

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1882 of 2013

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1. Apne Aap Women Worldwide Trust India through Ms. Tinku Khanna (W/O Indranil Roy) Technical Specialist- Survivor Leadership and Advocacy, Apne Women Worldwide (India) Trust.
 2. Soumya Pratheek alias Soumya Suresh, Monitoring and Documentation Officer Apne Aap Women Worldwide, India Trust. Having its Bihar State Coordination Office at Jagdish Mills Compound, Ram Manohar Lohia Path Near Bus Stand Forbesganj, Dist.- Araria- 854138 and registered office at D-56, Anand Niketan Top Floor, New Delhi 110021
- Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Home, Old Secretariat, Patna, Bihar
2. The Secretary, Department of Social Welfare (Women and Child) Old Secretariat, Patna, Bihar
3. The Principal Secretary, Human Resources Department, Patna, Bihar
4. The State Project Director, Sarva Shiksha Abhiyan, Bihar Shiksha Parishad, Shiksha Bhawan, Rashtra Bhasha Parishad, Saidpur, Rajendra Nagar, Patna
5. The Chairperson, State Commission for Protection of Child Rights 22 Hardinge Road, Patna
6. The District Magistrate, Araria
7. The Superintendent of Police, Araria
8. The Chairperson, Child Welfare Committee, District- Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Choudhary, Advocate
Mr. Nagendra Kumar, Advocate

For the Respondent/s : Mr. P.N. Shahi AAG-10
Mr. Ritesh Kumar No.1, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
And
HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date : 20-11-2014

Petitioner-Trust, a Non-Government Organisation, has been established by well meaning public spirited citizens of India to provide for education, health care, legal protection and job skill to women and children found in the red light area by following the



Gandhian principles of Antodaya (upliftment of the last woman), Ahimsa (non-violence). Sex trafficking and prostitution are the worst form of violence against women. Any attempt to end sex trafficking, prostitution requires internalization of the principles of non-violence. The mission of the trust is to end trafficking of women and children. Its objectives are to support community based initiatives, to mitigate the circumstances of those trapped/ caught by the sex industry/ prostitution. Develop leadership amongst the affected to end sex trafficking and prevent inter-generational prostitution. Build linkages between grass root activist and policy makers for ending sex trafficking. To create awareness in society on discrimination against women and girls, particularly issues relating to sex trafficking, prostitution, sexuality and violence against women and girls.

2. Present writ petition was initially filed with 10 prayers contained in Paragraphs 1A to 1K. By filing I.A. No. 1656 of 2013 prayer was made to delete the prayer contained in Paragraphs 1E, 1G, 1H and 1I, which was allowed under order no. 4 dated 07.03.2013. The prayer which still survives in the writ petition is to direct the respondents to carry out their constitutional obligation enshrined in Article 23 of the Constitution by strictly enforcing the provisions of the Immoral Traffic (Prevention) Act,



1956 (hereinafter referred to as the Act) and to conduct operations in red light area/ other areas in presence of women social worker, to direct the State respondents to appoint Special Police Officers not below the rank of Inspector for dealing with the offences under the Act and to maintain the victims rescued in shelter homes certified by the State Social Welfare Department as per IT(P) A norms. Further prayer made in the writ petition is to direct the respondents to enforce the directions of the Supreme Court issued in the case of **Budhadev Karmaskar Vs. State of West Bengal AIR 2011 Supreme Court 2636.**

3. In the light of the prayer made in the writ petition State respondent no. 1 filed counter affidavit duly affirmed by the Principal Secretary, Department of Home asserting that to combat social evil of human trafficking in Bihar the Department of Social Welfare has formulated State Plan of Action called **ASTITVA** providing for integrated approach by several Departments of the Government (Education, Rural Development, Social Welfare, Labour, Human Resources, Health, Police, District Administration etc.) vide resolution of the Government issued from Social Welfare Department bearing No. 595 dated 31.12.2008. The basic objectives of **ASTITVA** are as follows :

- i. To prevent, control and eradicate human trafficking,

ensure qualitative action at source, transit and destination areas of trafficking.

ii. Ensure and prioritize proper rescue, rehabilitation and sustainable repatriation with special emphasis on livelihood, socio-economic empowerment.

iii. Human trafficking is an organized crime, therefore, ensuring legal action against pimps, traffickers etc.

iv. Ensuring sensitization, mobilization and capacity building of Government/ Non-Government bodies for minimizing the vulnerability of human trafficking in the State.

4. Perusal of resolution notifying **ASTITVA-BIHAR** indicates that there is State, District level Anti Human Trafficking Coordination Committee established under the Chairmanship of Chief Secretary of the State and District Magistrate of the district concerned. It also indicates that Anti Human Trafficking Task Force has been constituted at both State, District level under the Chairmanship of Director General of Police and Superintendent of Police concerned. Besides Anti Human Trafficking Prosecution Monitoring Committee has also been established both at the State, District level under the Chairmanship of Director General Prosecution and the District Magistrate concerned. Further perusal of resolution of the Government formulating **ASTITVA** indicates



that Village Level Anti Human Trafficking Bodies, Cross-Border Anti Human Trafficking Prevention Bodies are also required to be constituted. The Director General of Police under his Memo No. 30 dated 17.06.2009 constituted Anti Human Trafficking Unit (AHTU) in the district situate on the borders of the State. Besides there are three other units under the control of Additional Director General of Police, C.I.D. working in C.I.D., Bihar, Patna, I.G., Muzaffarpur Zone and D.I.G., Magadh Range, Gaya. The Director General of Police, Bihar under Memo No. 185 dated 27.09.2011, 187 dated 24.10.2011 and 201 dated 23.11.2011 appointed all Zonal I.G., Range D.I.G. and Superintendent of Police including Rail as Nodal Officer in their respective jurisdiction to enforce the provisions of the Act. It has further been averred in the counter affidavit that participation, coordination of activities by the different Departments of the Government is necessary to minimize the cases of trafficking, rescue and rehabilitation of victims and for ensuring such participation, coordination I.G. of Police (Weaker Section), C.I.D. requested the Principal Secretary, Home Department vide his letter no. 112 dated 10.06.2011 and letter no. 148 dated 10.07.2012 to direct the District Magistrate to include one officer from each concerned department in AHTUs constituted in districts to provide strength and make AHTUs more effective. The Home (Special)



Department under letter no. 11159 dated 30.06.2011 directed all the District Magistrates of Bihar to include one officer from each concerned Department in AHTUs constituted in the district. It has further been averred in the affidavit that for the success of State Plan of Action to contain the menace of human trafficking training of the officers including police officer is necessary. Training of Trainers (TOTs) programme for the police officers and officers from other concerned department is being conducted in workshop at State level. The trainers are being used to impart training at district level workshop. I.G. (Weaker Section), C.I.D. issued instruction to all the Superintendent of Police of Bihar to organize workshop for training of the police officers in the district under his letter no. 210 dated 05.12.2011. He also issued letter no. 207 dated 29.11.2011 and 128 dated 27.06.2012 to persuade the police officers to take admission in human trafficking certificate course conducted by Indira Gandhi National Open University. It has also been stated in Paragraph 12 of the affidavit that Home (Special) Department informed the Social Welfare Department under letter no. 3740 dated 26.04.2011 that appointment and training of Special Police Officers under Section 13 of the Act is to be made by the Social welfare Department by adopting the procedure prescribed under Section 19 of the Bihar Police Act. In Paragraph 13 of the counter affidavit it has been stated



that it is important to prepare a data base of missing children and women, rescued victims and human traffickers for effectively curbing the menace of human trafficking. In this regard Social Welfare Department of the Government had issued instruction contained in letter no. 1161 dated 18.05.2012, 1284 dated 20.06.2012, 1464 dated 12.07.2012. In turn I.G. (Weaker Section), C.I.D., Bihar has also issued instructions under letter no. 197 dated 21.11.2011, 162 dated 24.07.2012 to all the Superintendent of Police of Bihar directing them to submit monthly compliance report in the prescribed performa to Social Welfare Department.

5. A separate counter affidavit has also been filed on behalf of respondent nos. 2 to 6 stating that the Department of Social Welfare, Government of Bihar is serious in dealing with the anti human trafficking and has framed State Action Plan called **ASTITVA** to combat human trafficking which has been notified in Bihar gazette vide notification no. 595 dated 31.12.2013, which is perhaps mistake for 31.12.2008 whereunder different committees have been constituted at State, District level to deal with the issues related to human trafficking i.e. prevention, raid & rescue and rehabilitation of trafficked victims. It has also been averred in the said affidavit that in the light of the order passed by this Court dated 29.10.2013 reports have been sought from all the District



Magistrates regarding cases registered against human trafficking as well as rehabilitation details of trafficked victims in format contained in letter no. 2787 dated 25.11.2013. In Paragraphs 6, 7 of the affidavit it has been averred that State has also formulated scheme/ created fund for providing rehabilitation support to the women victim of violence including victim of human trafficking, domestic violence and other violence which is known as social rehabilitation fund and Rs. 95.10 lakhs has been allocated for the 38 districts of the State for extending support to the women victim, out of which Rs. 21.13 lakhs was disbursed amongst 402 victims.

6. By filing supplementary counter affidavit on behalf of respondent no. 2 further statement has been made that the District Level Anti Human Trafficking Unit has been formed in all the districts of Bihar which meets on regular basis to deal with the issues relating to human trafficking, such as, prevention, raid & rescue and rehabilitation of trafficked victims. In the said affidavit it has further been stated that to build the capacity of different functionaries involved in the Anti Human Trafficking Programme steps are being taken in the light of the guidelines of the Government of India to sensitize, develop the capacity of the officers by imparting training to not only the officers but also to the trainers. In Paragraph 7 of the supplementary counter affidavit again



statement has been made about the creation of the social rehabilitation fund for providing rehabilitation support to the victims in which Rs. 95.10 lakhs has been allocated for the 38 districts of the State. In Paragraph 8 of the supplementary affidavit statement has been made that constitution of Advisory Board in the light of the provisions contained in Section 13(3) of the Act for protection and rehabilitation of trafficked victims is under consideration of the Government.

7. By filing rejoinder affidavit petitioners in Paragraphs 3, 9 pleaded that the concept of trafficking, as understood in the Indian context, is required to be reviewed in the light of the definition of trafficking given in **Palermo Protocol** referred to in the report of J.S. Verma Committee on the amendments to the criminal law, as according to the petitioners, the provisions of the Act is not able to fulfil the objectives it is meant to achieve. In order to overcome the shortcomings, placing reliance on the observations made by National Human Rights Commission, Verma Committee recommended introduction of new Section 370 in the Penal Code expanding, clarifying the scope of trafficking with specific explanations introducing new Section 370-A dealing with exploitation of trafficked person as also making the same a punishable offence. It has also been stated in the rejoinder that



victims of trafficking are required to be specially treated by specialized police, civil officers in the shelter/ Corrective Institutions as also by the Child Welfare Committee under the watchful eyes of independent bodies. In Paragraph 7 of the rejoinder petitioner asserted that the Anti Human Trafficking Units set up in the country have miserably failed to crack the network of national, international traffickers, thus, permitting their trade to flourish. In Paragraph 8 of the rejoinder it has been stated that Protective Homes are required to be modernized and psychologically revolutionalised and made useful homes for productivity. In Paragraphs 10, 11, 13 of the rejoinder petitioner stated that even after introduction of the State Plan of Action called **ASTITVA** in collaboration with the several departments of the Government, namely, Education, Rural Development, Social Welfare, I.C.D.S, Labour, Human Resources, Health, Police and District Administration, there is nothing on record to indicate the degree, extent to which the State Action Plan has succeeded in curbing the organized crime of trafficking as hardly any facts, figures are made available from 38 districts of the State in the counter affidavit. Counter affidavit does not refer to the number of cases registered/ tracked by the Anti Human Trafficking Units in past three years or since the date of its inception. It is also silent about the measures which were taken to rehabilitate the



rescued women and children so as to prevent their return into the black holes of the prostitution. In Paragraph 12 of the rejoinder petitioner asserted that State, District level and other Committees are wholly non-functional and cannot eliminate the suffering of the victims of trafficking unless it is tackled at the grass-root level, which is being effectively done by the N.G.O. but crippled by the inaction of police. In Paragraphs 14, 15 of the rejoinder petitioner referred to the order of the Director General of Police bearing Memo No. 30 dated 17.06.2009, Annexure-B whereunder Anti Human Trafficking Units were constituted and submitted that no positive action was taken by the Units. The respective Superintendent of Police failed to take swift action in a professional manner against the accused trafficker. The Superintendent of Police also did not care to maintain a list of the victims and the steps taken for their rehabilitation as has been envisaged in the State Plan of Action **ASTITVA** dated 31.12.2008, Annexure-A. Feed back from the Superior Nodal Officer of their respective jurisdiction has also not been received which is indicative of the lack-luster approach of the State in the matter of human trafficking. In the same paragraph petitioner further averred that in the district of Araria Anti Human Trafficking Unit is not handling the cases of trafficking as per the provisions of the Act. Thus, failing in their statutory duty in rescue



of the victims of Uttari Rampur, as according to petitioner, Superintendent of Police, Araria did not involve AHTUs in rescue of victims which is indicative of the fact that the exercise of establishing the Unit is nothing but sham. In this connection, petitioner has also referred to the instruction issued by I.G., C.I.D. dated 24.10.2011 addressed to all the Superintendent of Police of Bihar enumerating the duties of AHTUs and chalking out the manner in which Superintendent of Police should associate AHTUs in anti trafficking operations. In Paragraph 18 of the rejoinder petitioner asserted that the police administration is still functioning in contravention of the provisions of Section 13 of the Act as no special police officer has yet been appointed for conducting the rescue operation under the Act. In Paragraph 20 of the rejoinder petitioner stated that steps taken to rehabilitate the victim has not at all been mentioned in the counter affidavit. Counter affidavit is also silent about the establishment, maintenance of shelter homes for rehabilitation of the victims and grant of legal advice, counselling, job training and health care facilities to them. In Paragraphs 23, 24, 25 of the rejoinder petitioner asserted about the apathetical attitude of Child Welfare Committee, Araria and that of State Commission for Protection of Child Rights and pointed out that there is hardly any implementation of the Act and the Juvenile Justice Act in the

district of Araria.

8. By filing rejoinder to the supplementary counter affidavit petitioner asserted that the authorities of the State responsible for executing the State Plan of Action (**ASTITVA**) are lacking in sensitivity as in 27 out of 38 districts of the State District Level Committee, Anti Human Trafficking Units held its meeting after passing of order dated 01.08.2013 in the instant case. In five districts meetings were held in the preceding five months and no meeting at all has been held in other six districts and thereby the authorities failed to discharge their constitutional obligation as enshrined in Article 23 of the Constitution. In Paragraph 6 of the rejoinder petitioner asserted that the officers connected with the implementation of the action plan were provided training way back in the year 2011 when the Criminal Law Amendment Act providing for new definition of human trafficking had not been inserted in the Penal Code, as such, it is absolutely expedient in the interest of justice that elaborate training programme be organized to ingrain in the mind of the Special Police Officers as to how they are required to deal with the menace of trafficking in the light of Palermo concept of trafficking and the amended law for effectively tackling the menace of human trafficking in the State which has assumed horrific proportions. In Paragraph 7 of the rejoinder petitioner



asserted that money allocated under the Social Rehabilitation Fund amounting to Rs. 95.10 lakhs is meager considering the extent and enormity of medical and financial requirement of the victims. It is also stated in the same paragraph that a sum of Rs. 12.82 lakhs was spent towards the welfare and rehabilitation of 276 victims. In the same paragraph further statement has been made that in most of the districts detailed by the State in their list there is neither any victim nor disbursement. In the same paragraph it is further stated that in the district of Araria there has been no efforts whatsoever to rescue and rehabilitate those suffering from inter-generational prostitution and young girls of the age of 12 years are being thrown into the ugly trade which is well within the knowledge of the district authorities but no action has been taken by them despite fervent appeals by the petitioners necessitating the filing of present Public Interest Litigation. In the same paragraph it has further been averred that petitioners informed the District Magistrate and Superintendent of Police, Araria, the Nodal Officer of Anti Human Trafficking Unit at Araria that there was wide spread trafficking going on in Kali Mela in January, February, 2012 but no action was taken against the Mela contractor who remained unscathed right under the august nose of the public functionaries. In Paragraph 8 of the rejoinder to the supplementary counter affidavit petitioner averred that in spite of the



direction of the High Court to file affidavit indicating the number of cases where the District Level Anti Human Trafficking Unit has taken action including steps for rehabilitation of the victim indicating the measure taken in the last six months with brief reports, no such report has been brought on record. In Paragraph 9 of the rejoinder petitioners asserted that Special Police Officers, as envisaged under Sections 13(1) (2) and (2A), has not been appointed, as such, there is no occasion to implement sub-section (3) of Section 13 of the Act. In the same paragraph petitioner further averred that in the earlier counter affidavit it was mentioned that Special Police Officers are to be appointed by the Social Welfare Department as per the procedure in Section 19 of the Bihar Police Act but it is not known whether any such appointment has been made till date. In Paragraph 10 of the rejoinder petitioner stated that Act provides for mechanism which ensures that trafficking police officer can undertake search of any premises with or without warrant as the situation may require but it is mandatory for the police officer in terms of sub-section (2) of Section 15 of the Act to call upon and ensure presence of two or more respectable inhabitants of the area to attend and witness the search in all cases. Out of two inhabitants of the area associated to witness the search one must be a woman. It is also incumbent on the Special Police Officer or the Trafficking



Police Officer in terms of sub-section (4) of Section 15 of the Act to remove the person from within the premises found therein and forthwith produce him/ her before the Magistrate as per sub-section (5) of Section 15 of the Act. In this connection petitioner pointed out that in view of the new definition of trafficking given in Section 370 of the Penal Code, it is important for the State machinery to be aware about the procedure in which offence of trafficking is to be dealt with and until Special Police Officers are appointed under Section 13 of the Act and understand the mechanism provided under sub-sections (2)(4)(5) of Section 15 of the Act implementation of Sections 370, 370-A inserted by Criminal Law Amendment Act may not be secured. In the same paragraph it has further been averred that as per sub-section (6A) of Section 15 of the Act any woman or girl removed under sub-section (4) by the Special Police Officer must be removed in presence of at least two women police officers. In case, any woman or girl removed under sub-section (4) is required to be interrogated, the interrogation be done by woman police officer, if available, otherwise in presence of a lady member of a recognized welfare institution or organisation. In Paragraph 11 of the rejoinder to the supplementary counter affidavit petitioners asserted that in order to eliminate trafficking and effectively rehabilitate the trafficked victims the State must first endeavour to set up shelter



homes duly certified by the Welfare Department so as to ensure that the rescued victims are provided healthy environment for reverting back to a dignified existence. It is further important that such shelter homes must be continuously monitored by the State authorities to ensure their proper maintenance and also granted adequate security and rehabilitation machinery so that such women may be brought back into the society with self confidence and dignity. In Paragraph 12 petitioners asserted that the State Action Plan **ASTITVA** originated with much enthusiasm but failed to gather momentum and fulfil the goal it sought to achieve as the Home Department could not gear up the requisite machinery to tackle the flourishing trafficking trade and the AHTUs did not meet at necessary intervals to address itself to the purpose for which it was created and has remained an empty formality. Finally petitioners stated that in the interest of justice, it is expedient that the High Court should issue necessary direction calling upon the State as well as District Units to make it mandatory to file reports periodically which shall be reviewed by impartial bodies, Committees created for the purpose.

9. By filing supplementary counter affidavit on behalf of respondent no. 1 it was clarified that due to inadvertence Home (Police) Department requested the Social Welfare Department under Memo No. 3740 dated 26.04.2011 to appoint, impart training to



special police officers under Section 13 of the Act with further information that the Home (Police) Department under Memo No. 8483 dated 04.08.1997 has already notified all the Superintendent of Police, Deputy Superintendent of Police, Inspector posted in Criminal Investigation Department (C.I.D) and the districts of the State as special police officers under the Act and requested Social Welfare Department under letter no. 11264 dated 16.09.2013 to arrange for imparting training to the notified special police officers in the light of the earlier letter dated 04.08.1997 and furnish the said information to this Court by filing affidavit in the present case.

10. By filing rejoinder to the supplementary counter affidavit filed by respondent no. 1 petitioners submitted that though special police officers have been duly notified under Memo No. 8483 dated 04.08.1997 the notified officers have not been effectively implementing the provisions of the Act and discharging their statutory duties and human trafficking seems to be on the rise. The concerned officers have perfunctorily addressed themselves to the issue on account of their failure to treat the victims rescued as per the provisions of the Act for non-availability of victim friendly rehabilitation shelter homes with adequate support mechanism. In this connection, it was also pointed out that the State Government has not taken any steps to provide adequate medical, counselling



support to the victim and the treatment meted out to them after their recovery is causal inasmuch as they are left without any monitoring mechanism and the entire rescue operation becomes an exercise in futility defeating the provisions of the Act. In Paragraph 3 of the rejoinder petitioners referred to notification of the Government bearing Memo No. 8443 dated 04.08.1997 whereunder Special Police Officers were notified under Section 13 of the Act and submitted that bare perusal of the said notification would indicate that although the name of the Act has been substituted by Act No. 44 of 1986 and the word “Suppression of Immoral Traffic in Women and Girls” substituted from the nomenclature of the Act with the word “Prevention” but the authorities of the State are not aware about the change in the nomenclature of the Act and thereby are also not aware about the purpose, large context which persuaded the Parliament to change the nomenclature of the Act to provide for Prevention of Trafficking and Rehabilitation of the victims by ensuring minimum standard for correctional treatment as also to make the Penal provisions more stringent. In Paragraph 6 of the rejoinder petitioners asserted that the training imparted to the special police officers has not produced any tangible result as they are not discharging their duties in terms of the provisions of the Act and continue to conduct raid without the presence of a women social

worker.



11. Petitioners also filed rejoinder to the supplementary counter affidavit filed on behalf of respondent no. 1 asserting in Paragraph 5 that from the pleadings filed on behalf of the State respondents itself it will appear that AHTUs were constituted in the year 2008 but became active only after the present Public Interest Litigation was filed. Even now nothing tangible has been done to prevent trafficking by conducting raid, rescue and above all to rehabilitation of a trafficked victim. In the same paragraph petitioners challenged the respondents to produce before the Hon'ble Court even a single case where a trafficked victim has been rescued, rehabilitated so as to free her from the clutches of trafficking or to prevent her from being further trafficked. In the same paragraph petitioners further stated that they have often seen that after a victim is rescued no sooner she is sent back to the same environment from where she was trafficked in the name of reintegration results in re-trafficking and negation of her fundamental rights.

12. By filing counter affidavit on behalf of respondent nos. 6, 7, 8 Collector, Araria informed this Court that District Level Anti Human Trafficking Committee has been functioning in Araria district and several steps have been taken by the Committee for prevention of trafficking and rehabilitation of the victim and thereby



Committee is discharging its constitutional obligation. It has further been averred in the said affidavit with reference to proceedings of the Committee dated 26.08.2013 that petitioner-N.G.O. has also been included in Awareness sub-committee of District Level Anti Human Trafficking Committee, Araria so as to enable the petitioners to take active part in prevention of human trafficking. Perusal of resolution of the Committee dated 26.08.2013 further indicates that besides Awareness sub-committee Raid, Rescue, Prosecution Monitoring Committee were also formed to root out human trafficking. In Paragraphs 7, 8 of the aforesaid affidavit it has been asserted that in the district of Araria 39 cases under the Act have been registered at the instance of District Level Anti Human Trafficking Committee in which 41 victims have been rescued, out of whom 33 have received their cheque of Rs. 6,000/-, the amount of rehabilitation support and payment to the remaining eight shall be made after fund is received for the purpose. In the same paragraph further statement has been made that training workshop was organized on 20.11.2013 and next training workshop is proposed to be held in January, 2014.

13. In rejoinder to the supplementary counter affidavit filed on behalf of respondent nos. 6, 7, 8 petitioners stated that though Anti Human Trafficking Committee has been constituted in



the district of Araria there is no tangible effect of its existence as rampant human trafficking still pervades in the area and the question of the State fulfilling its constitutional obligation is a far cry. In the same paragraph it has also been averred that disbursement of Rs. 6,000/- to a trafficked victim can hardly suffice towards her rehabilitation as rehabilitation of any woman, much less a woman under awkward circumstances, requires special care which can hardly be provided with Rs. 6,000/-. In Paragraph 5 of the said rejoinder petitioners stated that though Non-Government Organisation “Apne Aap” has been included in one of the sub-committees of the Anti Human Trafficking Unit, Araria but the petitioners are not able to perceive any sincere effort by the so called sub-committee inasmuch as rampant trafficking is still existing in the area which also extends across the border and persons known to be seasoned trafficker have been allowed to move freely and continue trafficking girls into the flesh trade. It has also been stated in the same paragraph that in a recent case registered in Araria Mahila Police Station vide Case No. 40/13 Md. Gainul a noted trafficker of the area trafficked one Raushni Khatoon, a minor girl, who after rescue was sent to her parents’ house wherefrom she has been re-trafficked all over again within a week of the incident. It is further stated in the same paragraph that had the District Level Anti



Human Trafficking Committee stepped into action and secured her proper rehabilitation by housing her in shelter home with vocational training facility occasion to enable her tormentor to re-traffic her into the black holes could have been avoided. In Paragraphs 6, 8 of the said rejoinder petitioners asserted that in absence of Standard Operating Procedure to prevent human trafficking there is bound to be misapplication of the funds and no amount of funding will ensure rehabilitation of trafficked victims. In Paragraph 7 petitioners asserted that in the district of Araria few cases of trafficking have been reported but in many other districts not even a single case of human trafficking has been reported although this Court under orders dated 29.10.2013 directed to furnish figures of trafficking cases reported in all the districts.

14. Further counter affidavit has been filed on behalf of respondent no. 2. In Paragraph 3 whereof statement has been made that to combat human trafficking Government has established women police station in all the districts of Bihar and for smooth functioning of the said police station State Government has sanctioned 647 posts under letter no. 8750 dated 01.12.2011 and series of motivational-cum-capacity building training/ sensitization programme has been organized for Station House Officers of all the women police station. In Paragraph 4 of the said affidavit statement



has been made that on pilot basis female counsellors have been deputed in 23 police station of Patna district to provide immediate service of trauma counselling to the victims. It has also been averred in the same paragraph that Child Welfare Committee has been constituted in all the districts of the State for proper rehabilitation, social integration of child victim. It has further been stated in the same paragraph that C.W.C. in every district has been asked to conduct home study (social investigation report) to assess, ensure safety of the rescued victim by providing necessary medical, psychological assistance to the victim during her stay in the institution. C.W.C. has also been directed to maintain a list of local N.G.Os. providing residential support, special services in their respective districts. In Paragraph 5 of the said affidavit statement has been made that Government has established short stay homes in 21 districts for social, economic rehabilitation of women who are victims of domestic violence. In the same paragraph it has further been averred that the Act and the Protection of Women from Domestic Violence Act, 2005 mandate that at least one such home for women should be established in each district. It has further been stated in the same paragraph that principal thrust is to reintegrate the women with her family. The home provides a compassionate environment along with essential services to the women affected by



domestic violence and trafficking. The services include nutritious food, medical, psychiatric services, legal aid and vocational training amongst others. It is also stated in the same paragraph that through Short Stay Homes total number of human trafficking cases registered are 52, out of which 29 have been properly rehabilitated between 01.04.2013 till 31.12.2013. In Paragraph 6 statement has been made that State Government has sanctioned establishment of protection homes and correctional homes for women, girl victim of trafficking under the provisions of the Act. In Paragraph 7 of the said counter affidavit it has been averred that till December 31, 2013 67 cases relating to human trafficking has been registered in concerned police station across the State, out of which three have been disposed of, remaining 64 are pending for disposal in the concerned Court. Out of three disposed of cases, in one case accused has been convicted but in two cases accused has been acquitted by the concerned Court. In Paragraph 8 of the aforesaid affidavit further statement has been made that the State Government in the Home Department has notified district-wise Nodal Police Officers to handle cases relating to exploitation of women/ crime against women. In Paragraphs 9, 10 of the said affidavit further statement has been made that a sum of Rs. 95.10 lakhs has been allocated for disbursement amongst the victims of trafficking, women help line



has been established in 35 districts so as to enable the women in distress to seek assistance of crisis intervention centre where counselling as well as legal assistance is provided to the victim. In the same paragraph further statement has been made that human trafficking cases registered so far are 43, out of which 28 victims have been properly rehabilitated between 01.04.2013 to 31.12.2013. In Paragraph 13 statement has been made that State Government has established Block Referral Unit in 66 blocks to work as relief point for women in distress for providing counselling services and also linking them to available referral services, such as, help line, Short Stay Homes, medical, legal aid as the case may be.

15. By filing further supplementary affidavit petitioners asserted that Raushni Khatoon, a trafficked victim after rescue was restored to her parents, who sent her to her in-laws house where trafficker Md. Gainul had easy access, as a result thereof Raushni once again landed in the clutches of Gainul. Raushni was again rescued by the petitioner-organization and the organization wanted to rehabilitate her but police again handed her to her in-laws, from where she is still being trafficked. In the same paragraph, it has further been asserted that petitioners reliably learnt that Gainul is a regular visitor to the house of the in-laws of Raushni. In Paragraph 6 of the said affidavit further statement has been made that Gainul is a



renowned trafficker, he is named accused in several cases, every time he is arrested, is released on bail and he continues to indulge in the horrific trade of trafficking and has been moving scot-free in the area. In Paragraph 7 of the said affidavit petitioners prayed for rescue and rehabilitation of Raushni, a minor girl as she is still under constant threat of being trafficked and handed over to Gainul. In the same paragraph further prayer is made to arrest, prosecute Gainul, who is the kingpin of trafficking trade flourishing in Forbesganj area. In Paragraph 8 of the said affidavit petitioners stated that C.W.C. functions under the aegis of Social Welfare Department has proved itself to be a non-functional body as rescued girls who are sent to C.W.C. are not properly taken care of and more often victims of trafficking are not provided protective care of shelter home which result in their return to the same ugly environment of exploitation.

16. Respondent no. 2 also filed second supplementary counter affidavit. In Paragraph 3 whereof statement has been made that Department has sanctioned Short Stay Homes for women, girls in all the 38 districts under the Chief Minister's Women Empowerment Scheme with aim and object to provide temporary shelter, support to women, girls who has no support system to rely on and also to rehabilitate women, girls socially, economically by providing them training, counselling. In Paragraphs 4, 5 of the said



affidavit it has been averred that Short Stay Homes have been established through N.G.Os. in 31 districts of the State. In 13 districts operation of Short Stay Home has been stopped for the time being as irregularities were found in the proper functioning of the N.G.O. concerned. In the same paragraph further statement has been made that proposal has been invited from interested N.G.Os. working in 18 districts to consider their case for permitting them to establish, run Short Stay Home in those districts. In Paragraphs 8, 9 of the said affidavit statement has been made that Department has organized three days' training of trainers workshop on anti human trafficking in the years 2011, 2012. Similar training was also organized in the year 2014 in which altogether 100 participants were present, out of whom 44 were police officers, 29 were prosecution officers and remaining were representatives of different N.G.Os.

17. Union of India, respondent no. 9 has also filed counter affidavit in the matter asserting that the Central Government is concerned with the issue of trafficking of women, children for sexual exploitation. The Ministry of Women and Child Development has issued advisory dated 09.09.2009, 31.01.2012 and 30.04.2012 advising the States for effective implementation of the Act to prevent trafficking of women, children. In Paragraph 5 of its counter affidavit respondent no. 9 has stated that as per sub-section (4) of



Section 13 of the Act the Central Government appointed officers of Delhi Special Police Establishment above the rank of Inspector of Police to serve as trafficking police officer for the purpose of investigating any offence under the Act. Special police officers so appointed shall exercise all the powers, functions in discharge of their duties as special police officer under the Act. In Paragraph 7 the affidavit states that the Ministry of Women and Child Development is implementing **Ujjwala**, a comprehensive scheme for prevention of trafficking and rescue, rehabilitation, reintegration of victims of trafficking of sexual, commercial exploitation. One of the important components of the scheme is establishing, maintaining protection and rehabilitative homes for women and child victims of commercial, sexual exploitation. The inmates are provided vocational training for their economic rehabilitation. The homes are established/ maintained by Non-Government Organisations. In Paragraphs 8, 9, 10, 11, 12 the affidavit states that Government of India is also implementing schemes concerning crèche, pre-school programme, day and night care centres, counselling centres as also their broad features. In Paragraphs 13, 14, 15, 16, 17 the affidavit states about the protocol for pre-rescue, rescue and post-rescue operation as also strategy, guidelines for such operation and rehabilitation.



18. In the light of the orders of this Court dated 21.07.2014, 22.08.2014 petitioners filed supplementary affidavit highlighting issues which needs to be addressed by the authorities for effective implementation of the Act. In Paragraph 3 of the said supplementary affidavit petitioners reiterated that they are actively engaged in fighting human trafficking and work in cooperation with all other stakeholders i.e. Government, Academia, Civil Society and the media to support each others' effort to create new partnership and develop effective tools to fight human trafficking. In the same paragraph petitioners stated that without the cooperation of the Government it may not be possible to combat the evil of trafficking and to grant protection to the victim (s) from the traffickers. In Paragraphs 4, 7 of the supplementary affidavit petitioners referred to Section 21 of the Act and submitted that it is the duty of the Government to establish Protective Homes, Corrective Institutions to protect the victims of trafficking in every districts of the State but the Government has not established adequate number of Protective Homes, Corrective Institutions to protect the victims in accordance with the Act. It is also stated in the same paragraph that rescue, rehabilitation of the trafficked victim must go together. Rescue of the trafficked victim without rehabilitation is meaningless. In the same paragraph it is further stated that the State Government with



the cooperation of the Central Government should commit adequate financial support for execution of viable schemes to rehabilitate victims in gender sensitive manner. In Paragraph 6 of the supplementary affidavit petitioners stated that financial support of Rs. 6,000/- each for rehabilitation of the victim is wholly insufficient and victims are vulnerable to re-trafficking. In the same paragraph it is further stated that rehabilitation of the victim will not happen in absence of sufficient financial assistance. In Paragraph 8 of the supplementary affidavit petitioners referred to Section 13 of the Act casting statutory duty upon the respondent authorities to appoint Special Police Officers and Advisory Boards for specified area but the police officers appointed as Special Police Officer have neither been trained nor appointed in accordance with the gazette dated 31.12.2008 issued by the Social Welfare Department of the Government. In Paragraph 9 of the supplementary affidavit petitioners asserted that the police authorities are not taking action in the light of the newly substituted Sections 370, 370-A of the Penal Code to deter the traffickers from indulging in trafficking of human being, particularly women and children. In Paragraph 10 of the supplementary affidavit petitioners asserted that search of the premises by the Special Police Officers without warrant is being conducted ignoring the provisions of sub-section (2) of Section 15 of



the Act which provides for search of a premises in presence of two or more respectable inhabitants of the locality in which the premises is situate, one of whom shall be a woman, may be from an area other than the one in which premises is situate. In Paragraph 11 of the supplementary affidavit petitioners asserted with reference to Section 23 of the Act that the Government has not yet notified the Rules in official gazette for granting protection to the witness for effective prosecution of the case filed against a trafficker. In Paragraph 12 of the supplementary affidavit petitioners referred to sub-section (6A) of Section 15 of the Act which provides for interrogation of a woman in connection with a case filed under the Act by a woman police officer but in absence of woman police officer, in presence of a lady member of the recognized welfare institution only and submitted that while interrogating the women Special Police Officer or the trafficking police officer are generally ignoring the said provision of the Act and women are being interrogated by the male police officers in absence of lady member of a recognized welfare institution. In Paragraph 13 petitioners referred to Section 17 of the Act which deals with intermediate custody of the persons removed under Section 15 or rescued under Section 16 of the Act and asserted that without adequate training of police personnel compliance of Section 17 of the Act is virtually



impossible. According to the petitioners, sensitization of the police personnel in this regard is necessary and there has been cases where production has been delayed and manipulations made in between. In Paragraph 14 petitioners referred to Section 17-A of the Act which provides conditions to be observed before placing the person rescued under Section 16 in the custody of parents/ guardians and submitted that Magistrate concerned are not observing the provision in letter and spirit and without taking adequate precaution and satisfying themselves about the capacity or genuineness of the parents/ guardians or husband to keep such person are handing over the person rescued under Section 16 to the parents/ guardians or husband. In Paragraph 15 of the supplementary affidavit petitioners referred to Section 21 of the Act and submitted that Government has not taken adequate steps to establish Protective Homes. The homes which have already been established are not maintaining minimum standards as specified in the licence granted. No strict vigilance or control mechanism has yet been evolved by the State Government for ensuring minimum standard in the Protective Homes/ Corrective Institutions. Corrective Institutions are being mismanaged and rescued victims are not provided adequate care and protection for a sufficient period, result being that inmates fall prey to unsavory elements. In the same paragraph, it is further asserted that there is



hardly any counselling, vocational training facility available in the Protective Homes. In Paragraph 16 of the said affidavit petitioners referred to Sections 22, 22-A of the Act, which require establishment of special Courts for trial of trafficking cases and with reference to the said provision it has been asserted that the Special Courts are not constituted for speedy trial of trafficking cases result being that such cases remained pending for indefinite period.

19. Respondent no. 2 also filed supplementary counter affidavit in the light of the aforesaid two orders reiterating the statements made earlier and further stated in Paragraph 6 thereof that the Government of Bihar has prepared Standard Operating Procedure (SOP) on conducting raid, rescue, care & protection and rehabilitation of trafficked victims in consultation with the representatives of Non-Government Organisation serving in the field, Chair-Person of Child Welfare Committees constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 and Assistant Director, District Child Protection Unit of all the districts. In the light of the feed back received in the consultation process from the stakeholders Standard Operating Procedure will be notified soon for its implementation. In Paragraph 7 of the supplementary counter affidavit statement has been made that under Section 22-A of the Act Government in consultation with Patna High Court has



notified special Courts for speedy trial of the cases filed under the Act. In Paragraph 8 of the affidavit further statement has been made that in terms of the provisions of the Act State Government is in the process of establishing protection, correctional homes through Non-Government Organisation with financial support from the Government and Non-Government Organisation also. Selection of Non-Government Organisation for setting up correctional home is under process and short-listing of eligible N.G.Os. has already been completed. In Paragraph 9 of the affidavit statement has been made that the State is in process of formulating scheme for vocational training (residential) and rehabilitation of trafficked victims so that they can be gainfully employed.

20. In the light of the pleadings filed by the parties and the order of this Court dated 09.09.2014 petitioners through Ms. Tinku Khanna and the State respondents through Director, Social Welfare, Bihar, Patna submitted their joint submission. Perusal of joint submission indicates that the submissions have been categorized in four headings : Prevention, Raid & Rescue, Rehabilitation and Prosecution.

(A) Prevention :

(i) Vulnerability mapping of children living in red light area and children at risk to be trafficked (Nomadic and Semi-

Nomadic tribes mostly living in border areas of the State) and preparation of individual child care plan by the Child Welfare Committee in each district.

(ii) Linkage of vulnerable families with Government Schemes.

(iii) Ensuring enrolment and retention of vulnerable children in school.

(iv) Creating gender resource centre in the blocks where vulnerability of children is high.

(v) Imparting life skills and job ready skills to the youth living in red light area and linking the children from red light area to sustainable livelihood opportunities.

(vi) Monthly monitoring of vulnerable children by the notified officer, who should submit report, on the basis of which appropriate action shall be taken by the Social Welfare Department.

(vii) Police to work as watch dog against known-traffickers.

(viii) Anganwari Sevika be held accountable for birth registration, especially in red light areas, N.G.Os. working at the grass-root level may also be consulted for verification.

(ix) Establishment and proper functioning of Day Care Centre, Anganwari Centre etc.

(x) Middle, High school be set up near red light area.

(xi) Kasturba Gandhi Balika Vidyalaya (KGBV) to be recognized as safe space for the rescued minor survivors of trafficking.

(xii) KGBV be upgraded to Class-XII from Class-VIII, which is its present status in Bihar.

(xiii) Instructions be issued to the authorities not to grant licence for the travelling theatre, Nautanki as according to the petitioners travelling theaters are the recruiting grounds for the young girls in the name of performing entertainer but girls are made to perform nude dance leading to their commercial, sexual exploitation.

(B) Raid & Rescue

(i) There should be raid in red light areas/ other areas where children, women are in distress following the Standard Operating Procedure. The raiding party must consists of women police officer and N.G.O. representative.

(ii) Rescued victims be placed in reception centre established at divisional level and subjected to counselling by trauma counsellor followed by medical examination after production of the victim before the concerned C.W.C.

(iii) Police personnel dealing with trafficking cases



must be well-versed with the provisions of the Act and Sections 370, 370-A of the Penal Code to book the trafficker in connection with the offence of trafficking, exploitation of the trafficked person by imparting training so as to enable the police officer to effectively deal with the problem of trafficking.

(iv) Adequate number of Protective Homes, Corrective Institutions be established in every district of the State in order to protect the victim of trafficking. In order to protect the victim in accordance with the Act rescue of trafficked victim should go along with the effective rehabilitation. Each victim should be placed in the Protective Homes, Corrective Institutions for a considerable period of time so that she can get opportunity to equip herself with adequate skill that would prevent her getting re-trafficked. The shelter homes should effectively look into the needs of a victim regarding legal advice, counselling, job ready skill training and health care. The care givers working in homes should be trained for capacity building as well as enhancing motivation.

(v) When a child is recovered from a red light area the intents of the parents, guardians, husband should be checked, rechecked through P.R.I. representative and also from native police station before granting interim relief/ custody to the parent/ guardian. In this regard the Authority/ Court shall verify the

character of the custody keeper.

(vi) Annual Social Audit must be made by independent agency and for the same Nodal Department should take all necessary steps.

(C) Rehabilitation

(i) Victim be given identity card like BPL, AADHAR through which she will link herself to number of social security schemes i.e. Indira Awas Yojna, MANREGA, RGRSB Yojna, Jan-Dhan Yojna etc. The victim be also allotted land as in many cases traffickers have gained control over the victim because they know that she does not have any safe place to go.

(ii) Victims should get trained into skills that would help her in becoming economically self sufficient. The residential vocational training be provided by the Department concerned to the victim in the trade of her choice and bank loan, if required, may also be sanctioned. During training period she be not handed over to any person like natural guardian, husband or others. To meet the emergencies in the family like demise, marriage etc. victim may be allowed to leave the place of her stay for a day or two with direction to come back on the date fixed.

(D) Prosecution

(i) Witness protection is vital for effective prosecution



of the case. In absence of effective witness protection programme most of the witnesses turn hostile, result being cases instituted against the traffickers end in acquittal for want of evidence. It is expected from the Government that AHTUs in coordination with District Legal Services Authority ensure conducive atmosphere to make it safe for the victims to testify in favour of the prosecution. Family of the trafficked victim should be brought into the purview of social security system.

(ii) Trafficked victim should be compensated during the interim period.

(iii) The police and the prosecution should work in tandem for securing effective conclusion of the case in a time frame preferably within six months.

21. Director General of Police, Chief Secretary, Bihar having gone through the joint submission filed by the petitioners, Director, Social Welfare filed supplementary counter affidavit, counter affidavit respectively in the matter stating that the joint submission made by the petitioners, Director Social Welfare is appropriate as it covers overall the issues concerning protection of vulnerable children, women from human trafficking and provide for proper rehabilitation of trafficked victims. In Paragraph 5 of the supplementary counter affidavit filed on behalf of Director General



of Police, Bihar, Patna it has been stated that since trafficking of person is an organized crime, source information is a major area of intelligence collection in detecting crime of trafficking and rescue of victim. Besides crime stoppers, help lines, police control room etc., Non-Government Organisation are also important source of information. The Non-Government Organisation working at local level may play a crucial role in providing information regarding scene of crime which includes brothel or places of exploitation, the source, transit, destination point, the vehicle used for transfer of victim at any place, the other places where women juvenile are exploited or are kept in distress etc. It is quite essential that list/ data of Non-Government Organisation recognized by the State Government at district and local level is prepared and provided to the district police/ AHTU as also duly publicized. The recognized N.G.O. should provide information to the police/ other stakeholders regarding the crime. In Paragraph 6 of the said affidavit it is further stated that police headquarter has sent a proposal to the Government of Bihar for creation of Anti Human Trafficking Police Stations in 14 districts of the State i.e. Patna, Gaya, Munger, Muzaffarpur, Katihar, Purnia, Madhubani, Begusarai, Sitamarhi, Motihari, Kishanganj, Araria, Bettiah and Saharsa as these districts have been found to be more prone and vulnerable to the crime of human



trafficking. In this connection, reference is also made to the direction of the Supreme Court in Writ Petition (Civil) No. 75/ 2012 for creation of Anti Human Trafficking Police Station. In Paragraph 7 of the affidavit it has also been averred that when information is received regarding victims/ activities relating to CAS and/or trafficking the police needs help, assistance of concerned Department in district while conducting raid and rescue operation. It is, therefore, necessary that the concerned Department, such as, Social Welfare, Labour, Public Health Engineering etc. may notify a Nodal Officer for Anti Human Trafficking Unit at State, District level so as to enable the Anti Human Trafficking Unit at the State, District level to take prompt action.

22. In Paragraph 7 of the counter affidavit filed on behalf of the Chief Secretary, Bihar, Patna it has been stated that it has been decided to formulate scheme through which trafficked victims may be imparted residential, vocational training for their economic empowerment. The ultimate purpose of imparting training is to link the victim with income generating avenues to make the victim self reliant. In the same paragraph it has further been averred that there is no specific protocol that specifies roles and responsibilities of various stakeholders involved in preventing rescue, care & protection and rehabilitation of trafficked victim of



commercial, sexual exploitation and child labour. Various Government Departments and other stakeholders play important role in the rescue, repatriation and rehabilitation of the victims. During raid as well as post-raid operation there is no clear laid out mechanism and supporting instructions which could be relied upon by the various stakeholders for taking necessary steps. Inter-departmental linkages, therefore, has to be formalized and mechanism for coordination is required to be clearly laid out which the Department concerned has developed as a set of guidelines (SOP) for safe rescue, care, protection and rehabilitation of the trafficked victims and contents thereof was brought to the notice of the State Level Anti Human Trafficking Coordination Committee in its meeting held on 10.10.2014 and the SOP shall be implemented after the same is notified. In Paragraph 8 of the affidavit it has been averred that trafficking of women, children for commercial, sexual exploitation is an organized crime that violates basic human rights. Appreciating such fact Ministry of Women and Child Development has also formulated a comprehensive scheme for prevention of trafficking for rescue, rehabilitation and reintegration of victim - **Ujjwala**. In the same paragraph, it has further been averred that in the meeting of State Level Anti Human Trafficking Coordination Committee it was decided to organize workshop in collaboration



with UNICEF, Patna especially in border districts for proper implementation of integrated Scheme **Ujjwala**. In Paragraph 9 of the affidavit statement has been made that decision has been taken to map out all red light colonies in each block and prepare block-wise plan for identification of all children in the age group of 0-18 years in the areas. It has further been decided to strengthen KGBV where vulnerability is very high, especially in age group of 12-18 years so that trafficked victims could get residential education, vocational training for longer period of time.

23. Before proceeding to consider the prayer made in the writ petition in the light of the pleadings, submissions made by the parties, it is necessary to notice Article 23 of the Constitution which provides for prohibition of traffic in human beings and forced labour. Any contravention of Article 23 is an offence punishable in accordance with law. India having become signatory and ratified International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others at New York on 09.05.1950 enacted Suppression of Immoral Traffic in Women and Girls Act, 1956 for punishing those who indulge in trafficking of women and girls for immoral purposes. Later, India became signatory and ratified the Convention for Elimination of all Forms of Discrimination Against Women 1979 which provides for



prohibition of discrimination against women in all its forms, amended the nomenclature of the aforesaid Act by enacting Amending Act no. 44 of 1986 providing for substitution of words “Suppression of Immoral Traffic of Women and Girls” from the nomenclature of the said Act with the word “Prevention” to provide for prevention of trafficking and rehabilitation of victims by ensuring minimum standard for correctional treatment as also to make the Penal provisions more stringent.

India having ratified U.N. convention on the right of child in 1992 prescribing a set of standards to be adhered by all State functionaries in securing the best interests of the child and for giving effect to the relevant constitutional provisions of Articles 39, 45 and 47 imposing primal responsibility on the State and its functionaries to ensure due care and protection to every child so that his basic needs during childhood is fulfilled and his childhood is not only protected but he is able to grow realizing his full potentiality, enacted the Juvenile Justice (Care and Protection of Children) Act, 2000. Having enacted the aforesaid Act respondent no. 9 adopted National Charter for Children in February, 2004 underlining intent to secure for every child its inherent right to be a child and enjoy healthy, happy childhood to address the root causes that negate the healthy growth and development of children. Perusal of the National



Charter for Children, 2003 indicates the commitment of the State to take affirmative measures by way of legislative, policy enactment to promote and safeguard the right of all children to live and grow with equity, dignity, security and freedom, especially those marginalized or disadvantaged so that all children have equal opportunities and that no custom, tradition, cultural or religious practice is allowed to violate or restrict or prevent children from enjoying their rights and childhood. Government of India, Ministry of Women and Child Development being conscious of its responsibilities to protect the childhood of every child, particularly vulnerable children of marginalized or disadvantaged groups rolled out Integrated Child Protection Scheme in the year 2009 for protecting the childhood of all the children including 40 % of India's vulnerable children whose parents on account of poverty are unable to protect their childhood. In 2013 Government of India once again reviewed the progress made in execution of Integrated Child Protection Scheme, 2009 drafted rights based National Policy for Children 2013 to address the continuing and emerging challenges in the situation of Children for filling up the gaps which were found in execution of the Scheme for providing due care and protection to children of the disadvantaged on the cardinal principle that unless rights, best interest of every child in difficult circumstances is protected their vulnerability

reduced by undoing abuse in any form, neglect, exploitation, abandonment and separation from family, it may be difficult to protect the childhood of the vulnerable child.

24. In 2011 India ratified United Nations **Palermo Protocol** which provides for prevention, suppression and punishment of persons indulging in trafficking of human beings, especially women and children. Perusal of Protocol would indicate that the same widened the concept of trafficking of person by including all those who for the purpose of exploitation recruits, transports, harbours, transfers or receives a person or persons.

Aforesaid definition of trafficking of person was considered by Justice J.S. Verma Committee constituted for suggesting Amendment in the criminal law. In the light of the report of the Committee new Sections 370, 370-A was substituted in the Penal Code by Act 13 of 2013 whereunder trafficking of person or persons including minor for the purpose of exploitation by recruitment, transportation, harbouring, transfer, receipt is made punishable. Government of India taking note of the spate of high incidence of violence against women, under letter of the Executive Director, National Mission for Empowerment of Women, Ministry of Women and Child Development dated 05.06.2014, conceived establishment of One Stop Crisis Centre (OSCC)/ Nirbhaya Centre

in every district of the country for providing medical, police, psycho-social support/ counselling, assistance, legal aid and shelter to the victims and asked the concerned authorities of the respective States to identify suitable land/ building for the purpose.

25. Having taken a bird's eye view of the context in which the present Public Interest Litigation has been filed and the prayer made, it is appropriate to consider the prayer made in the writ petition under four sub-headings, namely, Prevention, Raid & Rescue, Rehabilitation and finally Prosecution as it is well known that Prevention of the malady is always better than the cure.

A. Prevention

26. To prevent social evil of human trafficking in Bihar the State Government through its Department of Social Welfare has notified a State Plan of Action –**ASTITVA** providing for integrated approach by several of its line Departments, namely, Education, Rural Development, Social Welfare, Labour, Human Resources, Health, Police, District Administration etc. vide resolution bearing Memo No. 595 dated 31.12.2008, perusal whereof indicates that to combat the menace of human trafficking State, District, Village Level Anti Human Trafficking Body is to be constituted.

From perusal of the pleadings filed by the parties, it appears that the State, District Level Anti Human Trafficking Body



has already been constituted but till date no such body at the Village level has been constituted to prevent trafficking at grass root level. Accordingly, it is directed that in every village/ ward of Gram Panchayat/ Urban agglomeration including red light area where Anganwari Centre is already established Village/ Ward Level Anti Human Trafficking Body be constituted within a reasonable time not exceeding two months from the date of this judgment. Anti Human Trafficking Body so constituted may be the same Village/ Ward Level Child Protection Committee, which is required to be constituted at the village level in terms of the Integrated Child Protection Scheme, Chapter-2 Paragraph 3(i). Once Village/ Ward Level Anti Human Trafficking Body/ Village/ Ward Level Child Protection Committee is constituted, it shall be the duty of the said Body/ Committee to collect all relevant data concerning the children aged between 0-18 years residing within its jurisdiction i.e. date of birth, gender, family's income, status of the child attending Anganwari/ school etc. and to draw the individual Child Care Plan for each child residing within its jurisdiction, as is required in terms of Integrated Child Protection Scheme Chapter 2 Paragraph 3(v) and to submit monthly report to the Block/ District Level Committee. The Block/ District Level Committee will analyze the report/data, take remedial action and submit report to the Social Welfare



Directorate for further remedial action. The Directorate shall keep the report/data in public domain by placing the same on its website for annual social audit also by an independent agency. It shall also be the responsibility of the Body/ Committee to monitor that the child is regularly attending the Anganwari/ School. In case, child is not attending the Anganwari/ School for any reason, it shall be the duty of the Village/ Ward Level Committee through its Secretary to first ascertain the reason which persuaded the child not to attend Anganwari/ School and then to inform the same to the Block Level Child Protection Committee/ Child Welfare Committee and District Level Committee to take appropriate remedial measure. In case, acute poverty of the family is restraining the child from attending the School the Superior Committees i.e. Block Level Committee/ Child Welfare Committee through its Secretary and Chair Person will ensure linkage of the family with Social Security Schemes like MNREGA etc. and child is provided sponsorship, kinship care, foster care by linking the child to the Scheme like PARVARIS etc. The status of the child be reviewed by the Body/ Committee on regular basis. In case, child is to be given in adoption the same must be in accordance with law after obtaining due permission from the concerned Child Welfare Committee. In the event, data base including birth registration, vigil about the activities of every child is



not maintained by the Village Level Committee, Child Welfare Committee concerned, Directorate and the Social Welfare Department shall take appropriate action and will ensure maintenance of data base and required vigil over the activities of every child and his guardian by not only the Village/ Ward Level Committee but also by the Child Welfare Committee as also the Directorate. Aforesaid arrangement in the opinion of this Court will go a long way to prevent trafficking of children, child marriage in the Village/ Gram Panchayat/ Urban Agglomeration.

In order to provide better and longer educational facility to the girls Government should upgrade Kasturba Gandhi Balika Vidyalaya from Class-VIII to XII as early as possible, in any case, within a reasonable time so that girl child of those who are marginalized or disadvantaged may have longer period of time to learn, study in a residential school. The District Magistrate of each district may also not grant licence for travelling theatre or Nautanki. It shall be the responsibility of District Magistrate, Superintendent of Police of each revenue, police district to maintain the list of Non-Government Organisation, social workers engaged, serving in connection with rescue, rehabilitation of trafficked victim for the needful.

B. Raid & Rescue :



27. (i) To eliminate the menace of trafficking for sexual purposes there should be regular raid/ search and rescue from brothel(s) as defined under Section 2(a) of the Act as also in other premises wherever women, children are in distress by the Special Police Officers appointed under Section 13 of the Act and duly trained so that while conducting search they comply with the requirement of sub-section (2) of Section 15 of the Act and conduct search of the premises in presence of two or more respectable inhabitants of the area. One of whom should be a woman need not be a resident of the same area. During search Special Police Officer leading the search party should also observe the mandate of sub-section (6A) of Section 15 of the Act which require the raiding team to consist of at least two women police officers. In case, women or girl removed from the searched premises is required to be interrogated, interrogation must be made by a woman police officer. If no woman police officer is available, interrogation be done only in presence of a lady member of a recognized welfare institution/ organization. Special Police Officer leading the team to conduct search should also ensure production of the person removed under Section 15 or rescued under Section 16 within the time provided for production under Section 17 of the Act. Learned Magistrate/ Special Judge while conducting enquiry in terms of Section 17 of the Act



before passing order for interim custody of the person rescued under Section 16 of the Act in favour of the parents, guardian, husband must satisfy himself to the hilt about the capacity or genuineness of the parents, guardian, husband to keep the rescued person by causing investigation to be made by a recognized welfare institution or organization or P.R.I. representatives.

(ii) The rescued victim shall be placed in Reception/ One Stop Crisis/ Nirbhaya Centre and attended to by the Trauma Counsellor followed by her medical examination after placing the victim before C.W.C. in case, the victim is a child.

(iii) The Government shall notify the Standard Operating Procedure (SOP) for safe rescue, care, protection and rehabilitation of trafficked victim within one month from the date of this judgment.

(iv) It shall be the responsibility of the Director General of Police, Bihar and I.G. Weaker Section to draw annual calendar for training of the Special Police Officers and other police officers dealing with the offences of human trafficking, as provided under amended Sections 370, 370-A of the Penal Code on regular basis for ensuring better handling, registration, investigation of the trafficking cases to deter the traffickers from indulging in trafficking of human being. It shall be the responsibility of the Director, Bihar Judicial

Academy to provide a slot for training of Judicial Magistrate/ Special Judge dealing with trafficking cases in its Annual Calendar so as to acquaint them with the nuances of the provisions of Sections 15, 16, 17, 17-A of the Act for better handling, disposal of the cases relating to trafficking.

C. Rehabilitation

28. In order to protect, provide vocational training to the trafficked victims Social Welfare Department should establish adequate number of Protective Homes, Corrective Institutions in each district of the State. To begin with the Department must establish one Protective Home, Corrective Institution and One Stop Crisis/ Nirbhaya Centre in each district as early as possible, in any case within a reasonable time. The Protective Home, Corrective Institution, One Stop Crisis/ Nirbhaya Centre must be managed by a person or authority who is licensed under sub-section (3) of Section 21 of the Act with the help of trained staff. It shall be the responsibility of the Welfare Department/ Directorate and the Licensing Authority to ensure that the person managing the Protective Home, Corrective Institution does not violate any of the terms of the licence. Rescue of the trafficked victim is meaningless if the victim is not provided protective care, vocational training to enable her to stand on her own feet and become economically self



reliant. In absence of adequate vocational training the rescued victim is again likely to go back in the same black hole from where she has been rescued. Reference in this connection is made to the case of Raushni Khatoon, daughter of Md. Luna Master and victim of Mahila Police Station (Araria) Case No. 40/13 dated 03.12.2013. It shall be the responsibility of the Directorate of Social Welfare to ensure regular training of the Assistant Director and other care givers working in Protective Homes, Corrective Institutions and One Stop Crisis/ Nirbhaya Centre. The trafficked victims be issued identity card like B.P.L., AADHAR etc. which will immediately link her to the various social security schemes of the Government including housing scheme.

D. Prosecution

29. For successful prosecution of the trafficker, it is necessary that the cases registered under the Act are investigated by the Special Police Officer and also prosecuted before the Special Court constituted under Section 22-A of the Act within a time frame so as to ensure that the prosecution witnesses do not become hostile. From Paragraph 7 of the supplementary counter affidavit filed on behalf of respondent no. 2, it appears that Special Courts for trial of cases instituted alleging offences under the Act have already been notified. It shall be the responsibility of the Special Court concerned

to take up trial of the cases alleging offences under the Act on priority basis so as to conclude the same within shortest possible time. During investigation, trial trafficked victim be allowed the services of Para-Legal Volunteer as also panel lawyer to avoid any harassment, legal expenses by her and for ensuing such services to the victim District Legal Services Authority concerned be alerted about registration of the case no sooner the same is registered by the Police Station as also by the Special Court after receipt of the First Information Report by it.

30. The writ petition is, accordingly, disposed of in terms of the observations/ directions above.

31. Before parting with this judgment, this Court will like to observe that the petitioners, State respondents, Union of India, respondent no. 9 extended their full cooperation in disposal of the present matter.

(V.N. Sinha, J)

I agree.
Prabhat Kumar Jha, J :

(Prabhat Kumar Jha, J)

Rajesh/A.F.R.

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