# **Lawyers Collective, India[[1]](#footnote-1)**

**CONTRIBUTION TO DRAFT GENERAL RECOMMENDATION ON TRAFFICKING OF WOMEN AND GIRLS IN THE CONTEXT OF GLOBAL MIGRATION**

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1. **Introduction**
	1. Founded in 1981, the Lawyers Collective (“LC”) is a leading human rights law organization in India. LC has been spearheading interventions for structural change in a range of areas including environmental law, labour rights, women’s rights, equality and non-discrimination, civil liberties, health, access to medicines and law and HIV. LC has especially focused on protection of rights of vulnerable communities, such as LGBTI persons, sex workers as well as of persons who use drugs. To this end, LC undertakes legal aid and strategic litigation, advocacy and capacity building, and policy research.
	2. Over the past more than three decades, LC has been involved in some of the landmark litigations on the expansion of fundamental rights of people and has also contributed to the drafting of rights-based laws in India including the Protection of Women from Domestic Violence Act, 2005, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the HIV and AIDS (Prevention and Control) Act, 2017, as well as in giving inputs to the Patents (Amendment) Act, 2005, Immoral Traffic (Prevention) Act, 1956 and the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014 and the rules framed there under.
	3. In relation to anti-trafficking, LC’s legal team represented a leading sex workers’ collective before the Indian Supreme Court in ***Buddhadev Karmaskar v. State of West Bengal***, Criminal Appeal No. 135 of 2010, where the Supreme Court sought guidance on addressing the issues of prevention of trafficking, rehabilitation of sex workers who wish to quit sex work and conditions conducive for sex workers to live with dignity in accordance with the constitutional framework.
	4. We firmly believe that any legislative and policy measures to address trafficking in human beings must be grounded in fundamental human rights and principles such as dignity, autonomy and consent. LC’s submissions are based on our experiences with anti-trafficking laws and their application against vulnerable groups in India.
2. **Indian legal framework on trafficking in persons**
	1. Article 23 of the Constitution of India, 1950 prohibits “*traffic in human beings, begar and other similar forms of forced labour”* without defining or elaborating these terms.
	2. The Indian Penal Code, 1860 (“IPC”) contains several provisions dealing with human trafficking and attendant crimes. The offence of trafficking of persons is defined in Section 370, IPC and contains elements similar to those laid down in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, 2000 (“Palermo Protocol”). The offence of trafficking is punishable with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine. The punishment is more severe when more than one person or a minor(s) has been trafficked. In the event that the perpetrator is a police officer or public servant, the degree of punishment is greater.
	3. Section 370A penalizes engaging a person, who has been trafficked, for purposes of sexual exploitation with a more severe penalty in case the person trafficked is a minor. The provision does not define the term ‘sexual exploitation’.
	4. Section 371, IPC criminalizes slavery and Sections 372-373, IPC criminalize the buying and selling of underage girls for prostitution.
	5. India has various special legislations which address the activities that constitute “trafficking of persons” such as: The Immoral Traffic (Prevention) Act, 1956 (“ITPA”) which criminalizes activities related to “prostitution” and provides rescue, rehabilitation and correction of sex workers; the Juvenile Justice (Care and Protection of Children) Act, 2015 which provides a framework for protection of children who are missing or at risk of being trafficked; the Transplantation of Human Organs Act, 1994 which aims to prevent commercial dealings in human organs; the Bonded Labour System (Abolition) Act, 1976; the Contract Labour (Regulation & Abolition) Act, 1970; the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; the Children (Pledging of Labour) Act, 1933 and the Child Labour (Regulation and Prohibition) Act, 1986, which deal with forced labour, child labour, primarily through regulation and welfare-oriented measures.
	6. The Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018 (“Anti-Trafficking Bill”) was introduced in the lower house of Parliament in July, 2018. The Bill conflated voluntary migration with trafficking, contained vague and overbroad clauses, irrational and disproportionate penalties and was widely criticized by legal and human rights experts, labour organizations and sex workers. [[2]](#footnote-2) The United Nations Special Rapporteurs on Trafficking, especially women and children, and on Contemporary Forms of Slavery, noted that the Bill was inconsistent with international standards of human rights.[[3]](#footnote-3)
3. **International obligations with regard to anti-trafficking**
	1. The Palermo Protocol supplements the UN Convention against Transnational Organised Crime, 2000. These are specific instruments, which UN member States agreed to follow by adopting national or domestic laws.
	2. The Palermo Protocol operates alongside other international human rights instruments such as the Universal Declaration on Human Rights (“UDHR”), International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.
	3. The Charter of the United Nations, 1945 (“UN Charter”) has been signed by nearly every nation-State in the world. It is considered by jurists to be the foundational international instrument, not just of the UN, but the modern international legal order. Article 1 of the UN Charter recognizes its purpose to include the promotion and respect for human rights and fundamental freedoms in a non-discriminatory manner. Article 55 of the Charter declares that the UN shall promote solutions to international health problems and universal respect and observance for human rights, while Article 56 pledges that Members take joint and separate action in cooperation with the Organisation to achieve the purposes set out in Article 55. Articles 55 and 56, read together, can be construed as legal obligations upon States. Further, Article 103 of the Charter contains a non-obstante clause, declaring that the obligations under the Charter shall prevail over any other international agreement in the event of a conflict.
	4. Article 31(3)(c) of the Vienna Convention on Law of Treaties, 1969 (“VCLT”) states that while interpreting any treaty, States must take into account “*Any relevant rules of international law applicable in the relations between the parties.”* The VCLT is considered to be a codification of existing international customary law[[4]](#footnote-4). Thus, even States who may not be signatories to the VCLT, must interpret a treaty with specific characteristics in light of the international regime of human rights treaties.
	5. Therefore, the General Recommendation must emphasize that each State’s obligations to prevent and prosecute trafficking under the Palermo Protocol must be in consonance with its obligations to respect international human rights law. Accordingly, efforts to counter trafficking in persons must be consistent with, and not in contravention of the rights to liberty, dignity, autonomy, freedom from discrimination, equality and privacy.
4. **Problems with a criminal law centric approach to anti-trafficking**
	1. The Palermo Protocol is heavily premised on the assumption that a carceral approach can be meaningfully applied to the multi-faceted phenomenon of trafficking.[[5]](#footnote-5) Both migration and trafficking are closely linked to socio-economic issues of impoverishment, displacement, lack of security and economic opportunities, poor living and health conditions, gender based violence, racism and casteism. A singular focus on criminal law, that does not address the underlying reasons why people leave their homes, will not help secure the rights of women and girls, in the context of trafficking and global migration.
	2. The Protocol’s Statement of Purpose states that it aims “*to protect and assist the victims of such trafficking, with full respect for their human rights*”, and the Savings Clause enumerated in Article 14 asserts that nothing in this Protocol shall affect the rights of individuals under international law.
	3. Similarly, the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1) issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2002 (“Recommended Principles”) promote a human rights-based, gender sensitive approach to anti-trafficking measures. However, reports from independent legal experts reveal that this cannot be achieved in the backdrop of heavy reliance on criminal law mechanisms. [[6]](#footnote-6)
	4. The U.N Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo has noted that a strong criminal justice response must be explicitly focused on challenging the culture of impunity enjoyed by traffickers and to secure justice for the victims. She too underlined that, “*Too often, victims of trafficking are treated as instruments of criminal investigations, rather than as rights holders with a legal entitlement to protection, support and remedies*.”[[7]](#footnote-7) Further, increasing reliance on criminal justice mechanisms compels victims of trafficking to primarily interact with members of the police force and other law enforcement or border control agencies, who may not be trained in rights-compliant gender sensitive approaches towards victims.
	5. Anti-trafficking policies which lack a thorough understanding of the fundamental principles of consent and autonomy often criminalize the actions of consenting individuals, particularly those belonging to marginalized communities who have migrated with hopes and aspirations of seeking gainful employment or who are escaping violent or oppressive circumstances. This has been extensively documented in the case of suppression, detention of and violence against adult sex workers who are forcibly portrayed as ‘victims’ of trafficking. Such policies neglect to address structural and systemic causes of trafficking including global supply chains to which such criminal measures would not pose a significant deterrent.
	6. Principle 2 of the Recommended Principles provides that “*States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.*” The U.N Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro has urged the need to understand the human rights obligations of due diligence on trafficking to ensure that States comply with human rights in implementing these other anti-trafficking obligations.[[8]](#footnote-8) This would allow for examination of State failures to respect and fulfil human rights in non-discrimination, labour, migration, and education spheres which create the conditions conducive to trafficking by third parties.[[9]](#footnote-9) Such an approach is instrumental to a holistic understanding of the phenomenon of trafficking which does not selectively focus upon post-trafficking measures of prosecution and punishment.
	7. We submit that an effective and meaningful anti-trafficking policy must require States to adopt and respect human rights and principles and minimize interventions through the criminal justice system. States must be held accountable to a due diligence standard that is grounded on international human rights norms to prevent further suppression of marginalized groups. The use of a human rights framework will also ensure that anti-trafficking efforts are integrated with policies on related issues of immigration, labour and impoverishment.
5. **Human rights undermined by anti-trafficking practices**
6. **Identification of Victims**

**Anti-trafficking laws ignore ‘consent’**

* 1. Article 3 of the Palermo Protocol clearly states that consent of a victim of trafficking to the intended exploitation shall be irrelevant. The same position is reflected in our domestic law i.e. Section 370, IPC, which has the effect of negating and criminalizing choices made by individuals, e.g., an adult woman’s decision to engage in sex work is seen as trafficking, for under the law, she cannot ‘consent’ to ‘prostitution’, which is defined as *“sexual exploitation or abuse for commercial purpose.”[[10]](#footnote-10)*
	2. Further still, in several cases, even though consent to perform certain work may initially be obtained through coercion and compulsion, when such persons are apprehended they have taken the conscious decision to continue performing such work.[[11]](#footnote-11) However, this is not considered relevant while interpreting the Protocol as without consent at every stage, trafficking shall be deemed to have taken place.[[12]](#footnote-12) We urge that the universal principles of respect for the autonomy and dignity of a person imply that lack of consent at an earlier stage cannot negate consent or the right to consent at a later stage.
	3. Consent is also considered to be absent when there is “abuse of position of vulnerability,” which, according to the *traveaux preparatoires*, refers to “*any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved*.”[[13]](#footnote-13) Such a vague and broad proposition would consider almost all workers in an increasingly globalized capitalist economy as ‘vulnerable’ and their movement for economic opportunities will be considered to be trafficking. Such over-inclusive definitions as in the Palermo Protocol, result in perpetuating of stereotypes which stigmatize individuals and subject them to surveillance of both society and State.
	4. Such an interpretation cannot be countenanced in light of international human rights instruments guaranteeing to each individual the right to dignity, the right to liberty and the right to work. It would be tantamount to penalizing individuals for the socio-economic conditions in their countries, instead of holding State Parties accountable for not taking appropriate measures to achieve their Sustainable Development Goals relating to poverty, hunger, education, and health, amongst others.

**Conflation of victims of trafficking with adults voluntarily performing work**

* 1. In India, law enforcement agencies and anti-trafficking units routinely carry out misdirected interventions, often targeting stigmatized occupations like sex work and begging. Mass raids and rescue operations result in everyone being ‘removed’ or apprehended, not just persons who have been trafficked. Adult sex workers in India have borne the brunt of such imprecise identification of victims of trafficking both under ITPA and Section 370, IPC.
	2. The U.N Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, visited India and in her 2014 Report noted the tendency to conflate sex work with trafficking in persons, and as a result, when sex workers are identified as victims of trafficking, the assistance that is provided to them is not targeted to their specific needs.[[14]](#footnote-14) The Special Rapporteur also underlined the State focus on maintaining ‘public morality’ as opposed to rights based interventions to human trafficking.[[15]](#footnote-15) Thus, labelling adult consensual sex workers as victims of trafficking does not in any form result in betterment of their living conditions, rather, they are forcibly detained, denied access to treatment for HIV/AIDS and sexually transmitted diseases.
	3. When entire classes of workers are habitually characterized as ‘victims’ of trafficking in the need of ‘rescue’ and ‘protection’, genuine cases of human trafficking, such as workers being forced to work in exploitative conditions in a factory or farm or domestic workers being subjected to physical and sexual abuse, fail to garner any public attention let alone legal intervention.
	4. Such practices of ‘raid, rescue, and rehabilitation’ by law enforcement agencies and anti-trafficking groups are grounded on stereotypes of women as a class being devoid of agency and in constant need of paternalistic protection. These practices perpetuate discrimination against women and impair their enjoyment of human rights and fundamental freedoms. They are prevented from participating in public life to the same extent as others and are deprived of opportunities and benefits in the political, economic, social, and cultural sphere. [See Articles 1 and 2, CEDAW; Articles 2, 3 and 26, ICCPR and Article 2, UDHR].
	5. Treating adults who engage in voluntary work as ‘victims of trafficking’ may amount to a violation of the right to work and their right to protection and safety in working conditions. [See Article 11, CEDAW; Articles 6 and 7, ICESCR and Article 23, UDHR]
	6. In the same vein, improper and ill-conceived identification of victims of trafficking has grave implications on the Right to Health of individuals performing work voluntarily. [See Article 12, ICESCR and Article 25, UDHR] Even though sex workers may themselves not be subject to criminal sanctions, the punitive framework will have a chilling effect on persons working with such communities who may be unwilling to risk incrimination and thus, reduce the impact of health and social security programmes.
1. **Involuntary detention of victims is a gross violation of human rights**
	1. The *traveaux preparatoires* to the Palermo Protocol reveal that earlier drafts had a provision on Victim rehabilitation (Article 7) which stated that “2. *Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of and witnesses to crimes covered by this Protocol, in order to foster their health, self respect and dignity, in a manner appropriate to their age, gender and special needs*.”[[16]](#footnote-16) However, the Palermo Protocol (as adopted) contains no such provision, let alone any mention of fostering the self-respect and dignity of trafficked victims.
	2. The Recommended Principles strongly guide that trafficked persons should not be kept in custody or detention and that ‘rescue’ operations must be done in consonance with the dignity of the rescued persons.[[17]](#footnote-17)
	3. The ‘raid, recue and arrest’ intervention is most often seen in the context of police interventions with sex workers. Some sex workers may be deemed to be victims of trafficking, while others may be considered to be traffickers or guilty of aiding and abetting trafficking in sex work. The ‘rescue’ involves forcibly being removed, compulsory medical examinations and involuntary detention in the name of ‘rehabilitation.’
	4. Institutionalization of victims of trafficking is a common practice worldwide. Such institutionalization often happens in the absence of any formal hearing by a legal or administrative authority and without the opportunity to appeal or seek a review of the decision to detain. There are no due process guarantees provided to the victims ‘rescued’. Detention of adult unwilling victim is of itself a violation of rights and freedoms besides facilitating the violation of other rights and freedoms.
	5. In India, recent reports of rape, sexual assault and other forms of torture of ‘inmates’ in state and NGO run ‘protection’ homes inin Bihar[[18]](#footnote-18), U.P[[19]](#footnote-19) and Odisha[[20]](#footnote-20) amongst others, have compelled policy makers to reckon with the grave rights violations occurring in the name of rehabilitation.
	6. The egregious practice of ‘protective custody’ was examined way back in 2001 by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy. The Report noted that, “*Even if the sex worker is rescued, she is faced with innumerable problems. She is often kept in a government home while she waits to be released. Though she has done nothing wrong and is seen by the law as a victim, her stay in the home is by court order and is not voluntary. This “protective custody” is a serious infringement of the human rights of the women concerned*.”[[21]](#footnote-21)
	7. In 2012, the UN Special Rapporteur on Trafficking in persons, especially women and children observed:-*“The Special Rapporteur is concerned, however, by practices where victims of trafficking are mandatorily detained in shelters. Although the Special Rapporteur recognizes that the motivation for this may be to protect victims, she notes that the routine detention of victims of trafficking violates, in some circumstances, the right to freedom of movement and, in most, if not all, circumstances, the prohibitions on unlawful deprivation of liberty and arbitrary detention. International law absolutely prohibits any discriminatory detention of victims, including detention that is linked to the sex of the victim. The routine detention of women and of children in shelter facilities, for example, is clearly discriminatory and therefore unlawful.”[[22]](#footnote-22)*
	8. Most detainees under trafficking laws are women and girls, and their involuntary detention constitutes gender-based discrimination. [See Articles 1 and 2, CEDAW; Article 2, ICCPR; Article 3, ICESCR and Article 2, UDHR]
	9. Such detention is a violation of the right to life and liberty of individuals [Article 6 of the ICCPR and Article 3, UDHR] and undermines the dignity of both victims of trafficking and others deemed to be trafficked. [See Article 10, ICCPR; Article 1, UDHR]. It constitutes arbitrary detention [Article 9, ICCPR and Article 9, UDHR] and restricts the freedom of mobility and the right to reside in a place of one’s choosing [Article 15, CEDAW; Article 12, ICCPR and Article 13, UDHR].
	10. These concerns are magnified in the case of vulnerable groups such as transgender persons, adult sex workers, migrant labourers and other impoverished persons seeking employment who will be prone to frequent interrogations and detentions in the name of anti-trafficking efforts. They will be compelled to reside in institutions against their will, with limited or no access to legal remedies, healthcare or even basic human contact.
	11. Unfortunately, the Concept Note prepared by CEDAW does not mention this problematic trend of ‘protective custody’, which has been routinely critiqued by international human rights activists and UN representatives. The General Recommendation must unequivocally condemn involuntary detention of victims of trafficking and emphasize that forced detention, which violates human rights, cannot be justified in the name of ‘protection’ or ‘rehabilitation’.
2. **Forced repatriation- re-victimization of trafficked persons**
	1. Article 7 of the Palermo Protocol highlights that each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, permanently or temporarily. In doing so, States must appropriately consider ‘humanitarian and compassionate factors.’ These terms are vague and are not elaborated upon even in the preparatory documents of the Protocol. Thus, it is apparent that States have no obligation to accommodate victims of trafficking from other countries and can engage in forced repatriation.
	2. Article 8 of the Palermo Protocol states that due regard must be paid to the safety of the victim of trafficking and the status of any legal proceedings related to them being a victim of trafficking, and that repatriation must ‘preferably be voluntary.’ We submit that a victim of trafficking cannot be forced to return to their country of origin unless they consent to the same. State Parties must offer legal and viable alternatives in case their return is considered to be unsafe or if they have other reasons rendering them unwilling to return.
	3. In certain cases, expulsion and forced repatriation of victims of trafficking may violate the international customary law principle of *non-refoulement* which forbids States from returning refugees to their country of origin in case they are in danger of persecution. [See also Article 13, ICCPR]
3. **Right to redressal**
	1. Article 6 of the Palermo Protocol requires each State Party to ensure that their domestic legal or administrative systems contain provisions for victims of trafficking to receive assistance to present their views and concerns during criminal proceedings against offenders. The victims are to be provided with counselling and information with regard to their legal rights and relevant court and administrative proceedings. The Protocol also mandates that domestic legal systems must provide victims of trafficking with the possibility of obtaining compensation. However, this provision is of little use as most anti-trafficking laws are silent on the right to legal representation and in particular, legal aid. Victims of trafficking may often possess little to no legal knowledge and lack the necessary resources to institute a legal course of action.
	2. As per international human rights instruments, victims of trafficking are entitled to equal protection of the law [Article 26, ICCPR; Article 7, UDHR and Article 15(1), CEDAW] and they cannot be deprived of their right to have an effective legal remedy against the violation of their human rights [Article 3, ICCPR and Article 8, UDHR]. Thus, the General Recommendation must emphasize the need for free legal assistance and advice to be provided to victims of trafficking, if they so desire.
	3. We would also like to reiterate that if anti-trafficking efforts are based on a criminal law-centric approach, then victims of trafficking may be deterred from approaching the relevant authorities for redressal of their rights. When legislations and policies broadly define offences which may unduly penalize victims themselves, their families, colleagues, landlords or even social outreach workers and lawyers, victims may be reluctant to report their trafficking. This reluctance is compounded by the heavy involvement of police forces and the fear of being involuntary detained. The General Recommendation must explicitly clarify that victims of trafficking cannot be penalized or re-victimized if they choose to seek redressal for the violation of their rights.
4. **Other Obligations of State Parties**
	1. The General Recommendation must emphasize on the need for State Parties to develop comprehensive policies for asylum seekers, refugees and trafficked victims from other countries. This should include opportunities for employment, application procedures for temporary and permanent stay permits and guarantees of non-discrimination on the grounds of citizenship, race, religion, caste, class, etc.
	2. It must be clarified that obligations to prevent and prosecute trafficking under the Palermo Protocol must be seen holistically in light of international human rights of refugees, in particular the international law custom of *non-refoulement.*
5. **Need for representation and consultation with vulnerable communities of women and girls**
	1. Article 7 of CEDAW requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure participation of women in the formulation of government policy and the implementation thereof.
	2. We would like to strongly urge the Committee to emphasize the need for deliberation and routine consultation with members of communities most vulnerable to trafficking. An example of the community’s involvement in anti-trafficking measures can be seen in the Self-Regulatory Board instituted by the *Durbar Mahila Samanway Committee*, a sex workers’ collective in Kolkata, India. The Self Regulatory Board assesses the age and voluntariness of every new entrant to ensure that under-age and unwilling persons do not enter sex work.[[23]](#footnote-23)
	3. To exclude or neglect to engage with affected communities would be tantamount to contributing to the systemic deprivation of agency of such persons. It is only when community members are an active and integral part of decision-making processes that States will be able to achieve sustainable and effective solutions to trafficking in persons, especially women and girls and stop the numerous rights violations perpetrated in the name of anti-trafficking today.
1. A-13, Nizamuddin East, New Delhi- 110013, India; Tel: +91-11-43646623; Email: <http://aidslaw1@lawyerscollective.org>; website: <https://www.lawyerscollective.org/hivaids-unit>. [↑](#footnote-ref-1)
2. For a critique of the Anti-Trafficking Bill, see: Tripti Tandon, *We don’t need the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018*, Lawyers Collective, available at <https://www.lawyerscollective.org/wp-content/uploads/2017/07/Critique-of-the-Anti-Trafficking-Bill-2018.pdf>;; See also Rethinking the 2018 Trafficking Bill, EPW Engage, available at <https://www.epw.in/rethinking-2018-trafficking-bill>. [↑](#footnote-ref-2)
3. Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children and Urmila Boola Special Rapporteur on contemporary forms of slavery, including its causes and consequences, “India must bring its new anti-trafficking Bill in line with human rights law, urge UN experts”, OHCHR, Geneva (23 July, 2018), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23392&LangID=E>. [↑](#footnote-ref-3)
4. Case concerning the Gabcikovo-Nagymaros Project, International Court of Justice (25 September, 1997), p. 38, para 46. [↑](#footnote-ref-4)
5. Article 5 is solely dedicated to criminalization of offences defined in Article 3. [↑](#footnote-ref-5)
6. See Anne T. Gallagher and Nicole Karlebach, *Prosecution of Trafficking in Persons Cases: Integrating a Human Rights Based Approach in the Administration of Criminal Justice*, OHCHR (2011), available at <https://www.ohchr.org/Documents/Issues/Trafficking/Geneva2011BP_GallagherAndKarlebach.pdf>. [↑](#footnote-ref-6)
7. First decade of the mandate of the Special Rapporteur on trafficking in persons, especially women and children, United Nations, OCHR, p. 17, available at <https://www.ohchr.org/Documents/Issues/Trafficking/FirsDecadeSRon_%20trafficking.pdf>. [↑](#footnote-ref-7)
8. Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, A/70/260 (3 August, 2015). [↑](#footnote-ref-8)
9. Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, A/70/260 (3 August, 2015), para 15. [↑](#footnote-ref-9)
10. Section 2(f), Immoral Traffic (Prevention) Act, 1956 [↑](#footnote-ref-10)
11. See Tripti Tandon, Gabriel Armas-Cardona, Anand Grover, *Sex Work and Trafficking: Can Human Rights Lead Us Out of the Impasse?*, Health and Human Rights Journal (21 October, 2014), available at <https://www.hhrjournal.org/2014/10/sex-work-and-trafficking-can-human-rights-lead-us-out-of-the-impasse/>. [↑](#footnote-ref-11)
12. Toolkit to combat trafficking in persons, UNODC, Global Programme against Trafficking in Human Beings, (United Nations, New York, 2006), p.xvii, available at <https://www.unodc.org/documents/human-trafficking/HT-toolkit-en.pdf>. [↑](#footnote-ref-12)
13. UNODC, TRAVAUX PRÉPARATOIRES of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (United Nations, New York, 2006), p. 347, available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/Travaux%20Preparatoire/04-60074_ebook-e.pdf>. [↑](#footnote-ref-13)
14. Para 20, United Nations General Assembly, Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, A/HRC/26/38/Add.1, 1 April 2014. [↑](#footnote-ref-14)
15. Para 28, United Nations General Assembly, Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, A/HRC/26/38/Add.1, 1 April 2014. [↑](#footnote-ref-15)
16. Second Ssession (8-12 March 1999), Argentina and United States of America (A/AC.254/4/Add.3/Rev.1), UNODC, TRAVAUX PRÉPARATOIRES of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (United Nations, New York, 2006), p. 374. [↑](#footnote-ref-16)
17. Guideline 2 and 5, Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1), the Office of the United Nations High Commissioner for Human Rights, 2002. [↑](#footnote-ref-17)
18. Abuse at Bihar Shelter Homes, India Today (6 August, 2018), available at <https://www.indiatoday.in/india/story/bihar-shelter-homes-rape-case-tiss-report-1306304-2018-08-06>. [↑](#footnote-ref-18)
19. The girls returned crying: Child reveals details of abuse at UP shelter home, India Today (6 August, 2018), available at <https://www.indiatoday.in/india/story/the-girls-returned-crying-child-reveals-details-of-abuse-at-up-shelter-home-1306417-2018-08-06>. [↑](#footnote-ref-19)
20. Odisha Shelter Home Girls Allege Sexual Abuse, In-Charge Arrested, NDTV (2 December, 2018), available at <https://www.ndtv.com/india-news/odisha-shelter-home-girls-allege-sexual-abuse-in-charge-arrested-1956650>. [↑](#footnote-ref-20)
21. Para 51, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, E/CN.4/2001/73/Add.2 (6 February 2001); also see paras 135-139, 159. [↑](#footnote-ref-21)
22. Paras 43, 44, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, A/HRC/20/18 (6 June 2012), available at

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18_En.pdf>. [↑](#footnote-ref-22)
23. See Smarajit Jana, Bharati Dey, Sushena Reza-Paul and Richard Steen, *Combating human trafficking in the sex trade: can sex workers do it better?,* Journal of Public Health, Vol. 36, Issue No. 4 (1 December 2014), pp. 622–628, available at <https://doi.org/10.1093/pubmed/fdt095>. [↑](#footnote-ref-23)