

Submitted by



**Recommendations on the Draft India
Trafficking in Person (Prevention) Act,
2016**

To the Ministry of Women and Child Development, Government
of India

Contents

Preamble	Error! Bookmark not defined.
Chapter 1: PRELIMINARY	Error! Bookmark not defined.
1. Short title, extent, commencement and application.-	Error! Bookmark not defined.
2. Definitions.-	Error! Bookmark not defined.
3. General Principles.-	4
Chapter 2: OFFENCES AND PENALTY	6
4. Trafficking in person.-	6
5. Punishment for trafficking in person.-	8
6. Aggravated trafficking in person.-	8
7. Punishment for Aggravated forms of trafficking.-	9
8. Exploitation of trafficked persons.-	9
9. Punishment for keeping a place of exploitation or allowing premises to be used as a place of exploitation.-	9
10. Registration of placement agencies.-	10
11. Non-registration or non-compliance with registration of placement agency.-	11
12. Punishment for trafficking in person by a placement agency.-	11
13. Punishment for promoting or facilitating trafficking in person.-	11
13 a. Punishment for Money laundering for the purpose of Trafficking:	11
14. Punishment for disclosure of identity.-	11
15. Punishment for negligence of duty	12
Provided that any dereliction of duty and non compliance of duty shall be dealt as per the provisions of Prevention of Corruption Act, 1988;	12
16. Attempt and Punishment.-	12
17. Presumption of Offences.-	12
17. A Punishment for not reporting an offence-	13
18. Non-liability of victims of Trafficking in Person.-	13
Chapter 3: INVESTIGATION AND RELATED MATTERS	13
19. Special Police Officer and Advisory Body.-	13
20. State Nodal Officers.-	15
21. National Bureau on Trafficking in Persons (NABTIP).-	16
22. Procedure for Rescue of a Trafficked Victim.-	22
23. Rescue of person-	24
23 A Investigation	24
23 B Evidence	25
23 C Forensic evidence -	26
Chapter 4: PROTECTION & REHABILITATION	26
24. Safe Care and Protection of Victims of Trafficking rescued under this Act:-	26

25. Application for being kept in a protective home or for providing care and protection by court.- 28	
26. Protective homes.-	28
27. Rehabilitation not to be contingent on criminal proceedings	30
28. Other reliefs for a victim of trafficking for forced labour	30
29. Other reliefs for a victim of trafficking for organ trade	30
30. District Rehabilitation Committee (DRC).-	30
Chapter 5: PREVENTION	31
31. Prevention of trafficking in person.-	31
Chapter 6: GENERAL PROVISIONS	32
32. Special Prosecutors.-	32
33. Special Courts and Related Provisions.-	33
34. Procedure and Powers of Special Courts and Recording of Evidence.-	33
35. Victim/Witness Protection.-	34
36. Victim Compensation.-	34
1. Closure of premises of trafficking for the purpose of sexual exploitation and eviction of offenders from the premises.	35
3. Rehabilitation and Reintegration Fund.-	36
4. Alternative Punishment.-	37
5. Repatriation to Another State or Country.-	37
10. Cognizance and Related Matters.-	38
11. Power of Central/State Government to Make Rules.-	39
12. Saving Clause.-	39
13. Protection of Action Taken in Good Faith.-	39
14. Laying of Rules.-	39
15. Power to Remove Difficulty.-	39
16. Section 360 of the Code and Probation of Offenders Act not to apply to persons committing an offence under this Act.-	40
17. Act to override other laws.-	41

The recommended portion in the bill has been re-written in red, and exact change has been highlighted for the readers benefit. The text in black are the word of the bill itself while, proposed recommendations are in red and additional comments are in blue.

Draft no 3 dated 22Jul2016

India Trafficking in Person (Prevention) Act 2016

Preamble

An Act to prevent trafficking in person and to provide protection and rehabilitation to the victims of trafficking, to prosecute offenders and to create a legal, economic, and social environment against trafficking in person and for matters connected therewith or incidental thereto

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

AND WHEREAS, all forms of trafficking in person need to be prevented, the victims and vulnerable persons need to be given proper care, protection and rehabilitation as a matter of fundamental right, and the offenders brought to justice expeditiously;

AND WHEREAS all rights of a victim of trafficking needs to be protected whether foreign or Indian

AND WHEREAS, there is a need to coordinate activities at the national level and among all concerned to ensure best response;

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

Chapter 1: PRELIMINARY

1. Short title, extent, commencement and application.-

- (1) This Act may be called India Trafficking in Persons (Prevention) Act, 2016.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.-

- (1) In this Act, unless the context otherwise requires, –
 - (a) “Trafficking in person” has the same meaning as assigned to it in section 4.
 - (b) “Aggravated forms of trafficking” has the same meaning as assigned to it in section 6.
 - (c) “Victim of trafficking in person” or “trafficked person” means a person on whom the offence of trafficking has been committed or attempted **to be committed**.
 - (d) “Premises” includes any land, building, structure or conveyance.
 - (e) “Place of exploitation” includes any location, place or premises where exploitation is or has been carried on
 - (f) “Child” means a person who has not completed the age of eighteen years.
 - (g) “Rehabilitation” is “a set of measures, to assist individuals who experience or are likely to experience disability, to achieve and maintain optimal functioning in interaction with their

environments.” Therefore, rehabilitation is not an outcome, but a process. It has to include several steps which also have to be individual-oriented and done in the best interest of the person concerned. The steps will include assessment, diagnostics and treatment of psychological impact of trafficking, of injuries and diseases, assessment of skills, education, and livelihood necessities, assessment of readiness for integration or re-integration, ensuring civil rights, compensation, and reduction of vulnerabilities.

- (h) “special police officer” means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act or previously notified under any act;
- (i) “central anti-trafficking police officer” means a police officer appointed by the Central Government under this Act, or previously notified under any act.
- (j) “Employment Agency or Placement Agency” means any agency, registered or unregistered, including individuals, carrying on business in connection with the employment of persons in any capacity, including recruiting, receiving or arranging persons for employers for employment by them, whether for the purpose of financial gain, benefit or reward or otherwise.
- (k) “Protective home” means an institution by whatever name called, being an institution established or licensed as such under section 27 in which persons, who are in need of care and protection, may be kept under this Act and where appropriate technically qualified persons, equipment and other facilities have been provided;
- (l) “Exploitation” shall be mean the definition mentioned in explanation 1 and 2 of the section 4 of the present Act.
- (m) Missing person:

(2) Words and expressions used but not specifically defined in this Act but have been defined in any other law of the country shall have the meanings respectively assigned to them in that act unless it is specified in this Act.

3. General Principles.-

- (1) Principle of dignity, rights and freedom: All human beings shall be treated with equal dignity and rights. Trafficking takes away the freedom of the person and is, therefore, deprivation of the freedom enshrined under the Constitution of India.

Recommended wording:

Treatment that is consistent with the victim’s sense of dignity and worth is a fundamental principle of human rights. This principle reflects the fundamental human right enshrined in Article 1 of the Universal Declaration of Human Rights that all human beings are born free and equal in dignity and rights and the under the constitution of India.

The victim’s right to dignity and worth must to be respected and protected throughout the entire process of dealing with such victim from the first contact with law enforcement agencies to the implementation of all measures thereof.

- (2) Right of the trafficked person: In consonance with Article 23 of the Constitution, rehabilitation of a trafficked person shall be deemed to be a right of the person. Therefore, all state agencies responsible for rescue, prevention, protection, investigation and prosecution shall be duty-bound to provide all services, as a matter of right, to the trafficked persons, and persons vulnerable to be trafficked.

Principle of Rehabilitation, restoration and repatriation:

- (a) Every victim has the right to be re-united with his family and restored back to the same socio-economic and cultural status that such victim enjoyed before coming within the purview of the Act if such repatriation is in the best interest of the reintegration of the victim.
- (b) All efforts shall be made to develop infrastructure and socio economic and other sources so that the victim of Human Trafficking is reintegrated back.
- (c) Victim reintegration back to the same community is not in the best interest then all efforts should be made to locate identify an alternate location for socio-economic, cultural status
- (d) Any victim, who has lost contact with his/her family, shall be eligible for protection under the Act and shall be repatriated and restored, at the earliest, to his/her family, unless such repatriation and restoration is likely to be against the best interest of the victim.

(3) Organised crime: Even if there may be stray cases of human trafficking being done by individuals, it is a well-organised crime, a crime without borders. Therefore the response mechanisms have to be appropriate and capable. The investigating officers shall investigate human trafficking crimes from the organised crime perspective, prepare crime maps involving all the scenes of crime from source to transit(s) to destination and investigate into all the offenders, accomplices, abettors, conspirators, etc.

Recognition of Organised crime: Human trafficking is an organised crime, and a crime without border, therefore the response mechanism must be appropriately equipped to handle the variant sophistications of its functioning. Hence the Officers investigating shall investigate from organised crime perspective.

(4) Missing children: Since there is a linkage between trafficking and missing children, the issues of missing children have to be given proper attention. The police stations shall register FIR in all crimes of missing children, presuming the child has been kidnapped/trafficked. If the investigation shows that the crime has inter-state linkages, or if the missing person could not be traced despite investigation in a span of four months, the case be handed over to the AHTU having jurisdiction. If no AHTU is available, the Superintendent of Police should set up a special team to investigate such crimes.

Presumption in cases of missing children: When a prima facie case of trafficking has been made out in the statement of any person regarding a missing person then the same shall be presumed to be trafficked and in critical danger. The Investigating Officer shall investigate such case as an offence under this Act.

(5) Principle of non-waiver of rights: No waiver of any of the right of the victim is permissible or valid, whether sought by the victim or person acting on behalf of the victim, and any non-exercise of a fundamental right shall not amount to waiver.

(6) Principle of equality and non-discrimination: There shall be no discrimination against a victim on any grounds including sex, gender, caste, ethnicity, nationality, place of birth, disability and equality of access, opportunity and treatment shall be provided to every victim.

(7) Persons: The provisions of this Act apply equally to males, females, transgender and other gender non-conforming persons.

(8) Gender Identity: In case of rescued victims who are transgender, they shall be treated by all concerned in accordance with their chosen gender identity.

(9) Minimum Punishment: Wherever this act prescribes for minimum punishment, the trial court can consider imposing lesser punishment if the court is convinced that there are reasonable grounds for doing so, and will provide reasons in writing for arriving at such a decision, provided that such punishment shall not be less than one half of the minimum punishment so prescribed. The appellate court can, however, increase the punishment, if it is of the opinion that the reasons provided by the trial court are not sufficient.

(10) Principle of best interest: All decisions regarding the victims shall be based on the primary consideration that they are in the best interest of the victims.

Recommended wording

- a) In all decisions taken within the context of administration of justice, the principle of best interest of the victim shall be the primary consideration
- b) This principle seeks to ensure physical, emotional, intellectual, social, economic progress and psychological of a victim so as to ensure the safety, (skills vocational training and education, safety) well being and rehabilitation of victim and thus enable each victim to survive, thrive and reach his or her full potential.

(11) Principle of safety: All measures shall be taken to ensure that the victims are safe and are not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(12) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of victims and the need for intervention under this Act.

(13) Principle of right to privacy and confidentiality: Every victim shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(14) Disclosure of Identity: The identity of the trafficked person shall not be disclosed in any manner. However, such disclosure can be made with the permission of the trafficked person, or with the permission of the guardian if the trafficked person is a child, or for matters of investigation and prosecution, if required by the concerned agencies.

(15) Priority of offences: The investigating and prosecuting agencies shall assign priority to offence of trafficking in person. The police and other agencies shall ensure that the charge sheet, after completing investigation from all points, is filed without any delay.

(16) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review

Comment: The language of the principle needs to be sharper and more direct.

Chapter 2: OFFENCES AND PENALTY

4. Trafficking in person.-

A person is said to commit “trafficking in person” if he (a) recruits, (b) transports, (c) harbours, (d) transfers, (e) receives, (f) restrains, (g) buys, (h) sells, or (i) trades, a person or persons, or causes or abets any of these acts, or participates in the same in any manner whatsoever, for the purpose of exploitation, by –

Firstly. – using threats, or

Secondly – using force, or any other form of coercion, or

Thirdly – by abduction or kidnapping, or

Fourthly – by practising fraud, or deception, or

Fifthly – by abuse of power, or

Sixthly – by inducement, including the giving or receiving of payments, benefits, or services, or promise of payment, benefits or services, in order to achieve the consent of any person recruited, transported, harboured, transferred, received, bought, sold or traded, or of any person having control over the person recruited, transported, harboured, transferred, received, bought, sold or

traded, or

Seventhly – by exercising undue influence (as defined in Sec 16, Indian Contract Act 1872),
or

Eighthly – by abuse of position of vulnerability, where vulnerability refers to any situation which would compel a person to fully submit to another person, which is caused by circumstances including that in which the person involved believes he has no real and acceptable alternative but to submit, or

Ninthly – by using narcotic drugs or psychotropic substances or alcohol or by administering any chemical substance or hormones with whatever motive, including early sexual maturity, or

Tenthly – by using electronic or **online or use of internet or** any other means.

Explanation 1. – The expression “exploitation” shall include any act of physical, physiological, psychological, emotional, or economic exploitation bonded labour, forced labour, child labour, begging, slavery or practices similar to slavery, *beggar*, servitude, the forced removal of organs, exploitative surrogacy, illegal adoption, or forced or false marriage, for unlawful gain of any sort.

Explanation 2. – The expression “sexual exploitation” shall mean exploitation of any person by any act or omission in the form of forced prostitution, including socially, traditionally or religiously sanctified forms of prostitution, sex slavery, sexual abuse, sex tourism and pornography, under the façade of marriage, or any other vocation like massage parlour, escort services, etc. and also denotes a situation where a person under coercion is explicitly portrayed either physically, or through any form of media such as print, electronic and internet etc. in an objectionable manner, for the benefit of another person, either through financial gains or compensation or favours or any other arrangement.

Explanation 3. – The expression “physical exploitation” shall include forced labour, bonded labour and any other form of labour or physical work, including child labour, inconsistent with any law in force.

Explanation 4. – The expression “forced labour” shall mean situations in which a person or persons are coerced to work through the use of violence, intimidation, deception or coercion, or by more subtle means, including accumulated debt, retention of identity papers, or threats of denunciation to authorities, with or without payment of wages, or with payment of wages less than minimum wages fixed by appropriate government. Forced labour includes bonded labour. The expression “bonded labour” shall have same meaning as defined in Sec 2(e) of the Bonded Labour System (Abolition) Act, 1976.

Explanation 5. – The expression “forced removal of human organs” shall mean the grafting of any human organ from any living or deceased person to some other living person in contravention of the Transplantation of Human Organs Act, 1994.

Explanation 6. – The expression “exploitative surrogacy” shall mean surrogacy where the consent of the surrogate mother has been obtained by lure, deception, cheating, coercion, force, or abuse of position of vulnerability. And the expression “surrogate mother” means a woman who bears a child on behalf of another woman, either from her own egg fertilized by the other woman’s partner, or from the implantation in her womb of a fertilized egg from the other woman.

Explanation 7. – The expression “forced marriage” shall mean marriage by use of threat, deceit, undue influence, coercion, force or any other unlawful means. And the expression “false marriage” means a marriage where the consent of either party has been obtained by fraud.

Explanation 8. – The expression “recruits” shall include any act of hiring, supplying, obtaining, selecting, approving or inducting labour or services of any person, by way of compensation or otherwise.

Explanation 9. – The expression “harbour” for the purpose of this Act, shall include any act of receipt of any person for the purpose of lodging or sheltering, or hiding or concealing any person.

Explanation 10. – The expression “coercion” shall include, but is not limited to, the act of withholding from any person any jewellery, wearing apparel, money or other property belonging to such a person, or threatening such a person with legal proceedings if he takes away with him any jewellery, wearing apparel, money or other property lent or supplied to him by or by the direction of a trafficker.

Explanation 11. – The consent of the victim of trafficking is immaterial in determination of the offence of trafficking in person.

Explanation 12. – The word ‘person’ shall include agencies, bodies, institutions and similar bodies too.

Explanation 13- An act or acts constituting or amounting to the offence of trafficking in person or any other offence under this Act may be committed physically, or through any other medium such as print, electronic, internet, etc.

5. Punishment for trafficking in person.-

Whoever commits trafficking in person shall be punished, unless otherwise specified in this Act, with rigorous 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.

Whoever commits trafficking in person, on first conviction, shall be punished, ~~unless otherwise specified in this Act~~, with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to 10 to 14 years, and shall also be liable to fine which shall not be less than one lakh rupees.

Whoever commit trafficking in person, found to be a habitual offender shall be Punished with rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to life time and shall al so be liable to fine.

6. Aggravated trafficking in person.-

A person who has committed the offence of trafficking under the following circumstances has committed aggravated form of trafficking:

Any person who has committed the offence of trafficking under the below given circumstance shall have committed aggravated form of trafficking;

- (a) Where the person trafficked is a child; or
- (b) Where the person trafficked is a person of the transgender; or
- (c) Whoever having the custody, charge or care of a person; or
- (d) Whoever being a police officer, a member of any of the armed forces, a person in charge of a shelter home or any other institute where children/adult women are housed, a person in charge of a hospital or any other person who is in a position of authority; or
- (e) Where the offence involves trafficking of more than one person; or
- (f) If a person has already been convicted of the offence of trafficking; or
- (g) Where the offence involves serious injury amounting to grievous hurt, or death of the victim or another person, including death as a result of suicide as a consequence of trafficking; or
- (h) Where the offence involves a victim who is particularly vulnerable, including a pregnant woman; or
- (i) Where the offence results in pregnancy of the victim; or
- (j) Where the offence exposed the victim to a life-threatening illness, including HIV/AIDS; or
- (k) Where the victim suffers from any mental or physical disability; or

- (l) Where the offence was committed after inducing the victim with any substances that contribute to diminishing his mental capacity; or
- (m) Where the offence was committed using any narcotic drug or psychotropic substance, or alcohol for the purpose of trafficking, or by administering any chemical substance or hormones to the trafficked person for trafficking, for generating early sexual maturity, or for any purpose; or
- (n) Where the offence has left the victim physically incapacitated or mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or impaired in such a way that he is unable to perform regular tasks temporarily or permanently; or
- (o) Where trafficking has been committed by use of deadly weapons; or
- (p) Where children are recruited as child soldiers or used as human shield; or
- (q) Where offender has undue influence over the victims.
- (r) **Where a second offence has been committed by an offender previously convicted under this act.**

7. Punishment for Aggravated forms of trafficking.-

Whoever commits aggravated forms of trafficking in person shall be punished with rigorous imprisonment for not less than fourteen years and which may extend to life imprisonment and shall also be liable to fine, not less than five lakhs rupees.

8. Exploitation of trafficked persons.-

- (1) Whoever, knowingly or having reason to believe that a person is a victim of trafficking in person, subjects such a victim to exploitation in any manner shall be punished with rigorous 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.
- (2) Whoever subjects a victim of trafficking in person, who is a child or a person suffering from any physical or mental disability, to exploitation in any manner shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment, and shall also be liable to fine, not less than five lakh rupees.

9. Punishment for keeping a place of exploitation or allowing premises to be used as a place of exploitation.-

- (1) Any person who keeps or manages, or acts or assists in the keeping or management of, a place of exploitation shall be punishable on first conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to **one lakh--** fifty thousand rupees
- (2) Any person who—
 - (a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a place of exploitation, or
 - (b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a place of exploitation, or is willfully a party to the use of such premises or any part thereof as a place of exploitation,

shall be punishable on first conviction with imprisonment for a term which may extend to seven years and with fine which may extend to one lakh rupees **5 to ten lakhs for landlord.**

- (3) For the purposes of sub-section (2), it shall be presumed until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a place of exploitation or, as the case may be, has knowledge that the premises or any part thereof are being used as a place of exploitation, if, —
- (a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for exploitation as a result of a search made under this Act; or
 - (b) a copy of the list of all things found during the search referred to in clause a. is given to such person.
- (4) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

Provided that no third party agreement should not be created for atleast a year from registration of offence under this act , and it will be the duty of the person purchasing such property to ensure that such property has not been obtained from untainted proceeds of crime.

Comment: this particular proviso is to avoid sale of such property in question, and therefore loss of evidence.

10. Registration of placement agencies.-

- (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 six months of commencement of this Act. If the agency is working in different states, the registration with respect to the work done being done in that state be undertaken in that state.
- (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 violates any of the conditions of registration under sub-section (2), the registration of such placement agency shall 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.
- (4) Government of India shall maintain a central database of placement agencies, which will be updated every month and be open to public view but managed by a government body.
- (5) The Government of India and state governments shall frame rules regarding the various activities, including monitoring of the placement agencies, and the method of maintaining due diligence, etc.
- (6) Migrant's right for safe migration needs to be ensured. States will bring out rules and activities in this regard and ensure their compliance.

Provided that where no such provision exists, the general guidelines of compliance of the state having the legislation to that effect will be referred to.

Comment: Since there is no over-arching Interstate Migration Act or any Central Act to govern the regulation of un-organised section of agencies of such sort this particular section may cause confusion in its interpretation and application. This section lacks proper frame-work. Since this is an unorganised sector, how will any kind of regulation function.

11. Non-registration or non-compliance with registration of placement agency.-

Non-registration or non-compliance of any of the provisions mentioned above by any placement agency will be an offence and all concerned in the agency and acting on behalf of the agency are liable to be punished with rigorous imprisonment for three years and shall also be liable to fine proportionate to the offence.

12. Punishment for trafficking in person by a placement agency.-

Any person in charge of a placement agency, or anybody acting on behalf of such agency, in whichever name or nomenclature it is known, indulges in any manner in any act of trafficking in persons, shall be punished with rigorous imprisonment of not less than ten years and may extend to life imprisonment, and shall also be liable to fine which may not be less than five lakhs rupees.

13. Punishment for promoting or facilitating trafficking in person.-

- (1) A person is said to promote, procure or facilitate the commission of trafficking in person if that person –
 - (a) produces, prints, issues or distributes unissued, tampered or fake certificates, registration or stickers of any government agency which issues the certificates, registration or stickers as proof of compliance with government requirements for promoting trafficking in person; or
 - (b) advertises, publishes, prints, broadcasts or distributes, or causes the advertisement, publication or distribution by any means, including the use of information technology or any brochure, flyer or any propaganda material that promotes trafficking in person; or
 - (c) assists in the conduct of misrepresentation or fraud for purposes of procuring or facilitating the acquisition of clearances and necessary exit documents from government agencies for the purpose of trafficking in person; or
 - (d) facilitates or assists in the exit and entry from or into India for the purpose of trafficking in person.
- (2) Whoever commits “promoting or facilitating trafficking in person” shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine which shall not be less than ~~one lakh rupees~~ **5 lakhs rupees**.

13 a. Punishment for Money laundering for the purpose of Trafficking: Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party to or is actually involved in any process or activity connected with the proceeds of crime from Trafficking and projecting it as untainted property shall be guilty of offence of money-laundering for the purposes of Trafficking, Shall be punishable with rigorous imprisonment seven years to ten years, with fine with 5 lakhs

Provided that any person found to be accused of this section, provisions and procedures of Prevention of Money laundering Act, 2002 shall be invoked and applicable.

14. 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, judicial procedure or any other stage, 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 person under this Act, nor shall the picture of any

such victim be published without their consent, and in the case of children, the consent of their legal guardian.

- (2) Any person 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.

Recommended wording:

- (2) Any person who contravenes the provision of sub-section (1) shall be punishable with imprisonment for a term which may extend *to one year or fine which may extend to five lakhs rupees or with both.*

15. Punishment for negligence ~~dereliction~~ of duty

Whoever commits breach of a duty, imposed upon him under this Act, either by an act or omission of an act shall be punishable with imprisonment for a term which may extend to one year and with fine.

Provided that any dereliction of duty and non compliance of duty shall be dealt as per the provisions of Prevention of Corruption Act, 1988;

Provided, further that any public servant taking gratification other than legal remuneration in respect of official act shall be dealt according to the relevant sections of Prevention of Corruption Act, 1988 also.

16. Attempt and Punishment.-

Whoever attempts to commit an offence punishable by this Act shall be punished with imprisonment of any description provided for the offence, ~~for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, and with such fine as is provided for the offence.~~

Comments: Needs to be reworded for clarity of interpretation.

17. Presumption of Offences.-

- (1) Where a person is prosecuted for committing or abetting or attempting to commit any offence under this Act, in respect of a child or a person suffering from physical or mental disability, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.
- (2) Where a child or minor found in a place of exploitation, is on medical examination, detected to have been physically or sexually abused, or with a disease or illness commonly contracted in the course of the exploitation being carried on, it shall be presumed, unless the contrary is proved, that the child or minor has been trafficked for purposes of exploitation or, as the case may be, has been subject to exploitation *and the onus of proving otherwise shall lie with the person so accused.*
- (3) Whenever any debt is claimed by a bonded labourer, or anybody on his behalf, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.
- (4) *For the purpose of this offence the principle of strict liability on all movable and immovable property shall be imposed on all confiscated property.*
- (5) *Any person/s accused under this act shall be presumed to be acting in collusion with a network of persons with a common intention as stipulated under section 34 to 38 of the Indian Penal code and in Chapter VA Indian Penal Code involving criminal conspiracy and abetment towards profiting from the crime of trafficking it shall be upon that person/s to show that*

he/she is not part thereof.

- (6) The Special Court shall presume where there is reasonable ground to believe that the accused rendered any assistance to a person named as co-accused or accomplice or reasonably suspected of involvement in an offence punishable under this Act, unless the contrary is proved.
- (7) Where an employee is found to be a victim of human trafficking of his/her employment by an agency or person, it shall be presumed that the owner and employer/s of such person and agency, respectively, shall have committed the offence of abetment under this act.
Provided where the owner proves that due diligence was done before such employment or deployment as may be prescribed for such purpose under this Act, such person will not be presumed to have abetted such crime.
- (8) When a prima facie case of trafficking has been made out in the statement of any person regarding a missing person then the same shall be presumed to be trafficked and in need of immediate action. The Investigating Officer shall investigate such case as an offence under this Act.

17 A Punishment for not reporting an offence-

- (1) A person with information about an on-going offence of human trafficking:
 - i. shall inform the police officer or appropriate authorities established under this Act or any other Act under which offence has been committed.
 - ii. may inform authorities established under the Juvenile Justice (Care and Protection of Children) Act, 2015; in case of an involvement of a trafficked Child.
- (2) Such information received shall be verified and action shall be initiated within 24 hrs.
- (3) The information of the complainants shall remain confidential at the request of the person and violation of such confidentiality shall be punishable with suspension, relieved of his/her duties or such other punishment as in herein after mentioned.

Proviso if a person fails to inform the established authority such person shall be said to have commit an offence and maybe liable on summary conviction to a fine of not less than two thousand rupees or a term of imprisonment not less than one month or to both.

---Where a child has been found exploited in an establishment, where a child has found to be that a child has been trafficked it shall be presumed tht such establishment is using the proceeds of crime of trafficking.

18. Non-liability of victims of Trafficking in Person.-

- (1) A victim of trafficking in person shall not be held criminally or administratively liable and shall not be punished, fined or otherwise penalized, but shall be treated as victim and not as an accomplice in relation to the offence of trafficking in person.
- (2) A victim of trans-border trafficking shall not be arrested or charged criminally or administratively for offences under the Foreigners Act, 1946, The Immigration Act, 1990, and Passport Act, 1967.

Chapter 3: INVESTIGATION AND RELATED MATTERS

19. Special Police Officer and Advisory Body.-

- (1) There shall be for each area a Special Police Officer appointed by the State Government for dealing

with offences under this Act in that area. All the officers working in the Anti-Human Trafficking Unit (AHTU, special units set up in the states by the Government of India or state governments for preventing and combating human trafficking) will be deemed to be Special Police Officers. The powers of a police officer in India under the Cr.P.C to investigate a crime anywhere in India applies to a Special Police Officer/AHTU, especially in the context of the fact that trafficking is a border-less crime.

- (2) The Special Police Officer shall be a police officer of the rank of Inspector of Police; or in the rank of Sub Inspector of Police, but with ten years' experience. However, a police officer of the State Government or Central Government will be deemed to be a Special Police Officer only when that person is fully trained and sensitised by the concerned government and certificate awarded accordingly by a competent authority. This applies equally to all officers of ranks in the police and AHTUs, investigating and supervising the cases of trafficking in persons.
- (3) For the efficient discharge of his functions in relation to offences under this Act—
 - (a) the Special Police Officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable); and
 - (b) the State Government shall associate with the AHTU and all Special Police Officers in the field, a ~~non-official~~ advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers) to advise and assist them on questions of general importance regarding the working of this Act.
- (4) The Central Government may, for the purpose of investigating any offence under this Act appoint any number of Special Police Officers under the National Investigation Agency on Trafficking in Persons (refer section 22) as Central Anti-Trafficking Police Officers and they shall exercise all the powers and discharge all the functions as are exercisable by Special Police Officers under this Act and all related laws, with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.
- (5) Any crime of trafficking in persons will be registered by the police station where the incident happens or is reported to. If the jurisdiction of the offence happens to be in another police station, after registration of the crime, the FIR be transferred. However, the process of investigation shall not be held up for transfer.

Recommended wording:

Any crime of trafficking in persons will be registered by the police station where the incident happens or is reported to. If the jurisdiction of the offence happens to be in another police station, after registration of the crime, the FIR be transferred.

Provided, that the investigation must continue irrespective of such transfer.

- (6) Since the investigation of trafficking ~~for forced organ removal~~ requires expert medical and scientific advice, the investigating officer shall utilise the service of experts **for obtaining all kinds of forensic evidence** and on a request in writing from the investigating officer, the concerned medical professional shall render all advice and support.
- (7) Wherever AHTUs are in position, appointed by the central government or state government, it will be the duty of the AHTU to undertake all activities in matters of rescue, investigation, prevention, protection and prosecution. Wherever AHTUs are not functional, the responsibility of rescue, investigation, prevention, protection and prosecution will lie with the local police station. In places where both co-exist, the first responder will be that agency, either AHTU or police station, where the information reaches first. In places where AHTU is functional, if the crime is registered with the police station as mentioned above, the AHTU will take over the case from the police station, on receipt of information from the police station. The District Superintendent of Police should, without any delay, ensure training and notification of the officers of the AHTU with powers to undertake rescue, investigation, prevention, protection and

prosecution throughout the district in all matters of trafficking in persons.

Provided that nothing shall prevent the local police to take any necessary action, on information received suo-moto.

- (8) Notwithstanding any provision made in this Act or any Act in force, all crimes with international ramifications shall be investigated by an officer of the rank of Deputy Superintendent of Police or above, who should also be trained and certified to be qualified. Further, all crimes which have interstate ramification shall be investigated by an officer of the rank of Inspector of Police and above, who should also be trained and certified to be qualified.

20. State Nodal Officers.-

- (1) Every state shall have two nodal officers in respect of human trafficking matters, one with the police department, to be notified by the DGP (Head of Force) as the State Police Nodal Officer Anti-Trafficking (prevention, investigation and prosecution) (SPNO). The second nodal officer will be the State Nodal Officer (SNO) in Matters of Relief and Rehabilitation, appointed by the Chief Secretary. The SNO officer will coordinate the activities of all departments in matters of relief, rehabilitation and also prevention. ~~Both the nodal officers should have complete synergy in their functioning and should meet every fortnight and review the situation on ground including the activities of all the district level rehabilitation committees.~~ The nodal officers shall work in coordination with each other and shall meet every fortnight for purposes of reviewing. It will be their responsibility to ensure capacity building and empowerment of all responders in the state. The SNO and SPNO will be in constant liaison with and be functional under the guidance and supervision of, besides the existing statutory agencies and authorities, the National Bureau on Trafficking in Persons (refer section 22)
- (2) In matters of inter-state transfer of a rescued person and offenders, the AHTU/Police station, through the SP of the district, should contact the SPNO and the latter should make all arrangements to contact his counterpart in the concerned state and ensure smooth and safe passage of the rescued persons and offenders. If any escort is to be provided, it will be his responsibility to do so. Women and children shall be escorted by a team including female officials. The travel and contingency expenditure for the travel/stay of the rescued persons, offenders and the accompanying persons including social workers (if any), shall be borne by the of the District Rehabilitation Committee (refer section 31 of this Act) of the district where the persons have been rescued. The National Bureau on Trafficking in Persons Refer Section 21 of this Act) will coordinate, facilitate and monitor all activities.
- (3) It shall be ensured that the offenders are kept away from the rescued persons so that the former are never allowed to mix up with the latter or intimidate them in any manner **or come in contact with them.**

Comment: This particular section can be added in later provision of witness or victim protection.

21. National Bureau on Trafficking in Persons (NABTIP)

Since human trafficking cuts across the functioning of different Ministries, Departments, Agencies and Commissions of the Government of India and all State Governments, it is essential that the entire activity is done in a coordinated and integrated manner. Further, the activities of investigation of trafficking crimes with trans-border and multi state ramifications, the activities of coordination of trans border and interstate rescue and post rescue activities as well as the implementation of the rehabilitation activities, including the national level programmes and projects, and undertaking research and research based changes in policy and implementation have to be ensured at the national level. Therefore, there is a need and urgency for such a body which will have all powers, authority as well as facilities and accordingly National Bureau on Trafficking in Persons is hereby constituted, with the following proviso:

- (1) The agency will be called The National Bureau on Trafficking in Persons (NABTIP).
- (2) It will be headed by a Chairperson, who will be a person of eminence who has experience and expertise in dealing with interstate crimes of trafficking in persons, has vast experience in law enforcement or justice delivery on trafficking in persons, has proven experience in research and implementation of the research findings and networking in this field and with experience in working with government agencies. The tenure of the Chairperson shall be initially for a period of 5 years. The Chairperson shall have the Status of Minister of State in Government of India, as one has to deal with several Ministries and agencies in the Centre and the States and even abroad.
- (3) NABTIP will have an Advisory Body headed by the Secretary, Women and Child and with members, who shall be not below the level of Joint Secretary, from the Ministry of Home Affairs, Ministry of Labour, Ministry of Social Justice and Empowerment, Ministry of Health, Ministry of Information Technology, Ministry of External Affairs, Ministry of Tourism and any other ministry or department or agency, including border guarding forces and immigration agencies, which has any role in matters of trafficking in persons. Representatives of NHRC, NCW, NCPCR, and other Commissions under the Ministry of Labour as well as any Ministry or Department of Government of India, which has anything to do with matters relating to trafficking in persons, will be co-opted by the Chairperson as part of the Advisory Body. Chairperson will also co-opt renowned experts, professionals etc to render professional advice to the Advisory Body. The body will also have five civil society members, with vast experience in anti-human trafficking, representing five regions of the country, Northeast, East, South, West and North. These members will be rotated every year so that all states in the region get representation in a matter of few years.
- (4) The NABTIP will have, besides the usual wings of any government agency including administration, establishment, finance, media, legal, etc, a Research Division, A Rehabilitation Division and an independent investigating agency. The Rehab Division will be headed by an officer of Joint Secretary level, with experience in this field or by a specially selected person, after advertisement and due process, from the civil society or NGOs working and experienced in this field.
- (5) The **NIATIP**, the investigative division of NABTIP:
 - (a) Considering the fact that trafficking in persons is an organised crime spreading across boundaries of state and nation, and the fact that traffickers are using hi-tech methods for their operations, it is essential to have a specialised investigation agency for conducting professional investigation of trafficking in persons. The original jurisdiction of the police stations will continue. The AHTUs established in the states will continue as specialised bodies for investigating trafficking in persons. The nodal police officers on anti-human trafficking in the states will continue to be the nodal contact persons in the state for ensuring accountability in all matters of investigation. At the national level, there is a need for an agency to coordinate the activities among the states and also to undertake

investigation and prosecution of crimes of trafficking in persons which have linkages with several states or with different countries. Accordingly, the National Investigation Agency on Trafficking in Persons is hereby constituted. The Agency will be called the National Investigation Agency on Trafficking in Persons (NIATIP).

The NIATIP will be headed by an officer serving in the rank of Additional Director General of Police in any State or Centre, to be appointed by the Ministry of Home Affairs, on the recommendation of the Ministry of Women and Child. The selection of the person will be done by the Chairperson of NABTIP, in consultation with MWCD, MHA and Ministry of Labour, and appointed for a usual tenure of deputation to Government of India. The selection of the person be done after due publicity, inviting applications etc and finally from a panel of three outstanding professionals who have vast experience and proven interest in not only law enforcement but in prevention, rehabilitation, research, networking, and so on, a competent person shall be selected. Once selected, Ministry of Home Affairs shall ensure that the officer joins NIATIP without delay.

The NIATIP will be provided with a required staff as national investigators and as supporting staff. The details may be worked out by the Ministry of Home Affairs. The posts of the officials of CBI, Immigration Bureau, Border guarding Forces and other agencies of the Government, who are presently attending to the issues of Trafficking in persons shall be moved to NIATIP. Every State Government will provide the required number of officials, on the request of the Chairperson, on deputation to NIATIP. However, all investigators of NIATIP will be on deputation and will have all perks, including deputation allowance, at par with the officers who are on deputation to CBI. All the officers of NIATIP will be deemed to be officers notified under this act for investigating and follow up of any crime of trafficking in persons anywhere in India.

The National Network: The Police nodal officers of states (SPNO) on anti-human trafficking will be directly linked to the NIATIP, as the state-level functionaries. The AHTUs in the states will be directly linked to the SPNO and accordingly there will be a national network of all districts to NIATIP. The state government should ensure that wherever there are no AHTUs, either AHTUs are set up soon, and till such time, the SP of the district will be deemed to be the officer in charge of AHTU and will be linked up with the SPNO and further up to NIATIP. The national level communication systems, including hotlines, need to be developed.

The NIATIP, which will have a team of national investigators, is essentially a referral agency, which will take up investigation of such crimes referred to it. NIATIP will be called upon to undertake only selected crimes of trans-border ramifications or wherever there is linkage of trafficking with three or more states. NIATIP can suo-moto take over crimes having international ramifications and conduct investigation, but this can be done only on the orders of Chairperson of NABTIP or MWCD or MHA. However, the state government may refer the investigation of any crime of Trafficking in Persons to NIATIP as and when required, especially when the offence spreads across three or more states.

The rehabilitation of the rescued person, in cases being investigated by NIATIP also, like other crimes, will be essentially carried out by the District Rehabilitation Committee (refer section 31). The NIATIP will ensure, facilitate and monitor the activities and expedite the work through the SNO.

Even when cases are not taken over, NIATIP will facilitate and coordinate investigation of trafficking crimes in the states by linking up the various states and investigators, by developing and maintaining national database on trafficking, traffickers, conspirators, etc. and sharing the database with the law enforcement officials on a need basis. For this purpose, a National Resource and Research Centre will be set up at the NABTIP.

- (6) The NABTIP will have a direct linkage with the NCRB, on all relevant matters, including issues of missing person, tracking the missing child, NCRB database, etc. NABTIP will also have direct linkages with all other agencies concerned including CBI, NIA, IB, RAW, NCB, border guarding forces like BSF, SSB, ITBP, etc. as well as all other agencies in the country including NHRC, NCW and NCPCR and similar agencies in the States. Direct linkages will also be maintained with the Ministry of Railways, as well as Ministry of Roads and Transportation. NABTIP will also coordinate with all NGOs, civil society agencies, workers, social workers etc and develop a national coordination of all activities in preventing and combating against trafficking in persons. In this regard, NABTIP will organize regular events for facilitating collaboration of all agencies of the government as well as non-government agencies, including the corporate and business houses, national and international organizations working in this field as well as the UN Agencies working in India, etc.
- (7) The NABTIP will have a research division which will carry out research, with the support of national and international agencies on various aspects of trafficking, including the response systems. They will also bring out an annual report, latest by March of the following year, on the trafficking scenario and response systems in the country, including rescue, relief, rehabilitation, investigation, prosecution and prevention. This report be titled INDTIP report.

Comment: The above clause has been re drafted below

Recommended amendments to the current draft of the clause:

22. National Anti Trafficking Bureau (NATB).-

National Anti Trafficking Bureau, (hereinafter called as NATB), shall be established under this Act which shall function as a national body for coordination of matters related herein.

(1) Composition:

- i. The NATB shall be a body functioning under the Ministry of Woman and Child Development and comprising of the representatives of:
- a. The Ministry of Woman and Child, Ministry of Home Affairs, Ministry of Labour, Ministry of Social Justice and Empowerment, Ministry of External Affairs, Ministry Of Health, Ministry of Information Technology, Ministry of Railways, Ministry of Rural Development, Ministry of Skills, Ministry of Road and Transportation, Ministry of Education.
 - b. The representative as appointed in the NATB shall not be below the rank of Joint Secretary.
 - c. The border security agencies including and not limited to Border Security Forces, Sahasthra Seema Bal, Central Industrial Security Forces, Indo-Tibetian Border Police.
 - d. The NCPCR, NCW, NHRC and any other Commissions.
 - e. NATB shall have an Advisory Body of two outstanding Experts/professionals and three reputed Civil Society Organisation having expertise and experience on the issue of trafficking of persons. Such Civil Society Organisations may be rotated every year or after such fixed period as the rules framed under this Section may prescribe. The Advisory Body shall comprise of a majority of Women representatives.
 - f. The NATB shall and shall have officers deputed from the concerned Ministries that constitute

the Body of the NATB including and not limited to the Ministry of Woman and Child Development and Ministry of Home affairs and central and state law enforcement agencies, as per the deputation rules of government of India.

- g. The NIATIP shall be supported by staff including Probation officers, administrative assistants, financial staff and any other staff as may be deemed necessary by the Body of NATB. The manner and duties of such staff shall be prescribed by way of rules made herein. The officers under NIATIP will be deemed to be officers notified under this act.
- h. The NATB shall be headed by a Chairperson to be decided by the appropriate Government. Provided that the appropriate Government shall make rules to provide for the qualifications and tenure of such Chairperson of the NATB.
- i. The Advisory Body shall have five primary areas of focus- Prevention, Investigation, Protection, Rehabilitation and Monitoring, each to be headed by a representative of the concerned Ministry.

(2) ii. National Network:

- (a) A national network shall be established by coordination between NATB and State Police Nodal Officers (SPNO) and State Nodal Officers (SNO).
- (b) The State Police Nodal Officers (SPNO) shall be linked to and have responsibility of all Anti-Human Trafficking Units in a State.
- (c) The State Nodal Officers (SNO) shall be linked to and have responsibility of all District Anti-Trafficking Centres in a State.
- (d) The State Government shall ensure that Anti Human Trafficking Units and District Anti Trafficking Centres are set up in each District. During the interim period pending the set up of Anti Human Trafficking Units and District Anti Trafficking Centres, the Superintendent of Police of the district will be deemed to be the officer in charge of Anti Human Trafficking Units and District Anti Trafficking Centres and will be responsible for coordination with the State Police Nodal Officers (SPNO) and State Nodal Officers (SNO).
- (e) The National Network shall include but not be limited to national level communication systems, and hotlines, for effective communication thereof.
- (f) The appropriate Government shall make Rules to provide for the functioning of the National Network.

(3) iii. Functions of NATB

- 1. The NATB shall have five primary areas of function- Prevention, Investigation, Protection, Rehabilitation and Monitoring, each to be headed by a representative of the concerned Ministry.
 - a. *Prevention- Repetitive from the ministry of Women and Child.*
 - b. *Investigation- Representative of the Ministry of Home Affairs.*
 - c. *Protection- Representative of the Ministry of Home Affairs.*
 - d. *Rehabilitation- Representative of the Ministry of Women and Child.*
 - e. *Monitoring- Representative of the Ministry of Women and Child*
- 2. The NATB shall be supported in the areas of administration, finance, media, legal and any other

areas as the appropriate government deems necessary by individuals to be appointed by the appropriate Government.

Provided that the appropriate Government shall, make rules to provide for the resource and qualifications of such individuals and areas of support.

a. Prevention

The NATB shall in the area of *Prevention* have responsibility for the planning of programmes and schemes and any other mechanism incidental thereto.

- i. The focus area of *Prevention* shall include but not be limited to awareness and sensitization through a curriculum in schools, vocational trainings, skill development and social empowerment.
- ii. The focus area of *Prevention* shall be responsible for identifying the vulnerable areas of the country and vulnerable persons and towards which end shall be responsible for the creation and execution of mechanisms incidental thereto.

b. Investigation

- i. The NATB shall in the area of *Investigation* have responsibility for all investigations of offences under this Act. NATB shall have a specialised Investigating Agency, headed by an officer serving in the rank of Additional Director General of Police, to be appointed by the Ministry of Home Affairs, in consultation with the Chairperson of the NATB. The selection and procedures thereof shall be prescribed in the rules made herein.
- ii. The Investigating officers under NATB shall function as a referral agency. NATB shall be called upon to undertake cases or matters relating to trans-border trafficking or inter-state trafficking involving more than two states. The NATB may suo-moto take up cases involving trafficking where the offence involves cross border trafficking within the country as well as in instances across international Borders.
- iii. The Investigative Agency of the NATB shall develop a database on crimes related to trafficking, traffickers and other offenders connected with trafficking in persons in co-ordination with the CCTNS. The Investigative Agency of the NATB will co-ordinate with other investigative and law enforcement agencies, including but not limited to Central Bureau of Investigation, National Investigation Agency, Research and Analysis Wing, Intelligence Bureau, NCB, Interpol and other international law enforcement agencies.
- iv. The NATB shall also coordinate where ever necessary with the National agencies including National Human Rights Commission, National Commission for Women, and National Commission for Protection of Child Rights, as well as reputed Civil Society Organisations.
- v. The NATB shall also coordinate where ever necessary with Corporate and other business houses both national and International.

- vi. It shall be the responsibility of the Investigating Agency of NATB to provide modern secure storage facilities to ensure that all best evidence is preserved and protected.
- vii. The Investigating Agency of the NATB shall facilitate quarterly meetings of the SPNOs to monitor and evaluate the establishment and functioning of AHTUs.
- viii. The appropriate Government shall make rules under this Act prescribing the manner of functioning and reporting for the Investigating Agency of the NATB.

c. Protection:

- i. The NATB shall in the area of *Protection* have responsibility for the protection of prosecution witnesses in cases of trafficking, victims and affected families as the case may be.
- ii. The NATB shall, through its Investigative Agency or any other Agency, as the case may be, ensure the safety and protection of prosecution witnesses in cases of trafficking, victims and affected families as the case may be.
- iii. The NATB shall provide for a Witness Protection Programme, including but not limited to the creation of new identities for witnesses as the case may be. (The appropriate Government shall make rules under this Act to prescribe an effective Witness Protection Programme).
- iv. The NATB shall provide for Protection Homes.
- v. The NATB shall provide for funds necessary for the protection of the prosecution witnesses in cases of trafficking, victims and affected families as the case may be, from the Rehabilitation Fund, as prescribed under this Act.

d. Rehabilitation:

The NATB shall in the area of *Rehabilitation* have responsibility for ensuring relief including compensation, repatriation, re-integration for victims of trafficking.

- i. The NATB shall provide for Rehabilitation Homes that enable the Aftercare for victims.
- ii. The District Anti Trafficking Committee established under section (refer section), shall be responsible for the rehabilitation of the person rescued under this Act. NATB shall ensure that all facilities are made available and monitor the activities and expedite any necessary support thereof through SNO.
- iii. The NATB shall ensure the effective coordination between the concerned authorities both within the country as well as with other countries for the repatriation of victims.
- iv. The NATB shall facilitate through the State Nodal officer all necessary programmes and schemes to ensure that victims have adequate educational facilities including but not limited to National Open schooling, Bridge education, Vocational training and skill development.
- v. The NATB shall in the area of *Rehabilitation* be responsible for the planning of programmes and schemes and any other mechanism incidental thereto.

e. Monitoring:

- i. The NATB shall in the area of *Monitoring* have responsibility for the effective collection and analysis of all data pertaining to Trafficking in Persons.
- ii. The NATB shall ensure that timely reports on all cases of trafficking and action taken thereon are received and collated.
- iii. The NATB shall coordinate with the National Crime Records Bureau to facilitate the collating and analysis of such reports. NATB shall set up a National Resource and research centre for developing and maintaining a national database on trafficking crimes, traffickers, conspirators, etc. and this database may be shared by the NATB to the investigating authority on a need basis on any given case.
- iv. The NATB shall commission research or projects in the area of trafficking of persons for the prevention, protection and rehabilitation purposes.
- v. The NATB shall through the State Police Nodal Officers and State Nodal Officers monitor the investigation of all cases of trafficking.
- vi. The NATB shall seek reports from the National Legal Services Authority and State Legal Services Authority on all prosecutions in cases of Trafficking in Persons.
- vii. The NATB shall seek reports from the National Commission for Women and the National Commission for the Protection of Child Rights on the quality of Aftercare and the functioning of Protection and Rehabilitation Homes for victims of Trafficking.
- viii. The NATB shall publish an annual report hereinafter referred to as (INDTIP) on the situation of Trafficking in Persons, including the status of rescue, relief, rehabilitation, investigation, prosecution and prevention.
- ix. The appropriate Government shall make Rules to prescribe for effective Monitoring and Evaluation of all Programmes, Schemes and Procedures prescribed under this Act.

21. Procedure for Rescue of a Trafficked Victim.-

- (1) Any officer, not a special police officer, who finds or takes charge of, or who is handed over the care of a victim, or receives information asking for rescue, shall within twenty-four hours, **initiate removal of such person or persons from the place of exploitation, by** giving information about the victim or offence to the special police officer,
- (2) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant and rescue the victims **at the first instance.**
- (3) Before making a search under sub-section (1), the special police officer shall call upon members of a recognized welfare organization for victim support including counselling, and other roles and responsibilities under this Chapter.
- (4) ~~Before conducting search and rescue, the special police officer shall call upon two or more~~

~~respectable persons to attend and witness the search and rescue, and may issue an order in writing to them or any of them to do so. If any of the victims to be rescued is either a woman or a child, the special police officer shall call upon a woman to witness the search and rescue and a woman police officer.~~

Recommended Wording:

Before making a search or conducting a rescue, the special police officer shall call upon two or more respectable persons to attend and witness the search and rescue, and may issue an order in writing to them or any of them to do so.

Provided that if any victims to be rescued is either a woman or a child; then at-least one of the person so called upon to witness the search and rescue shall be a woman.

- (5) ~~Where victims of trafficking for forced labour, bonded labour are to be rescued, the special police officer shall, intimate the District Magistrate and the Superintendent of Police, form a search and rescue team comprising of officials from district administration who may not be below the rank of tehsildar. The role of the District Magistrate (DM) includes ensuring all required steps like conducting inquiry, issuing release certificates without delay under the Bonded Labour System (Abolition) Act, 1976, and coordinating with the Labour Officer for the purpose of initiating proceedings under the Minimum Wages Act, 1948 and Payment of Wages Act, 1936, for recovery of back wages, and initiating proceedings for violation of other labour laws in force.~~

Recommended Wording:

When victims of trafficking of forced labour, bonded labour are to be rescued, the authorized agency shall intimate the District Magistrate and the Superintendent of police. The concerned authority will ensure that a search and rescue team comprising of officials from district administration, not below the rank of tehsildar is created. It shall be the duty of the District Magistrate to ensure that inquiry is conducted, release certificates are issued without delay under the Bonded Labour System (Abolition) Act, 1976, and coordination with the Labour Officer for the purpose of initiating proceedings under the Minimum Wages Act, 1948 and Payment of Wages Act, 1936, for recovery of back wages, and initiating proceedings for violation of other labour laws in force.

- (6) If the special police officer has reason to believe that it is necessary to rescue without undue delay because the victim is in imminent danger, the offender(s) may abscond or any other reasonable ground, and the DM or Labour Officer or both are unavailable, the special police officer shall carry out the search and rescue in presence of independent witnesses and observing other protocols under the Code of Criminal Procedure, 1973, (2 of 1974).

Provided that the police officer conducting such rescue will intimate the DM and Labour Officer without any delay, and the DM and Labour Officer shall carry out their role as soon as possible.

- (7) When it is expected that the rescue involves trafficking for child labour of any sort, CWC should be associated. Further, in all such rescue operations, there should be adequate number of women officials, and if women officials are not available, women social workers should be associated. If in case the SDM/Labour Officer is not available, the DM/SP should ensure that the officials of the concerned department undertake the process with due diligence.
- (8) The special police officer shall after rescue cause the victims to be examined by a registered medical practitioner for the purposes of determination of the age of such person, and for the detection of any injuries as a result of physical or sexual abuse, or for the presence of any sexually transmitted or other diseases. The medical examination will also include psychosocial examination which shall be carried out with appropriate care and attention to provide the required relief in a registered institution.

Explanation—For the purpose of this sub-section, “registered medical practitioner” shall have the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956).

- (9) The Special Police Officer shall interview the rescued trafficked victim in the presence of a social worker, preferably a trained counsellor.
- (10) Provided that where any woman or child rescued is required to be interviewed, it shall be done by a woman police officer and if woman police is not available, by a male police officer in the presence of a lady member of a recognized welfare organization. A trained psychiatrist or psycho social expert, wherever possible, shall be associated during interviews.
- (11) The special police officer and all other persons taking part in, attending or witnessing a search, rescue and post rescue care shall not be liable to any civil or criminal proceedings against them in respect of anything lawfully done in connection with, or for the purpose of, these activities.
- (12) The provisions of the Code of Criminal Procedure, 1973, (2 of 1974) shall, so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under section 94 of the said Code.

22. Rescue of person-

- (1) ~~Rescue is the right of a trafficked person and a person likely to be trafficked. All agencies concerned are accountable to undertake this as and when any information is received.~~

Recommended Wording:

It shall be the duty of the concerned agency to rescue a trafficked person at the first instance without delay, once information on the same has been received.

- (2) Where a magistrate has reason to believe from information received from the police or from any other person authorised by the State Government in this behalf or otherwise, that any person is being subjected to trafficking he may direct a police officer not below the rank of a sub-inspector to enter such premises, and to rescue such person and search the said premises and also take action against the offenders, in accordance with the provisions of this Act.
- (3) When an officer in charge of AHTU has reason to believe that any person is being subjected to trafficking or a trafficked person is being exploited in any manner, and that the rescue shall not be delayed, he shall immediately take all actions envisaged under this Act, including those mentioned section 23(2) of this Act, as well as other relevant laws.
- (4) When the SP of a District has reason to believe that any person is being subjected to trafficking or a trafficked person is being exploited in any manner, and that the rescue shall not be delayed and that AHTU is not available for whatever reasons, he shall direct a police officer not below the rank of Sub Inspector of Police to undertake all activities as mentioned in section 23(2) of this Act

23 A Investigation

- (1) The Investigating Officer within 90 days subsequent to the review of the Special Public Prosecutor and the Superintendent of Police shall submit the final police report before the court.

The investigation shall completed on top priority and submit the report to the Superintendent of Police who in turn will immediately forward the report to the competent authority as prescribed by the Rules. File the charge-sheet within 90 days post review of the Special Public Prosecutor and the Superintendent of Police.

- (2) The investigating officer shall ensure all the forensic evidence namely phone records, medico-forensic records, cyber forensic records, financial forensic records and the documentary evidence, shall be submitted as part of his proceedings for scrutiny to the Special Public Prosecutor and Superintendent of Police.

Provided where an accused has been previously convicted of an offence under this act, or any other act or another matter involving an offence under this act, the Investigating officer shall apply to the appropriate authority for the freezing account of said accused.

Provided that any person accused under this Act, is found to be responsible for publishing material in violation of section 67A of the Information Technology Act, 2000, then such Investigating officer shall ensure such evidence is made admissible in accordance with Section 65B of Evidence Act.

- (3) The investigating officer shall while investigating into an offence under this Act shall chart out and trace the whole network of persons involved in the commission of this crime through the narration of transit and transfer of the victim of such crime from the source till the destination.
- (4) The investigation officer shall, if during the course of investigation finds that section 306 of the criminal procedure code can be applied to ensure credible evidence or information for the conviction of a case shall make use of the same.
- (5) Authorization of interception of wire, electronic or oral communication.
- a. A Police officer not below the rank of Superintendent of Police Supervising the investigation of an organized crime under this Act may submit an application in writing to the Competent Authority for an order authorizing or approving the interception of wire, electronic or oral communication by the investigating officer when such interception may provide or has provided evidence of any offence involving an organized crime.

Details of such application to be provided for in the rules.

- b. The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.
- c. Upon such application, the Competent Authority may after recording the reasons in writing reject the application, or issue an order, as requested or as modified, authorizing or approving interception of wire, electronic or oral communications, if the Competent Authority, on the basis of the facts submitted by the applicant that-
 - i. there is a probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence described and made punishable under section this Act;
 - ii. there is a probable cause for belief that particular communications concerning that offence will be obtained through such interception
 - iii. normal modes of enquiry and, intelligence gathering have been tried and have failed, or reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception;

There is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted or be used or are about to be used, in, connection with the commission of such offence, leased to, or are listed in the name of or commonly used by such person.

23 B Evidence

- (1) The Investigating Officer shall ensure that search and seizure must be conducted in a professional manner and in a systematic way so as to maximize the opportunity to recover relevant and admissible evidence in accordance with the Indian Evidence Act, 1872, The Information Technology Act, 2000, Prevention of Money Laundering Act, 2002 and Criminal Procedure Code, 1973.
- (2) It shall be the responsibility of the state to provide modern secure storage facility to the investigating officers to ensure all such best evidence is preserved/protected from any tampering thereof.
- (3) The Investigating Officer shall seek all requisite approvals to facilitate the interception of communications pertaining to all suspected personnel related to the offence of human trafficking as mentioned in sub-section 10 (2).
- (4) He shall collect such evidence as best evidence during the course of his investigation and present the same before the Special Public Prosecutor and the Special Court.

23 C Forensic evidence -

- (1) The Investigating and the Special Public Prosecutor shall ensure that the forensic evidence in case of offences committed under this Act shall be gathered and stored in the proper manner.
- (2) The investigating officer shall co-ordinate with all registered agency to collate/gather all forms of Forensic evidence namely digital forensic, scene of crime, financial forensic, medical forensic and online forensic, if it found that such evidence is in existence and may prove to be crucial for such case.
- (3) **Verification of Certificates submitted:** Investigating Officer shall verify all certificates with the forensic expert for authentication; in case any such document is found to be fraudulent or forged the Investigating Officer shall initiate criminal proceedings against such person.
- (4) The Investigating Officer shall verify all aspects of money transactions related to the accused and shall apply for freezing of all bank accounts of related persons linked to the criminal activities of the accused.

Provided that, any person who has been previously convicted or accused in another offence when such person subsequently commits another offence under this Act, such person's account shall be frozen. The IO shall through the NIATIP, ensure that data pertaining to online platforms is triaged and disseminated to the concerned authorities for the purposes of investigating and successfully convicting such crimes.

Chapter 4: PROTECTION & REHABILITATION

23.Safe Care and Protection of Victims of Trafficking rescued under this Act:-

1)Child Victims

Where trafficked person is a child, the SPO or any other officer conducting such a rescue, shall produce them before the Child Welfare Committee as per provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

2) Victims of Trafficking for Forced Labour, Bonded Labour

Where trafficked persons are victims of trafficking for forced labour, bonded labour, the SPO or the officer conducting such a rescue, shall produce them before District Magistrate or Labour Officer

or any other such officer in accordance with the provisions of The Bonded Labour System (Abolition) Act and other labour laws.

3) Victims of Trafficking for Sexual Exploitation

- a) The special police officer or any officer authorised to do so, after rescuing a victim of trafficking for sexual exploitation shall forthwith produce him/her before the appropriate magistrate. If the rescued person is a child or appears to be a child, the rescued person shall be produced before a CWC.
- b) When the special police officer, or any other authorised to do so, rescuing a person under this section, is for any reason unable to produce him before the appropriate magistrate or CWC, as required by sub-section [3(a)] he shall forthwith produce him/her before the nearest magistrate of any class, who shall pass such orders as he deems proper for his safe care and protection until he is produced before the appropriate court/CWC. Provided that no victim shall be placed in Protective Home or Shelter Home under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or be restored to or placed in the care and protection of a person who may exercise a harmful influence over him. **Provided, that whoever applies for the custody. The magistrate shall ensure proper verification of documents submitted thereto.**
- c) When the person is produced before the appropriate magistrate or CWC as the case may be, he shall, after giving him an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received the age of the person and the suitability of his parents, guardian, spouse and community for taking charge of him and the nature of the influence which the conditions in his home are likely to have on him if he is sent home, and, for this purpose, he may direct a probation officer appointed under the Probation of Offenders Act, 1958, (20 of 1958), or the advisory body constituted under the Act or to a competent registered social welfare organization to inquire into the above circumstances and into the prospects of his rehabilitation **and submit a home investigation/inquiry report.** The magistrate, in this regard, may consult a trained psychosocial expert.
- d) The magistrate may, while an inquiry is made into a case under sub-section [3(b)] pass such orders as he deems proper for the safe care and protection of the person: Provided that the rescued person is a child, he shall be produced before the Child Welfare Committee and proceeded under JJ Act 2015. Provided further that: no person shall be kept in Protective Home or Shelter Home for the purpose for a period exceeding three weeks from the date of such an order, and no person shall be kept in the care and protection of a person likely to have a harmful influence over him.
- e) Where the magistrate is satisfied, after making an inquiry as required under sub-section [3(b)], and within a reasonable time, after taking into account the recovery status of the survivor and her own wishes regarding her rehabilitation, that the information received is correct; and that he is in need of care and protection, he may, make an order that such person be placed for such period, as minimum as possible, not being more than three years, as may be specified in the order, in a protective home, or in such other safe care and protection as he shall, for reasons to be recorded in writing, consider suitable: Provided that the person or body of persons entrusted with the care and protection of the person including the persons in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training, rehabilitation and medical and psychiatric treatment of the person as well as supervision by a person appointed by the court, which will be in force

for a period not exceeding three years.

- f) In the event, the person rescued and produced before the magistrate is an adult and he voluntarily makes an application supported by an affidavit for the release on personal bond, then the magistrate, upon satisfying himself of the voluntariness of such application and after ascertaining from the said person the content of such affidavit and explaining the consequence thereof and upon recording such satisfaction in writing, may release such person on personal bond. In the event, upon inquiry as aforesaid, the magistrate is of the opinion that such application has not been made voluntarily, the magistrate shall reject such prayer after recording his reasons in writing.

4) Victims of Trafficking of other Exploitation than mentioned in 24 (1)(2)(3)

Where trafficked person rescued is a victim of trafficking of other exploitation than mentioned in Section 24 (1)(2)(3), the victim shall be produced before the Magistrate and the Magistrate shall proceed in accordance with law.

- (5) In discharging his functions under this section, a magistrate may summon a panel of five persons, three of whom shall be women, and at least one should be a mental health professional or a trained psycho social counsellor, to assist him; and may, for this purpose, in consultation with the District Collector, the District Superintendent of Police and the DLSA, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of trafficking in persons.

24. Application for being kept in a protective home or for providing care and protection by court.-

- (1) A person who a victim of trafficking may make an application, to the magistrate within the local limits of whose jurisdiction he is being trafficked for an order that he may be—
- (a) kept in a protective home, or
 - (b) Provided care and protection by the court in the manner specified in sub-section (3).
- (2) The magistrate may, pending inquiry under sub-section (3), direct that the person be kept in such care and protection as he may consider proper, having regard to the circumstances of the case.
- (3) If the magistrate, after hearing the applicant and making such inquiry as he may consider necessary, including an inquiry by a probation officer appointed under the Probation of Offenders Act, 1958 or a reputed registered social welfare agency, into the desires of the applicant, conditions of home and prospects of rehabilitation of the applicant, is satisfied that an order should be made under this section, he shall, for reasons to be recorded, make an order that the applicant be kept,—
- (a) in a protective home, or other registered and recognised institution, or
 - (a) under the supervision of a person appointed by the magistrate, for such period as may be specified in the order, which shall not be more than three years.
- (4) The magistrate should consult the District Rehabilitation Committee in taking a final decision with respect to the rehabilitation of the person.
- (5) The home or institution so appointed and the District Rehabilitation Committee shall be responsible for establishing linkages with all concerned and ensuring timely and appropriate rehabilitation of the person concerned.

25. Protective homes.-

- (1) The State Government may in its discretion establish as many protective homes under this Act as it thinks fit and such homes and institutions, when established, shall be maintained in such manner as may be prescribed.—
- (2) No person or no authority other than the State Government shall, after the commencement of this Act, establish or maintain any protective home except under and in accordance with the conditions of a licence issued under this section by the State Government.
- (3) The State Government may, on application made to it in this behalf by a person or authority issue to such person or authority a licence in the prescribed form for establishing and maintaining or as the case may be, for maintaining a protective home and a licence so issued may contain such conditions as the State Government may think fit to impose in accordance with the rules made under this Act: Provided that any such condition may require that the management of the protective home shall, wherever practicable, be entrusted to women: Provided further that a person or authority maintaining any protective home at the commencement of this Act shall be allowed a period of six months from such commencement to make an application for such licence.
- (4) Before issuing a licence the State Government may require such officer or authority as it may appoint for this purpose, to make a full and complete investigation in respect of the application received in this behalf and report to it the result of such investigation and in making any such investigation the officer or authority shall follow such procedure as may be prescribed.
- (5) A licence, unless sooner revoked, shall remain in force for such period as may be specified in the licence and may, on application made in this behalf at least thirty days before the date of its expiration, be renewed for a like period.
- (6) No licence issued or renewed under this Act shall be transferable.
- (7) Where any person or authority to whom a licence has been granted under this Act or any agent or servant of such person or authority commits a breach of any of the conditions thereof or any of the provisions of this Act or of any of the rules made under this Act, or where the State Government is not satisfied with the condition, management or superintendence of any protective home, the State Government may, without prejudice to any other penalty which may have been incurred under this Act, for reasons to be recorded, revoke the licence by order in writing: Provided that no such order shall be made until an opportunity is given to the holder of the licence to show cause why the licence shall not be revoked.
- (8) Where a licence in respect of a protective home has been revoked under the foregoing sub-section such protective home shall cease to function from the date of such revocation.
- (9) Subject to any rules that may be made in this behalf, the State Government may also vary or amend any licence issued or renewed under this Act.
- (10) The State Government or an authority authorised by it in this behalf may, subject to any rules that may be made in this behalf, transfer a person from a protective home to another protective home, where such transfer is considered desirable having regard to the conduct of the person to be transferred, the kind of training to be imparted and other circumstances of the case: Provided that,—
 - (a) no person who is transferred under this sub-section shall be required to stay in the home or institution to which he is transferred for a period longer than he was required to stay in the home or institution from which he was transferred;
 - (b) reasons shall be recorded for every order of transfer under this sub-section.
- (11) Whoever establishes or maintains a protective home except in accordance with the provisions of this section, shall be punishable in the case of a first offence with fine which may extend to twenty thousand rupees and in the case of second or subsequent offence with imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees, or with both.
- (12) Every person or authority who is licensed under sub-section (3) of this section to establish or

maintain, or as the case may be, for maintaining, a protective home or other institution shall, whenever required by a court, produce the records and other documents maintained by such home or institution before such court.

- (13) The District Rehabilitation Committee shall exercise monitoring on the functioning of the homes to ensure that the activities are rights-based and are in the best interests of the persons concerned. Periodical inspection reports should be submitted to the state government, and the state government shall take appropriate actions immediately thereof.

Comment: License for protective has to be linked with protective homes provided under the JJ Act and the Immoral traffic prevention Act. Nariniketan where victims of trafficking stay and the shelter home under Ujwala scheme also have provisions for the stay of victims of trafficking- but may or may not be licensed under the ITPA hence clarity on the same is needed in implementation. Case in point Nariniketan New Delhi.

26. Rehabilitation not to be contingent on criminal proceedings

Where the rescued person is a victim of trafficking for forced labour, bonded labour, besides the proceedings envisaged under the Bonded Labour System (Abolition) Act, 1976, and Child Labour (Prohibition and Regulation) Act, 1986, and other labour laws, the SDM/DM shall ensure that the rehabilitation of the rescued person is not contingent upon criminal proceedings being initiated against the offender or the outcome thereof.

27. Other reliefs for a victim of trafficking for forced labour

- (1) Where the rescued person is a victim of trafficking for forced labour or bonded labour, the rescued person is entitled for relief under the Bonded Labour System (Abolition) Act, 1976, and Child Labour (Prohibition and Regulation) Act, 1986, and other labour laws. The concerned authority passing orders should send the communication regarding relief to the District Rehabilitation Committee constituted under section 31 of this Act. The rehabilitation funds should be provided and made available by the District Rehabilitation Committee, immediately on receipt of orders from the SDM. The SDM should ensure that the release certificate is issued immediately after rescue and in any case within forty-eight hours of the rescue and that the initial rehabilitation amount is made available to the rescued person within forty-eight hours and final amount within one month of the passing of the order. This rehabilitation amount is in addition to any other compensation or relief, payable either by way of any scheme of government or pursuant to any order of the court under any law in force.
- (2) Where the rescued person is a victim of trafficking for forced labour, bonded labour the release certificates shall be considered as identity proof of the rescued person and be relied upon for all matters of rehabilitation.
- (3) Considering the high level of vulnerability of the persons trafficked, and since the risk factors and insecurity can be high, the SP of the District shall ensure protection to the trafficked persons from harassment and intimidation from the offenders or associates at all stages during and after the proceedings. The State Governments shall bring out appropriate SOPs in addressing the various risk factors and ensure accountability of the agencies concerned in this regard.

28. Other reliefs for a victim of trafficking for organ trade

In matters of rehabilitation of persons trafficked for organ trade, the requirement of medical care will be much more. Therefore the District Rehabilitation Committee (DRC) (refer Section 30 of this Act) should associate medical and psychosocial professionals for advice, support and for undertaking rehabilitation measures.

29. District Rehabilitation Committee (DRC).-

- (1) Every district shall have a committee set up under the chairmanship of the District Magistrate/District Collector. The Superintendent of Police will be the coordinator. The members will include AHTU and representative from all concerned departments including prosecution, DLSA, Childline and two to three civil society organisations. The departments or agencies that have statutory roles to play like Labour Officers in case of trafficking for labour, will be part of the committee. The committee will also have representatives of the Panchayat Raj institutions, CWC, JJB, and SJPU, etc. The chairman will notify the committee and re-notify as and when there is any change. The civil society organisations may be changed every year. The committee shall be responsible for ensuring all aspects of protection and rehabilitation of the rescued person, immediately after rescue. The state government will bring out rules regarding the protocols and procedures, including medical care, psychosocial care, counseling, capacity building, providing education/employment and ensuring sustained livelihood options for the rescued person. The committee will also undertake all activities in matters of prevention and will be responsible in ensuring promptness, efficiency and accountability in all responses.
- (2) The State Government shall provide adequate resources to the DRC. Since the State Government is providing funds to DLSA on matters of compensation, state government may frame rules in such a way that this is linked with DRC. Further the state government will frame rules with respect to the quantum and process of delivering the relief amount to the victim(s) in such a way that the amount reaches the person without any delay whatsoever. The utilisation of the resources of DRC shall be audited by SLSA and the State Government/Central Government. In order to ensure that the DRC starts functioning in all the districts in the country, as a one-time measure, Government of India may allot funds to them in the beginning.

Chapter 5: PREVENTION

30. Prevention of trafficking in person.-

- (1) ~~Not to be trafficked is a right of the person and therefore all agencies concerned with prevention are accountable for the same.~~
- (2) Prevention of trafficking for sexual exploitation is a combination of several factors, especially in addressing vulnerability and simultaneously addressing demand. While the state government should take all steps to map, assess and remove vulnerabilities by involving all departments and agencies, they also should take steps to contain demand. This involves timely prosecution and conviction of offenders, public awareness campaigns to contain demand, etc. The strategies and plans will depend on the local situation and therefore the state government may authorise the District Rehabilitation Committees to come up with ideas and plans and execute them in a time-bound manner. The different agencies in the state, including the State Human Rights Commissions, Women's Commission, Commission for Protection of Child Rights, Child Labour Commission, etc. as well as Panchayat Raj Institutions should be involved in prevention. Community based prevention and rehabilitation activities involving all concerned shall be considered as the best option. Addressing vulnerabilities is more of a developmental issue and the agencies concerned shall focus on removing the vulnerabilities of the most vulnerable, especially women and children and more so from the weaker sections of society. The fundamental responsibility of prevention lies with the State police agencies. State Governments shall ensure this.

The government shall ensure that the MHA, MoRD, Ministry of skill shall work together with various schemes and skill development programmes, to reduce the vulnerability factors due to which the victims are getting trafficked at the source area.

Comment: Need for the involvement of other Ministries - MHA/MoRD / Ministry of Skill - for

strengthening the targeted linkages of the skill development programmes and the MGNREGA programmes to reduce the vulnerability factors due to which the victims are getting trafficked in the source areas.

- 3) ~~Since there is a direct linkage between unsafe migration and forced labour, in order to ensure that the migrants are not trafficked, on the one side, the migrants' rights have to be ensured and on the other side, the traffickers have to be dealt with according to law. The state governments shall undertake appropriate mechanisms to ensure that the migrants are aware of their rights and undertake all steps to ensure safe migration.~~
- 4) ~~The crime prevention comprises strategies and measures that seek to reduce the risk of crimes occurring and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes. Therefore the state government should bring out rules identifying the roles, functions and accountability of all agencies of the state government in preventing human trafficking. The role of Panchayat Raj Institution and civil society should also be brought out.~~ **The government shall bring out rules identifying roles, functions, and accountability of all the agencies in their endeavour for the prevention of crime.**
- 5) ~~The police agencies including AHTU should take prompt action against all the violators and exploiters trafficking persons for forced labour, bonded labour and take steps to prosecute them. Stringent and timely punishment is a good way of prevention.~~

Comment: The entire section needs to be reworded and bring in clarity as to the intention of the legislation. There are task forces existing in various districts established for the purpose of dealing with crimes of trafficking – these task forces can be utilized for purposes of prevention.

Recommended vigilance committee to be established under this Act:

Vigilance committees –(1) Every state Government shall constitute vigilance committees in each district and each subdivision as it may think fit.

(2) The functions of each vigilance committee shall be:

- (a) to advise the district magistrate or any officer authorised by him as to the efforts made, and action taken, to ensure that the provisions of this Act or of any rule made there under are properly implemented;
- (b) to provide for the economic and social rehabilitation of the victims of human trafficking;
- (c) to coordinate the functions of rural banks and cooperative societies with a view to canalising adequate credit to the rescued victims of trafficking;
- (d) to keep vigil account on the number of offences of which cognizance has been taken under this Act;
- (e) to make a survey as to whether there is any offence of which cognizance ought to be taken under this Act;

Chapter 6: GENERAL PROVISIONS

31. Special Prosecutors.-

- 1) The state Government in consultation with the State Legal Services Authority shall, by notification

in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases under the provisions of this Act and related offences.

- 2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate and proven experience in related field.
- 3) Every person appointed as a Special Public Prosecutor 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 and provision of that Code shall have effect accordingly.
- 4) The State Government in consultation with the High Court appoint one ore more Special Public Prosecutors for handling crimes of trafficking in persons in the High Court.
- 5) The victim has a right to be represented by private lawyers in addition to government prosecutors. The court may provide advocate from the Legal Services Authority or from any organisation or service provider to represent the victim at all stages of the proceedings. Such advocate shall be duty-bound to appraise the victim of the victim's legal rights and progress in the case.
- 6) The court should ensure that the advocate appearing for the accused or anybody acting on his behalf, shall not appear for the victims.

32.Special Courts and Related Provisions.-

(1) Trials. – All offences under this Act shall be tried by the Special Court to be notified by the Government of India or the State Government.

(2) Designation of Special Courts:

- (a) For the purposes of providing a speedy trial, the State Government shall in consultation with the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act.
- (b) While trying an offence under this Act, a Special Court shall also try an offence other than the offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure,1973 be charged at the same trial.

(3) Application of Code of Criminal Procedure, 1973 to proceedings before a Special Courts:

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 Public Prosecutor.

Provided that when a case is cognizable by the children's court, then the provisions thereof shall apply.

33. Procedure and Powers of Special Courts and Recording of Evidence.-

(1) Procedure and powers of Special Court:

- (a) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.
- (b) With regard to offences against children, the Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, ensure that the proceedings are in

accordance under sections 33-39 of the Protection of Children from Sexual Offences Act, 2012.

- (c) As regards adults, the Special Court may consider invoking aforesaid provisions, depending on the circumstances.
- (2) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session.
- (3) Period for recording of evidence of trafficked person and disposal of case:
 - (a) The evidence of the trafficked person shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.
 - (b) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.
- (4) The Special Court ~~may~~ shall record the statement of a trafficked person through video conferencing in all cases where the victim is not willing to appear in the court for reasons of security or otherwise. In all matters relating to trans-border crimes and inter-state crimes where the victims have been repatriated and are not able to come to the court for trial proceedings, video conferencing facility shall be resorted to. If the Special Court does not have video conferencing facility, the court will liaise with the District Collector and utilise the facility of video conferencing with National Informatics Centre. In matters of trans-border crimes, this linkage may be established through the Ministry of External Affairs and the Indian Embassy in the concerned country. The Police Nodal Officer of the state should undertake the task of working with Ministry of External Affairs and Embassy and providing this video conferencing linkage.
- (5) Supply of Documents: In matters of inter-state and trans-border trafficking, if the victim has been moved to another state or country, the responsibility for supply of documents to the victim as permissible under the laws shall be entrusted to a competent advocate appointed for this purpose by the SLSA of the state in which the trial is being conducted. Further, if the language in which the case records are written is different from the language understood by the victim, translation shall be attended to by the said advocate appointed by SLSA in the shortest possible time. The expenditure in regard to the procurement and translation shall be met by SLSA.
- (6) **Treatment of victim: Ensure protection and treatment of victim in a dignified manner throughout the whole proceedings of the criminal case and the rehabilitation procedure.**

34. Victim/Witness Protection.-

The provisions available in Section 15 A (1) to 15 (8) (b) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended up to date, will ipso facto apply here.

35. Victim Compensation.-

- (1) As and when the trafficked person is rescued and makes an application for interim compensation to DLSA, DLSA shall take immediate steps not later than a month, to award interim compensation as deemed appropriate, taking into consideration all aspects, including physical and mental trauma as well as the requirements for immediate relief. The state government should place adequate amount at the disposal of DLSA for this purpose within a period of one month from the commencement of this Act.
- (2) The rehabilitation process should commence immediately after rescue, and this should be

ensured by DRC.

- (3) The court shall ensure that the back-wages of the victim have been made payable to the victim who has been trafficked for exploitation including but not restricted sexual exploitation; in the initial stages of reporting itself.
- (4) After the process of trial: The Court, on its own or on application filed by or on behalf of the victim, recommend the award of compensation under Section 357A of CrPC , or under any other applicable scheme, at any stage, or where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified.
- (5) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the victim of trafficking for any physical or mental trauma caused to him/her or for immediate rehabilitation of such victim.
- (6) Special court may, in appropriate cases, on its own or on an application filed by or on behalf of the victim, pass an order for interim compensation to meet the immediate needs of the victim for relief or rehabilitation at any stage after registration of the FIR such interim compensation paid shall be adjusted against the final compensation if any.
- (7) The State Government shall make adequate budgetary allocations towards the fund to be created for person who had been trafficked.
- (8) Any voluntary donations, contributions or subscriptions or funds under Corporate Social Responsibility, whether or not for any specific purpose, may be credited to the Fund created for victims of Trafficking under section 39 of this Act.

37. Closure of premises of trafficking for the purpose of sexual exploitation and eviction of offenders from the premises.

- (1) The DM or SDM or any officer entrusted with the powers of the Magistrate under this law or any earlier law, shall, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof is being run or used for the purpose of trafficking for sexual exploitation, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, the magistrate is satisfied that the house, room, place or portion is being used as premises for trafficking for sexual exploitation then the magistrate may pass orders—
 - (a) directing eviction of the occupier and exploiters within seven days of the passing of the order from the house, room, place or portion;
 - (b) directing that before letting it out during the period of one year, or in a case where a child has been found in such house, room, place or portion during a rescue under section 22 or 23, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the magistrate: Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

Provided that the onus of proving the owner did not have the knowledge regarding the purpose of usage such property shall be upon the owner or the landlord itself.

- (2) A court convicting a person of any offence under in this Act may pass order under sub-section (1) without further notice to such person to show cause as required in that sub-section.
- (2) Orders passed by the magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal and the said orders shall cease to have validity after the expiry of one year or three years, as the case may be: Provided that where a conviction under section 16 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used for trafficking for sexual exploitation any order passed by the trial court under sub-section (1) shall also be set aside. **Comment - This particular section is subject to be struck down as it may be arbitrary.**
- (3) Notwithstanding anything contained in any other law for the time being in force, when a magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.
- (4) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to one lakh rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under **section 9** as the case may be, and punished accordingly.

38. Confiscation, Forfeiture and Attachment of Property.- (we will be deleting closer section)

- (1) Where a person or anybody on his behalf is in possession or ownership of any property, and is accused of having committed an offence under this Act or related offences under any Act, and it is likely that such property be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings, or it is likely that such property has been used or may be used for the commission of an offence under this Act, the Special Court shall attach 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 shall, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person or held by anybody on his behalf, which has been used for the commission of that offence or accrued thereby, and which has been attached under sub-section (1), shall be confiscated and stand forfeited to Government and the same may also be used by way of auction and other methods for the purpose of realisation of any fine imposed by the Special Court and be remitted to the state level Rehabilitation and Reintegration Fund under section 40.
- (3) Notwithstanding the conviction of the accused or any other proceedings under this Act, any property used for the commission of an offence under this Act shall be confiscated and stand forfeited to Government and the same may also be used by way of auction and other methods for the purpose of realisation of any fine imposed by the Special Court and be remitted to the state level Rehabilitation and Reintegration Fund under section 40.
- (4) Notwithstanding anything contained under sub-section (1), (2) or (3), 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, provided such acquisition was done without the knowledge of the pending proceedings.

39. Rehabilitation and Reintegration Fund.-

- (1) The Government of India will set up a national fund, under the National Bureau on Trafficking in Persons (NABTIP), within three months of commencement of this Act, with adequate resources for attending to all activities under this Act and any Rules, SOPs, Schemes and Programmes which will entail from this Act. The fund will be maintained and monitored by the NABTIP, and will apply to all victims of trafficking, irrespective of gender and age. The NIATIP will be provided with access to resources for matters of inter-state activities including prevention, protection, and prosecution. Similarly, funds will be made available to the nodal officers of the state, both police and government, on matters of prevention, protection and prosecution. The funds will also be devolved to the DRC, AHTUs and investigative agencies, on demand and with due checks and balances.
- (2) The State Governments, within three months of commencement of this Act, will set up a state-level Rehabilitation and Reintegration Fund. The purpose and functions of the Fund will be as mentioned in the previous sub-section and for activities within the state or for any other activities which the state agencies like AHTU undertake, in other states.
- (3) The national and state level Rehabilitation and Reintegration Fund managers can, after due diligence, accept voluntary donations, contributions or subscriptions as may be made by any individual or organisation.
- (4) The Government of India and State Government will bring out rules to ensure the accountability of the agencies in generating, disseminating and utilising the funds.
- (5) Recovery of fines: Any fine recovered as a part of the sentence for the commission of offence under this Act will be remitted to the state level Rehabilitation and Reintegration Fund.
- (6) The process of recovery of fines will be as stated in section 421 of the CrPC. The fines proposed under this Act are mandatory and the court shall ensure their recovery.

40. Alternative Punishment.-

Where an act or omission constitutes an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any such law, the offender found guilty of such offence shall be liable for punishment under such law which provides for punishment which is greater in degree.

41. Repatriation to Another State or Country.-

- (1) As regards trafficking in persons for sexual exploitation, the following are to be ensured:
 - (a) In case of a trafficking from one state to another, the responsibility for repatriation rests with the police SPNO of the state concerned. He should liaise with the SPNO of the other state and take appropriate action. The NABTIP will coordinate, facilitate and monitor these and related activities. The funds for the same should be provided by the State Rehabilitation & Reintegration Fund.
- (2) In matters of children, the decision for transfer is given by the CWC, and in adults, by the magistrate concerned. Repatriation should be undertaken only after proper home verification. This verification should be undertaken by probation officer or an appropriate agency to be appointed by the magistrate/CWC. Only after the report is received a decision should be taken in respect of repatriation. The expenditure for the verification should be provided by the State Rehabilitation & Reintegration Fund. While in safe care and protection, the rights of the person/child should be ensured to avoid any victimization. The NABTIP will coordinate, facilitate and monitor these and related activities.
- (3) As regards trafficking in persons for forced labour, bonded labour, the following are to be ensured:
 - (a) In case of trafficking from one state to another, the victims are to be repatriated after

obtaining their informed consent. In case the victim does not consent to the repatriation, after due counseling by trained psycho social professional, it is the responsibility of the State in which the victim was rescued to rehabilitate and reintegrate the victim. The responsibility for this lies with the SNO and the required funds will be provided by the State Rehabilitation & Reintegration Fund. The NABTIP will coordinate, facilitate and monitor these and related activities.

- (4) Until the victims are repatriated, they may be provided safe and secure accommodation by the DRC and this shall be ensured by the SPNO.
- (5) As regards trafficking from another country to India, the following are to be ensured:
 - (a) The repatriation/reintegration of such persons have to be initiated by the SPNO, after the concerned magistrate/CWC issues orders. The Ministry of External Affairs and other agencies concerned have to be brought into the loop and the process expedited. The concerned agencies should ensure that any report in this regard is acted upon within fifteen days of receipt. The follow up has to be done by the SPNO at the state level, and the NIATIP and NABTIP at the national level. The Ministry of External Affairs will provide NABTIP with the support of officials from the Ministry and attached offices to expedite and ensure the processes involved.
- (6) The decision for repatriation should be done from the best interests of the person trafficked and cannot be delayed or denied on grounds of pending litigation. In order to expedite the trial proceedings, video conferencing facility as mentioned above should be adopted so that the victim is not put to hardship.
- (7) There are instances where the children of the trafficked persons are kept in Shelter Homes and after due process of law, the parents are repatriated and the children continue to remain in such Home. Some of them were born in India but do not have a passport. Some of them came along with their migrant parents and do not have a passport but were born in the foreign country. In both cases, repatriation remains a grave issue. Considering the human rights involved, the magistrates/CWC shall, after hearing the child concerned and the NGO/advocates appearing on behalf of the child, take a well-considered decision to repatriate or not. If the order is for repatriation, the SPNO, NABTIP, NIATIP and the Ministry of External Affairs shall facilitate repatriation within a month of the order. Every effort should be made by all the concerned agencies to ensure the children are repatriated along with their parents.

42. Cognizance and Related Matters.-

- (1) Offence to be cognizable and non-bailable: All offences under this Act are cognizable and non-bailable.
- (2) In addition to the existing provisions of the CrPC, the following provisions also need to be adhered to:
 - (a) Bail should be denied to habitual offenders except upon exceptional, special and compelling reasons with the most stringent conditions.
 - (b) The court shall call for the antecedent report of the accused in all trafficking cases from the SPNO/AHTU/local police and consider the same before passing any order of bail. The court shall ensure that such report is filed within a reasonable time, which the court may decide.
 - (c) The victim shall have a right to be heard in bail matters. In this regard, the victim can also be represented by private advocates of their choice. In the event the victim is willing to engage an advocate but cannot afford one, the DLSA or SLSA, as the case may be, will

ensure the appointment of a competent advocate to represent him.

- (d) The court shall ensure that the address of the surety and the person accused of an offence have been verified by the court and if necessary the same shall be verified by independent *amicus curiae*.
- (e) The court shall not grant to brothel owners, unless the brothel is closed or sealed.
- (f) The court shall deny bail if the victim is a minor.
- (g) Anticipatory bail shall not be allowed in cases of trafficking in person.
- (h) Bail on medical grounds shall not be given, medical assistance to be provided in jail.

Comment: The stringent conditions observed in *Freedom firm v. Commissioner of Police, Bombay high court* must also be adopted.

43. Power of Central/State Government to Make Rules.-

- (1) The Center/State Government shall bring out rules and Standard Operating Procedures on all aspects of implementation of the Act, within two months of the notification of this Act incorporating all the roles and responsibilities of the agencies as well as the procedures to be adopted, including checklist to ensure that the rights of the victims are protected.
- (2) In matters of rehabilitation, the rules and SOP should have adequate scope for the agencies concerned to work according to the need and requirement of the individual concerned.

44. Saving Clause.-

- (1) Section 370 IPC, 370 A IPC and Immoral Traffic (Prevention) Act of 1956 hereby stand repealed.
- (2) Section 166 A IPC, and Section 53 A of Indian Evidence Act ipso facto become applicable under this law.
- (3) In matters relating to children, the provisions of The Juvenile Justice(Care and Protection of Children) Act, 2015, and The Protection Of Children from Sexual Offences Act, 2012, will hold good. If any anomaly arises, the decision be taken by the Special Court or CWC, as the case may be, in the best interest of the victim.

45. 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, any person, including NGOs acting in good faith 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 there under.

46. Laying of Rules.-

- (1) 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, within a period of thirty days.
- (2) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the Assembly, while it is in session, within a period of thirty days.

47. 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.

48. 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 and the provisions of Probation of Offenders Act, 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.

48 A Plea Bargaining -

(1) Notwithstanding anything contained in any other law for the time being in force, Plea-bargaining shall be allowed in an offence committed under this Act, subject to the provisions mentioned herein below.

Provided that this section does not create a right for the accused and shall not be entertained in such way either by the court or the investigation agency

Explanation: A person accused under this Act cannot claim plea bargaining as a matter of right and no claim under plea-bargaining shall be entertained on rejection of any application.

(2) An application for plea- bargaining shall be produced before the State nodal police officer for approval. The SPNO may reject or approve such application. If the approval is granted, such approval shall be in writing with reasons thereof; before being presented to the court under the specifications mentioned in Chapter XXIA of the criminal procedure code, excluding the exception created therein. The approval of the SPNO shall be recorded in such cases.

(3) When an approval from the SPNO has been obtained in writing with reasons; a person accused of an offence under this Act may file an application for plea bargaining in the Court in which such offence is pending for trial.

(4) Such application under sub-section (1) and (2) shall contain a brief description of the case, alleged offence along with an affidavit by such accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence.

(5) After receiving such application, the Court shall issue notice to the Special Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(6) When the Special Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed, the Court shall examine the accused in-camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where -

the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case and thereafter fix the date for further hearing of the case; the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Code from the stage such application has been filed under Sub-Section (1).

Provided notwithstanding anything contained in Criminal procedure code, a reduced sentence shall not amount only to monetary payment as compensation. Any payment levied by the court shall be in addition to the period of minimum sentence which shall be served by the accused.

Explanation: A person accused of an offence under this Act cannot be released on mere payment of compensation to the victim.

49. 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.