



Role Of Legal Services Authorities In Rendering Legal Services To Victims Of Human Trafficking- A Study

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ABSTRACT

“It is a matter of bitter shame and sorrow and deep humiliation that a number of women have to sell their chastity for men’s lust. Man, the law giver, will have to pay a dreadful penalty for the degradation he has imposed upon the so-called weaker sex. When woman freed from man’s snares rises to the full height and rebels against man’s legislation and institution designed by him, her rebellion, no doubt, non-violent, will be nevertheless effective” - Mahatma Gandhi.

Human trafficking is the fastest growing criminal businesses in the world due to its high profitability of \$5 – 7 billion annually. It has low risks of detection, prosecution and arrest compared to other transnational crimes. While the legal controls are state-based, the crime groups are transnational which creates difficulties for law enforcement to combat effectively. It is clear that trafficking of persons is a pressing problem, at both the global and local level, with an urgent need for action. Human trafficking is a worldwide epidemic that deprives women, men and children of their basic rights each day. It has been recognized as one of the fastest growing crimes in the world that profits from the exploitation and victimization of human beings and undermines national economies and human safety. Virtually all countries are affected, acting as countries of source, transit, destination or a combination thereof. Over the last decades, human trafficking has captured significant attention worldwide and raised awareness on the different forms of exploitation and its consequences. While it is clear that the global community is committed to counter human trafficking, there is still much to be done to eradicate this crime. The multifaceted and clandestine nature of human trafficking poses a challenge for effective prevention, victim protection and prosecution related measures and policies. Its linkages with illegal migration, labor issues and health problems underline the complexity of the problem and demand different approaches from all actors. It is crucial now more than ever for actors at the international, regional and local levels to cooperate, coordinate and share responsibility in the fight against human trafficking.

Law enforcers, local and national governments, international organizations and non-governmental organizations are among the key actors at the forefront of this fight. In particular, local governments play a significant role in reducing the vulnerability of potential victims, providing support and assistance to presumed and current victims, and implementing development strategies that address the root causes of trafficking, all in alignment with international human rights standards.

Legal services authorities across the country disposed of 2.2 crore cases including 1.61 crore cases in pre-litigation stage in the last one year. The legal services authorities were making access to justice a reality, he said that by preventing cases from coming to courts, they were relieving the burden on the judiciary. Justice Thakur, who is the chief patron of the National Legal Services Authority (NALSA), said that since February last year, they settled claims of Rs.5,855 crore in pre-litigation and Rs.8,462 crore in pending cases. Stating that there are 40 crore people below poverty line, he said challenges before the NALSA and state legal services authorities have multiplied. The role of legal services authorities was no longer confined to giving legal aid to those who can't afford a counsel as it last year launched seven schemes to help various sections of needy people like victims of human trafficking, workers in unorganized sector, children and tribals.

Under Section 4 (b) of the Legal Services Authorities Act, 1987, the "Central Authority", i.e. the National Legal Services Authority, has been obligated to "frame the most effective and economical schemes for the purpose of making legal services available under the provisions" of the Act. The Preamble of the Legal Services Authorities Act, 1987, underscores that the legal services authorities are concerned with the weaker sections of the society and imposes a duty on them to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

There can be no doubt that victims of commercial sexual exploitation, whether trafficked or voluntary sex workers are by far a highly marginalized group. Their rights are forgotten; their conditions of life and living are not anybody's concern; what happens to them and their children interest no-one. Yet they are all entitled to benefits of the various schemes of the government by the mere fact of who they are. By their much marginalized existence they are entitled to all benefits that accrue to them as are available to other marginalized sections of the society.

Victims of trafficking for commercial sexual exploitation face a great deal of trauma not just following such trafficking but also after their rescue. They need to be protected against the traffickers who would want them to come back or not pursue their case. There are also livelihood issues and if a viable alternative is not given, chances of being re-trafficked are high.

NALSA submits report to SC on combating Human Trafficking; Recommends measures for victim-justice. In a Writ Petition filed by Prajwala, a Hyderabad based NGO, the National Legal Services Authority (NALSA) submitted a report to the Supreme Court of India pertaining to effective tackling of the issues of trafficking in women and children, rescue, rehabilitation, monitoring and functioning of shelter homes. The report was submitted based on deliberations of a committee that consisted of eminent judges from the Supreme Court of India and various other members from several government and non-government organizations. The Committee analysed the lacuna in existing statutory regime and identified a vacuum in respect of justice for trafficked victims. In the report it has been pointed out that the shelter and protective homes prescribed under the Immoral Trafficking Prevention Act (ITPA) do not have adequate facilities to cater to victim's needs, whereas victims in child care institutions are ousted upon reaching the age of 18, due to the absence of after-care homes. The report suggests that raid and rescue operations must not be conducted in an ad-hoc manner resulting in victim penalising. It says that pervasive intervention right from counselling the victims, psychological study and consideration of their views to effect rehabilitation is warranted since the ultimate aim is social integration, whether it's trafficked victims or voluntary sex worker. Absence of a victim/witness protection protocol that ultimately exposes them to pressure, exploitation and threats from traffickers forcing them to turn hostile or worse pushing them back into the trade due to lapses in background verification of applicants seeking release of victims have been remarked as the major flaws with the present system. The absence of a single investigating agency along the lines of the Narcotics Control Bureau has also

been identified as a gaping hole in the institutional framework since Anti-Human Trafficking Units have to rely on existing police for manpower coupled with absence of a separate budget dealing with trafficking. The report recommends that during rescue operations, differentiation between voluntary sex workers and trafficked persons should be maintained to protect civil and human rights of the former along with right to dignity and access to government programmes as well as proper identification while maintaining confidentiality of victims to prevent re-trafficking or re-establishment of contact by the exploiters. The Committee also culled suggestive changes in legislation regarding the definition and ambit of 'sexual exploitation' with recommendations to amend the ITPA. There are also recommendations for improving the security and vigilance over shelter homes, enforcement of strict vigilance policy and ensuring the competence and quality of attending personnel. "As the physical and mental trauma suffered by most victims requires hands-down caretaking, the in-house counsellors, medical personnel, volunteers should be trained in anger-management, conflict management, socialisation/sexualisation, grooming, self-defense and leadership, and be equipped to handle difficult cases," report says. The report envisages participatory role of residents in the running of the shelter homes to effect smooth re-integration of victims into ordinary life schedule. Systemized vocational training has also been recommended to equip them with employability and aptitude. Regarding the legal process it has been set out that "victims should have all information regarding the legal recourse available to them, rehabilitation options and accessible welfare schemes. The prosecutors, judicial officers as well as the judges should be sensitized on how to handle cases of trafficked victims on priority being given to trafficking cases, to exercise vigilance to prevent re-victimization through court processes while exercising caution in releasing the victims through thorough background checks ensuring they go into safe hands without any hurry or urgency to dispense such cases." Court proceedings in trafficking cases usually run aground due to lack of evidence or victims turning hostile. To tackle this, video conferencing facilities has been suggested in the courts to enable them to testify away from the threat of traffickers by putting a Witness/Victim Protection Programme in place applicable across the country. The report says "ample time must be allowed to the victims to recover from the trauma before recording their statement u/s. 164 Cr. P.C. FIR must be registered after guidance from legal services authorities so that offenders are convicted after trial." In order to successfully combat the interconnected network of human trafficking, the Committee has suggested creation of Nodal Agency, State Agency and District Task Force Agency. It shall meet once in three months, to facilitate convergence, intelligence sharing, monitoring compliance, to oversee issues of cross border trafficking, repatriation of foreign nationals and shall also make policies in this regard. It shall conduct training programmes for police, rescue personnel and staff of shelter homes, affix responsibility when any stakeholder is found wanting in their response and also make suitable record of appreciation for reasons of accountability and better cohesion, said the report. Last month, the ministry of Home Affairs had issued guidelines to set up a Central Victim Compensation Fund (CVCF) to support and implement the Victim Compensation Schemes, reduce disparity in quantum of compensation amounts notified by various states and UTs and encourage the states to effectively implement the Victim Compensation Schemes (VCS) notified by them under the provisions of 357-A of Cr.P.C. and continue financial support to victims of various crimes such as rape, acid attacks, exploitation of children and human trafficking. A couple of days back, in a Petition filed by a minor rape victim the Allahabad High Court had directed the state government to make a fixed deposit of a sum of rupees ten lakhs in the name of victim in a nationalised bank to be given to her when she reaches the age of 21 years. The state government was also requested to conduct a socio-psychological study based on appropriate survey on the number of rapes, number of children born out of rape, number of abandoned children, reactions of the victims, ways and means to counter the trauma of rape and the choice of the rape victims as to what are their expectations for rehabilitation and other related and ancillary issues, in order to frame suitable legislation in the matter of rehabilitation of rape victims.

In the case filed by PRAJWALA, being Writ Petition (C) No.56 of 2004 the NALSA has given a report in the Supreme Court to take the following actions in respect of victims of trafficking for commercial Sexual Exploitation and sex workers:

The role of the legal services authorities as set out in the preliminary report is reiterated as follows:

- **Provide legal assistance to the victims of trafficking and sexual exploitation at the time of rescue and thereafter during trial.**
- **Facilitate the accessing of the District Legal Services Authorities(DLSAs) for award of victim compensation under Section 357ACr.P.C**
- **To monitor and act as social auditors of the existing facilities available for rehabilitation of rescued victims of sexual exploitation and trafficking.**
- **DLSAs can spread awareness in the community through the panel lawyers and para-legal volunteers about the issues of trafficking particularly in vulnerable areas and among vulnerable groups.**
- **The DLSAs can act as converging nodes to ensure that the government schemes meant for the marginalized actually reach them as such access to the government support does have a positive impact in preventing trafficking and falling prey to traffickers.**
- **Initiate steps to sensitize the corporate world to support rehabilitation measures for trafficked victims including skill building and employment under the head of CSR.**
- **SLSAs can also assist in the training and sensitization of stakeholders, like police, lawyers including legal services lawyers, prosecutors, government servants and the judiciary.**
- **SLSAs may also collaborate with the local educational institutions and civil society organisations and NGOs working in this field."**

The NALSA believes that it is necessary to draw up a scheme to give a framework for the legal services authorities at different levels to put into action the undertaking given to the Supreme Court. To that end the present Scheme has been drawn up. It is expected that the Legal Services Authorities at all levels would be able to render legal services effectively to these vulnerable people by following the present scheme.

NAME OF THE SCHEME

The Scheme shall be called "**NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme,2015**".

The objective of the Scheme is to provide legal services to address the concerns of victims of trafficking including women of all age groups and at every stage: i.e. prevention, rescue and rehabilitation.

The thrust of the scheme is to provide economic and social pathways for these marginalised groups so that they are socially included and thus get all social protections available to an ordinary citizen. The interventions of the legal services authorities should be to ensure the protection of the dignity of the victims which is as much their fundamental right to a life as of any other citizen.

In order that the already marginalised voluntary sex workers are not excluded from the assistance of the legal services authorities, they are also considered victims of commercial sexual exploitation, apart from those

children and adults who are trafficked for the purpose.

STRATEGY FOR LEGAL SERVICES TO THE VICTIMS

The strategy of the legal services must be guided by a 360 degree approach. Thus, children, young adults of whatever sex, adolescent girls, young women and older women should all be included in the action plan. The legal services authorities must also develop an action plan for prevention, rescue and rehabilitation and not merely for one of these aspects. Further the legal services authorities must document each case and carry out a follow up at least for three years so that reintegration of the victim into the society is complete.

Enabling trafficked women to get their entitlements by completing all due diligence processes

The action plan must be to use the existing welfare schemes of the Government, both Central as well as the State, with a life-cycle approach to strengthen social security, social development and welfare in order to cover prevention of trafficking and rehabilitation of the victims. DLSA can request NGOs/CBOs to use tools such as micro planning and surveys to ascertain the demand for schemes and thereafter set up Help Desks across the district to facilitate registration for the schemes. Simultaneously the victims/community members could be motivated and educated about how to apply for schemes they wish to enroll or register for.

The DLSA, with the support of the concerned department could facilitate the applicant to fulfil the procedures stipulated under each scheme and comply with all the due diligence processes. This would include enabling the applicant to get the supportive documents that are required to be furnished in order to establish eligibility for the benefits under a scheme, such as getting proof of residence, age certificate, nativity certificate, income certificate, etc. Once all the due diligence is over and the scheme sanctioned, DLSA should provide support to the community till the scheme gets delivered or the benefit reaches the beneficiary.

The Available Schemes

1. ICDS or Childcare development ---0-6 years, pregnant women and lactating mothers (as care givers)
2. Food security or ration cards
3. Social security or Pension for the elderly women
4. Educational schemes including midday meal, bridge schools, residential schools of Sarva Shiksha Abhiyan, Sabala; scholarships for the primary, secondary and higher education from Social Welfare Department for adolescents and specifically girls
5. Livelihood - Skill Development, Financial Inclusion, Micro Enterprise - from SC/ST/BC/Minority and Women's Development Corporation and CSR funds from government and public sector undertakings
6. Housing or Subsidy for Construction and Land Pattas from Urban Development, Housing Corporation
7. Universal entitlements-Jan Dhan, Aadhar, Voter Card, SHG membership
8. Legal aid Schemes-Legal Literacy, Para Legal Volunteers, Legal services clinics to ensure free legal aid and protection

Role of LSAs

The most important role of the SLSAs/DLSAs is to maintain convergence oversight. While the administrative convergence for all the schemes no doubt will be under the District Collector, the protection convergence will have to be overseen by the SLSAs and the DLSAs. To converge social and legal protection for marginalized women SLSAs and DLSAs will provide the oversight on the process of convergence by bringing together the administrative convergence provided by the District Collector and those generated by the structures or community organizations that are facilitating the process on the ground and are rooted in the community and its realities and have played significant roles in preventing HIV, trafficking and violence against women and girls. In this background, the role of the SLSAs/DLSAs would be in:

Bridging the Gap-between all departments and trafficked women, women in sex work and those vulnerable to trafficking and extreme violence

Enhancing Engagement-Scheme Education Drive Organized by DLSA bringing together Community organizations and its members and government-department-district and sub-district administration

Facilitating Participation and Ownership-Led by DLSA in collaboration with community organizations through community meetings and camps.

Sensitization-Enabling all departments and institutions to learn about dynamics of community, remove misconceptions

Strengthening Accountability-Through an MIS capturing all processes from

identifying entitlement holder to scheme delivery.

Forging Partnerships-At the more micro level the collaborations will be with Community Organizations and NGOs working with sex workers and victims of trafficking and sexual exploitation. They will facilitate the process of reaching out to the many hidden members of the community and shape the process of community mobilization.

At the meso level, the partnership should be with and between district administrative mechanisms such as Department of Women and Child Development (especially Child Protection/Welfare Committees and Anti Human Trafficking Units) and the DLSA. This will highlight initiatives at the ground level with the community or beneficiaries.

The third level of partnership will be at the macro level with the Department of Women and Child which implements many schemes for victims of trafficking and also runs shelter homes for those rescued; Ministry of Home Affairs, Ministry of Social Justice and Empowerment and Rural Livelihood Mission which also has the mandate of prevention of human trafficking and will be vital partner to strengthen protection and safety nets to the beneficiaries.

Action Plan

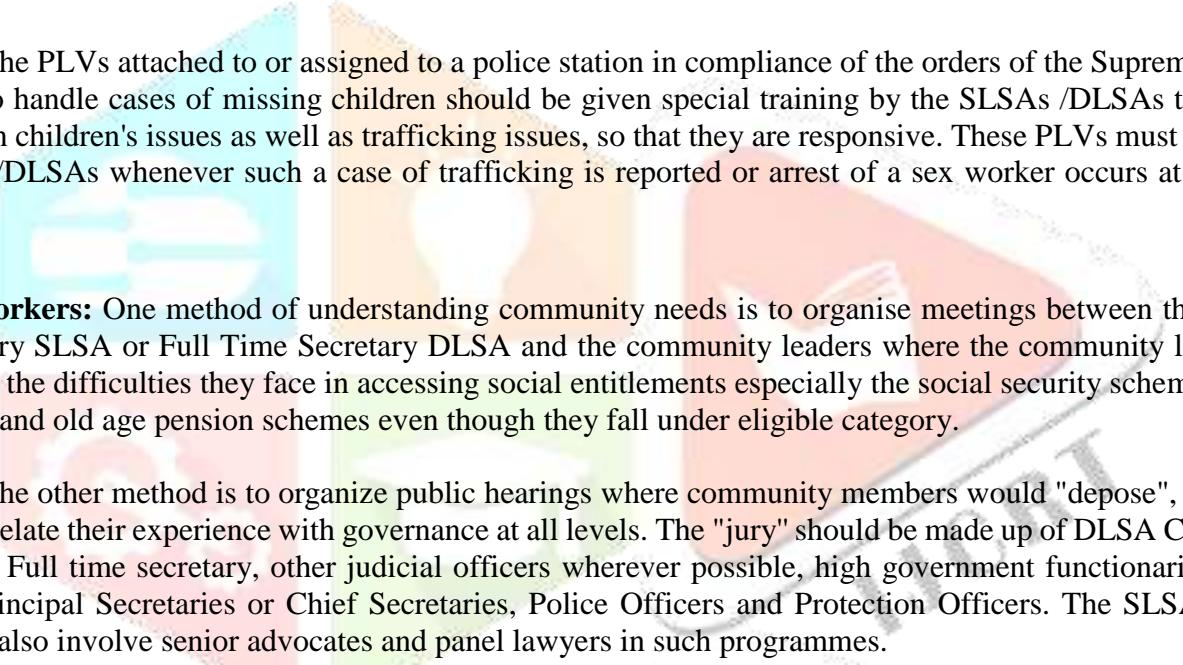
The first step that the DLSA should take is to reach out to the Non Governmental Organisations and Community Based Organisations (CBOs) working in the field. To do this, the SLSAs must contact the UNICEF or UNODC. State Agencies such as Department of Women and Child, Rural Livelihood Missions. They must also seek the assistance of the National Aids Control Organisation (NACO) and the State and District Aids Control Societies (SACS & DACS). Thus the SLSAs/DLSAs would be able to obtain information about trafficking as well as sex workers.

The second step would be to catalyze inter departmental convergence both at the State and further down to the district level so that an all inclusive and comprehensive response from all concerned departments and

stakeholders emerges and essential inter-sect oral linkages, processes and mechanisms get established.

Trafficking : As regards trafficking, from the Anti Human Trafficking units in the State and with the help of the NGOs/CBOs, the DLSA should map out the vulnerable areas and the vulnerable populations within its jurisdiction. Then preventive strategies can be put into motion. These would be spreading information about schemes and connecting the vulnerable people to such schemes so that they benefit from them. This would also include spreading awareness about the law and about the dangers posed by prospective traffickers. The children and adolescent children could be made aware of the dangers of strangers befriending them and the parents cautioned about the falsity of promises made to them of better education for their children in cities. Young adults could similarly be warned about false promises of jobs and better lives.

The SLSAs/DLSAs should create a team of panel lawyers and social workers to spread awareness about the welfare schemes of the government. The PLVs should be used to ensure that all the due diligence processes including eligibility documents and proofs are collected to enable the vulnerable communities to access the various schemes. The DLSA should use their PLVs and their offices wherever necessary to interact with the Administrative heads such as the District Collector or Chief Secretary to ensure the final realization of the scheme.



The PLVs attached to or assigned to a police station in compliance of the orders of the Supreme Court of India to handle cases of missing children should be given special training by the SLSAs /DLSAs to sensitize them on children's issues as well as trafficking issues, so that they are responsive. These PLVs must inform the SLSAs/DLSAs whenever such a case of trafficking is reported or arrest of a sex worker occurs at the police station.

Sex Workers: One method of understanding community needs is to organise meetings between the Member Secretary SLSA or Full Time Secretary DLSA and the community leaders where the community leaders can explain the difficulties they face in accessing social entitlements especially the social security schemes such as widow and old age pension schemes even though they fall under eligible category.

The other method is to organize public hearings where community members would "depose", or in other words relate their experience with governance at all levels. The "jury" should be made up of DLSA Chairperson and /or Full time secretary, other judicial officers wherever possible, high government functionaries such as DC, Principal Secretaries or Chief Secretaries, Police Officers and Protection Officers. The SLSAs/DLSAs should also involve senior advocates and panel lawyers in such programmes.

After the deposition the Member Secretary/Secretary as the case maybe or the panel advocate should explain to the community about the legal services available in the Legal Services Authority and encourage them to file complaints and seek free legal aid whenever their rights are infringed or they have a legal problem such as inheritance etc. The Legal Services Authority can enable the target groups to redress the violence and harassment they face in their day to day life. In cases of violence from partners or husbands, the DLSA along with Protection Officers can provide legal aid and counseling services.

The DLSAs can accredit Para legal volunteers drawn from the community and train them as per the NALSA module. These PLVs can then act as the front line workers of the Authority as far as the community is concerned. The effort must be to ensure "saturation coverage" by having representation from all the blocks of the district and ultimately the entire State.

Once again, the DLSAs should assess the need for schemes in the community and facilitate the access of the community to the various welfare schemes of the government in the manner as mentioned hereinbefore.

Prevention: While ensuring the implementation of government welfare schemes, the SLSAs/DLSAs should pay attention to the structure already available under the Integrated Child Protection Scheme, particularly the

setting up of the Village Level Child Protection Committees (VLCPC). These Committees are made up of Panchayat members, school teachers, students and parents from the community. Special awareness programmes should be organized for the VLCPC to keep a watch on the children in the village. The teachers should be sensitized to keep a watch for children missing from school and report them, so that further enquiries about their well being are promptly made.

A similar awareness and sensitization programme should be organized for the Anganwadi and Health workers for younger children and adolescent girls. Again, the SLSAs/DLSAs must ensure that children remaining absent are followed up and reported immediately.

PLVs drawn from the VLCPCs and Anganwadi is as well as teachers should be trained with special emphasis on the issues of trafficking and sexual exploitation. The work of these PLVs must be closely monitored. At the same time these PLVs must be given effective mentors and support so that any incident reported is given full and complete attention by the SLSA/ DLSA concerned.

Student Legal Literacy Clubs should be encouraged to write about and talk and discuss about trafficking issues. These clubs could play the role of peer educators about the dangers of growing up and how to keep oneself safe.

The SLSAs/DLSAs should strengthen groups who are working to prevent child marriages and empowerment of women. Many times, child and forced marriages are a prelude to trafficking for sexual exploitation. Apart from spreading awareness student groups should be formed in vulnerable areas and communities to report on child marriages and initiate preventive action.

Women could be encouraged to save money and channelize the money into entrepreneurship which would ensure their social recognition and assimilation. The SLSAs/ DLSAs should help the women to protect themselves from domestic violence and provide legal assistance to follow up court cases. They should help these women access all government schemes as mentioned above.

Strategies of prevention and protection of victims of trafficking implemented by the Rural Livelihood Missions should also be understood and explored so as to replicate some of the successful methods and establish collaborative efforts.

Rescue and Rehabilitation : The protocol for the One Stop Crisis Centre would no doubt be available for the rescued victims of trafficking. Apart from ensuring compliance of the directions of the Supreme Court in Prajwala's case, the SLSAs/DLSAs must also follow up with the rehabilitation of the victim chiefly through access to government schemes to provide a stable alternate livelihood for the victims. The DLSAs should ensure that panel lawyers and PLVs help the victims to get their FIR registered and are present during remand proceedings to oppose bail etc. The Panel lawyers should obtain court orders for protection of witnesses wherever necessary and to counsel the victims before deposition and be present during trial including recording of the statement of the victim. The panel lawyers and PLVs should also help the victim to apply to the DLSAs for release of compensation under the Victims Compensation Scheme and also to access other welfare schemes of the Govt. meant for the rehabilitation of such victims.

Management Information Systems : The SLSAs and DLSAs will have to develop a sound MIS so that every activity under this scheme is recorded, followed up and assessed. Similarly, the assistance of the PLVs and the Panel lawyers given to the victims will have to be recorded and monitored closely by the Secretary DLSA. Where the DLSA has facilitated the rehabilitation, there must be a tracking of the person for at least three years so that the rehabilitation is complete and there is no danger of retrafficking.

Transgenders: The provisions of this scheme will be applicable to all Transgenders as well.

CONCLUSION:

The authorities are also creating awareness among people about their rights. NALSA is working towards establishing fully functional legal aid clinics in all jails so that cases of under trials are under constant monitoring, he said. The system of Lok Adalats was started to do justice to those who approach them but the concept now has changed as legal services authorities are trying to do justice to even those who have not approached courts. The government was also ready to settle disputes with individuals by choosing alternate dispute resolution route, as far as possible.

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