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Ministry of Women and Child Development

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Posted On: 30 JUL 2018 5:44PM by PIB Delhi

The Ministry of Women and Child Development has clarified the arguments of certain UN human rights experts on the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 passed in the Lok Sabha last week.

The UN human rights experts have expressed arguments over the measures contained in the Trafficking of persons (Prevention, Protection and Rehabilitation) Bill, 2018 stating that it is not in accordance with the international human rights laws. In a statement issued jointly by Ms. Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, and Ms. Urmila Boola, Special Rapporteur on contemporary forms of slavery, it has been stated that the Bill does not give due consideration to the rights and needs of the victims and their protection and proper rehabilitation. It has also been stated that the Bill seems to conflate sex work and migration with trafficking.

The WCD Ministry has clarified that the concerns expressed by the experts seems to be emanating from a lack of understanding of the Bill in question.

The Trafficking of persons (Prevention, Protection and Rehabilitation) Bill, 2018 is the first ever comprehensive legislation in the country concerning trafficking in humans which deals with aspects of prevention, protection and rehabilitation to the victims. It addresses the gaps of the earlier legislations that only defined and penalized trafficking.

Immediate protection to the victim has been provided through rescue, with sufficient safeguards to prevent misuse of the law. The Bill is also a significant departure from institutionalization as a method of rehabilitation, and goes much beyond it. Not only are the victims placed in the safe environment of a rehabilitation home voluntarily, but they are also provided with physical, psychological and social support, including access to education, skill development, physical and mental healthcare, legal aid etc. Rehabilitation has been provided as a matter of right to the victim, which is not contingent upon conviction of the offender.

To give primacy to victims' rights of privacy and dignity, provisions like speedy time-bound trials, immunity to victims in certain cases, reverse imposition of burden of proof, in camera trials and trial through video conferencing have been granted in the bill. The consent and agency of the victim has also been respected at all stages.

The Bill is clear in excluding consenting adults from its purview. The definition of trafficking has been taken from Section 370 of the Indian Penal Code, 1860 which does not apply to consenting adults and sex workers, as clarified by the J.S. Verma Committee. While it criminalises trafficking for the purpose of pushing a woman into sex work, it does not punish the act itself. At no point is the victim held as a criminal, or detained against his/ her will.

The Bill maintains a clear distinction between trafficking and the smuggling of migrants. The Bill

does not criminalise migration per se. It is the trafficker made liable under the Bill who promotes irregular and exploitative migration, and not the migrant. These measures are in complete accordance with the Guideline 2 of “OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking”. *Exploitation has been made the key parameter to constitute the offence of trafficking.*

Rehabilitation Fund, Section 30 of the Bill, shall be constituted to be used, *inter alia*, for generating awareness, providing legal assistance and after-care support for the welfare of the victims. An initial corpus of Rs.10 crores would be topped up further by multiple means such as grants and loans by the Government, donations and contributions, fines recovered from offences provided herein, assets seized and any other sums also. The State Government can also supplement the Fund. The fund shall be maintained and monitored by National Anti Trafficking Bureau(NATB). Provisions in Section 30 are in accordance with UNODC.

Model Law against Trafficking in Persons. Concerning accountability mechanisms, officials have been made liable under the law for omission of duty.

In compliance with the Guideline 1 of “OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking”, multiple stakeholders have been consulted in the process of formation of the Bill. Public comments were invited at various stages of drafting. More than sixty organizations and eminent social workers and activities in the field were consulted, along with police and lawyers. Consultations were also held with the eight most affected states, with regional consultations in various cities. Sex workers and the Ministry of Labour and Employment were also made a part of the deliberations, along with other members of Parliament.

Hence the Bill is in conformity with various international standards such as the Global Compact for Safe, Orderly and Regular Migration, the UNODC Model Law against Trafficking in Persons and the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking.

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