

MOST IMMEDIATE

No. 14051/14/2011-F.VI  
Government of India  
Ministry of Home Affairs  
(Foreigners Division)

Dated 1<sup>st</sup> May, 2012

OFFICE MEMORANDUM

Sub: Advisory on preventing and combating human trafficking in India -  
dealing with foreign nationals.

The undersigned is directed to refer to this Ministry's Office Memorandum No. 15011/6/2009-ATC (Advisory) dated 09.09.2009 on the above mentioned subject (copy enclosed). It has come to the notice of this Ministry that foreign nationals are associated in some instances of human trafficking among women and children.

2. Further to the detailed procedure outlined in the above mentioned Office Memorandum, it has been decided with the approval of the competent authority that in cases of foreign nationals who are apprehended in connection with human trafficking, the State Governments / UT Administrations may follow the following procedure :-

*Circulate  
to all  
Unit*

*Commander  
for n/a.*

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5/5/12*

*shri. Chavan*

*S.S cell*

- (i) Immediately after a foreign national is apprehended on charges of human trafficking, a detailed interrogation/investigation should be carried out to ascertain whether the person concerned is a victim or a trafficker.
- (ii) The victims and the persons actually involved in human trafficking should be treated differently by the police authorities. This is in line with the SAARC Convention which advocates a victim-centric approach.
- (iii) Missions/Posts in India may be informed of the arrest/detention of the foreign national by the concerned state or other authorities through CPV division in the Ministry of External Affairs (MEA) or the concerned territorial Division in MEA.

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- (iv) It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. *If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the chargesheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned.* Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels.
- (v) During the interim period, pending repatriation, the victim may be taken care of in an appropriate children's home, or "Ujjawala" home or appropriate shelter home either of the State Government concerned or of any NGO aided by the Government of India / State Government.
- (vi) If the investigation reveals that the person is actually a trafficker, he/she may be charge-sheeted under the Immoral Trafficking Prevention Act and the Foreigners Act and due process of law should be followed in such cases.
- (vii) In order to ensure better conviction rates of perpetrators of the crime of trafficking, prosecution should be based on documentary, forensic and material evidence. State Governments are advised to encourage the law enforcement agencies to investigate the cases in a manner that they are able to build fool proof cases against the traffickers, so that convictions can be guaranteed. Use of fast-track courts and video conferencing to the extent possible also need to be ensured. Please refer to para 7 of the enclosed Advisory dated 9.9.2009.

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3. All other instructions contained in this Ministry's Advisory dated 09.09.2009 including reporting to the Anti Human Trafficking Nodal Cell in MHA will be applicable in the case of foreign nationals associated with human trafficking, whether they are women or children(children means both boys and girls upto 18 years of age).
4. You are requested to issue suitable directions to all concerned under intimation to this Ministry.
5. The receipt of this Office Memorandum may kindly be acknowledged.

(G.V.V. Sarma)  
Joint Secretary to the Govt. of India

To

The Chief Secretaries/Principal Secretaries/ Secretary (Home) of all State Governments and Union Territory Administrations.

Copy for information and necessary action to:-

- (i) The DGs / IGs (In-charge of Prisons) /- All State Governments/ UTs
- (ii) Sri Sandeep Goel, Joint Commissioner(Crime), 3<sup>rd</sup> Floor, Police Station Kamla Market, Delhi.
- (iii) Ministry of Women and Child Development(Smt. Aditi Ray, Senior Economic Advisor), Shastri Bhavan, New Delhi.
- (iv) Secretary, Ministry of Labour, Shram Shakti Bhavan, New Delhi
- (v) Secretary, Ministry of Social Justice & Empowerment, Shastri Bhavan, New Delhi.
- (vi) Secretary, Ministry of Overseas Indian Affairs, Akbar Bhavan, New Delhi.
- (vii) Ministry of External Affairs:
  - (a) Addl. Secretary(PV)
  - (b) JS(Consular)
  - (c) JS(BSM)
- (viii) Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi.
- (ix) Chairperson, National Commission for Protection of Child Rights, 5<sup>th</sup> Floor, Chandralok Building, Janpath, New Delhi.
- (x) Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- (xi) Director General, NCRB, R.K.Puram, New Delhi.
- (xii) Director General, BPR&D, New Delhi.
- (xiii) Director General, Border Security Force, New Delhi.
- (xiv) Director, CBI, New Delhi..
- (xv) AS(CS) / JS(CS) / JS(UT) / JS(NE) / JS(K), MHA, North Block, New Delhi.

(G.V.V. Sarma)  
Joint Secretary to the Govt. of India