

## **POLICING COMMERCIAL SEXUAL EXPLOITATION IN INDIA: LEGAL ANALYSIS AND A CALL FOR CRUCIAL REFORMS**

Aditi Morale\*

### **Abstract**

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The state police forces are manifestly the country's first line of defence. The police personnel are usually the first responders after any criminal activity is reported. Consequently, this also includes incidents related to human-trafficking for sexual exploitation. The State police forces partake in various activities such as intelligence collection, patrolling, rescue operations or raids, investigation, repatriation, rehabilitation et cetera and are, as a matter of rule, expected to be trained to deal with the cases of human trafficking. However, a quick look at the statistics and the existing literature on police excesses will reveal that the status of policing in India is largely dissatisfactory.

Despite extensive statutory as well as regulatory checks and balances, judicial pronouncements that regularly assess and limit the powers given to the police coupled with consistent efforts by the members of civil society that have long documented the custodial abuses, the Indian police remains shrouded in endless controversies due to political interference, unwarranted violence, corruption, underfunding, lack of incentives and training, among other things. Thus, the call for police reforms, particularly emphasized by the Supreme Court in the landmark judgement of Prakash Singh v. Union of India, needs to be revisited and acted upon.

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\* Author.

If comprehensive reforms in policing including but not limited to the strict implementation of the directives from the Supreme Court judgement in Prakash Singh case are undertaken, the local police forces would prove to be even more effective in dealing with cases of Commercial Sexual Exploitation (hereinafter, CSE). This article also argues for the need of an added system of accountability mechanisms (well within the ambit of the Supreme Court directives) which would help check the menace of police excesses during the ‘raids’, thus amplifying the output in the fight against human trafficking in terms of helping and rehabilitating the victims of CSE ‘willing to escape the trade’.

## 1. INTRODUCTION

Selling sex may not be the “world’s oldest profession”, an adage attributed to and popularized by Rudyard Kipling in his 1898 short story, but it might just be the oldest currency in the world.<sup>1</sup> Be that as it may, sex work is linked to disparate cultural interpretations across societies throughout the course of human history; some laden with ideas of shame or impurity while others, particularly indigenous cultures, with more spiritual ascriptions to prostitution than commercial.<sup>2</sup> In the modern day and age however, prostitution is illegal in several national jurisdictions and almost universally disdained.

This write-up deliberately avoids the usage of word “prostitution” to describe sex work due to mainstream negative connotations and instead uses the phrase “commercial sexual exploitation” (CSE) in reference to the cases of human trafficking for sexual exploitation and forced sexual labour. Additionally, this piece also seeks to disengage in the conflation of sex work with victimhood and condemns the use of police action in any

form, including rescue or rehabilitation, in cases where the sex workers are involved in their profession voluntarily and wish to continue the same of their own volition. Sex work is legal in India and sex workers are rightfully entitled to protection under article 21 and the right to life beyond the protection of limb or faculty i.e., the right to live with human dignity as well as the right to carry on such functions and activities that constitute the expression of their human-self.<sup>3</sup>

While sex work is legally allowed in India, the profession is mired in controversy due to the sad realities of human trafficking, cyclical poverty, condescending social attitudes and repeated misuse of the protective legislation<sup>4</sup> leading to further marginalization of the sex workers, many of whom belong to the historically oppressed Dalit and Adivasi communities.<sup>5</sup> The discrimination is compounded when sex

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<sup>3</sup> Budhadev Karmaskar v. The State of West Bengal, 2022 SCC OnLine SC 704; *see also* Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981) 1 SCC 608

<sup>4</sup> The Immoral Traffic (Prevention) Act, 1956, (India)

<sup>5</sup> Maggie Black, *Women in ritual slavery: Devadasi, Jogini and Mathamma in Karnataka and Andhra Pradesh, Southern India*, ANTI-SLAVERY INTERNATIONAL (2007), [https://idsn.org/wp-content/uploads/user\\_folder/pdf/New\\_files/India/WomeninRitualSlavery.pdf](https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/India/WomeninRitualSlavery.pdf); *see also* Suprakash Majumdar, *No Justice For These Sex Workers, Even With the Supreme Court on Their Side*, VICE NEWS, (July 15, 2022), <https://www.vice.com/en/article/g5vg43/dalit-sex-workers-supreme-court-india>

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<sup>1</sup> Kate Lister, *The Oldest Profession in the World?* LIVE ENCOUNTERS MAGAZINE, (July 2017), <https://liveencounters.net/wp-content/uploads/2017/06/Live-Encounters-Magazine-July-2017.pdf>

<sup>2</sup> *Id.*

workers are meted out abusive treatment by the law enforcement personnel in the form of physical and/or sexual violence coupled with ill practices such as demands for bribery in return for protection or refusal to register a case, *inter alia*.<sup>6</sup> Several documented instances of destruction of private property of the sex workers during the “raids” and physical assault on sex workers and their clients by the police officials<sup>7</sup> highlight the need for sensible law enforcement to strengthen the fight against sex trafficking without jeopardizing the fundamental freedoms of voluntary sex workers.

Ostensible hopes come in the form of judicial pronouncements such as the recent judicial order<sup>8</sup>, wherein the Supreme Court issued several crucial directions, invoking the powers under Article 142 of the Constitution and declared “equal protection before the law” for the sex workers. The Apex Court ruled that sex workers should not be arrested, penalized, harassed, or victimized during rescue operations and essentially re-iterated the tenets of principles

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<sup>6</sup> Suprakash Majumdar, *No Justice For These Sex Workers, Even With the Supreme Court on Their Side*, VICE NEWS, (July 15, 2022), <https://www.vice.com/en/article/g5vg43/dalit-sex-workers-supreme-court-india>

<sup>7</sup> *Id.*

<sup>8</sup> Budhadev Karmaskar v. The State of West Bengal, 2022 SCC OnLine SC 704

of natural justice and basic human decency by directing the police to treat all sex workers with dignity and to not subject them to verbal, physical or sexual violence.<sup>9</sup>

In this welcome move, the Supreme Court also made a distinction between sex workers based on ‘age’ and ‘consent’, ruling that criminal action against consenting sex workers is unwarranted and thus, outlawed. Other recommendations regarding the provision of Identity Proofs (Aadhar Cards) and rehabilitation-related reforms were also included in the directives.<sup>10</sup>

Despite the constructive judicial decision, the sex workers as well as welfare advocates for sex workers in India are unsure of its successful implementation.<sup>11</sup> Such lack of trust in law enforcement agencies acts as a barrier in the efforts to combat sex trafficking. The paper at hand deals with such socio-legal complications surrounding the ways India polices sex work. While the

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<sup>9</sup> Sharbani Banerjee, *Consenting Sex Workers are Entitled to Equal Protection under the law: Supreme Court*, THE STATESMAN, (May 27, 2022), <https://www.thestatesman.com/india/consenting-sex-workers-entitled-equal-protection-law-supreme-court-1503075957.html>

<sup>10</sup> *Id.*

<sup>11</sup> Miriam Berger, *India’s sex workers win new rights, but still fear police violence*, THE WASHINGTON POST, (MAY 30, 2022) <https://www.washingtonpost.com/world/2022/05/30/indias-sex-workers-win-new-rights-still-fear-police-violence/>

paper advocates for accountability mechanisms to deal with police excesses against consenting adult sex workers, it also emphasizes on legal provisions and procedures that need special emphasis to ensure the fight against commercial sexual exploitation stays alive.

## 2. IMMORAL TRAFFIC (PREVENTION) ACT AND POWERS GIVEN TO THE POLICE

There is no legal requirement or limit on the investigator's minimum rank under Section 370 of the Indian Penal Code or other offences related to child trafficking.<sup>12</sup> However, the State governments are required by the Immoral Traffic (Prevention) Act (ITPA) to designate a "Special Police Officer" not below the rank of a sub-inspector of Police in designated areas to deal with ITPA violations.<sup>13</sup> Subordinate police officers, including women police officers wherever possible, must assist Special Police Officers.

The Central Government may also nominate police officers as Anti-trafficking police officers to investigate crimes under the ITPA or any other laws that deal with sexual

exploitation and these officers have the authority to exercise their powers across India. Since trafficking and commercial sexual exploitation can take place anywhere and not just in typical brothels; a police officer working under the ITPA can intervene in all places where there is any possibility of human trafficking leading to CSE, including those disguised as massage parlours, inter alia.

The ITPA authorizes rescue of any person (irrespective of age or gender) who is being sexually exploited in a brothel. Both Judicial Magistrates and Executive Magistrates can order a rescue of any person they believe to be in danger due to CSE.

The act also gives powers to Special Police Officers to search without warrant and during such a rescue operation, the SPO is entitled to remove all the persons found in the suspected premises. This shows that the SPOs are given very wide powers under the Act which could potentially lead to violence and brutalization of sex workers during such operations (as the evidence suggests<sup>14</sup>) if caution is not exercised.

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<sup>12</sup> PM NAIR, INVESTIGATING SEX TRAFFICKING: A HANDBOOK, 38 (Bureau of Police Research & Development 2020)

<sup>13</sup> The Immoral Traffic (Prevention) Act, 1956, §13(2) (India)

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<sup>14</sup> Saie Shetye, *Policing Prostitution in India: An Examination of Field Experiences at Mumbai*, 13 INTERNATIONAL JOURNAL OF CRIMINAL JUSTICE SCIENCES (IJCS) 68, 68-76 (2018)

The Act also shields the special police officer or the trafficking officer along with other persons involved in a search such as the witnesses and the NGO workers from any litigation, civil or criminal proceedings, for actions that are lawful and done to facilitate the search.<sup>15</sup>

While it is true that removing this provision could open a bad can of worms in the form of litigations against the social workers and police officers, jeopardizing rescue operations and demotivating the actors, an in-depth scrutiny is required to re-consider the validity of this provision to avoid violation of rights of sex workers during the rescue operations.

### 3. STRICT ADHERENCE TO SOPS & PROTOCOLS IS PARAMOUNT

The Standard Operating Procedures (SOPs) aim to help investigators in responding to crimes of commercial sexual exploitation. The SOP serves as a comprehensive resource book for all stakeholders and is also a useful tool to inform the victims about their specific rights.<sup>16</sup> Since, SOPs describe the

appropriate procedure to be followed in a rescue operation, not adhering to SOPs can lead to severe violations that could even endanger the lives of the sex workers and those involved with the rescue party.

The example of IPS Officer Raj Tilak Roushan, erstwhile Additional Superintendent of Police of Vasai-Virar, Palghar and current Deputy Commissioner of Police, Mumbai demonstrates how creative SOPs can lead to better police action in rescuing victims of commercial sexual exploitation. DCP Roushan is considered responsible for successful resolution of 89 per cent of the minor-missing cases, rescue and in some cases rehabilitation of 450 children and rescue of more than 100 adult victims of trafficking for sexual exploitation and forced labour.<sup>17</sup>

According to him, the objective format proforma that he designed for the missing children cases covered a complete 360-degree profile of the victim and included data collection methods to obtain linkages to criminal networks, regular anti-trafficking

<sup>15</sup> The Immoral Traffic (Prevention) Act, 1956, §15(6) (India)

<sup>16</sup> *Standard Operating Procedures (SOP) On Investigating Crimes of Trafficking for Commercial Sexual Exploitation*, UNITED NATIONS OFFICE ON DRUGS AND CRIME (2007), <https://www.unodc.org/documents/human->

[trafficking/India\\_Training\\_material/SOP\\_on\\_Investigation\\_of\\_Crimes\\_of\\_Trafficking\\_for\\_Commercial.pdf](https://www.unodc.org/documents/human-trafficking/India_Training_material/SOP_on_Investigation_of_Crimes_of_Trafficking_for_Commercial.pdf)

<sup>17</sup> TBI team, *How 450 Minors, 100 Trafficking Victims Were Rescued in a Year, Thanks to an IPS Officer*, THE BETTER INDIA, (July 6, 2019), <https://www.thebetterindia.com/188103/ips-raj-tilak-roushan-palghar-maharashtra/>

exercises using facts and data crawling, awareness programs targeting all stakeholders, “buy-bust” operations, detailed procedure on rehabilitation of the rescued victims and so on.

He says that since the police are not allowed to go beyond the SOP, it should religiously cover everything necessary for an investigation. This protocol helped the Palghar district police team increase the detection rate from 66 % in May to 89 % by the end of the year and to uncover several rackets of human trafficking.<sup>18</sup> Similar steps can be taken by other police officials to ensure that the rescue operations and investigation take place in accordance with the SOPs to make the most out of their interventions.

#### **4. TRAINING AND SENSITIZATION FOR THE POLICE NEED TO BE PRIORITIZED**

As opposed to traditional police training, that mainly focuses on compliance-related knowledge and physical attributes of the recruits, a human rights-based curriculum that sensitizes the police officials in various

systems of discrimination should be made non-negotiable for officers at all ranks.<sup>19</sup>

Considering the sensitivity of their work and the wide powers that the police officers have under the ITPA Act, it becomes crucial to train and sensitize them when it comes to the handling of cases related to CSE. To understand and empathize with victims who have been trafficked, sexually abused, removed from the comfort of their homes and living without much social security, the police personnel need to be empathetic in their approach while dealing with traumatized victims.

One of the main concerns while addressing lack of sensitivity that comes to the mind is the inherent bias that sex workers are “fallen women” which leads to a dehumanized response. To avoid such detrimental associations, the police personnel can be trained and enrolled in sensitization programmes carried out by NGOs or Police Training Institutions to ensure effective handling of CSE cases.

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<sup>18</sup> *Id.*

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<sup>19</sup> “Status of Policing in India Report 2019: Police Adequacy and Working Conditions”, COMMON CAUSE AND LOKNITI - CENTRE FOR THE STUDY DEVELOPING SOCIETIES (CSDS) (2019), [https://www.commoncause.in/uploadimage/page/Status\\_of\\_Policing\\_in\\_India\\_Report\\_2019\\_by\\_Common\\_Cause\\_and\\_CSDS.pdf](https://www.commoncause.in/uploadimage/page/Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSDS.pdf)

Standard practices in investigation mentioned in relevant laws and various SOPs that try to employ an empathetic approach need to be strictly adhered to. For example, the police must meticulously carry out intelligence collection so that the victim is not confused with the suspect/accused person. It is also important to ensure that the officers do not intimidate or abuse the victims by hurtful or insensitive words, actions or demeanor.

The police officers must also realize that the privacy concerns are equally important for the sex workers as they are for other citizens and should not allow any publicity or make a spectacle out of a rescue operation/investigation. Anonymity should be maintained at all costs and harm done to the victims should be validated and sensitively dealt with.

The police can also be trained in de-escalation practices and conversational skills to ensure they make the victims feel comfortable and safe during the investigative process. Ensuring that the victims get possession of all her belongings or assets, protecting the children of the victims, ensuring physical safety of victims during rescue and post-rescue transfers along with prompt medical checkups of the victim etc.

are some of the other standard practices that the police personnel dealing with CSE related cases should strictly follow.

Training needs to be given to the police officers so that they understand that the victim of trafficking is neither accused, accomplice nor abettor and that it is not the victim of sex crime who is on trial in the court.<sup>20</sup>

Other standard practices that need to be regularized are avoiding repeated interrogation by police officers at different levels of investigation that could make the victim relive trauma, conducting interviews at places deemed comfortable by victim, making the ambience child-friendly for minor victims and ensuring presence of counselors, trauma-informed therapists, psychiatrists, medical examiners and forensic experts during relevant stages of investigations.

The police can even carry out electronic documentation of the recording of the statement, if the victim's informed consent is asked for at all such times and efforts to protect the victim's anonymity are religiously adhered to.

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<sup>20</sup> Haryana v. Prem Chand and others, 1990 (1) SCC 249 (India); Maharashtra v. Madhukar Narayan Marvikar, AIR 1991 SC 207 (India); State of Punjab v Gurmit Singh, AIR 1996 SC 1393 (India).



It is also equally important to ensure that the police carry out meticulous intelligence collection and verify sources before conducting rescue operations to ensure they are not harassing sex workers who are voluntarily involved in prostitution and to ensure help reaches only where it is truly needed.

##### **5. DOES HIGHER REPRESENTATION OF WOMEN IN THE POLICE HELP?**

The police forces are notorious for being gender-insensitive<sup>21</sup> and the percentage of women officers, although increasing over time, constitutes just 7.28% of the police (as of 2016), with 90% of the women serving as constables and less than 1% in supervisory positions.<sup>22</sup> Thus, it is quite evident that most rescue operations and investigations involve a majority of male officers who are not only capable of having inherent biases against the sex workers but may also (even when presumed to have no such prejudice) elicit a negative response from victims, especially

children, who regularly face sexual abuse at the hands of predominantly male clientele. Hence, it helps to think that having female police officers on ground during rescue operations and during interrogations might invoke a sense of safety in victims of CSE and facilitate better response towards investigation.

However, representation is not a one-stop solution for all the problems with how victims of CSE respond to the legal system. There is no way to conclusively prove that a woman police officer is more respected by the sex workers than their male counterparts since there is a general sense of discomfort and intimidation around the *khaki* in marginalized communities, especially sex workers.

Representation in the forces coupled with elaborate programs to sensitize the police officials, irrespective of their gender, would go a long way in getting the victims of human trafficking and CSE to trust the police officials and to help with improved perception. It is necessary for victims to be interviewed by a woman police officer (WPO) or women social workers. Hence, having adequate representation in police forces is important for investigation in cases of CSE and the statutory requirement under

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<sup>21</sup> Sarfaraz Ahmed Khan & Aditi Morale, *A Compelling Case for Why Police Reforms Matter*, 4 NMIMS L. Rev. (2022), <https://lawreview.nmims.edu/wp-content/uploads/2022/09/SLR-Vol.-IV.pdf>

<sup>22</sup> Uttam Sengupta, *Increase number of women and Dalits in the police to make women safer*, NATIONAL HERALD, (Oct. 3, 2020), <https://www.nationalheraldindia.com/opinion/increase-number-of-women-and-dalits-in-the-police-to-make-women-safe>

the ITPA Act should be complied with in every case.

It is always advisable for the police stations to maintain a list of WPOs residing in the jurisdiction of the police station, or the neighbouring stations and other nearby locations. If one is not able to find a WPO for a case under the Act, they could always get a retired WPO notified as Special Police Officer under ITPA.<sup>23</sup>

## 6. EXPLORING THE VIABILITY OF COMMUNITY POLICING TO TACKLE CSE

A retired IAS officer defines Community Policing as “*a philosophy that promotes a partnership-based, collaborative effort between the police and the community to more effectively and efficiently identify, prevent and solve problems of crime, reduce the fear of crime, increase respect and trust among people, create fear among law breakers, besides addressing neighbourhood decay and promoting community wellness in order to improve the quality of life for everyone.*”<sup>24</sup>

In this context, while the definition correctly focuses on reliable information-sharing

<sup>23</sup> The Immoral Traffic (Prevention) Act, 1956, §13(2 A) (India).

<sup>24</sup> B. Bhanamati, *Community Policing In Anti Human Trafficking*, 6 JANAMAITHRI - A JOURNAL OF DEMOCRATIC POLICING 5, 5-22 (2015)

between the police and the community and organized effort to combat human trafficking, one cannot help but notice the usage of term “neighbourhood decay” that plays into the popular tropes surrounding sex work and hints at the notion of impurity attached to sex workers.

To ensure that the communities are working towards a safe neighbourhood without demonizing the sex workers or seeing them as “filth”, extensive sensitization programs and training need to be undertaken *before* citizens are empowered to join any community clubs against human trafficking.

There are many successful instances of community policing that have dealt with the menace of human trafficking for the purpose of CSE. For instance, in Jharkhand, nearly 175 young tribal women, many of whom were victims of trafficking, were trained to become security guards and housekeeping staff and often helped the police in rescuing victims of CSE, mostly children forced to engage in sex work.<sup>25</sup>

<sup>25</sup> India: Strengthening Safety Nets to Counter Human Trafficking, UNITED NATIONS OFFICE ON DRUGS AND CRIME, (2011), <https://www.hurights.or.jp/archives/asia-pacific/section1/10%20UN%20Office%20on%20Drugs%20and%20Crime.pdf>

Similar efforts were taken by an NGO at Kishanganj district, in Bihar (another high source state for trafficking), where sensitization drives for the community substantially helped the police in rescuing and rehabilitating victims of human trafficking.<sup>26</sup> The efforts by the Kerala Police to establish anti-trafficking clubs in colleges have also paid off and the students have been able to rescue 168 human trafficking victims in their pilot project.<sup>27</sup>

This shows that local neighbourhoods possess the potential to avert the threat of human trafficking, but sufficient care needs to be taken to ensure that the community policing efforts do not turn into vigilantism of any form and this responsibility should be shouldered by the police departments who initiate such community policing programs.

## 7. THE PERCEPTION PROBLEM

It is common knowledge that responding officers regularly exhibit punitive attitudes and engage in illegitimate differential

treatment in sex-work-related offenses.<sup>28</sup> In order to ensure that the victims of human trafficking respond to the legal system better, it is imperative that the victims of commercial sexual exploitation look to the police officers as rational and humane persons they could safely reach out to when in distress. However, the image of the policing system as an ecosystem rife with corruption, inefficiency, violence and sycophancy has created barriers when it comes to the levels of public confidence in the Indian police. This makes it extremely difficult for the victims to seek help from the police.

The victims often refuse to cooperate with the police because of either intimidation, fear or even anger due to consistent harassment meted out to the sex workers who are booked under the section 8 of the ITPA for publicly soliciting customers or fined under various provisions of the Police Acts, thus creating an environment of mistrust and suspicion.<sup>29</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> Toby Anthony, *Kerala looking for United Nations' endorsement for its Anti-Human Trafficking Clubs*, THE NEW INDIAN EXPRESS, (Sept. 9, 2019), <https://www.edexlive.com/news/2019/sep/02/kerala-looking-for-united-nations-endorsement-for-its-anti-human-trafficking-clubs-7791.html>

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<sup>28</sup> Cody Jorgensen, *Badges and Brothels: Police Officers' Attitudes Toward Prostitution*, FRONTIERS IN SOCIOLOGY, 3 (June 2018) <https://doi.org/10.3389/fsoc.2018.00016>

<sup>29</sup> *Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices*, SAMPADA GRAMEEN MAHILA SANSTHA (SANGRAM), (2018), <https://sangram.org/resources/RAIDED-E-Book.pdf>

It is not just the victims and the local police forces that struggle to understand each other's motives. Researchers studying the working dynamics between social workers and police officials have pointed out a general sense of misunderstanding about each other's occupations and methods of working.<sup>30</sup>

Saie Shetye rightly highlights this problem in their study<sup>31</sup> and refers to Parkinson's<sup>32</sup> observations about the stereotypes that act as barriers to cooperation between police departments and social workers. According to Parkinson, "*the police perceive social workers as bleeding hearts, and social workers view police as rigid and punitive*". And while such experiences might not be universal, mutual respect and communication is important to facilitate any association of the two different groups. And as Saie suggests, the presence of social workers

within the police department will help with the communication gaps and with expansion of protection services to the community.

Thus, it is highly imperative to improve the public perception of local police forces and their attitudes towards the sex workers during rescue operations so that the victims of commercial sexual exploitation can trust the institution and cooperate with it. Improvement in the public image of the local police is equally important when it comes to social workers who need to trust the police officials in their joint efforts in combating human trafficking.

## 8. ACCOUNTABILITY MECHANISMS AGAINST VIOLATIONS IN RESCUE OPERATIONS

Several Court Orders and Judgements have highlighted the menace of police brutality and have issued guidelines to ensure protection of human rights.<sup>33</sup> Despite the constant efforts by the Judiciary, activists and the civil society, the culture of violence is ever persistent. The idea of custodial violence and torture is so endemic to our

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<sup>30</sup> Simon Holdaway, Police and Social Work Relations—Problems and Possibilities, 16 (2) THE BRITISH JOURNAL OF SOCIAL WORK, 137-60 (1986) <http://www.jstor.org/stable/23705267>; Gary C. Parkinson, *Cooperation between police and social workers: hidden issues*, 25 (1) SOCIAL WORK, 12–18, (1980) <https://doi.org/10.1093/sw/25.1.12>

<sup>31</sup> Saie Shetye, *Experiences of Working as a Social Worker with the Delhi Police on Human Trafficking Cases: Issues and Challenges*, 14 INTERNATIONAL JOURNAL OF CRIMINAL JUSTICE SCIENCES 61, 56-66 (2019), DOI: 110.5281/zenodo.3244172

<sup>32</sup> Gary C. Parkinson, *Cooperation between police and social workers: hidden issues*, 25 (1) SOCIAL WORK, 12– 18, (1980) <https://doi.org/10.1093/sw/25.1.12>

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<sup>33</sup> Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260; Yashwant And Others v. State of Maharashtra (2018) 4MLJ (CrI)10(SC); D.K. Basu v. State of West Bengal, 1997 (1) SCC 416; Munshi Singh Gautam v State of Madhya Pradesh, Appeal (CrI.) 919 of 1999

system that even the law presumes such abuse of power by the police. (For example, confessions made to a police officer not admissible as evidence<sup>34</sup>)

This culture of violence also reflects in rescue/raid operations under the ITPA Act where even basic requirements such as segregation of the accused and the victim in cases of sexual offence, treatment of rescued sex workers with dignity, etc. are not met and victims are often dragged out, not fully clothed or even mistaken for “exploiters”.<sup>35</sup> To deal with such grave violations, the states need to establish robust accountability mechanisms and grievance redressal forums such as the Police Complaints Authorities envisaged by the Supreme Court in Prakash Singh Judgement.<sup>36</sup>

The organization CLPR issued a report which hints at three different modes of enforcing accountability in policing: Judiciary-based scrutiny, Police Complaints Authority and the National Human Rights Commission.<sup>37</sup> The report points to the fact that while the judiciary and the Human

Rights Commissions have been incessantly monitoring and correcting cases of police excesses and ruling to protect the fundamental rights of citizens, police brutality is still sadly a feature of our criminal justice system.

At this juncture it helps to direct one’s attention towards the conceptualization of “accountability” by Schedler – a political scientist, who says that accountability means subjecting unrestricted forms of power to sanctions to check abuse and to institute transparent ways of manifesting power while also compelling the authority to justify its acts publicly.<sup>38</sup> To ensure accountability to the fullest, we need a system of internal and external checks and balances so that there is little scope for abuse of power. The systems of accountability must also aim at re-building public confidence.

And the Police Complaints Authority, if instituted as per the Supreme Court directives without any discrepancies in relation to the membership or binding nature of recommendations, is an absolutely effective way of bringing about citizen-

<sup>34</sup> The Indian Evidence Act, (Act 1 of 1872) ss. 25, 26.

<sup>35</sup> *Supra Note 14*.

<sup>36</sup> Prakash Singh v. Union of India, (2006) 8 SCC 1

<sup>37</sup> *Legal Accountability of the Police In India*, CENTRE FOR LAW AND POLICY RESEARCH, (2018), <https://clpr.org.in/wp-content/uploads/2018/09/Police-Accountability-CLPR.pdf>

<sup>38</sup> ANDREAS SCHEDLER & LARRY DIAMOND, *CONCEPTUALIZING ACCOUNTABILITY, THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES* 14 (Lynne Rienner Publishers, 1999)

partnered accountability mechanisms. The PCAs not just provide an effective grievance redressal mechanism at different levels of governance but will also help analyze the patterns in relation to police brutality such as the frequency of abuse across different regions and demographics.

The state-level PCAs can inquire into allegations of “serious misconduct” including death, grievous hurt and rape in custody, while the district level complaints authority is even authorized to inquire into allegations of extortion, land grabbing and serious abuse of power<sup>39</sup> which means they could substantially deal with cases of extortion by the police officials and abuse of power during raids.

Additionally, the estoppel regarding bonafide work of police officers during raids protecting them from civil and criminal proceedings under section 15(6) of the ITPA will not bar the complainant from filing a grievance under PCAs against violations by police in rescue operations under ITPA, since the abuse of power by police during raids will not be considered as “lawful”

action done to facilitate a rescue as mentioned in the section.<sup>40</sup>

## 9. CONCLUSION

In summary, the researcher argues for various exercises including adherence to and regularization of existing standard practices along with other constructive recommendations towards maximizing police cooperation with social workers and victims of sexual exploitation to effectively deal with the menace of sex trafficking.

The paper argues in the favour of sensitization drives, training programs for fresh recruits, sensible community policing along with the more obvious suggestions such as creating awareness among the police officers to avoid violations of the rights of the sex workers during rescue operations or during different stages of investigation.

This write-up highlights the need to resolve the problem with the way victims of sex trafficking as well as social workers perceive the police officers and vice versa by suggesting better communication, adoption of an empathetic approach by officers while dealing with victims and a system of external

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<sup>39</sup> *Supra Note 36*

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<sup>40</sup> The Immoral Traffic (Prevention) Act, 1956, §13(2 A) (India).

and internal checks and balances to prevent violative search operations or investigations.

The writeup also focuses on establishment of robust accountability mechanisms including proper implementation of the Supreme Court directive in relation to the constitution of Police Complaints Authorities (PCAs) which could significantly help address the regular complaints regarding extortion by police officers and abuse of power during raids.

Thus, in conclusion, the researcher believes that only lawful policing is the right kind of policing and to achieve that, the state needs to rebuild the policing ecosystem in a fashion that it serves the people through a human rights-based lens.