

F.NO.15011/27/2011-ATC
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
NORTH BLOCK, NEW DELHI
CS DIVISION

New Delhi, the 30 April, 2012

OFFICE MEMORANDUM

Subject: Advisory on Human Trafficking as organized crime.

Human Trafficking (HT) is a serious crime and a gross violation of human rights. It is very often linked with organised crime and is considered as one of the most profitable criminal activities worldwide. Combating and preventing HT requires special skills and effort to prevent, investigate and prosecute offenders. Generally a group of offenders in HT crimes ranges from the spotter, recruiter, agents of recruiters, transporter, harbourer, brothel manager, brothel keeper, exploiters, etc at the lower rung and organized crime syndicates above which need to be investigated at source, transit and destination.

2. In May 2011, Government of India ratified the United Nations Convention against Transnational Organized Crime (UNTOC) and one of its three protocols includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children. The UNTOC is the first comprehensive and global legally binding instrument to fight transnational organized crime and as such has provided for a universally accepted definition of “organized criminal group” and also lists the offences which are transnational in nature. Though there is currently no central legislation in India with regard to organized crime, Maharashtra has enacted the MCOCA 2000 and some States have adopted the same and other states can also do likewise. Legal action against trafficking in India is being taken under the IPC and the Immoral Traffic Prevention Act (ITPA), 1986 and MCOCA against those involved in HT.

3. Organised Crime involves any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other persons or promoting insurgency.

4. The present advisory is intended to provide guidelines to law enforcement agencies on the manner and modalities regarding the crime which should be implemented in conjunction with a MHA Advisory dated 09.09.2009. F.No.15011/6/2009-ATC-(Advisory).

5. Central Bureau of Investigation (CBI), Government of India, is the national Nodal Authority to receive and respond to all requests for all inter-state and cross border

assistance as a single point of contact and to act as liaison between the Ministry of External Affairs and other State parties on matters relating to the Convention as well as the Protocols. One unit in Special Crime Division of CBI has been designated as AHTU to provide specialized assistance in the area of HT of children and women for the purpose of begging, prostitution, pornography, forced labour in industries & other forms of exploitation. Criminal Intelligence Cell (CIC), CBI which receives data on gangs involved in kidnapping from all States/UTs in India has been subsumed into this Unit. To ensure that all links in a HT chain are identified and prosecuted as per law, the State/UT police agencies can also take assistance of AHTU, CBI for capacity building as well as for investigation of cases having international ramifications. The agency has also activated a helpline number (011-24368638), where any person, having inputs about gangs and syndicates involved in HT can give information.

6. The following **key action points** need to be addressed by States/UTs for effectively dealing with the organized crime aspect of human trafficking.

- a) **Anti Human Trafficking Units (AHTUs):** All states are urged to utilize the AHTUs as a key machinery to deal with the crimes of HT in a holistic manner. Police officers in the AHTU should collect/disseminate/utilize intelligence on offenders; maintain database of offenders as well as their hierarchical structure, place of operation, segments of supply chain and allied places of exploitation; partner with NGOs and local communities to unearth information relating to HT and above all carry out a professional investigation.
- b) **Sensitisation of Law Enforcement Agencies:** Police / Border Guards / Railway Police / Immigration officers, Prosecutors and Judiciary may be sensitized through training / seminars and workshops for the effective implementation of the ITPA, the IPC (Sections 3A, 107-117, 120A, 120B, 551), the Prevention of Corruption Act, 1988, (Sections 7-11, 13, 17, 20) and other relevant state legislations. This should be with the specific purpose of dealing with the organized aspect of trafficking.
- c) **Special Police Officers (SPO):** U/s 13 of the ITPA, the State Government may appoint SPOs and 'Non-official advisory bodies' to advise the SPOs for dealing with offences under the ITPA.
- d) **Local Intelligence Units (LIU):** State Governments may consider setting up LIUs in all districts against organized crime to gather intelligence and ensure that it is disseminated. Priority should be given to the database on traffickers and their networks. Their profiling and surveillance can be an effective tool for intelligence collection and for prevention of trafficking.

- e) **Helplines:** State police agencies may set up helplines and special desks in the police stations and control rooms to address this issue on a real time basis.
- f) **SOPs:** The protocol on Inter-State rescue and Post-Rescue activities and Standard Operating Procedures for Investigation etc. developed jointly by the MHA and UNODC for conducting joint investigations and operations which also facilitate exchange of information about traffickers and their mode of operation, routes etc should be implemented. These resource materials should be translated and re-printed by the states into local languages for wider use and dissemination.

7. INVESTIGATION OF ORGANISED HUMAN TRAFFICKING CASES

Only relentless law enforcement pressure can diminish the possibility of unattached criminal elements forging alliances with big crime figures, constitute criminal networks and thereby spawn the phenomenon of organised crime. Organised crime can only be combated by a deft mix of good intelligence, proper and exhaustive investigation and national and state level coordination.

8. SUMMARY OF GUIDELINES FOR INVESTIGATION.

An organised criminal group is structured in a hierarchical manner so that the kingpins are insulated from law enforcement. Conviction of kingpins is difficult because of rules of evidence: witnesses are not willing to depose for fear of their lives and informers fail assist law enforcement agencies as documentary evidence is not available. For counter these difficulties which hinder proper investigation and prosecution of cases, the following measures are beneficial – inter-agency coordination, use of undercover agents, early completion of investigation and speedy trials, access to common databases for enforcement, witness protection, confiscation of crime proceeds, training of investigation officers and use of Mutual Legal Assistance Treaty (MLAT) for assistance in investigation from other countries.

9.1 Ingredient of Offence: Each ingredient of an offence made out in a case must be clearly identified and must be matched against the relevant pieces of available evidence as well as the legal admissibility of each piece of evidence along with linking it with one or more ingredients.

9.2 Investigation at source, transit and destination:

- a) Evidence collection at the source to ascertain the true identity of a victim, identify and whereabouts of the local gang members and their contacts (links), the modus operandi used for recruitment/engagement of a victim, complicity of the family and others (if any).
- b) Evidence collection through transit is required to establish transfer of a victim, routes and modes of transportation used, identify accomplices and the methods used to control a victim through the transfer.

- c) Evidence collection at the destination to establish the nature of exploitation, methods employed by exploiters to control a victim, impact of exploitation on a victim, places used for exploitation, identification of gang members operating the business, property and assets of a gang and individual members, complicity of officials (if any).

9.3 Corroborative evidence: Medical reports should be used to establish the nature of exploitation and its impact on victims. Age estimation of a child victim is necessary to book offenders under more stringent provisions; DNA/finger prints and such other test reports may be obtained to establish the identity of a person (victim/accused); call record analysis of gang members to establish contact between relevant persons (victim/accused/others), travel documents/tickets used by traffickers to establish movement of victims/accused and forensic reports of items seized from a scene of crime (SOC) such as blood stains, instruments, weapons, registers, property papers etc. are other forms of evidence which should be used to establish relevant facts for a case.

9.4 Independent reports from other agencies: An Inquiry report submitted under Section-10A (b(i) or 17(2) or 19(3) ITPA, would be highly relevant and useful in cases involving adult female victims of trafficking for commercial and sexual exploitation. Similarly, inquiry report submitted u/s 33 JJ Act in case of child victim or Income Tax department assessment or any other official agency in relation to the activities/assets of an accused or the gang or a Counsellor's report about the condition of a victim would be of utility.

9.5 Sequence of events: The sequence of events from 'source to destination' should be reconstructed with all available information to identify the missing links of information and their legal admissibility. Each SOC should also be individually reconstructed to identify the missing links of information/evidence. The role of predators/accomplices such as Procurers/Spotters, Recruiters, Transporters of the victims, Financiers and other exploiters such as clientele, pimps, brothel owner and managers should be investigated from a conspiracy angle.

9.6 Defeating Organised Gangs:

- a) A clear plan of action should be chalked out to collect relevant evidence to prove existence of a gang, the identities and activities of its gang members, nexus with other gangs and public officials, if any and identify the trail of illegal and ill-gotten money (proceeds of crime).
- b) Deciphering the communication linkages through link analysis.
- c) Specific and general 'intelligence' about a gang should be developed to make a prima facie assessment about the lines of investigation with respect to the activities of a gang.
- d) Relevant 'surveillance' methods may be employed to develop specific information including the identity, the activities and the level of complicity of gang members in the case and otherwise.

- e) The case history of every crime committed by every gang member should be collected from the concerned districts to prepare a dossier of the gang to be used to book a gang under relevant laws such as the UP Gangster Act.

9.7 Parallel Financial Investigation into Money Laundering

It would be virtually impossible to establish and manage an organized HT network without creating audit trails such as advertising, rentals, transportation, communication, mapping of exploiter profits and financial transactions. Any of the following four aspects relating to money laundering need to be established during the course of investigation. Assistance of financial experts should be taken:

- a) Conversion or transfer of crime proceeds for the purpose of concealing their illicit origin;
- b) Concealment or disguise of crime proceeds;
- c) Acquisition, possession or use of crime proceeds;
- d) Contributing indirectly to the commission of the offences outlined above, including participation in and conspiring or attempting to commit the offences in question.

9.8 Efforts should be made to identify each and every moveable and immovable asset of a gang and each of its members including benami properties by verifying documents and analyzing the source of funds. Each business or establishment run by gang members should be scrutinized to assess the investment made into the business/establishment, its source of funding, profits made and utilization/re-investment of profits, possible tax evasion, violation of financial rules and regulations including the ones relating to foreign exchange.

9.9 Confiscation of Proceeds:

It will be essential to deprive the criminal gangs of their ill gotten wealth. The laws relating to confiscation of proceeds of crime are available in several statutes. As per the facts of the case being investigated the relevant law is to be invoked.

- a) Sections 102, 105 and 452 of Cr.P.C
- b) Sections 111 to 121 of the Customs Act, 1962 ;
- c) Chapter V A of the Narcotic Drugs and Psychotropic Substances Act, 1985;
- d) The Criminal Law [Amendment] Ordinance, 1944 (Ordinance XXXVIII of 1994)
- e) Foreign Exchange Regulation Act, 1973 (Section 63) ; and
- f) Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.
- g) Unlawful Activities (Prevention) Act,1967
- h) Invoke provisions of ITPA alongwith IPC, ITPA with MCOCA (wherever in force), ITPA with Goa Children's Act, 2003 (applicable in Goa) etc.

- i) Action be initiated under the provisions of the Prevention of Money Laundering Act, 2002 for offences committed u/s. 5, 6, 8 and 9 of ITPA; The Enforcement Directorate is to be informed during the investigation of the predicate offences.

9.10 Collection and sharing of criminal intelligence

As with any other form of organized crime, successful investigation of trafficking in persons requires the need to identify and gather evidence from other jurisdictions in the course of investigations, be it inter-state or cross-border trafficking. Hence, joint proactive operations/serious investigations in the region or transit or destinations sites can exploit evidential opportunities to gather collaborative evidence at recruitment and transportation phases of the crime. It is necessary that while investigating the crime of human trafficking, the following needs to be considered at all stages of human trafficking:

- a) Sharing criminal intelligence with other police agencies (different police stations, districts, states, CBI etc.) on traffickers and all other accomplices.
- b) Sharing crime data with other police agencies and CBI regarding vulnerable places and vulnerable people.

9.11 Transfer of evidence from another country:

For transfer of evidence from another country Letter of Request (LR) u/s 166A Cr.P.C. or invoking MLAT must be resorted to by contacting the IPCC Division of the CBI.

10. The aforementioned measures are only indicative and the States/UTs may consider any additional measures for dealing with the organized crime of human trafficking. This Ministry may also be kept apprised of any special measures/mechanisms introduced in their respective jurisdictions so that the same could be circulated to other State Governments and UT Administrations for consideration / adoption. States/UTs may consider translating this Advisory into regional languages for dissemination.

The receipt of the Advisory may be acknowledged.

Sd/-

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To
The Chief Secretaries &
The Principal Secretary/Secretary (Home)
All State Governments and Union Territories

Copy also for information and necessary action to:

- i. The DGs of all State Governments/UTs.
- ii. National Commission for Protection of Child Rights
- iii. Director General BPR&D
- iv. Director NCRB
- v. Director CBI
- vi. Director, IB
- vii. Director General BSF
- viii. Director General ITBP
- ix. Director General SSB
- x. Ministry of Women and Child Development
- xi. Ministry of Labour
- xii. Ministry of Social Justice and Empowerment
- xiii. Nodal officers Human Trafficking

Sd/-

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