



# HUMAN TRAFFICKING

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# Understanding Human Trafficking

- Trafficking in persons
- Modern day slavery

# Exploitation of Trafficked Victims Globally, 2020.



Trafficking for  
forced labour  
38.8%



Trafficking for  
sexual exploitation  
38.7%



Trafficking for  
mixed forms of exploitation  
10.3%



Trafficking for  
forced criminal activity  
10.2%

\*sources: United Nations Office on Drugs and Crime elaboration of national data



Trafficking for  
forced marriage  
0.9%



Trafficking for  
exploitative begging  
0.7%



Trafficking for  
illegal adoption  
0.3%



Trafficking for  
removal of organs  
0.2%

- Two primary forms of trafficking in persons is
- forced labor and sex trafficking.

# 1. Identification of a victim of human trafficking

Who can be a victim of human trafficking?

- “Victim” defined under  
Section 2(wa) IPC, 1860  
Section 2(y) BNSS 2023

Need for Courts to identify such victims since there  
are certain misconceptions about  
“victims of human trafficking”

# Section 370 of the Indian Penal Code 1860

**Section 370** of the Indian Penal Code 1860 and now

**Section 143 The Bharatiya Nyaya Sanhita 2023**

defines the offense of trafficking of a person or a child as any person who is;

- exploited,
- recruited,
- transported/transferred
- harboured,
- received under threat, force,

or is put under any other form of

- coercion,
- abduction,
- fraud/ deception,
- abuse of power,
- inducement (including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received)

Explanation 1 of section 370 says the expression “exploitation” shall include any act of;-

- physical exploitation
- sexual exploitation
- servitude
- slavery/ or practice similar to slavery
- forced removal of organs.

Explanation 2 provides that the consent of the victim is immaterial in determination of the offense of trafficking

Hence Section 370 after it's amendment in 2013, now clears the misconceptions involving consenting victims.

Under its broadened umbrella the identification of a victim of human trafficking now includes any person who has been a victim of any form of exploitation.

- Abduction/kidnapping
- Fraud
- Sexual exploitation
- Slavery/Forced labor
- Forced marriage
- Organ trafficking
- Sex tourism



# The Bharatiya Nyaya Sanhita, 2023

- Section 143 – Trafficking of persons
- Section 144 – Exploitation of a trafficked person
- Section 145 – Habitual dealing in slaves
- Section 146 – Unlawful compulsory labour

# The Constitution of India and other Acts on Human Trafficking in India

- Article 23 – which prohibits trafficking in human beings and forced labour
- Article 39(e) which ordains that the health and strength of individuals are not abused and that no one is forced by the economic necessity to do work unsuited to their age or strength
- Article 39(f) - that childhood and youth should be protected against exploitation and against moral and material abandonment

- The Immoral Traffic (Prevention) Act, 1956 (ITPA)
- The Protection of Children from Sexual Offences (POCSO) Act, 2012,
- The Prohibition of Child Marriage Act, 2006
- The Bonded Labour System (Abolition) Act, 1976
- The Child Labour (Prohibition and Regulation) Act, 1986
- The Transplantation of Human Organs Act, 1994
- The Schedule Caste and Schedule Tribes (Prevention of Atrocities ) Act, 1989
- The Juvenile Justice (Care and Protection of Children) Act, 2015
- The Information Technology Act, 2000 and
- Prevention of Money Laundering Act, 2002

# Inter-country trafficking

- Challenges faced
- What can you do?

# Solution for Courts

Section 166 A CrPC now Section -112 BNSS, 2023; Letter of Request to a competent authority for investigation in a country or place outside India.

- Transfer of Evidence from another Country: In case of inter-country trafficking, evidence from another country can be obtained through Letters Rogatory or Letter of Request (LR) u/s 166A CrPC, 1973 now Section - 112 BNSS, 2023.
- Section 188 IPC now 208 BNSS2023; Offence committed outside India
- Section 189 IPC now 209 BNSS2023; Receipt of evidence relating to offences committed outside India.

- a) Letters Rogatory – A formal request from a Court to a foreign country seeking Judicial assistance (service of process/ taking of evidence or production of evidence located in a foreign country)
- b) Letter of Request (LR) u/s 166A CrPC, 1973 - A letter of request to competent authority for investigation in a country or place outside India
- c) MLAT- Mutual Legal Assistance Treaty

- Letters Rogatory (letter of request)
- The term “rogatorious” means - seeking information
- Any criminal court may issue a letter of request. However an IO cannot request for issue of a Letter Rogatory without concurrence of the Central Authority, i.e. Ministry of Home Affairs (MHA)

- Letter of Request under the Hague Evidence Convention is a standard form/template used to obtain evidence located in a country participating in the Hague Convention. However unlike a Letter Rogatory it can be used only in Civil matters as opposed to Criminal proceedings

For obtaining the concurrence of MHA, the Investigating Agency concerned has to send the following:

- A self-contained note containing brief facts of the case, names of the accused and a copy of First Information Report (FIR).
- Legal opinion of Director of Prosecution is mandatory
- The relevance of statement of witnesses to be examined

- MLAT (Mutual Legal Assistance Treaty) - Bilateral treaties between countries to provide international cooperation and assistance for purpose of gathering and exchanging information. India entered into MLAT with 40 countries in November 2019.

## 2. Victim Friendly Courts

- Court Infrastructure/
- Vulnerable Witness Deposition Center (VWDC)
- Adopting friendly Court procedures

2(i) Why the need for  
Victim Friendly Courts?

Who can be categorized as a  
“Vulnerable Witness”?

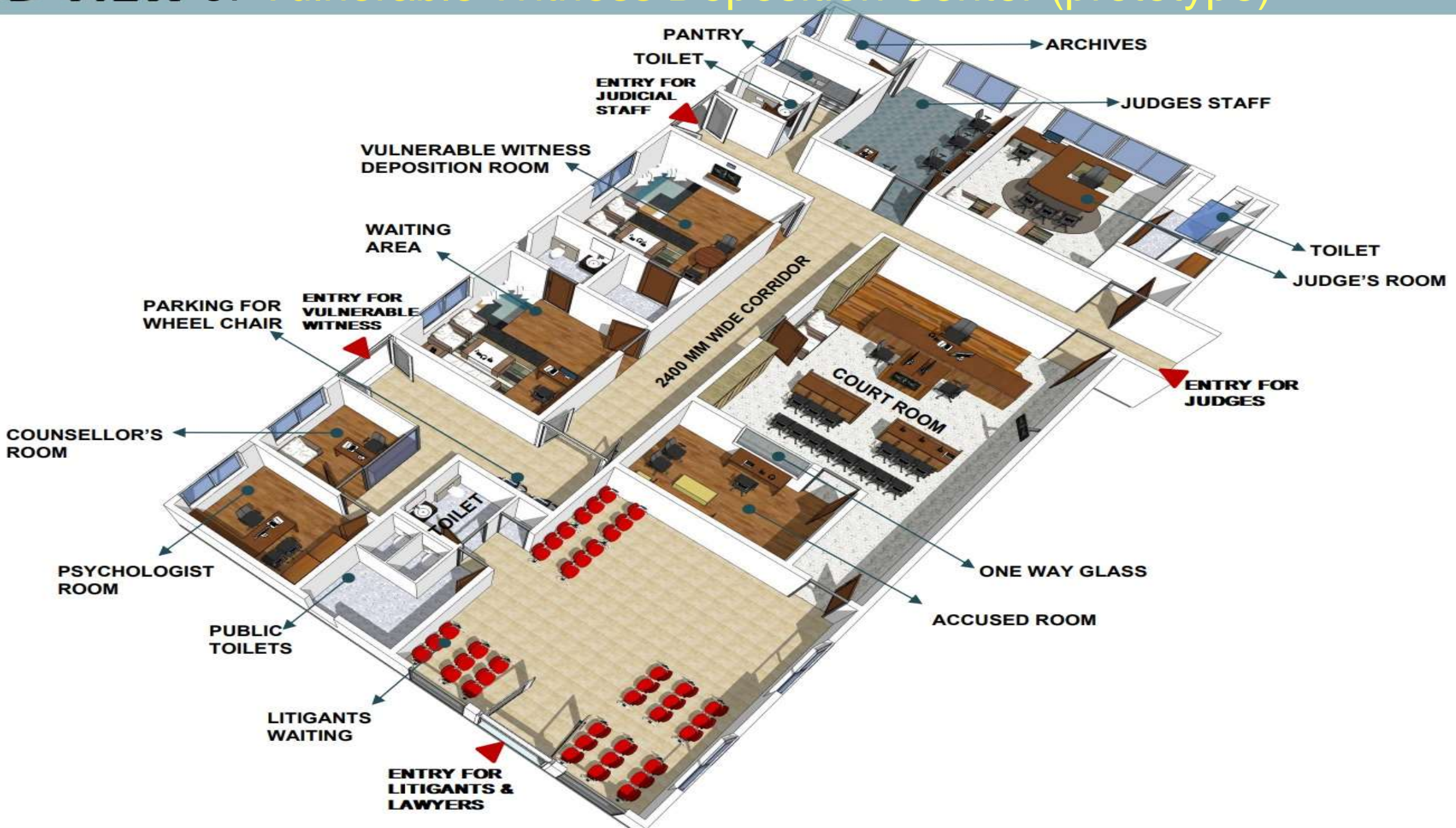
- “Vulnerable Witness” defined in 3.a. of *Guidelines for recording evidence for vulnerable witnesses*

(Notification No. 08/Confdl/HCS dated  
17.08.2022, High Court of Sikkim )

# Court Infrastructure

Vulnerable Witness Deposition Centers/  
Special facilities

# 3D VIEW of Vulnerable Witness Deposition Center (prototype)



# Vulnerable Witness Deposition Center



Separate Entrance for  
Vulnerable Witnesses



Main entrance of Court building

# Vulnerable Witness Deposition Center



Separate Entrance for  
Vulnerable Witnesses

Main entrance of Court building

# Vulnerable Witness waiting room



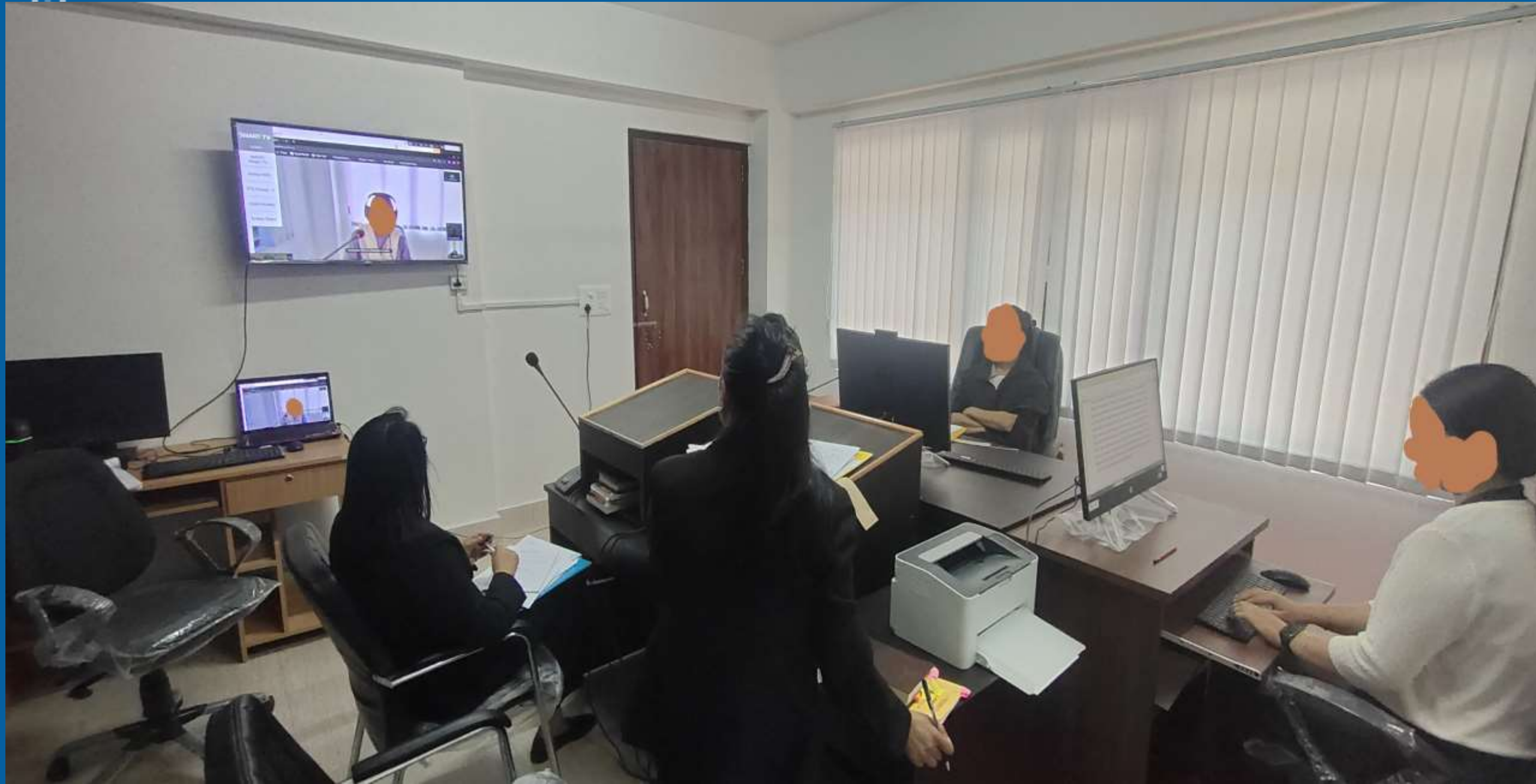
# Vulnerable Witness Deposition Room



## The Vulnerable Witness deposing in the Vulnerable Witness Deposition Room




# Vulnerable Witness Deposition Court Room



# Vulnerable Witness Deposition Center

Vulnerable Witness deposing from the Vulnerable  
Witness Deposition Room

Recording of evidence of a Vulnerable Witness in the  
Vulnerable Witness Courtroom

 Bird's eye view



Accused area separated by one way glass in black

## 2 (ii) Adopting Victim friendly Court procedures

How can you be an effective trauma informed  
Judge when examining human trafficking  
victims?

### 3. Protection of Victims

- Most Countries have witness protection laws. In India we have The Witness Protection Scheme 2018
- Why the necessity for protection of such a witness during trial?

## Some Other Protective Measures that can be taken:

The *Immoral Traffic (Prevention) Act 1956* also provides certain protective measures for persons who are carrying on or being made to carry on prostitution.

- An application may be made to the magistrate under *Section 19 of the Act* for protection through an order for being kept in a protective home, a corrective institution, or under the supervision of a person appointed by the Magistrate.
- Such an order may also be made *suo moto* by the Magistrate under section 17(4) of the Act. This provision is to be used keeping in mind that the *ITPA* is a social welfare legislation and must not be used to curtail the liberty of the victim.

# Impact of trafficking

**Excluded from the mainstream. Due to low self-esteem, the survivors need external support to economically sustain themselves**

**Social Impact**



**Economic Impact**



**Health Impact**



**Difficulty in dealing with the social stigma when rehabilitated back to their homes. Unable to integrate back into their Environment/Society**



**Significant health impacts- mental and physical. Trauma and depression after rehabilitation and prone to STDs and HIV/AIDS has been observed among the survivors/victims.**

## 4. Impact of Trafficking and the Importance of Rehabilitation

# Post-trial Challenges:

## Rehabilitation and Reintegration

- The process of rehabilitation focuses on addressing the physical, psychological, social and economic consequences of trafficking.

# Rehabilitation of Victims

- As a Judge handling Human Trafficking cases can you be involved in the victim's rehabilitation?

# Compensation as a step towards rehabilitation

- Can you grant compensation to trafficked victims/survivors?

- Victim Compensation Schemes
  - Sikkim Compensation to victims (or their Dependents) Scheme, 2021
- Section 357, 357A, 358 CrPC 1973 (now 395, 396, 399 BNSS, 2023) mandates grant of compensation to victims.

Today there are numerous NGOs who deal specifically with victims of human trafficking and hence have proved instrumental in assisting the court in the rehabilitation of victims. In India some of these are:-

- Berana (Mumbai)
- Development Forum (Jharkhand)
- Oasis India (Mumbai, Bangalore, Chennai)
- Vipla
- HELP ( Andhra Pradesh)
- Rescue Foundation (Mumbai)

# EXERCISE 1

What are your comments on the following images/slides?



Special Court

VULNERABLE  
VICTIM

ACCUSED



# Special Court



पुलिस थाना



In a case of human trafficking where several women have been sexually abused, the investigating agencies and the press should

- A. disclose only some details of the crime but not of the victims
- B. disclose the list of all the survivors/victims along with their details
- C. publish the name with the victim's photographs
- D. publish the name of the victim but not her photograph

A witness in a human trafficking case is located in a different State/Country and cannot appear before the Court without an unreasonable amount of expenses and delay

- A. The Court must insist the witness be physically present in the Court.
- B. The witness can be examined through video conference/live link
- C. The witness can be examined through WhatsApp/face time.

# While recording the statement of a specially abled witness

- A. seek the assistance of a special educator to record the statement.
- B. the court should send victim to the Chief Medical Officer for her medical assessment and report on the victims disability before recording her statement.
- C. observe that due to the disability of the witness, her statement can not be recorded.

# When a victim of sexual assault appears in court for recording his/her statement; the court must

- A. ensure the accused is present in the room to hear the statement made against him.
- B. ensure the accused does not come into contact with the victim during her examination in court.
- C. permit the accused be present only when the evidence-in-chief is being recorded and screen him during the cross-examination of the victim.

# When recording the statement of a child victim, the court

- A. must remain formal, with minimal communication
- B. should put all questions to the child through the court in a child friendly manner
- C. ensure detailed questions are put to the child by the prosecutor and defense to elicit a full statement
- D. must see that the child is thoroughly cross-examined by the defense

# When recording the evidence of a victim of human trafficking who has been sexually assaulted;

- A. the evidence must be recorded in an open court.
- B. the evidence must be recorded in camera
- C. in presence of other advocates but not other litigants.

# Police when examining a child victim;

- A. should be properly dressed in uniform to show the victim is in safe hands.
- B. should not be dressed in uniform but in civil attire.
- C. should have a baton in hand while examining the child.

During cross-examination of a victim trafficked for sex/prostitution the court should allow

- A. questions relating to the victim's past sexual history and character since it is necessary.
- B. allow detailed and lengthy cross-examination to elicit the truth.
- C. should not permit any questions that demeans the character of the witness.

# Which of the following does not fall under the category of a vulnerable witness

- A. a victim of robbery
- B. differently abled persons
- C. a mentally unsound person
- D. victim of sexual assault, minors and specially abled persons

If a victim is found traumatized by a Court, the Court can;

- A. grant compensation only at the end of the trial.
- B. grant interim compensation during pendency of the trial
- C. grant compensation only if accused is convicted.

When a witness, due to fear of her traffickers is hesitant to come to Court to depose, the Court

- A. must direct the Prosecutors to take steps.
- B. can direct the family members to accompany her.
- C. can pass an order for her protection based on the threat perception.

VIHAAN has made a movie for awareness which is a story of a survivor of human trafficking.

- Reena ki Kahani



Thank You!