

Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

Question & Answers



The Trafficking in Persons (Prevention, Protection and Rehabilitation) Bill 2018 seeks to provide the first step towards a comprehensive solution to trafficking in persons in India, that goes beyond its criminalisation.

TRAFFICKING OF PERSONS (PREVENTION, PROTECTION, REHABILITATION) BILL, 2018 (Trafficking Bill, 2018)**1. Why do we need Trafficking Bill, 2018 as there is already a law namely, Immoral Traffic Prevention Act, 1956 and section 370 and other related trafficking provisions under Indian penal Code, 1860?**

Though, section 370 of Indian penal Code, 1860 defines the offence of trafficking of persons and related offences, but it does not address trafficking offences which are aggravated in nature. Similarly, Immoral Traffic (Prevention) Act, 1956 refers to procuring, inducing or taking person for the sake of prostitution.

It is important to mention that there are various issues associated with the offence of trafficking and these are not limited to its prevention, protection of victims and witnesses starting from their rescue and even after the disposal of the case and most importantly the timely disposal of cases, rehabilitation and repatriation of the victim. The need of the hour is to address these issues in a more comprehensive manner at one place and in the form of legislation.

In this regard, looking at the seriousness of the crime of trafficking of persons and need for a holistic and comprehensive legislation covering all aspects of trafficking, the Hon'ble Supreme Court in its order dated 09.12.2015 in the matter of Prajwala vs. Union of India & Ors. in WP(C) No. 56/2004 directed Ministry of Women and Child Development to prepare a comprehensive legislation on trafficking of persons. Accordingly, Ministry of Home Affairs was also directed to set up 'Organized Crime Investigation Agency' for the investigation of human trafficking cases.

It is pertinent to mention that for the drafting of the Trafficking Bill an Inter-ministerial Committee was constituted and subsequently various Inter-ministerial Committee meetings were held for discussions on the Trafficking Bill, 2018. Thereafter, the first draft of the Trafficking Bill, 2018 was released by Minister, WCD and uploaded on the Ministry's website for comments on 30th May 2016. In its response more than 250 suggestions and comments were received by the MWCD and suitable suggestions were incorporated in the draft Bill. The draft Bill was further discussed in regional consultations held in Delhi, Kolkata, Chennai and Bombay with various stakeholders, domain experts, CSOs, government departments, etc. and based on such recommendations the Trafficking Bill, 2018 was further modified and circulated amongst concerned ministries/ departments for comments and to Legislative Department for legal vetting. The Trafficking Bill, 2018 has been examined and discussed in the Group of Ministers (GoM) as a result the same was approved by the Union Cabinet on 28th February, 2018.

2. Who are the beneficiaries of the Trafficking Bill, 2018?

The offence of Trafficking targets every person irrespective of gender, age, economic status etc. The Trafficking Bill, 2018 addresses all genders, including transgenders. According to NCRB data in the year 2016 a total number of 15379 people were trafficked. The break up for the same is as follows;

Male- 5229
Female- 10150

Male (below 18 years)- 4123
Female (below 18 years)- 4911

Male (above 18 years)- 1106
Female (above 18 years)- 5239

Transgender- 25

Note: These are reported cases. Figures could be more.

It is common trend amongst the trafficking gangs to target the vulnerable for trafficking. The above data clearly depicts that children and women because of their age and gender are more vulnerable to trafficking.

The proposed Trafficking Bill in its Statement of Objects and reasons clearly addresses the issue. It states:
“to prevent trafficking of persons, especially women and children and to provide care, protection and rehabilitation to the victims of trafficking, to prosecute offenders and to create a legal, economic and social environment for the victims and for matters connected therewith or incidental thereto”.

Note: Who is a victim under the Trafficking bill, 2018?

“victim” means any person on whom an offence of trafficking has been committed or attempted by any other person or persons:

Provided that for the purpose of receiving compensation or relief under this Act, any dependent or legal heir, as the case may be, of a deceased victim, shall also be construed as a victim.

3. Why a new list of offences under the heading 'aggravated form of trafficking has been created?

As discussed above, it is evident that mostly the vulnerable such as women and children are the easy target of the traffickers. Further, in Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, the means for the purpose of trafficking also includes 'abuse of position of vulnerability' which was not addressed in section 370 of Indian Penal Code, 1860. As we know that there are situations such as natural calamity, political insurgency and women including those who are pregnant, children, etc. which aggravates the situation of vulnerability. Also, there are cases wherein the offence of trafficking puts a victim in such exploitative conditions which further exacerbates the sufferings of the victims. This aspect of vulnerability and further its abuse for the purpose of exploitation of the victim has been addressed in the following manner:

- Trafficking for purpose of forced labour or bonded labour by using violence, intimidation, inducement, promise of payment of money, deception or coercion or by subtle means including, allegations of accumulated debt by the person, retention of any identity paper, threats of denunciation to authorities.
- Trafficking for purpose of bearing child, either naturally or through assisted reproductive techniques.
- Trafficking by administering any narcotic drug or psychotropic substance or alcohol on a person for the purpose of trafficking or forcing him to remain in exploitative condition.
- Trafficking by administering any chemical substance or hormones on a person for the purpose of early sexual maturity.
- Trafficking for the purpose of marriage or under the pretext of marriage or trafficks a woman or child after marriage.
- Trafficking by causing serious injury resulting in grievous hurt or death of any person, including death as a result of suicide as a consequence of trafficking of person.
- Trafficking of a pregnant woman or the offence results in pregnancy of the person.
- Trafficking by causing or exposing the person to a life-threatening illness including acquired immuno deficiency syndrome or human immunodeficiency virus.
- Trafficking for the purpose of begging.
- Trafficking of a mentally ill person or a person with disability.
- Trafficking by encouraging or abetting any person to migrate illegally in to India or Indians in to some other country. (as per the suggestion of GoM).

Looking at the aggressiveness of the offence the punishment ranges from minimum rigorous imprisonment of 10 years to life and fine not less than Rs. 1 lakh.

4. Is the Bill only criminalizes certain forms of trafficking?

No. The Trafficking Bill, 2018 has proposed various categories of offences which are necessary for the prevention of trafficking, protection of the victim, witnesses, complaints etc. New offences introduced in the Trafficking Bill, 2018:

- **Trafficking of persons on more than one occasion.**
Justification: Section 370 IPC, 1860 does not deal with habitual offenders and the same has been addressed in the Trafficking Bill).
- **Buying and selling of a person:** The Trafficking Bill, 2018 criminalises buying and selling of a person for a consideration. In the same section the issue of Sex Tourism leading to the trafficking of a person has been addressed.
Justification: Section 372 and 373 of IPC, 1860 deals with buying and selling of minors for the purpose of prostitution. It is a known fact that people of any age are bought or sold for various other purposes such as domestic slavery, forced labour, etc. other than prostitution.
- **Punishment for keeping or allowing premises to be used as place for trafficking of persons. (Prevention of trafficking and protection of victims. It will act as deterrence to the wrongdoers and break the organised nexus)**
- **Punishment for promoting or facilitating trafficking of person:** It criminalizes any form of propaganda or material used for the facilitation of trafficking such as- tampered or fake certificates, registration or stickers which could be used as a proof of compliance with Government requirements; advertisement or publication through various means including information technology; conduct of misrepresentation or fraud for the purposes of procuring or facilitating the acquisition of clearances and necessary documents from Government agencies. **(Prevention of trafficking and protection of victims. It will act as deterrence to the wrongdoers and break the organised nexus)**
- **Hiring or obtaining possession for the trafficking of a person:** The Trafficking bill, 2018 provides for hiring or obtaining possession or disposal of a person for the purpose of trafficking of a person.
Justification: IPC, 1860 deals only with hiring, disposal, possession of a person (minor) for the purpose of prostitution.
- **Criminalising all forms of media used for the purpose of trafficking:** There is no such provision in any law which could put a noose on the media, who uses print media (digital or electronic or internet to groom or entice the victim to fall into the trap of trafficking. The same section addresses the issue of recording or use of rape, or sexual assault, or sexual exploitation videos for further exploiting the victim or his family. **(Prevention of trafficking and protection of victims. It will act as deterrence to the wrongdoers and break the organised nexus)**
- Closure of premises and eviction of offenders from the premises. **(Prevention of trafficking and protection of victims. It will act as deterrence to the wrongdoers and break the organised nexus).**
- **Criminalizing disclosure of identity:** In order to prevent the identity of the victim all form of media is barred to disclose the name, address or any other particulars, which may lead to the identification of a victim or witness of trafficking of person. **(Protection of victims, witnesses and complainants)**
- **Act committed or attempted by the victim of trafficking:** Immunity is provided to the victims of trafficking in certain offences (punishable with death or imprisonment for life or for imprisonment for ten years) committed by the victim.
- **Omission of duty:** The Trafficking Bill, 2018 criminalizes those who knowingly or having reason to believe that a person has been trafficked, fails to perform a duty, which he is entrusted under this Act, for providing care, protection and rehabilitation to a victim or performs duty but knowingly causes physical or mental injury or hardship or trauma to the victim.

5. How the issues related to trafficking in terms of prevention, protection, rehabilitation, repatriation, etc. are going to be handled?

Since the issue of trafficking of person is not one isolated issue, it is intertwined with its prevention, protection of victims and witnesses and robust investigation procedure to break the organized nexus. In this regard the 'Trafficking Bill' is comprehensive as it has taken into its account the necessity for putting in one frame the institutional mechanism such as law enforcement, social welfare, government departments (External Affairs, Labour, Women and Child, Health, Legal Services Authority etc.). The mechanism at the District, State and National level has been well knitted in a convergence model to address the issue of prevention of trafficking, protection of victims, rehabilitation, repatriation and investigation of cases of trafficking in a robust manner and to bring accountability and transparency amongst these institutions.

In the Trafficking Bill, 2018 in order to break the organised nexus of trafficking industry and for the purpose of timely and robust investigation and to address international ramification of the crime at the national level National Anti- Trafficking Bureau has been proposed (for which it has been proposed that the National Investigation Agency (NIA) will perform the task of NATB), who will look after the following components:

To investigate matters when there is an involvement of two or more states; to facilitate inter-State and trans-border transfer of evidence and materials, witnesses and others for expediting prosecution; to provide necessary support for investigation by the Anti- Trafficking Units; to facilitate inter-State and international transfer of evidence in investigation as well as video conferencing in judicial proceedings; to develop and monitor a database on every crime under this Act; to co-ordinate actions taken by the concerned Ministries, Departments and organisations of the Government, especially linking the source of transit to destination and connecting all stakeholders; to strengthen the intelligence apparatus to improve the collection, collation, analysis and dissemination of operational intelligence, etc.

At the District level the District Anti- Trafficking Committee headed by the District Magistrate having Members from various department- labour, Police, legal services authority Panchayat Raj, CSOs are responsible for taking action for the prevention of trafficking; rehabilitation of victims, repatriation of victims; mapping of trafficking; awareness generation etc. Similarly, other Committees such as State Anti- trafficking Committee and National Anti-Trafficking Relief and Rehabilitation Committee and various nodal officers (both State and the District level for welfare and law enforcement purposes) are working together in a convergent manner to deal with the offence of trafficking and related issues and to bring accountability and transparency amongst these institutions.

6. What is the immediate procedure for the protection of the victim after the rescue and long term Rehabilitation?

For the immediate protection of the victim just after the rescue 'Protection Homes' have been introduced and for long term and rehabilitation 'Rehabilitation homes' are proposed and it is mandatory for them to get themselves registered and to penalise any contravention in this regard.

7. What if the rescued person is not the victim of trafficking or willingly involved in prostitution? Are they also going to be rehabilitated even if they do not want to ?

The Trafficking Bill, 2018 has taken in to consideration this aspect as well. It provides that a victim or any person rescued on behalf of him may make an application to the Magistrate within the local limits of whose jurisdiction the victim or such other person is trafficked or suspected to be trafficked for an order that he may be kept in a Rehabilitation Home. Further, The Magistrate may after making an inquiry:

- as to the age of the person rescued finds that the person is a minor, pass such orders as he deems necessary for the care and protection of the person;
- where the Magistrate is satisfied, after making an inquiry and finds that the victim is not a minor, the Magistrate may, make an order that the victim be placed for such reasonable period, in a Rehabilitation Home. Provided that, if the victim or any person rescued is an adult and he voluntarily makes an application supported by an affidavit for his release and if the Magistrate is of the opinion that such application has not been made voluntarily, the Magistrate may reject such application after recording his reasons in writing.

It is important to mention by incorporating Rehabilitation in a legislative framework, it has become a matter of 'Right' which is not contingent upon criminal proceedings being initiated against the accused or the outcome thereof.

8. How 'Rehabilitation Fund' created for the victims is going to be managed or used?

The Trafficking Bill has adopted a very liberal approach in defining 'Rehabilitation'. It says that- rehabilitation means all measures and processes of physical, psychological and social well-being of a person who is trafficked and includes access to education, skill development, health care including psychological and physiological support, medical services, economic empowerment, legal aid and assistance, safe and secure accommodation.

At the National level National Anti-Trafficking Relief and Rehabilitation Committee headed by Secretary, Ministry of Women and Child Development as Chairperson is responsible for providing relief and rehabilitation services to the victims. The other members includes representatives from MoLE, MHA, MoSJE, MEA, MoHFW, Legislative department, CSOs etc.

It will be utilised for the following purposes:

- the establishment and administration of Protection Homes and Rehabilitation Homes
- supporting innovative programmes for the welfare and rehabilitation of the victims
- strengthening legal assistance and support
- providing entrepreneurial support, skill development training or vocational training
- providing aftercare facilities for capital and infrastructure to the victims who are ready to integrate into mainstream society by setting up small business or profession
- providing victim and witness protection
- awareness generation programmes for the prevention of trafficking of persons
- creating community-based programmes to identify, report and prevent trafficking of persons
- providing specialised professional services, counsellors, translators, interpreters, social workers, mental healthcare professionals, vocational trainers or such other specialised professionals, for the victims;

9. How the Rehabilitation Fund will be generated?

Rehabilitation Fund for the welfare and rehabilitation of the victim shall be constituted through:

- any grants and loans made by the appropriate Government;
- any voluntary donations, contributions or subscriptions, whether or not for any specific purpose as may be decided upon by the Central Government;
- any fine recovered for the commission of an offence under the Act which may include recovery of fine specified in section 421 of the Code of Criminal Procedure, 1973;
- the amount seized from any bank account frozen (proceeds of crime)
- State Government may supplement the Rehabilitation Fund.

10. Trafficking of persons is a borderless crime. How this has been addressed in the Trafficking Bill, 2018?

The international ramification of trafficking has been addressed through the formation of National Anti-Trafficking Bureau (NATB) and involving Protector of Emigrants, MEA (for illegal immigrants and other related issues) and representative from Home Department in the State Anti-Trafficking Committee.

The NATB amongst others will also look after the following issues:

- facilitate surveillance, enforcement and preventive steps at source, transit and destination points;
- maintain co-ordination between various law enforcement agencies and non-Governmental organisations and other stakeholders;
- increase international co-operation and co-ordination with concerned authorities in foreign countries and international organisations, in operational and long term intelligence in investigation, mutual legal assistance, to facilitate universal action for prevention and suppression and to implement any obligation under the various international conventions and protocols that are in force in respect of counter measures;
- co-ordinate actions taken by the concerned Ministries, Departments and organisations of the Government, especially linking the source of transit to destination and connecting all stakeholders;
- co-ordinate investigating activities among the Districts, States and with other countries in case of cross-border trafficking of persons;
- undertake and facilitate other investigators for investigating offences from the organised crime perspective;
- co-ordinate with any national or international investigating or law enforcement agencies and civil society organisations;
- facilitate inter-State and international transfer of evidence in investigation as well as video conferencing in judicial proceedings;
- facilitate inter-State and trans-border transfer of evidence and materials, witnesses and others for expediting prosecution;
- monitor and facilitate victim and witness protection protocols, rules and procedures including video conferencing during trial of offences which have ramifications across States and beyond borders

11. Under what circumstances NATB will be investigating Trafficking cases?

- NATB may take over investigation of any offence under this Act, where referred to it by two or more States and in such case the State Government shall not proceed with the investigation of the offence and shall forthwith transmit the relevant documents and records to the Bureau.
- Further, that till the Bureau takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation of an offence under this Act.

While investigating any offence under this Act, the Bureau, having regard to the gravity of the offence and other relevant factors, may

(a) if it is expedient to do so, request the State Government to associate with the investigation; or

(b) with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence.

- While investigating any offence under this Act, the Bureau may also investigate any other offence under any law for the time being in force, which the accused is alleged to have committed, if the offence is connected with such other offence.
- In these cases the State Government shall extend assistance and co-operation to the Bureau for investigation of an offence under this Act.

12. How the issue of prevention of trafficking has been taken up in the Trafficking Bill, 2018?

The Trafficking Bill, 2018 has separately introduced a chapter on 'Preventive measures'. It provides for:

- The State and the District Anti-Trafficking Committees shall undertake all measures and recommend strategies and plans to protect and prevent vulnerable persons from being trafficked and this will include:
 - ✚ co-ordinating the implementation of all the programmes, schemes and plans relating to the prevention of trafficking of persons with any statutory bodies, organisations or agencies as well as Panchayati Raj institutions;
 - ✚ facilitating the implementation of livelihood and educational programmes for vulnerable communities;
 - ✚ facilitating the implementation of programmes and schemes sponsored by various Ministries and Departments of the appropriate Government;
 - ✚ co-ordinating with corporate sector to implement the various schemes, programmes for the prevention of trafficking of persons;
 - ✚ ensuring accountability of the concerned agencies, by regular review and appropriate action;
 - ✚ developing appropriate law and order framework to ensure prevention of trafficking of persons;
 - ✚ undertaking vulnerability mapping of the State and give focus and attention to the challenging areas;
 - ✚ commissioning independent research on various aspects of trafficking and ensure follow up action;
 - ✚ organising interface between law enforcement agencies, other Government Departments and agencies with the voluntary organisations or non-Governmental organisations in matters of prevention of trafficking of persons;
 - ✚ networking with the Bureau and other State Anti-Trafficking Committees, especially with those States where source-transit-destination linkages exist, and undertake all activities for joint action programmes by bringing in common policies and programmes;
 - ✚ linking with the Bureau and the Central Government and other concerned agencies, in case of trans border trafficking of persons and ensure appropriate action.

13. What are the relief available under the Trafficking Bill, 2018?

Under the Trafficking Bill the relief (Interim and other relief) are available under the following form:

- Upon application for interim relief by the victim the District Anti-Trafficking Committee or Child Welfare Committee, as the case may be, shall take immediate steps to award interim relief to the victim as deemed appropriate not later than thirty days, taking into consideration all aspects, including physical, mental trauma and the other requirements of the victim.
- The District Anti-Trafficking Committee shall take steps to ensure that appropriate relief is provided to the victim, within sixty days from the date of filing of charge sheet.
- The relief amount shall be in addition to any other compensation including any amount or benefit payable by way of any scheme of the appropriate Government or pursuant to any order of the court under any law for the time being in force.

14. What are the steps taken under the Trafficking Bill, 2018 for the protection of victims, witness and complainant?

A separate chapter has been dedicated to the protection of victims, witness and complainant in the following manner:

- The designated court, if on an application made by a victim, witness or a complainant in any proceeding before it or by the Special Public Prosecutor in relation to such victim, witness or a complainant or on its own motion, is satisfied that the life of such victim, witness or a complainant is in danger, it may, for reasons to be recorded in writing, take such measures to protect such victim, witness and the complainant.
- The holding of the proceedings at a place to be decided by the designated court;
- The avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;
- The issuing of any directions for securing that the identity and address of the witnesses are not disclosed;
- A decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

15. How 'Repatriation of the victim, both nationally and internationally has been dealt in the Trafficking Bill, 2018?'

The repatriation in both cases has been dealt in a time bound manner in the following manner:

- The District Anti-Trafficking Committee or the Child Welfare Committee, as the case may be, shall be responsible for the repatriation of victims by co-ordinating with their counterparts in any other District.
- Where the State Anti-Trafficking Committee is of the opinion that a victim from a foreign country needs to be repatriated to the country of origin, it may deal with the matter under any law for the time being in force.
- The State Nodal Officer shall obtain informed written consent from the victim for repatriation purposes, and where needed, shall make arrangements for the counselling of the victim by trained psycho social professionals.
- The repatriation of the victims shall be completed within three months for inter-State repatriation, and within six months in case of cross border repatriation from the date of rescue by the District Anti-Trafficking Committee, or the Child Welfare Committee, or State Police Nodal Officer, as the case may be:
Provided that any delay in repatriation shall be recorded for reasons in writing and shall be reported to the National Anti-Trafficking Relief and Rehabilitation Committee and the Bureau forthwith.

16. What is the search and seizure procedure in the Trafficking Bill, 2018?

There is a separate chapter on search, rescue and post-rescue activities in the Trafficking Bill, 2018. These are:

- The provisions of the Code of Criminal Procedure, 1973 shall *mutatis mutandis* apply in relation to a search and seizure in respect of an offence under this Act.
- Where a police officer or Anti-Trafficking Police Officer or Anti-Trafficking Unit has reason to believe that it is necessary to rescue a person without undue delay due to the imminent danger that may cause to his life and person, he or it may remove such person from any place or premises and produce him before the Magistrate or Child Welfare Committee, as the case may be, and shall take all necessary steps for the medical examination of such person for the purposes of determination as to the age, the assessment or detection of trauma, injury, illnesses incidental thereto to him.
- The provisions of section 164A of the Code of Criminal Procedure, 1973 and section 27 of the Protection of Children from Sexual Offences Act, 2012 shall *mutatis mutandis* apply in relation to a medical examination of any person under this section.
- The police officer or Anti-Trafficking Police Officer or Anti-Trafficking Unit, as the case may be, shall inform the District Anti-Trafficking Committee about the rescue conducted under this section and the Committee shall take appropriate actions for providing interim relief and further rehabilitation services to the person rescued.

17. What are the functions of Anti Trafficking Units?

- The appropriate Government shall set up for each District or a group of Districts, such number of Anti- Trafficking Units, for dealing with all matters of prevention, rescue, protection and care of victims and witnesses and of investigation and prosecution of any offence under this Act.
- Every local police station shall, where Anti- Trafficking Unit is not functional, undertake every activity in matters of rescue, investigation, prevention and protection of persons trafficked under this Act.
- The State Government shall appoint for every Anti- Trafficking Unit such number of subordinate police officers including women police officers as it deems necessary for the discharge of the functions of the Anti-Trafficking Unit and vest in them with all the powers to investigate any offence committed within its local jurisdiction under this Act:

Provided that the officer-in-charge of a police station after registering the First Information Report under section 154 of the Code of Criminal Procedure, 1973, shall take all necessary action for immediate rescue and protection and then transfer the case to the Anti- Trafficking Unit.

18. Who are Anti-Trafficking Police Officers and what are their functions?

- The State Government shall designate for each District such number of Anti-Trafficking Police Officers for matters related to trafficking of persons, including prevention of trafficking, rescue and protection of the victims, investigation and prosecution.
- In case of inter-District or inter-State trafficking of persons, the Anti-Trafficking Police Officers shall investigate an offence under this Act in consultation with their counter-parts in any other State or local police, as the case may be, with the prior approval of the concerned State Police Nodal Officer.

19. How State Police Nodal officers and District Police Nodal Officers are appointed and what are their functions?

As discussed earlier in order to curb and address the offence of trafficking each branch of the proposed institutional mechanism is performing its role. According to the appointment of State Police Nodal Officers and District Police Nodal Officers are appointed.

State Police Nodal Officers (SPNO): The State Government shall appoint a State Police Nodal Officer of such rank as may be specified by that Government. The SPNO shall be responsible for all the activities in the prevention and combating of trafficking of persons in the State and shall also monitor the functioning of Anti-Trafficking Police Officers and Anti-Trafficking Units in the State. The SPNO shall also co-ordinate and monitor inter-State and trans-border transfer of persons rescued, witnesses, evidence and offenders under this Act and lastly, the SPNO shall liaison with State Nodal Officer and shall perform such other functions as may be prescribed.

District Police Nodal Officers (DPNO): The State Government shall designate one police officer not below the rank of Superintendent of Police of the District to be the District Police Nodal Officer on matters relating to trafficking of persons and responsible for all the activities in the District concerned and perform such other functions as may be prescribed. The DPNO shall be the convener of the District Anti-Trafficking Committee and shall report to the State Police Nodal Officer in every matter relating to an offence of trafficking of persons including rescue, investigation and inter-State transfer of a person who is trafficked and the offenders and lastly, the DPNO shall monitor the functioning of Anti-Trafficking Unit and provide necessary assistance to them for the effective discharge of their duties.

20. What is the State level machinery for the purpose of relief and rehabilitation of the victim of trafficking?

The State Nodal officer (SNO) not below the rank of Director in the State Government, appointed by the State Government shall be responsible for follow up action under this Act, as per the direction of the State Anti-Trafficking Committee and co-ordinate with other Government agencies and civil society organisations. SNO shall provide relief and rehabilitation services through District Anti- Trafficking Unit and other Government agencies as well as civil society organisations. Lastly, the SNO shall liaison with the State Police Nodal Officer and the National Anti-Trafficking Relief and Rehabilitation Committee, for all matters relating to relief and rehabilitation.

21. Is there any special procedure for the trial of trafficking cases?

Looking at the gravity of the offence of trafficking and for preventing the victims and witnesses from further harassment the Trafficking Bill provides for the following procedures:

- **Designated Courts:** The State Government shall, in consultation with the Chief Justice of the High Court, by notification, designate for each district, a Court of Session, within two months from the date of commencement of this Act, to try any offence under the Act.
- **Special Public Prosecutors:** (1) The appropriate Government may, by notification, appoint Special Public Prosecutors for every designated court for conducting cases under this Act.
(2) 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 provisions of that Code shall have effect accordingly.
(3) Subject to the provision contained in section 301 of the Code of Criminal Procedure, 1973, the victim shall be entitled to the assistance of a legal counsel of his choice for any offence under this Act:

Provided that if the victim is unable to afford a legal counsel, the Legal Services Authority shall provide a counsel to him.

- Completion of trial as far as possible, within a period of one year from the date of taking into cognizance of any offence under this Act.

22. What all order can be made by the Designated Court, in terms of payment to the victim?

- The designated court may order, where applicable, any backwages of the victim to be paid to him.
- The designated court shall on its own motion or on an application filed by or on behalf of the victim, award compensation under section 357A of the Code of Criminal Procedure, 1973, or under any other law for the time being in force or otherwise at any stage of the proceedings.
- The appropriate Government shall ensure that the relief ordered by the designated court is paid within sixty days from the date of receipt of the order.

23. What is the procedure of recording of statement of the victim?

The Trafficking Bill, 2018 in its every procedure maintains the confidentiality of the victim. For instance the trafficking Bill provides:

- The designated court may record the statement of any victim through video conferencing in any case, where the victim is unable to appear before the court for the reasons of safety or confidentiality.
- In all matters of trans border and inter-State crimes where the victim has been repatriated to any other State or country is unable to attend the court proceedings, the court may order video conferencing to record their statement.
- Notwithstanding anything contained in this Act, the inquiry into and trial of offences under this Act, may be conducted *in camera*, if an application is made in this regard by the victim.

24. (1) Are offences under the Trafficking Bill, 2018 cognizable and non- bailable?

(2) What is the procedure for Appeal in the Trafficking Bill, 2018?

(1) (a) Yes, all offences under this Bill shall be cognizable and non-bailable.

(b) nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act with imprisonment of more than two years.

(c) no person accused of committing an offence under this Act shall be released on bail or on his own bond unless-

(i) the Special Public Prosecutor has been given an opportunity to oppose the application for such release;

(ii) where the Special Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

(iii) the victim shall have a right to be heard in all bail matters.

The limitations on granting of bail are in addition to the limitations provided under the Code of Criminal Procedure, 1973.

25. Other relevant provisions:

- 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 the State Government as the case may be, acting in good faith, or intended to be done in pursuance of this Act, or of any rules, or regulations made thereunder.
- The provisions of section 360 of the Code of Criminal Procedure, 1973 and the provisions of the Probation of Offenders Act, 1958 shall not apply to any person who is found guilty of having committed an offence under this Act.
- Act not in derogation of any other law: The provisions of this Act, shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.