

MOST IMMEDIATE

No. 14051/14/2011-F.VI
Government of India
Ministry of Home Affairs
(Foreigners Division)

Dated 1st May, 2012

OFFICE MEMORANDUM

Sub: Advisory on preventing and combating human trafficking in India -
dealing with foreign nationals.

The undersigned is directed to refer to this Ministry's Office Memorandum No. 15011/6/2009-ATC (Advisory) dated 09.09.2009 on the above mentioned subject (copy enclosed). It has come to the notice of this Ministry that foreign nationals are associated in some instances of human trafficking among women and children.

2. Further to the detailed procedure outlined in the above mentioned Office Memorandum, it has been decided with the approval of the competent authority that in cases of foreign nationals who are apprehended in connection with human trafficking, the State Governments / UT Administrations may follow the following procedure : -

- (i) Immediately after a foreign national is apprehended on charges of human trafficking, a detailed interrogation/investigation should be carried out to ascertain whether the person concerned is a victim or a trafficker.
- (ii) The victims and the persons actually involved in human trafficking should be treated differently by the police authorities. This is in line with the SAARC Convention which advocates a victim-centric approach.
- (iii) Missions/Posts in India may be informed of the arrest/detention of the foreign national by the concerned state or other authorities through CPV division in the Ministry of External Affairs(MEA) or the concerned territorial Division in MEA.

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- (iv) It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. *If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the chargesheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned.* Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels.
- (v) During the interim period, pending repatriation, the victim may be taken care of in an appropriate children's home, or "Ujjawala" home or appropriate shelter home either of the State Government concerned or of any NGO aided by the Government of India / State Government.
- (vi) If the investigation reveals that the person is actually a trafficker, he/she may be charge-sheeted under the Immoral Trafficking Prevention Act and the Foreigners Act and due process of law should be followed in such cases.
- (vii) In order to ensure better conviction rates of perpetrators of the crime of trafficking, prosecution should be based on documentary, forensic and material evidence. State Governments are advised to encourage the law enforcement agencies to investigate the cases in a manner that they are able to build fool proof cases against the traffickers, so that convictions can be guaranteed. Use of fast-track courts and video conferencing to the extent possible also need to be ensured. Please refer to para 7 of the enclosed Advisory dated 9.9.2009.

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3. All other instructions contained in this Ministry's Advisory dated 09.09.2009 including reporting to the Anti Human Trafficking Nodal Cell in MHA will be applicable in the case of foreign nationals associated with human trafficking, whether they are women or children(children means both boys and girls upto 18 years of age).

4. You are requested to issue suitable directions to all concerned under intimation to this Ministry.

5. The receipt of this Office Memorandum may kindly be acknowledged.

(G.V.V. Sarma)

Joint Secretary to the Govt. of India

To

The Chief Secretaries/Principal Secretaries/ Secretary (Home) of all State Governments and Union Territory Administrations.

Copy for information and necessary action to:-

- (i) The DGs / IGs (In-charge of Prisons) /- All State Governments/ UTs
- (ii) Sri Sandeep Goel, Joint Commissioner(Crime), 3rd Floor, Police Station Kamla Market, Delhi.
- (iii) Ministry of Women and Child Development(Smt. Aditi Ray, Senior Economic Advisor), Shastri Bhavan, New Delhi.
- (iv) Secretary, Ministry of Labour, Shram Shakti Bhavan, New Delhi
- (v) Secretary, Ministry of Social Justice & Empowerment, Shastri Bhavan, New Delhi.
- (vi) Secretary, Ministry of Overseas Indian Affairs, Akbar Bhavan, New Delhi.
- (vii) Ministry of External Affairs:
 - (a) Addl. Secretary(PV)
 - (b) JS(Consular)
 - (c) JS(BSM)
- (viii) Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi.
- (ix) Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi.
- (x) Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- (xi) Director General, NCRB, R.K.Puram, New Delhi.
- (xii) Director General, BPR&D, New Delhi.
- (xiii) Director General, Border Security Force, New Delhi.
- (xiv) Director, CBI, New Delhi..
- (xv) AS(CS) / JS(CS) / JS(UT) / JS(NE) / JS(K), MHA, North Block, New Delhi.

(G.V.V. Sarma)
Joint Secretary to the Govt. of India

F.NO.15011/6/2009-ATC (Advisory)
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
NORTH BLOCK NEW DELHI /CS DIVISION

New Delhi, the 09.09.2009

OFFICE MEMORANDUM

Subject: Advisory on Preventing and Combating Human Trafficking in India

Introduction:

The Trafficking in Human Beings (THB) is a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits. Such exploitation may take many forms, for example commercial sexual exploitation, child labour, forced labour, bonded labour or illegal organ removal etc. The country is witnessing cross-border as well as internal (intra-country) trafficking.

Human Trafficking and Indian Laws:

Trafficking in Human Beings (THB) is prohibited under the Constitution of India under Article 23 (1). Following specific legislations deal with Trafficking in Human Beings (THB)

- Laws relating to trafficking in women and children being administered by the MWCD (wcd.nic.in)
 - i. Immoral Traffic (Prevention) Act, 1956,
 - ii. Prohibition of Child Marriage Act (PCMA), 2006.
- The “Bonded Labour System (Abolition) Act, 1976”, being administered by Ministry of Labour and Employment (labour.nic.in), provides for abolition of the system of bonded labour and the rehabilitation of released labourers. Child Labour (Prohibition and Regulation) Act, 1986 is also being administered by Ministry of Labour.
- Further, commercial dealing in human organs is a punishable offence under the Transplantation of Human Organs act, 1994, being administered by Ministry of Health and family Welfare (mohfw.nic.in). The appropriate authorities appointed under the Act are responsible and empowered to check the illegal activities of human organs traffickers.
- Specific Sections in the IPC, e.g., Sections 372 and 373 dealing with selling and buying of girls for the purposes of prostitution.

‘Public Order’ and ‘Police’ as per the 7th Schedule of the Constitution of India, are State subjects and, as such, detection, registration, investigation and prevention of crime is primarily the responsibility of the State Governments. However, Central Government supplements the efforts of the State Governments by providing policy guidelines, financial assistance for modernization of the State Police Forces in terms of weaponry, communication, equipment, mobility, training and other infrastructure under the Scheme of Modernization of State Police Forces.

A working Group comprising of Directors General of Police of some of the affected States was constituted in 2004 by MHA to study the issues relating to cross border trafficking. The recommendations of this group were sent to the State Governments and they were advised to

evolve a comprehensive strategy for effectively dealing with the problem of trafficking. Also an **“Integrated National Plan of Action to Prevent and Combat Trafficking in Human Beings Specially Women and Children”** (*nhrc.nic.in/planofaction.doc*), which has been worked out through a consultation process of all related Ministries and other stakeholders, has been adopted by Government of India in the Ministry of Women and Child Development. This plan deals with all aspects of prevention, rescue, registration of cases, investigations, prosecution, conviction, cross border trafficking issues, rehabilitation, repatriation and reintegration of victims etc. Based on these the recommendations of DGPs and the integrated action plan stated above the State Governments may evolve a holistic approach towards combating Trafficking in Human Beings (THB), encompassing all aspects of prevention, rescue and rehabilitation. Convergence should be adopted between various state departments and stakeholders for effective of handling of crime of Trafficking in Human Beings (THB).

Following key points of advice have been worked out in collaboration with the related Ministries of Women and Child Development, Labour and Employment, and Health and family Welfare where the assistance/ action by the State Government/ Police would be required for the effective implementation/ enforcement of laws relating to Trafficking in Human Beings (THB):

1. Constitution of the State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation.

According to the Supreme Court order dated 2/05/09 (Vishal Jeet Vs Union of India), every State Government should set-up a State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation. Ministry of Women & Child Development (MWCD) has already issued an advisory in this regard to all the State Governments. .

2. Implementation of Immoral Traffic (Prevention) Act (ITPA), 1956.

- 2.1. Since ITPA is the main Act that can be used to book trafficking for commercial sexual exploitation, its implementation is essential for counter-trafficking. Under Section 23, the State Government may, by notification in the Official Gazette, **make rules for carrying out the purposes of the Act.** Such rules may be formulated, notified and intimated to MWCD with a copy to MHA.
- 2.2. Under Section 13, the State Government may **appoint ‘Special Police Officers (SPOs)’** and the ‘Non-official advisory bodies’ to advise the SPOs for dealing with offences under the Act.
- 2.3. Under Section 21, the State Governments may set-up ‘Protective homes’ and ‘Corrective institutions’ for ensuring proper implementation of the provisions of the Act. **The information regarding these homes may be circulated to all Police Stations and officers dealing with the trafficking cases.**
- 2.4. Under Section 22-A, the State Government may, by notification in the Official Gazette, and **after consultation with the High Court, establish one or more Courts** for providing speedy trial of the offences under the Act.
- 2.5. It is generally noticed that sections 8 and 20 of ITPA, which focuses on the victims, are more often invoked as a result of which the victim is re-victimized and the exploiters are not punished. It is, therefore, advised that sections 3, 6 and 7 which pertains to pimps, brothel owners, clients who are actual perpetrators of the crimes need to be invoked rather than sections 8 and 20. **Law enforcement agencies need to adopt a victim centric approach in the investigations.**

3. **Implementation of Juvenile Justice Act (JJ Act), 2000:** Juvenile Justice Act provides comprehensive mechanism for care and protection of children including rehabilitation and social integration of children. Therefore, its implementation is essential to address trafficking of children. Following provisions of the Act are concerned with the Home Department/ Police and require action by the State Governments:
 - 3.1. Under Section 62-A, the State Government shall constitute 'Child Protection Units' for the State and districts to fulfill its responsibilities as stipulated under the Act.
 - 3.2. Under Section 63, in each police station, at least one police officer may be designated as the 'Juvenile or Child Welfare Officer' to handle a juvenile or child in coordination with the police.
 - 3.3. Under Section 68, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
4. **Implementation of Prohibition of Child Marriage Act (PCMA), 2006:** Prohibition of Child Marriage Act (PCMA) was enacted in 2006 repealing Child Marriage Restraint Act, 1929. It is reported that traffickers in some pockets in the country are exploiting evil custom of child marriage to target innocent girls for trafficking. Therefore, it is essential to implement the Act to address this modus operandi of traffickers.
 - 4.1. As per PCMA, State Governments under Section 19 (1), may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
 - 4.2. Under Section 16, the State Government may appoint 'Child Marriage Prohibition Officers' to fulfill the mandate as stipulated in the Act. State Governments may intimate the MWCD about the status of appointment of Prohibition Officers and Rules.
 - 4.3. The State Governments are to maintain MIS and send quarterly information on number of cases registered under PCMA and convictions.
 - 4.4. On receiving a complaint about child marriage, police are required to follow the procedure laid down in the Code of Criminal Procedure, 1973, which include registering an FIR and carrying out investigation.
 - 4.5. The offences under PCMA are cognizable and non-bailable, hence, immediate arrest of offenders is necessary.
 - 4.6. Extra vigilance should be maintained during festivals such as 'Akshya Tritha' to ensure that no child marriage takes place.
5. **Capacity building of the State machinery:** Implementation of the legal provisions in relation to applicable Acts- CLPRA, BLSA, IPTA, JJA and IPC involves not only police but many other officials dealing with the Criminal Justice System - notably the executive magistrates, the labour officials, CWC members and in-charges of Homes. Therefore, the State government may initiate a time bound action plan to build the required capacity of the state investigation and prosecution machinery in this regard. Some of the key areas identified for capacity building are listed below.
 - 5.1. Identification of victims of trafficking for the purpose of commercial sexual exploitation, child/bonded/forced labour and for illegal organ removal.
 - 5.2. Recognition of all applicable legal provisions of the law to a case of trafficking (not just one Act or two) by law enforcement machinery.

- 5.3. Understanding of legal and administrative provisions for inter-state and cross border investigation.
- 5.4. Understanding of legal provisions for closure of places of exploitation.
- 5.5. Understanding of legal provisions for confiscation of proceeds of crime.
- 5.6. Understanding of the mechanism in place for victim support and assistance.
- 5.7. Integrated actions on prosecution, prevention and protection by building linkages with other Government departments and agencies, including NGOs.
- 5.8. For capacity building the Bureau of Police Research and Development (BPR&D) (www.bprd.gov.in), at the behest of MHA, has prepared a **training manual on Human Trafficking Handbook for Investigators** and this has been circulated to the States for use in the police Training Institutes. All the training materials have also been uploaded on BPR&D website. BPR&D has already translated the training material in Hindi, Telugu and Marathi languages. 12 Resource Books on ‘Training and Investigation on Anti-Human Trafficking’ prepared as a result of pilot project between MHA and UNODC (www.unodc.org/india/ind_s16.html) have also been uploaded on BPR&D website. These resource materials should be used by State Governments for the capacity building of all agencies involved in prevention of human trafficking.
- 5.9. Also MWCD, in collaboration with National institute of Public Co-operation and Child Development (NIPCCD) and UNICEF, has developed manuals for training of stakeholders such as ‘Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation’, ‘Manual for Medical Officers for dealing with Child Victims of Trafficking and Commercial Sexual Exploitation’, counseling services for Child survivors of trafficking’, Counseling services for Child survivors of trafficking’, Social workers.
- 5.10. States may organize training/workshops/awareness campaign to sensitize their SHOs/Dy. SP/ACP and other law enforcement agencies towards the crime, safety and security of women and children.
- 5.11. The **Compendium of Best Practices in handling cases of human trafficking** (www.unodc.org/india/ind_s16.html) **has already been circulated** to all the State Governments and UT Administrations for information and appropriate use.

6. Prevention of Trafficking:

- 6.1. It has been noticed that people, especially women and children are vulnerable to trafficking during ‘distress migration’ and from ‘disaster prone areas’- such as during floods, earthquakes, crop failures, riots, terrorist activities etc. Therefore, it is important to establish extra vigilance in this regard around transit points and at borders- inter-district/inter-state and international.
- 6.2. Police should work closely with immigration authorities, Border Security Force (BSF), Railways and other transport authorities, provincial/ territorial and municipal agencies, with Social Services, child welfare authorities and with any NGOs involved in service delivery for spotting and rescuing the victims.
- 6.3. Effective patrolling and vigil at locations prone to trafficking such as highways, dhabas, railway stations and bus stations for suspicious movement of traffickers and victims and monitoring, through involvement of village community, the suspicious/unnecessary movements of strangers in the villages.

- 6.4. Pro-active policing through information exchange with representatives from the local Government, community, NGOs with a view to raise awareness and garner active support of the community.
- 6.5. Periodical checks on transporters to prevent physical transportation of the trafficked persons.
- 6.6. Prevention at the demand area by understanding/ addressing new forms of demand. For example, placement agencies providing domestic child labourers.
- 6.7. Facilitating inter-State collaboration by sharing data on missing children/ kidnappings and suspected offenders. Development of victim and offender profiles on an inter-agency basis.
- 6.8. Sensitization programmes/workshops for police officers/railway police force and prosecutors on various legislations mentioned above in relation to trafficking. State nodal officers may hold periodical meetings to review and monitor the efforts taken to prevent and combat the crime of trafficking.
- 6.9. In case of child trafficking, following provisions also need to be kept in view:-
 - 6.9.1. Identification of children at risk, (e.g. following raids on off-street sites, responding to referrals from other agencies, NGO or members of the public, following up reports of missing children).
 - 6.9.2. Report instances of children in need of protection to relevant child protection agencies. For this purpose the Police Stations could be sensitized.
 - 6.9.3. The development of victim profiling with other agencies.
 - 6.9.4. Undertaking joint interviews with social workers of children identified as victims or potential victims to assess risk and assist in the development of protection plans.
 - 6.9.5. Carry out checks on sponsors and people who claim to be the relatives of children identified as being at risk of trafficking.
 - 6.9.6. Participating in local child protection networks with related organizations (immigration, social services, NGOs, health, education) to develop joint approaches to the issue at local level and contribute to wider forums as appropriate.
 - 6.9.7. If children disappear, initiate missing person's procedures, investigate circumstances and circulate information/ undertake investigations, linking with other agencies as required.
 - 6.9.8. Ministry of Labour & Employment has developed a detailed protocol for prevention, rescue, repatriation, rehabilitation and reintegration of migrant and trafficked child labour. The protocol has been issued to all State Governments for implementation.

7. Investigation & Prosecution:

- 7.1. Standard operating procedures for Investigation have been developed under the pilot project between MHA and UNODC as mention in para 5.8 above, which can be used for effective investigation in trafficking related crimes.
- 7.2. One of the effective means of securing better conviction rates of perpetrators of crime

of trafficking is to base the case on documentary, forensic and material evidence. At present, most of the time, the victim is being used as a witness and more often than not, he/she can easily be intimidated. State Governments are advised to encourage the law enforcement agencies to build full proof investigation against the traffickers, so that, convictions can be guaranteed.

7.3. Use of fast track courts and video conferencing to the extent possible.

8. **Rescue and Rehabilitation**

8.1. Police should work with other agencies and stakeholders to ensure that those who are rescued or who choose to return are not re-trafficked; this should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children).

8.2. Identifying support services and referring victims/ potential victims to specialist NGO's and safe accommodation, where these are available. The Ministry of Women and Child Development runs short stay homes Swadhar shelter homes for women in difficult circumstances (wcd.nic.in/Comscheme.doc). These cater to trafficked women/girls rescued or runaway from brothels or victims of sexual crimes who are disowned by family or who do not want to go back to respective family for various reasons. The schemes provide for shelter, food, clothing for women and children below the age of 18 years, counseling, clinical, medical, legal and other support, training and economic rehabilitation and helpline facilities.

8.3. A new scheme - UJJAWALA (wcd.nic.in/Comscheme.doc) – a comprehensive scheme for prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of the victims of commercial sexual exploitation has been launched on 04.12.2007 by the Ministry of women and Child Development which should be effectively used by the State Governments.

9. MHA has already established an Anti Trafficking Cell (ATC) under the Director (SR) which deals with the following major subject matters:

9.1. All matters pertaining to the criminal aspect of trafficking in human beings especially of women and children, which is the fastest growing organised crime and an area of concern.

9.2. To act as the Nodal cell for dealing with the criminal aspect of Human Trafficking in India, hold regular meetings of all States and UTs, communicating various decisions and follow up on action taken by the State Governments.

9.3. To interface with other Ministries like MWCD, MSJE, MEA, MOIA, MOLE, MOL, MOT and NCRB regarding the criminal aspect of human trafficking.

9.4. All matters relating to the UNODC, UNIFEM, their meetings, conferences, conventions, reports etc. in the context of the criminal aspect of Human Trafficking.

10. The Anti Trafficking Nodal Cell of MHA has developed an MIS proforma for the monitoring of the action taken by various State Governments regarding the criminal aspect of human trafficking as well as crime against women. The State Governments are requested to send quarterly information on 1st January, 1st April, 1st July and 1st October of the year in the prescribed proforma.

11. You are requested to issue suitable directions to all concerned under intimation to this Ministry. It is further requested that action taken in this regard may be regularly / periodically

reviewed by the State Governments and UT administrations and a report indicating the present status sent to this Ministry within a month.

12. This advisory is being issued in consultation with the Ministry of Women and Child Development and Ministry of Labour and Employment.

The receipt of this letter may kindly be acknowledged immediately.

Yours faithfully,

-Sd-

(Nirmaljeet Singh Kalsi)
Joint Secretary to the Government of India
Ministry of Home Affairs, North Block
New Delhi - 110001
Tel. No. 23092630

To,

The Chief Secretaries &

The Principal Secretary / Secretary (Home)

All State Governments and Union Territory Administrations – for information and necessary action.

Copy for information and necessary action to:

- i. The DGs / IGs (In-charge of Prisons)/ - All State Governments / UTs for information and necessary action.
- ii. Ministry of Women and Child Development (Mrs. Manjula Krishnan, Advisor & Joint Secretary, MWCD, Ms. P. Bolena, Joint Secretary) Shastri Bhawan, New Delhi.
- iii. Ministry of Labour (Shri S.K. Dev Verman, Jt. Secy.), Shram Shakti Bhavan, New Delhi.
- iv. Ministry of Social Justice and Empowerment (Sh. D.V.S. Ranga, Joint Secretary), Shastri Bhawan, New Delhi.
- v. Ministry of Overseas Indian Affairs (Shri G. Gurucharan, Jt. Secy.), New Delhi.
- vi. Ministry of External Affairs, (Joint Secretary SAARC and Joint Secretary UNES) South Block, New Delhi.
- vii. Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi-110 002.
- viii. Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi-110 001.
- ix. Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- x. Director General, NCRB, RK Puram, New Delhi.
- xi. Director General, BPR&D, New Delhi.
- xii. Director General Border Security Force, New Delhi
- xiii. Director, CBI, New Delhi.
- xiv. JS (UT)/ JS (NE) /JS (K), MHA, North Block, New Delhi.
- xv. Under Secretary (Parliament), MHA, North Block, New Delhi.

-Sd-

(Nirmaljeet Singh Kalsi)
Joint Secretary to the Govt. of India