails sanction and delivery of all the benefits provided by the government. It would be good if a list of such schemes and programmes is outlined and circulated to all including the AHTUs and the NGOs working in this field, so that they could follow up. More often, the beneficiaries are not able to avail the benefits of the Government schemes, despite there being many of them, due to a lack of awareness. The DM/SDM needs to take a proactive role in disseminating information to the needy and vulnerable as well as caregivers and the civil society, the panchayat representatives and all such stakeholders, including the media.

One of the relevant Schemes is the ‘Central Sector Scheme for Rehabilitation of Bonded Labourers, 2016’ from the Ministry of Labour & Employment. Features of the Scheme are:

- Financial assistance up to INR 100,000 per adult male beneficiary and INR 200,000 to 300,000 for special category beneficiaries;
- The DM/SDM shall provide immediate assistance of at least INR 5,000 to the rescued person. In case the DM/SDM is satisfied that a rescued person

18 People’s Union for Civil Liberties v. State of Tamil Nadu (2004) 12 SCC 381 at 383 (para. 3): “Under the modified Centrally Sponsored Scheme for rehabilitation of bonded labour effective from May 2000 the rehabilitation assistance to the extent of Rs 20,000 per bonded labour is provided for his/her rehabilitation. . . . And under this scheme, the State Governments shall provide Rs 1000 as subsistence allowance to a bonded labour immediately on his/her identification.”

requires more than INR 5,000 he or she may disburse a higher amount;

- In cases where the DM/SDM finds that immediate assistance is necessary for care and protection of the rescued persons during the pendency of the summary trial, such as assistance including food, lodging, medical assistance, legal aid etc., he/she shall ensure this is provided;
- In case the DM/SDM concludes that there is no bondage involved, but the alleged bonded labourer requires socio-economic assistance, he/she may provide assistance under other existing schemes;
- The above-mentioned benefits shall be in addition to other land and housing elements, including non-cash benefits such as allotment of house-site and agricultural land, land development, provision of low cost dwelling units, animal husbandry, dairy, poultry, wage employment etc., collection and processing of minor forest products, supply of essential commodities under targeted public distribution system and education of children.

Adjudication: S.21 of BLSAA states “the State may confer powers on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of offences under this Act...”. The Karnataka High Court in 1978<sup>19</sup> laid down that both the Executive Magistrate and the Judicial Magistrate will have the powers to try the cases. The High Courts of Bombay in 1991,<sup>20</sup> Madhya Pradesh in 1995<sup>21</sup> and

19 Manu/KA/0169/1978 State of Karnataka v. Gangaiah.

20 Manu/MH/0158/1991 Govind Shanwar Chatal v. Dattarya Waman Bhanushali & Another

21 Manu/MP/0311/1995 Hanumantsingh Kuber Singh v. State of Madhya Pradesh & Another

Tamil Nadu in 2013,<sup>22</sup> held that the enabling provision of Section 21 of BLSAA violates Articles 21, 14 and 50 of the Indian Constitution and struck down Section 21 further ordered all the cases to be transferred and tried by the Judicial Magistrates. However, in all other States/UTs, as of now, the power of the DM/SDM to adjudicate under S.21 BLSAA continues. Here lies an opportunity to inflict maximum penalty on the exploiters and violators, and simultaneously extend adequate relief to the victim by way of compensation.

8. Address vulnerability: The DM/SDM, as the person in charge of development, has a role to play in addressing the vulnerability, the major cause of trafficking, and ensure removing them.

In *PUCL v. State of Tamil Nadu* (1994) 5 SCC 116 at 116 (para. 1) the SC directed state governments, through their administrative processes, “(2) ...to identify the employers exploiting the bonded labourers and to initiate appropriate criminal proceedings against such employers,” (para. 2): “...and additionally setting forth steps for identifying and surveying bonded labourers, providing rehabilitation to bonded labourers, and reporting to the Supreme Court on compliance with these directives.”

Further, in *PUCL v. State of Tamil Nadu* (2004) 12 SCC 381 at 384–385 (para. 6) the SC directed that “states create plans to identify bonded labourers and the employers who exploit them; to eradicate any bonded debts; to appoint an independent, nongovernmental representative (e.g., an NGO) to survey the prevalence of bonded labour; to provide employment and/or agricultural land to bonded labourers; to provide a comprehensive rehabilitation package that includes shelter, food, medical facilities, and childhood education; to ensure oversight and inspection by Labour Commissioners, Vigilance Committees, and District

22 *Gajendran V. Thasildar /Sub – Divisional Executive Magistrate , Thiruvallur & Others*

Magistrates; and to criminally prosecute employers who employ bonded labour, employ children below age 14 in hazardous employments, fail to pay minimum wage, or provide compensation through Khesri dal that causes permanent disability.”

9. The DM should organize a vulnerability mapping with the help of all stake holders, including the local University. This will help in planning appropriate preventive steps.

In *Neerja Chaudhary v. State of Madhya Pradesh* (1984) 3 SCC 243 in para 4 the SC held: “What is really necessary is to involve social action groups operating at the grass roots level in the task of identification and release of bonded labourers ... It is only through social action groups working amongst the poor that we shall be able to discover the existence of bonded labour and we shall be able to identify and release them ... the State Government should start taking their assistance instead of looking at them askance and distrusting them ... We would also direct the State Government to take immediate action for identification and release of bonded labourers, whenever any representative of these social action groups, whether on the vigilance committee or not, points out to the Collector, District Magistrate or the Deputy Collector that there is existence of bonded labour at a particular place and whenever any officer of the District administration goes to such place for identification and release of bonded labour on the basis of the information given by such representative of the social action group, he shall take such representative with him and a copy of the report made by him shall be handed over immediately to such representative of the social action group.”

10. The Central Sector Scheme for Rehabilitation of Bonded Labourer – 2016, para. 5(x) provides that: “The amount of assistance for survey of bonded labourers shall be INR 4.50 lakh per district. This amount can be utilized to finance the NGO efforts for identification of bonded labour as per State Government norms.”
11. The DM/SDM should coordinate and monitor the functioning of the district rehabilitation agencies and ensure

appropriate rehabilitation of the victim, so that the victim is not re-trafficked. It is a fact that one of the main reasons for re-trafficking of a rescued person is lack of rehabilitation. Therefore the role of rehabilitation assumes more significance. This is another creative role, which only the DM/SDM can play, in preventing re-trafficking.

12. Coordination of agencies beyond Government: The corporates, business establishments and industrial houses, etc., under their mandatory Corporate Social Responsibility (CSR) schemes, have funds which can be effectively channelized for rehabilitation. The DM and SDM are the appropriate catalysts and trigger factors in this regard. A contact list of such corporates needs to be prepared and coordination meeting with them arranged at intervals. This can make a tremendous impact. There are outstanding examples of such coordination and initiative by the DMs across the country.
13. The DM (as the coordinating person in charge of administration of the district) and the SDM (in a sub-division), can facilitate and support, in the best manner, the activities of the police department by linking AHT work with other development and welfare departments, and NGOs, as well as industrial houses in the district to bring in synergy among the stakeholders in addressing the issues of human trafficking in all respects, i.e., prevention, protection and prosecution. The AHTUs<sup>23</sup> will be effective and functional

23 AHTUs are integrated Anti Human Trafficking Units set up in the Districts for preventing and combating human trafficking in a comprehensive manner. The first AHTU in India was set up by Dr P.M. Nair at Hyderabad, as Project Coordinator of the UNODC-MHA-USG Project, followed by eight more Districts (AP, Bihar, Goa and West Bengal) during 2007. These are special task forces, for prevention, rescue, investigation, prosecution and rehabilitation, with police in the lead role and in association with NGO as an integral member, as well as Prosecutor and an official



with the visit and association of the DM/SDM. The **convergence mantra**, the philosophy on which AHTUs have been created, will be meaningfully and effectively translated into action if the DM/SDM provides the coordinating support.

14. Under the Disaster Management Act 2005, the DM is the head of the District Disaster Management Authority (DDMA). It is a known fact that disaster situations are fully capitalized upon by human predators and therefore human trafficking looms large as the population, especially women and children, remain most vulnerable. Therefore, the District Plan for disaster mitigation and response should necessarily focus on addressing the vulnerabilities and recognizing traffickers, so that the crime can be better prevented.
15. Public awareness is a great tool in empowering the vulnerable and, thereby, mitigating trafficking. Since the Public Relations Department (PRD) is available with the DM, the PA campaigns can be focussed on vulnerable areas and persons. Further, the PA campaigns need to be done to address the demand. On the one side, those who violate rights of women and children are to be booked under the laws, investigated and prosecuted; and on the other side, the youth needs to be educated and empowered on the rights of women and children, as well as of the means and methods to

of the Rehab Dept. Since the external evaluation of the AHTUs in 2008 brought out the sterling delivery and impact of AHTUs and showed that they were the appropriate mechanism to address human trafficking, Govt of India sanctioned 270 AHTUs, one per district across India. The intended model is that the AHTU will have jurisdiction over the whole district and the SP/DCP can order them to take over and investigate any crime of trafficking in the district, irrespective of the PS where the crime has been registered. As AHTU has a Special Police Officer as its member, they can *suo motu* rescue and investigate any crime in the district. However, some of the State Governments have made minor modifications over a period of time regarding the role and responsibilities of the AHTUs.

ensure that human enslavement, violation and exploitation is prevented. The **AHT Clubs**<sup>24</sup> in colleges and other institutions can function as an informative medium as well. This will require the involvement of the youth in the process of ensuring a safe and secure society. Hence the DM/SDM may set up and facilitate the functioning of AHT Clubs.

16. Involving the media: As the coordinator of the activities and the chief representative of the Government in the district, the DM can and should address the media and bring in their cooperation in preventing and combating human trafficking. The media plays a significant role in creating public awareness, which can thereby help to combat and prevent human trafficking.
17. Capacity building of stakeholders is another important task that the DM/SDM should undertake. The agencies and departments may be unaware of their role and duty in matters of human trafficking. This is a reality in most of the districts in India. Effective capacity building events undertaken with the help of professional experts can empower the stakeholders and this can make a great impact. Many issues can be solved or prevented if the stakeholders are adequately empowered and sensitized. In this context, the following example is worth mentioning:

The powers of the SDM to evict a place of exploitation, under S. 18(1) of ITPA and the legal finality of proceedings if the eviction is done following due process, were very much part of the

24 **AHT Clubs** are groups of youth in colleges and other similar institutions, where the youth decide to empower themselves and others on issues of human trafficking and take positive steps to prevent such exploitation and human slavery. The AHT Clubs were set up by P.M. Nair starting in 2014 with the avowed mission of convergence and participation of the youth in this process of nation building. A protocol on AHT Clubs is available on demand.

statute since 1956, when ITPA was enacted by the Parliament of India. However, it was seldom utilized and in certain States, it was never utilized, despite the fact that this is a very powerful tool to prevent trafficking of human beings {refer paragraph 2(c) of this note}. The main reason for the poor or nil law enforcement, as brought out by the NHRC Action Research<sup>25</sup>, was that only 6% of the police officers in India were trained on addressing human trafficking! An effort was made to address this huge gap, a managerial failure by the trainings of police, started by the NHRC as part of the Action research in 2004. The UNODC project<sup>26</sup>, 2006–2008, on “Strengthening the Law Enforcement Response to Human Trafficking” in 5 States in India, including AP (and Telangana), made a paradigm shift in the scenario as it was focussed on addressing the gap. The impact made by the trained officers was indeed amazing. For example, in AP (Telangana included), in 2005 there was no instance of any place of exploitation closed down under S.18 (1) ITPA by the SDM. However, by 2015, more than 150 places of exploitation have been evicted by the SDMs. In 2005, the prevalent practice was to ‘arrest’ and ‘prosecute’ trafficked women and girls, branding them as ‘prostitutes’. Many were ‘convicted’ too! This practice of victimization of victims dropped drastically to nil scenario by 2015. The customers are the ones who create and perpetuate demand. They have become a part of the action to contain demand and trafficking, and they are now being arrested and prosecuted. The SDM, the police, the prosecutor, the law, protocols, procedures and rules remained the same in 2015 and 2005 and yet the difference in enforcement is too glaring. So the question arises as to what is

25 Nair, P.M. and S. Sen, *Trafficking in Women and Children in India*, Orient Longman, 2005; which was the report of the Action Research on the subject conducted by NHRC, where P.M. Nair was the Principal Researcher cum Investigator and also the Nodal Officer of the NHRC on Human Trafficking matters.

26 The two-year Project of UNODC Regional Office South Asia, New Delhi, when P.M. Nair was the Project Coordinator, had made a tremendous impact in the response to human trafficking in India, as the report of the external evaluators (Dr Sarala Gopalan and Ms. Laura Livingstone) has documented. For details see website of UNODC/ROSA.

the ‘magic’? The fact is that it was not magic but due to positive action in capacity building of stakeholders, in an integrated manner, with a focus on knowledge, skills, resources and attitudinal change, that was carried out by certain individuals who took it as a mission. As a follow up, the capacity building of the stakeholders, done in a professional and coordinated manner, by UNODC and APPA (now TSPA) made all the difference.

18. **Special care of children** (trafficked and vulnerable to trafficking): Under the Revised **Integrated Child Protection Scheme** (ICPS), the District Magistrate/District Collector is the head of the District Child Protection Unit (DCPU).

Clause 2.1 of ICPS enlists the various powers and duties of the DCPU, which are positive steps in preventing trafficking of vulnerable children. This includes mapping of vulnerable areas, identifying children at risk, mapping the services, ensuring the services to children at risk, setting up CWC and SJPU in each district, facilitate restoration of children to their families or ensuring other types of rehabilitation, facilitate implementation of other legislations including Child Labor Prohibition Act, Child Marriage Restraint Act, POCSO, ITPA, JJA, etc., networking with all Government Departments, networking with civil society organizations, involving youth in child protection, maintaining database of children needing care and capacity building of all stakeholders.

Further, funds have been made available under ICPS for rehabilitation of rescued children, for facilitating foster care of rescued children, etc. Chapter 10 of ICPS deals with Care and Rehab services. Under its sub-chapter C, on ‘Family based non institutional care, through **sponsorship, foster care, adoption** and aftercare’ the following provision is worth flagging:

“2.2 The ICPS supports the creation of a Sponsorship and Foster Care Fund that will be placed at the disposal of the DCPU. An **amount of Rs 10 Lakh per district per annum** shall be provided under the scheme. The State Governments are encouraged to give additional grants to the SCPS under Sponsorship and Foster Care Fund and may initiate steps to proactively identify children

needing protection with support of organizations working in this sector.”

DMs should make use of this provision as it can make a tremendous impact on the rehabilitation of the rescued and vulnerable children.

19. The Legal Services Authority has assumed much significance in recent years, due to several rulings of the Supreme Court of India. The DM is the Vice Chair of the District Legal Services Authority (DSLAs). The provision for compensation and relief to trafficked victims, which can be availed even while the crime is under investigation/trial, can be implemented only if the DM takes an initiative. (There are several examples in the country on this initiative). Further, as per the Supreme Court ruling in *BBA vs UOI* 2013, the AHTU has not only to take over all crimes of missing children if not traced in four months' time and investigate the crime, but also periodically report the progress to the DLSA. This is a tool for the DLSA to help and monitor the functioning of AHTUs and, in the process, bring in more synergy in preventing and combating human trafficking.
20. Government of India Schemes like “Ujjwala” and “Swadhar” are meant to be excellent outreach programmes for civil society organizations working in preventing and combating human trafficking. Often, NGOs are unable to avail these schemes, even though Ujjwala has a provision for extending support to several activities in preventing and combating human trafficking, including even intelligence gathering. So is the case with schemes for the rehabilitation of bonded labourers. Schemes are in plenty, but they are not reaching the beneficiaries. There is a need for the DM to coordinate the implementation of all these schemes. A single window should be provided to the NGOs so that they need not go

in circles. It would be appropriate if the DM can hold half-yearly meetings for all the NGOs in the district working on issues of human trafficking, along with all other stakeholders in the district and address these gaps so that all these schemes and programmes/projects of Government of India and the State Governments are effectively implemented. The DM and SDM would do well if a single window can be provided to the NGOs to help them avail the benefits of all these schemes.

### **Common FAQs:**

1. Can the DM/SDM initiate action for eviction under ITPA, if there is no report forthcoming from the Police agencies?  
Yes, Section 18(1) ITPA says that the SDM/DM can initiate action on a report from the police or otherwise. This means that the SDM/DM can start the proceedings on the basis of a report from an NGO or anybody. If nothing is available, the SDM/DM can start the proceedings *suo moto*. (There are examples of this *suo moto* action in Goa.)
2. Can the SDM start the proceedings if he/she is not specifically notified?  
Yes, the SDM is authorized under the law (Section 18 of ITPA).
3. Can the Commissioner of Police start action if he is not notified?  
No, the Commissioner of Police has to be notified by the Government under Section 18 of ITPA.
4. How is the DM/SDM in a source area of trafficking linked with the eviction by the SDM/DM/Commissioner of Police in a demand area?  
Human trafficking is a crime which has no borders. The source, transit and destination are well linked. If the place is evicted, many persons who are working there will become

unemployed and, consequently, vulnerable. They have to be rehabilitated. If they wish to come back to their home and want to start an employment, this can and should be facilitated by the concerned DM. Therefore the DMs at the destination and source have to work in tandem.

### **Additional reference materials:**

1. UNODC ROSA website has several tools, especially the SOP on Investigating trafficking for sexual exploitation; the SOP for Investigating Labour Trafficking; Training Manual on exploitative labour; etc., and the Film, “One Life, No price”, developed in the UNODC Project of 2006–2008.
2. Nair, PM, “Handbook for Law Enforcement Officers in Combating Trafficking of Women and Children for Sexual Exploitation”, UNIFEM 2002 and UNODC, 2007.
3. “Central Sector Scheme for Rehabilitation of Bonded labour-2016-enhancement of the amount of immediate financial assistance”, Order no S-/11012/01/2015-BL, dated 18.05.2016 and 17.01.2017, by the Ministry of Labour and Employment, Government of India.
4. Revised ICPS of Govt of India: [http://icds-wcd.nic.in/icpsmon/pdf/icps/final\\_icps.pdf](http://icds-wcd.nic.in/icpsmon/pdf/icps/final_icps.pdf)

### **About the author**

Dr P.M. Nair is an international expert, recognized by the United Nations on matters of human trafficking, combining in himself a researcher, author, activist, administrator, law enforcement official, advocate/lawyer, practitioner, and coordinator. He is presently the Chair Professor, Tata Institute of Social Sciences, Mumbai. He was with the Indian Police Services since 1978 and started his mission against human trafficking in 1982, with the rescue of 27 children of Palamu District from child labour

in Mirzapur. The mission continues unabated and with zeal and outstanding achievement. While working with the UN on anti-human trafficking, in the UNODC project 2006–2008, supported by Government of India and the US Government, Dr Nair set up the first 9 AHTUs in the country, the first being set up at Hyderabad in January 2007. Eventually, after seeing the evaluation report, the Government of India replicated the AHTUs in 270 districts in India. By the end of the year 2016, he has personally trained more than 50,000 stakeholders in India and abroad and did/caused/facilitated the rescue of more than 30,000 victims of trafficking in India and the region. He has authored several books, SOPs, handbooks, guidelines on different aspects of human trafficking; helped develop many films on trafficking; initiated the Certificate Course on anti-human trafficking at the Indira Gandhi National Open University Delhi; was part of the exclusive UN Expert Group which drafted the UN Manual on Anti-human Trafficking for Criminal Justice Practitioners and the UN Model Law on Human Trafficking. He is an expert resource person for several programmes of many international universities, like the University of Cambridge, and several Indian Universities. He is associated with several international bodies, like the Asian Human Rights Commission, Children's Investment Fund Foundation, Freedom Fund, International Justice Mission, Justice and Care, Free the Slaves, Freedom Project, World Justice Forum, Kamonohashi International, etc. He continues, with zeal and sustained dedication, his mission of ending human slavery. Presently, as Chair Professor at the Tata Institute of Social Sciences, Mumbai, he is the National Director of the All India Research Project on Human Trafficking, conducted under the aegis of the National Human Rights Commission (Government of India) and with support of UN agencies and Tata Trusts.

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