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Member of Standing Committee on Defence
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28th June, 2016

Dear Maneka ji,

I am writing to you with reference to the Draft Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016 which was released for comments from stakeholders by your Ministry on June 1st.

As you will recall, I had met you in December last year to submit a petition on the issue of protecting our children from sexual abuse, signed by nearly 2 lakh citizens across India. I had also written to you back in June 2015, regarding the disappointing responses I had received from your Ministry to my questions in Parliament on the issue of child sexual abuse reported in orphanages across India. In the same letter I raised the issue of organised sexual trafficking rackets prevailing in orphanages and the vulnerable status of children in such institutions.

Background:

The scale and pervasive nature of sexual exploitation of children is corroborated by studies conducted by your Ministry which estimate that there are 3 million people involved in sex work across the country, of which an estimated 40% are children - some as young as 5 years of age.

The problem does not end there, as several alarming trends such as child sex tourism, paedophilia, sexual trafficking rackets in orphanages, prostitution in pilgrim towns and tourist destinations and cross-border trafficking have been on the rise in recent years putting our children at further risk. A 2002 report by the National Human Rights Commission states that 40% of the traffickers admitted that they had trafficked in children, of which almost 80% stated that the purpose was commercial sexual exploitation. Back in 2008, the Government

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acknowledged the gravity of child trafficking and sexual exploitation in the foreword to the India Country Report:

'There has been a significant shift in the perception of the problem of sexual exploitation of children and adolescents, especially through devious means of trafficking, by seeing it not just as a law enforcement issue, but as a heinous crime which violates basic human rights, including their right to live with dignity and self-respect.'

Further, the 2015 US State Department Trafficking In Persons report has observed that, *"The Government of India does not fully comply with the minimum standards for the elimination of trafficking ... the government's law enforcement progress was unknown as the government did not provide adequate disaggregated anti-trafficking data and official complicity remained a serious concern."*

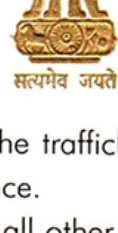
Comments on the Draft Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016:

It is in this background that I wish to make the following comments on the *Draft Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016* which has been released by your Ministry. The bill, unfortunately suffers from several legislative and procedural flaws, as identified by the country's most credible and experienced child rights activists.

The legislative flaws in the bill are as follows:

- i. There is no definition of 'trafficking' in the Draft Bill.
- ii. The Draft Bill does not state what forms and purposes of trafficking it will cover since no offence that amounts to trafficking is mentioned in the Draft Bill.
- iii. Section 41 of the Draft Bill states that "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" i.e. that it will have an overriding effect on other laws, including the Immoral Trafficking Prevention Act, 1956.
- iv. Since some of the sections of the Bill are weaker than the ITPA, this is another weakness in the bill.
- v. There is a need to define many more terms within the Bill, such as 'sexual exploitation', 'sex tourism', 'pornography', 'brothel' and 'public place'.

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- vi. The Draft Bill does not make the trafficking of children for domestic servitude by placement agencies as an offence.
- vii. The Draft Bill seeks to override all other laws even if its provisions are inconsistent with such other laws. This is a serious issue requiring attention as matters governing rehabilitation of children will have to be addressed through the Juvenile Justice Act, 2015 and the mechanisms set up there under.
- viii. The Draft Bill does not make mention of the Anti-Human Trafficking Units (AHTUs), on reporting of missing children to AHTUs or treatment of cases of children missing for more than a certain period as a case of trafficking.

Further, the procedural process followed in seeking comments and consultation to the Draft Bill is flawed. The Draft Bill has been put up for public comments over the Ministry's website without due regard being given to the decisions taken in the meeting of the Committee of Secretaries (CoS) held on 10 January, 2014 under the chairmanship of the Cabinet Secretary on the Pre-Consultation Policy (PLCP) to be followed while formulating principal and sub-ordinate legislation.

The PLCP explicitly states that:

- i. "Every draft legislation or rules, placed in public domain through pre-legislative process should be accompanied by an explanatory note explaining key legal provisions in a simple language". This has not been done.
- ii. "The Department/Ministry concerned might, in addition to placing the proposal in public domain, also hold consultations with all stakeholders. However, the degree of participation and mode of consultations may be decided by the Department/Ministry concerned and may vary according to the nature of the subject and the potential impact on those who will be affected by such legislation." This has not been done.
- iii. "The Department/Ministry concerned should publish/place in public domain the draft legislation or at least the information that may inter alia include brief justification for such legislation, essential elements of the proposed legislation, its broad financial implications, and an estimated assessment of the impact of such legislation on environment, fundamental rights, lives and livelihoods of the concerned/affected people, etc. Such details may be kept in the public domain for

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a minimum period of thirty days for being proactively shared with the public in such manner as may be specified by the Department/Ministry concerned". This has not been done only partially.

In light of the above facts, I would urge you to initiate a detailed and comprehensive consultation on the issue, involving prominent child rights organisations, and coalitions such as the National Coalition to Protect Our Children. My specific requests with regard to this are as follows:

1. The consultation process to obtain comments from the public on the Draft Bill must be extended by another 30 days. In the meanwhile, the Ministry should hold an Open House Pre-Consultation on the Draft Bill with the participation of all the necessary stakeholders like the National Coalition to Protect Our Children (NCPOC). The comments submitted by the stakeholders should be made available publicly.
2. The Ministry should strictly follow the guidelines laid down by the meeting of the Committee of Secretaries (CoS) held on 10th January, 2014 under the Chairmanship of Cabinet Secretary on the Pre-Legislative Consultation Policy (PLCP).
3. The Ministry should take into consideration the existing provisions under the Immoral Traffic (Prevention) Act, 1956 and the extensive consultations which were held on the ITPA (Amendment) Bill, 2006. There are existing provisions under the Indian Penal Code (IPC) under s. 370, s.372 (selling minors for purpose of prostitutes), s.373 (buying minors for purposes of prostitution), s.339 (wrongful restraint) and s.340 (wrongful confinement). With the enactment of the Criminal Law (Amendment) Act of 2013 (in 2013), for the first time there were very specific provisions on human trafficking in India. These reforms reflect a step towards aligning the country with its obligations under the Palermo Protocol. It does so by redefining human trafficking under Section 370 of the IPC, where in it draws upon the definition in the UN Trafficking Protocol.

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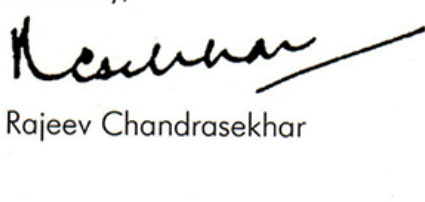


The Pre-Consultation should take into consideration the above facts and ensure the Draft Bill is reflective of this.

You will agree that any effort towards addressing this deeply entrenched institutional malaise will have to be thorough and comprehensive - and that any compromise in the quality of consultations issued by the Ministry would only serve to undermine the rights of our children.

While I commend the intention of the WCD in attempting to address the problem, it is my hope that you will consider these suggestions, which have the support and backing of the undersigned individuals and organisations - all with decades of experience on this issue. Our children deserve better.

Sincerely,


Rajeev Chandrasekhar

Smt.Maneka Gandhi
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