

## PROPOSED ITPA, 1956 AMENDMENT

Dated 18 May, 2007

The Parliamentary Standing Committee on Human Resource Development had submitted its report on proposed ITPA Amendment to the Parliament on 23 November 2006. The Ministry has processed the same and has amended and strengthened the clauses pertaining to ITPA Amendment. Details are given below

S No.	Section/Clause of ITPA Bill, 2006	Recommendation of PSC	Comments of the MWCD
1.	CLAUSE 2 SUB CLAUSE (iii)	<p><u>Modification of definition of prostitution under Section 2(f) of the Principal Act.</u></p> <p>The Committee feels that present definition is too wide particularly due to addition of the words "any other kind". The Committee, therefore, recommends that the proposed definition of 'prostitution' in section 2(f) needs a re-look, keeping in mind the purpose and intent of legislation and redrafted to avoid any ambiguity. (Para10.3)</p>	<p>The definition of prostitution is provided under Section 2 (f) of the ITPA. As recommended by the PSC and to remove any ambiguity in the definition it is suggested that " in clause (f), after the words "for commercial sexual purposes", the words "for consideration in cash or kind" shall be inserted.</p>
2.	CLAUSE 6	<p><u>Insertion of new Section 5A to define trafficking in persons.</u></p> <p>While threat, use of force, coercion, abduction, fraud, deception in sub-clause</p>	<p>In this context it may be pointed out that the definition of trafficking as incorporated in Section 5 A of the amendments is taken from the UN Convention against Transnational</p>

		<p>(a) have clear legal meaning, the term 'abuse of power or position of vulnerability' in sub-clause (b) is ambiguous and may result in categorizing all recruitment into sex as trafficking. It was pointed out that a significant number of persons enter sex work for economic reasons and are not recruited against their will through force, deception, etc. It is feared that such persons may be understood as being in a "position of vulnerability" and consequently, their entry in sex work will be construed as trafficking. (Para 11.5)</p>	<p>Organised Crime to which India is a signatory. There are a number of sex workers who admit that they are in the profession out of their own violation and are not trafficked even though the original reasons for entering the professions could be a person taking advantage of their economic or social vulnerability. The intent and essence of the definition of "trafficking" as provided under Section 5A is to cover all possible causes that can lead to trafficking of women and children which include economic vulnerability or poverty. Hence, we may continue to retain the existing definition as under 5A.</p>
3.	CLAUSE 6 (contd.)	<p>The Committee, therefore, recommends that while redrafting the definition of trafficking, the words "inducement of religious and social nature" may also be included appropriately in Section 5A to prevent cases of trafficking driven by religious beliefs and other social practices. (Para 11.4)</p>	<p>Agreed. As recommended by the PSC, Section 5A may be reworded as: -</p> <p>"5A. Whoever recruits, transports, transfers, harbours, receives, <i>induces or dedicates</i> a person for the purpose of prostitution by means of, —</p> <p>(a) threat or use of force or coercion, abduction, fraud, deception; or</p> <p>(b) abuse of power or a position of vulnerability; or</p> <p>(c) giving or receiving of payments or benefits to achieve the consent of such person having</p>

			<p>control over another person, (d) under guise of <i>religious, social, cultural, customary practices or sanctions</i></p> <p>commits the offence of trafficking in persons.</p> <p><i>Explanation.</i>—Where any person recruits, transports, transfers, harbours, receives, induces or dedicates a person for the purposes of prostitution, such person shall, until the contrary is proved, be presumed to have recruited, transported, transferred, harboured, received, induced or dedicated the person with the intent that the person shall be used for the purpose of prostitution.</p>
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4.	SECTION 5 B	<p><u>Punishment for Trafficking in Persons</u></p> <p>The Committee felt that punishment for child trafficking should be enhanced to no less than 10 years, as child trafficking deserves maximum punishment.</p> <p>The Committee, recommends that Section 5B (1) should accordingly be amended to read as under:  <i>Any person who commits trafficking in person shall be punishable on first conviction with rigorous imprisonment for a term which shall not be less than 7 years for trafficking in adults and not less than 10 years for trafficking in children and in the event of a second or a subsequent conviction with imprisonment for life.</i>  (Para 12.1)</p>	<p>Agreed. The recommendation made by the PSC may be incorporated in the proposed amendments, as Child Trafficking is a heinous crime that requires more stringent penalties.</p>
5.	SECTION 5C	<p><u>Punishment for Visiting Brothel</u></p> <p>The issues on which Committee has expressed apprehensions on: -</p> <p>(1) Mere visit to a brothel can be construed as sufficient ground for harassment irrespective of the reason of the visit.</p>	<p>For this we may clarify as under: -</p> <p>Any person who is found in a brothel as defined under section 2(a) for the purpose of commercial sexual exploitation as defined under section 2(j) and</p> <p>a. Induces a person to engage in any activity related to commercial sexual exploitation including negotiation for consideration in cash or</p>

			<p>kind for commercial sexual exploitation; or</p> <p>b. Identifies a person to engage in commercial sexual exploitation; or</p> <p>c. Takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to the person carrying on or being brought to carry on commercial sexual exploitation</p> <p>shall on first conviction be punishable with imprisonment for a term which may extend to three months or with fine which may extend to twenty thousand rupees or with both and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and shall also be liable to fine which may extend to fifty thousand rupees.”</p>
6.	SECTION 5C (Contd.)	<p>(2) The Committee felt that it would be difficult for a person visiting a brothel to distinguish between “trafficked” and a “non-trafficked” person.</p> <p>This ambiguity, the</p>	<p>As recommended by the PSC, the definition of Commercial Sexual Exploitation may be inserted as a new clause “j” under Section 2 of the Act: -</p> <p>2(j) Commercial Sexual</p>

		<p>Committee notes, is further confounded, as the term "sexual exploitation" has not been defined in the Bill. The words "for the purpose of sexual exploitation of any victim of trafficking" would allow the enforcement agencies to determine "victims of trafficking" and the intention of the visitor to 'sexually exploit' at the time of arresting.</p> <p>The Committee is of the view that it is cardinal principle of criminal law that what constitutes an offence must be clear, not vague. The Committee, therefore, recommends that Section 5C needs to be revisited for removing all the ambiguities and addressing the concerns expressed in respect thereto. It would be better if the terms "trafficked victim" and "commercial sexual exploitation" are defined precisely in the Bill itself. (Para 13.11)</p>	<p>Exploitation includes the exchange of sexual services or promise of the same with or without sexual contact or intercourse for consideration in "cash or kind" through threat, force, coercion, abduction, fraud, deception, abuse of power and position of vulnerability.</p> <p>As recommended by the PSC, the definition of Trafficked Victim may be inserted as a new clause "k" under Section 2 of the Act: -</p> <p>2(k) Trafficked Victim means a person who is forced into prostitution through trafficking as defined under Section 5A and includes a person who is</p> <p>(a) induced by a person to engage in any activity related to commercial sexual exploitation including negotiation for consideration in cash or kind; or</p> <p>(b) Identified by a person to engage in commercial sexual exploitation; or</p> <p>(c) Taken or attempted to be taken by a person, from one place to another with a view to the person's carrying on or being brought to carry on commercial sexual exploitation.</p>
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7.	CLAUSE 9	<p><u>Deletion of Section 8</u></p> <p>The Committee in principle agree for the removal of section 8 i.e. to protect the victims from further victimization. However, the Committee recommends that a suitable clause may be added in the Bill itself to take action against the pimps, procurers, perpetrators, agents and other exploiters with self-interest, for soliciting. (Para 14.7)</p>	<p>Agreed</p> <p>The Section 3, 4, 5 of ITPA takes care of this.</p>
8.	CLAUSE 10, Sub Clause (ii)	<p>The Committee feels that the whole aspect of corrective homes appears to be a medieval concept, which has to be rejected on the basis of the changing positions and changing perceptions about the women. We can't, on the one hand, say that women are victims and then send the victims for seven years incarceration on the other. This is more as imprisonment than a rehabilitation or relief. The Committee recommends that instead of corrective institutions the Government should create rehabilitation homes where opportunity for seeking an alternative livelihood with the women's consent is provided so as to prepare the victims to</p>	<p>Agreed.</p> <p>The comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-integration of Victims of Trafficking and Commercial Sexual Exploitation being formulated by the Ministry would look into this aspect.</p>

		live life in mainstream. (Para 15.1)	
9.	CLAUSE 11	The Committee recommends that the rank of the special police officers may be retained as Inspector. The Committee also recommends that more lady police officers may be appointed to deal with the crimes under ITPA. The Government should initiate a training and sensitization programme for such officials to ensure that the victims who are already under trauma may be saved from further harassment. (Para16.3)	Agreed as regarding reinstating Inspector as Special Police Officers.  The appointment of women police officer to deal with crimes under ITPA will depend on availability of such officers in the State.  The process of training and sensitization of police is a continuing exercise.

10.	<p>CLAUSE -12- INSERTION OF SECTION 13A AND 13B</p>	<p>Section 13A and 13B provide for the setting up of a Central as well as State Authorities respectively for the purpose of 'preventing and combating' trafficking in persons. However, the Committee notes that the composition and powers of these authorities have not been spelt out in the Bill. The Committee, therefore, recommends that the composition and powers of the authorities may be spelt out in the Bill itself.</p> <p>Furthermore, it should be mandatory on the Central and State Governments to set up these authorities in a fixed time frame as at present Section 13A and 13B leave it fully at the discretion of the respective governments.</p> <p>The Committee recommends that the word 'may' should be replaced by the word 'shall' in the first lines of Section 13A and 13B. (Para 17.1)</p>	<p>The composition and Powers of the Authorities will be spelt in the Rules.</p> <p>However, the requirements of staff for the Authorities will be spelt in the Bill as follows: -</p> <p>A new clause under Section 13A may be inserted and may be worded as: -</p> <p>“(1) The Central Government shall provide the Authority with such officers and employees as may be necessary for the efficient performance of the functions of the Authority under this Bill.</p> <p>(2) The salaries and allowances payable to and other the terms and conditions of service of the officers and other employees appointed for the purposes of the Authority shall be such as may be prescribed.”</p> <p>The word “shall” to replace “may” in first line of Section 13A and 13B.</p>
11.	<p>CLAUSE -12- INSERTION OF SECTION 13A AND 13B (Contd.)</p>	<p>The Committee further recommends that these authorities should also comprise social workers including members of women's organizations, health workers, and other concerned sections of the Society including</p>	<p>The recommendation of the Committee will be kept in view while formulating the composition of the Authority.</p>

		prostitutes themselves. (Para 17.2)	
12.	CLAUSE 16 – IN-CAMERA PROCEEDINGS	The Committee, therefore, feels that someone whom they find secure with and have trust in should always be allowed to be present with them during these proceedings. The Committee, therefore, recommends that appropriate provision in this regard should be added in Section 22 after sub-section (2).(Para 18)	As recommended by PSC, the proposed amendment to the Section 16 (2) may be re-worded as: -  16 (2) “ Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the trial of the proceedings under this Act shall be conducted in-camera and the court shall allow a person of victim’s choice and trust to be present during the proceedings.
13.	GENERAL	The Committee strongly feels that there is an urgent need for having a complete re-look at the Immoral Traffic (Prevention) Act, 1956 touching upon all conceivable aspects. An attempt has been made through the proposed amendments to bring the serious problem of trafficking under the Act. The Committee would, however, like to point out that this can be only considered a half-hearted attempt as the cross-border dimensions of problem of trafficking has remain untouched.	The proposed Section 5A covers cross-border trafficking and any trafficker belonging to India, if accused, is tried by the Judicial System of the Country.  Moreover, the rescued victims of trafficking whether Indian Citizen or cross border, is provided with the same rehabilitation package till such time the victim can be safely repatriated to the country of origin.
14.	GENERAL	The Committee finds that ITPA does not contain any special provisions relating to children, particularly	Based on the observations made by the PSC, it is suggested that a new sub clause (3) may be inserted

		<p>with respect to the treatment of rescued children. Secondly, the Committee was also given to understand that since the definition of 'prostitution' as given under the Act simply mentions persons, it is presumed to include children. Under the Act, a victim of commercial sexual exploitation can also be prosecuted because the law does not state whether children forced into prostitution are victims or offenders.</p> <p>Committee's attention was drawn to the case of <i>Perna V/s State of Maharashtra, Criminal Writ Petition 788 of 2002</i>, whereunder, the Bombay High Court ordered that children who are found soliciting should be treated as children in conflict with the law under the Juvenile Justice Court. The Committee is of the firm view that this grey area about the legal position about child prostitutes needs to be thoroughly looked into and adequate provisions safeguarding the interests of child prostitutes need to be included in the Act. (Para 19.3)</p>	<p>under Section 16 and worded as: 16 (3) "where a victim is found to be a child, the child shall be produced before the Child Welfare Committee constituted as under Juvenile Justice (Care and Protection) of Children Act, 2000 who shall give necessary directions for the care and protection of the child".</p>
15.	GENERAL	The Committee, therefore, recommends that the law needs to be reviewed to make a distinction between	As observed by the PSC and to remove anomaly in Section 4 of the Act, it is suggested that a new amendment to

		<p>living 'on' and living 'off' the earnings of a prostitute. While legal safeguards need to be provided to prevent extortion of money from a prostitute, her right to incur expenditure voluntarily has to be safeguarded. (Para 19.5)</p>	<p>Section may be proposed in the Bill to replace the word "living on" with "living off".</p>
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