



Draft

Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016

Government of India
**Ministry of Women and Child
Development**

**Trafficking of Persons (Prevention, Protection and
Rehabilitation) Bill, 2016 -DRAFT**

DRAFT

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Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2016- DRAFT

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BILL

to prevent trafficking of persons and to provide protection and rehabilitation to the victims of trafficking and to create a legal, economic, and social environment against trafficking of persons and for matters connected therewith or incidental thereto

WHEREAS, clause (1) of article 23 of Constitution of India prohibits trafficking in human beings and *begar* and other similar forms of forced labour, making a contravention of the same a punishable offence;

AND WHEREAS, article 21 of Constitution of India guarantees that no person shall be deprived of his life or personal liberty except according to the procedure established by law;

AND WHEREAS, the Government of India has ratified the United Nations Convention on Transnational Organised Crime and its three Optional Protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children;

AND WHEREAS, trafficking of persons needs to be prevented and the victims need care, protection and rehabilitation.

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. Short title, extent, commencement and application.—This Act may be called Trafficking of Persons (Prevention, Protection and Rehabilitation) Act, 2016.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions- In this Act, unless the context otherwise requires,-

- (a) “aftercare” means making provisions for support, financial or otherwise as prescribed by the appropriate Government, to a victim, who has left the Special Home and in the opinion of the District Anti- Trafficking Committee ready to reintegrate to join mainstream society;
- (b) “appropriate Government” means the Central Government or a State Government, as the case may be;
- (c) “child” means a person who has not completed eighteen years of age;
- (d) “District Anti-Trafficking Committee” means a Committee established by the appropriate government under sub-section(1) of section 3;
- (e) “Fund” means the Anti- Trafficking Fund created under section 29;
- (f) “narcotic drugs” shall have the same meaning assigned to it in clause (xiv) of section 2 of Narcotic Drugs and Psychotropic Substances Act, 1985;
- (g) “notification” means a notification published in the Official Gazette;
- (h) “placement agency” shall mean a person or body of persons whether incorporated or not other than a Government agency, department or organisation engaged in the business of providing the service of employment to any person;
- (i) “prescribed” means prescribed by rules made by the appropriate Government under this Act;
- (j) “Protection Home” means a home established or maintained in every district or a group of districts, by the appropriate Government directly, or through voluntary or non- governmental organisations, for the immediate care and protection of victims and for the purposes specified under section 8 ;

- (k) “psychotropic substances” shall have the same meaning as assigned to it in clause (xxiii) of section 2 of Narcotic Drugs and Psychotropic Substances Act, 1985;
- (l) “Special Home” means an institution, established or maintained, in every district or two or more districts by the appropriate Government, either directly or through a voluntary or non-Governmental organisation, and is registered as such for the purposes specified in section 9;
- (m) “Special Court” means a Court of Session specified as a Special Court under section 23 ;
- (n) “Special Agency” means a Specialized Agency under section 7;
- (o) “investigating officer” means an officer designated as such under section 28;
- (p) “State Anti-trafficking Committee” means a Committee constituted by the appropriate Government under sub-section (1) of section 5;
- (q) “victim” means a person or persons on whom trafficking of persons is caused or attempted by any other person or persons;
- (r) “Welfare Officer” means a person in charge of the management of a Protection Home or Special Home and monitoring of individual care plans of all victims in such homes under this Act;
- (s) words and expressions used but not defined in this Act and defined in the Juvenile Justice (Care and Protection of Children) Act, 2015 shall have the meanings respectively assigned to them in that Act.

CHAPTER II

DISTRICT ANTI- TRAFFICKING COMMITTEE

- 3 (1) The appropriate Government shall, by notification, constitute for every district, a District Anti Trafficking Committee, for exercising the powers and performing such functions and duties in relation to prevention, rescue, protection, medical care, psychological assistance, skill development, need based rehabilitation of victims as may be prescribed.
- (2) The District Anti Trafficking Committee shall consist of the following members, namely:-
- (i) the District Magistrate or District Collector- Chairperson;
 - (ii) two social workers out of which one shall be a woman to be nominated by the District Judge – Member;
 - (iii) one representative from the District Legal Services Authority nominated by the District Judge- Member;
 - (iv) District Officer of the Social Justice or Women and Child Development Department of the concerned States/UTs- Member Secretary.
- (3) The District Anti- Trafficking Committee shall meet atleast once in three months.
- (4) The District Anti- Trafficking Committee shall regulate its own procedure for conducting its meetings.

4. Procedure in relation to victims of trafficking of persons

- (1) A victim, after rescue shall be produced before the Member Secretary of the District Anti- Trafficking Committee by:-
- (i) investigating officer or any police officer; or
 - (ii) any public servant; or
 - (iii) any social worker or public spirited citizen; or
 - (iv) by the victim himself, including if the victim is a child.

CHAPTER III

STATE ANTI-TRAFFICKING COMMITTEE

- 5(1) The appropriate Government shall establish State Anti-Trafficking Committee to oversee the implementation of this Act and advise the State/UT Government and District Anti-Trafficking Committee on matters relating to prevention of trafficking, protection and rehabilitation of victims of trafficking in persons and to perform such other functions and duties as maybe prescribed.
- (2) State Anti-Trafficking Committee constituted for a State/UT, shall consist of the following members, namely:-
- (i) the Chief Secretary- Chairperson;
 - (ii) Secretary to the Department of the State dealing with Women and Child-Member;
 - (iii) Secretary of the State Home Department - Member;
 - (iv) Secretary of the State Labour Department- Member;
 - (v) Secretary from State Health Department- Member;
 - (vi) Director General of Police of the concerned State- Member;
 - (vii) Secretary of the State Legal Services Authority - Member;
 - (viii) two social workers out of which one shall be a woman and to be nominated by the Chief Justice of the High Court – Member.

CHAPTER IV

6. Central Anti- Trafficking Advisory Board

- (1) The Central Government shall constitute a Central Anti-Trafficking Advisory Board headed by the Secretary, Ministry of Women and Child Development and representatives from the concerned Ministries, State/UTs and members from civil society organisations as may be prescribed;
- (2) Central Anti – Trafficking Advisory Board shall oversee the implementation of the Act

and advise the appropriate Government on matters relating to prevention of trafficking, protection and rehabilitation of victims, in the manner as maybe prescribed.

CHAPTER V

7. Special Agency

The Central Government shall constitute a Special Agency for investigation of offences under the provisions of the Act.

CHAPTER VI

SUPPORT SERVICES

8. Protection Homes

- (1) The appropriate Government shall maintain either directly or through voluntary organisations, protection homes selected and managed in the manner, as may be prescribed for the immediate care and protection of the victims.
- (2) Protection Homes shall provide for shelter, food, clothing, counselling and medical care that is necessary for the rescued victims and such other services in the manner, as may be prescribed.

9. Special Homes

The appropriate Government shall maintain either directly or through voluntary organisations or use the existing shelter homes, as the case may be, one or more Special Homes in each district for the purpose of providing long- term institutional support for the rehabilitation of victims, in the manner as may be prescribed.

10. Registration of Homes

Notwithstanding anything contained in any other law for the time being in force, the Protection Homes and the Special Homes, shall be registered under this Act in such manner as may be prescribed by the appropriate Government.

CHAPTER VII

REHABILITATION AND SOCIAL INTEGRATION

- 11(1) The appropriate Government shall frame schemes and programmes, in such manner as

maybe prescribed, for the purpose of providing rehabilitation, support and after care services necessary for the social integration into mainstream society of the victims and to prevent re-trafficking.

- (2) The State Government shall create specialised schemes for victims, especially for women engaged in prostitution or any other form of commercial sexual exploitation, to enable them to come forward and reintegrate into mainstream prescribed.

In case of person below the age of 18 years...the provision of ICPS and its programme related to the prevention and rehabilitation to be linked with the clause..RTE is a tool for prevention, that can be mentioned here...

CHAPTER VIII

REGISTRATION OF PLACEMENT AGENCIES

- 12(1) Every placement agency, whether registered under any law for the time being in force or not, shall be registered for the purposes of this Act, within such time and manner as may be prescribed by the appropriate Government.
- (2) The period of registration and the conditions for registration shall be in the manner as may be prescribed, by the appropriate Government.
- (3) Notwithstanding anything contained in any other law for the time being in force, if any placement agency which violates any of the conditions of registration under sub-section (2) of section 12, the registration of such placement agency is liable to be suspended, cancelled or revoked, as the case may be.

Provided that the placement agency shall be given an opportunity to be heard before any action is taken against it.

CHAPTER IX

OFFENCES AND PENALTIES

13. Any person in-charge of Protection Home or Special Home providing shelter to the victims contravenes any of the provisions of section 10, shall be punished with imprisonment which may extend to one year or with a fine not less than one lakh rupees, or with both.
14. Any person who contravenes the provisions of sub-section (1) of section 12 of this Act, shall be punishable with fine which may extend to one lakh rupees and any person who

contravenes the provisions of sub-section (2) of section 12 shall be punishable with imprisonment for a term which may extend to 3 years or with fine which may extend to fifty thousand rupees, or with both.

15. Punishment for disclosure of identity

- (1) No report, or any newspaper, or magazine, or audio- visual media, or any other form of communication regarding any investigation or judicial procedure shall disclose the name, address, or any other particulars which may lead to the identification of a victim, or witness of a crime of trafficking in persons under this Act, or any other law for the time being in force, nor shall the picture of any such victim be published.
- (2) The publisher or owner of the media or studio or photographic facilities or any person in-charge of publication who contravenes the provision of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.

16. Using narcotic drugs, psychotropic or alcoholic substances for trafficking

Notwithstanding anything contained in any other law for the time being in force, whoever uses any narcotic drug or psychotropic substance, or alcohol, for the purpose of trafficking shall be punishable with 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 which shall not be less than one lakh rupees.

17. Use of chemical substance or hormones for the purpose of exploitation

Notwithstanding anything contained in any other law for the time being in force, whoever administers any chemical substance or hormones to a trafficked woman or a girl or a child for the purpose of early sexual maturity and exploitation shall be punishable with 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 which shall not be less than one lakh rupees.

18. General Penalty

Whoever, violates any of the directions given by the appropriate Government under this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to twenty thousand rupees, or with both.

19. Offence to be cognizable and non- bailable

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) no person accused of an offence under sections 16 and 17 shall be released on bail or on his own bond unless-

(i) the Special Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Special Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (a) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail.

CHAPTER X

CONFISCATION, FORFEITURE AND ATTACHMENT OF PROPERTY

20(1) Where a person is in possession or ownership of any property, and is accused of having committed an offence under section 16 and 17 of this Act or offences under section 370-373 of Indian Penal Code, 1860 and it is likely that such property be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings, the Special Court may confiscate such property.

(2) Where a person has been convicted of any offence punishable under an offence referred to in sub-section (1), the Special Court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence or accrue thereby, shall stand forfeited to Government.

(3) Where any person is accused of any offence referred to in sub-section (1), it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such

trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realization of any fine imposed by the Special Court.

Notwithstanding, anything contained under section 20, any order passed by the Special Court for confiscation, attachment or forfeiture of the property, as the case may be, shall not prejudicially affect the claim of any third person who acquired any right, claim or interest in the property through lawful consideration with lawful object.

21. Burden of proof

The burden of proving that the property so attached and confiscated as per Section 20, is not acquired or used in the commission of the offence under this Act, which he is named as accused shall be on such person.

22. Application for attachment of property

- (1) Where the appropriate Government has reason to believe that any person has committed (whether after the commencement of this Act or not) any offence under this Act, the State Government or, as the case may be, the Central Government may, whether or not any Court has taken cognizance of the offence, authorize the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this Act of the money or other property which the State Government or, as the case may be, the Central Government believes the said person to have procured by means of the alleged offence, or if such money or property cannot for any reason be attached, or other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.
- (2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, shall apply to proceedings for an order of attachment under this Act as they apply to suits by the Government.
- (3) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the alleged offence and the application shall also furnish the following:-

(i) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;

(ii) the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.

CHAPTER XI

SPECIAL COURTS AND POWERS OF SPECIAL COURTS

23. Special Court

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 for the purposes of providing a speedy trial of offences involving and punishable under sections 370 to 373 of the Indian Penal Code, 1860 and the offences under this Act, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district, a Court of Session to be a Special Court.

24. Presumption of certain offences

Where a person is prosecuted for committing or abetting or attempting to commit any offence under section 16 and 17 of this Act or offences under section 370-373 of Indian Penal Code, 1860, the Special Court shall presume that such person has committed the offence, unless the contrary is proved.

25. Application of Criminal Procedure Code, 1973 to proceedings before the Court

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Special Public Prosecutor.

26. Special Public Prosecutors

- (1) For every Special Court, the appropriate Government shall, by notification in the Official Gazette, specify a Special Public Prosecutor for the purpose of conducting case or cases falling under this Act and offences under sections 370 to 373 of the Indian Penal Code, 1860.
- (2) Every person appointed under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of Section 2 of the Code of Criminal Procedure, 1973 (2 of 1974).
- (3) A person shall not be qualified to be appointed as Special Public Prosecutor under this section unless possess ten years active practice as an Advocate before a Court of Session having good record of prosecution.

27. Procedure for recovery of fines

- (1) Where, on preliminary inquiry, a Special Court or a District Anti- Trafficking Committee, as the case maybe, finds that any amount is due to a victim, including backwages for the period of employment, or any other losses, it shall order for the recovery of the same as per the provisions of section 421 of the Code Criminal Procedure.
- (2) Notwithstanding anything contained in any other law applicable for the time being in force, where a person has been convicted of an offence of trafficking the Special Court may, in addition to the punishment prescribed under the relevant laws also order the accused to pay all backwages, or any other arrear or any other amount due to the victim, in addition to a fine which shall not be less than Rupees five lakhs for each victim engaged by such trafficker.
- (3) Where an offender has been sentenced to pay a fine, the Special Court shall initiate action for the recovery of such fine as an arrear of land revenue as per the section 421 of the Code of Criminal Procedure.

CHAPTER XII

MISCELLANEOUS

28. Investigating Officer

The State Government shall designate a police officer of the rank of Gazetted Officer to be an Investigating Officer for investigating offences under this Act and under section 370 to 373 of the Indian Penal Code, 1860.

29. Anti-Trafficking Fund

- (1) The appropriate Government, as the case maybe, shall create a fund for the effective implementation of this Act and also for the welfare and rehabilitation of the victims, as maybe prescribed.
- (2) There shall be credited to the fund such voluntary donations, contributions or subscriptions as may be made by any individual or organisation.
- (3) The fund created under sub-section (1) shall be administered by the appropriate Government in such manner and for such purposes as may be prescribed by that Government.

30. Procedure for Mandatory reporting

Any police officer or a public servant, or any officer or employee of Protection home or Special home, who finds or takes charge of, or who is handed over the custody or care of a victim shall within twenty four hours, give information to the nearest police station, or a District Anti- Trafficking Committee or in the case of a child victim, to a Child Welfare Committee, or a child care institution registered under the provisions of the Juvenile Justice (Care and Protection) Act 2015.

31. Repatriation to another state

A victim, on an order of the District Anti-Trafficking Committee or the Special Court may be repatriated to the home State or to another State for increased protection;

Provided the District Anti-Trafficking Committee of the recipient district may take over the rehabilitation of the victim in such manner as may be prescribed by the appropriate Government.

32. Repatriation to another Country

Where a victim from foreign country has been rescued and the State anti- Trafficking Committee is of the opinion that the victim needs to be repatriated to the country of origin, it may be dealt with the matter under any law for the time being in force.

33. Appeal

- (1) Notwithstanding anything contained in the Criminal Procedure Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court under sections 16 and 17 of this Act and sections 370-373 of the Indian Penal Code 1860 to the High Court both on facts and on law.
- (2) Every appeal under sub-section (1) shall be heard by a Division Bench of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.
- (3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.
- (4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.
- (5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from: Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days: Provided further that no appeal shall be entertained after the expiry of period of ninety days.

34. Protection of Action Taken in Good Faith

No suit, prosecution or other legal proceeding shall lie against the Central Government, or the State Government or any person acting under the directions of the Central Government or State Government, as the case may be, in respect of anything which is

done in good faith or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.

35. Power of Central Government to make Rules

The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act on the subject specified under this Act;

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government is required to make rules and where any such model rules have been framed in respect of any such matter, they shall apply to the State *mutatis mutandis* until the rules in respect of that matter are made by the State Government and while making any such rules, they conform to such model rules.

36. Power of the State Government to make rules

- (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature.

37. Power to give directions

The appropriate Government may give such directions as it may deem fit to any individual, person or body of persons or organisation, whether incorporated or not, in respect of any matter under this Act.

38. Laying of Rules

Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may

be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

39. Power to Remove Difficulty

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided, that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

40. Section 360 of the Code and Probation of Offenders Act not to apply to persons committing an offence under this Act

The provisions of section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

41. Act to override other laws

Save as otherwise provided in this Act, the provisions of this Act or any rule made thereunder or any order made under any such rule shall, have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having the force of law.