

DOES THE ANTI-TRAFFICKING BILL ADDRESS TRAFFICKING?

Relevant for: Government Policies & Welfare Schemes | Topic: Welfare of Women - Schemes & their performance; Mechanisms, Laws, Institutions & Bodies

Representational image.

The Bill goes beyond criminalisation; it tries to combat the organised nature of trafficking

India took a giant step towards the protection of its women and children when the Criminal Law (Amendment) Act was passed by the Lok Sabha in 2013. Section 370 of the Indian Penal Code (IPC) was substituted with Sections 370 and 370A, which defined trafficking and laid out the punishment for it. However, mere criminalisation of trafficking is not enough — several laws have not been implemented in letter and spirit in the absence of a comprehensive legislative framework. In the case of trafficking, data show that despite the 2013 law, there has been an increase in the number of victims of human trafficking. It is to tackle this menace that the comprehensive Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, was passed. Instead of mere criminalisation, the Bill seeks to systematically combat the organised nature of trafficking.

Multipronged approach

The Bill ties together the approaches of prevention, rescue and rehabilitation to create a robust policy framework against trafficking. It places at its core the rights and welfare of victims of human trafficking. There are aggravated forms of trafficking which have been introduced, such as trafficking for the purpose of begging, or bearing a child, or for the purpose of marriage or under the pretext of marriage by administering narcotic drugs, hormones, or chemical substances for the purposes of early sexual maturity, and so on. Under the Bill, prosecution under these offences will be made timely and efficient by special public prosecutors.

The Bill provides protection to witnesses. It also seeks to maintain the confidentiality of victims by recording their statements through video conferencing and by in camera proceedings. It states that there will be time-bound trials and repatriation of victims.

A rehabilitation fund has been introduced for the first time. This will be used for the physical, psychological and social well-being of victims. The Bill seeks to build the capacity of victims by providing capital, infrastructure, education and skill development to empower them to access justice and to prevent further trafficking.

For the first time, the National Anti-Trafficking Bureau will coordinate with authorities in foreign countries and international organisations, and facilitate inter-State and trans-border transfer of evidence and materials. It will strengthen the intelligence apparatus to improve the collection, collation and dissemination of operational intelligence. The Bureau will also coordinate actions and enforcement by various bodies or authorities established under this Bill. There will be State and District Anti-Trafficking Committees which will arrange for appropriate training and sensitisation of functionaries of all personnel.

It is crucial to note that trafficking is an organised crime. In order to break the organised nexus, at the national and international levels, the Bill proposes attachment and forfeiture of property

and to remit the proceeds of crime in the rehabilitation fund. It will also freeze bank accounts of those whose funds have been utilised to facilitate trafficking. By doing this, the Bill handicaps the organised trafficking networks.

Systematic surveillance

The Bureau will also develop and monitor a database on every crime under this Act. Such systematic surveillance of offenders will, in about three years, not only help prevent trafficking but pre-empt it. The Bill does its bit. Now we must all come together to use it to deliver justice.

Sampurna Behura is Director, Programmes, Bachpan Bachao Andolan

Most clauses have little to do with trafficking and more do to with imposing surveillance

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, fails in its fundamental purpose, i.e. it does not address the issue of trafficking.

Let us first be clear on what we understand by trafficking. 'Traffic' means to trade something. It's a transaction, and refers to the act of buying and selling. 'Traffic' or 'trafficking' is not wrong per se, but it is pejorative when the transaction involves prohibited goods such as narcotics or firearms or if it involves people. Article 23 of the Constitution prohibits "traffic in human beings and forced labour". This means that human beings cannot be bought and sold.

Proscribes legitimate activity

Barring one provision of the anti-trafficking Bill which criminalises the act of "buying or selling a person for a consideration," the rest of the clauses do not address this aspect at all. They either criminalise acts that are already punishable under other laws or proscribe activities that are not only legitimate but also constitutionally protected. An example of the former is the 'new' offence of "trafficking for the purpose of begging". Employing or causing someone to beg is already a criminal offence under anti-begging laws. Similarly, unauthorised immigration of citizens and foreigners is dealt with under the Passports Act, 1967, and the Foreigners Act, 1946, respectively. There is nothing novel in the proposed offence of "encouraging or abetting any person to migrate illegally into India or Indians in to some other country". Besides, illegal migration does not involve elements of 'trade' in human beings or trafficking. To term it an "aggravated form of trafficking" is questionable in itself.

The Bill also states that "whoever solicits or publicises electronically, taking or distributing obscene photographs or videos or providing materials or soliciting or guiding tourists or using agents or any other form which may lead to (emphasis mine) the trafficking of a person shall be punished with rigorous imprisonment." This means that no trafficking needs to take place; a remote possibility is sufficient to prosecute persons and shut down websites. It is important to remember that similar provisions of the Information Technology Act, 2000, were struck down by the Supreme Court for being vague and over-broad. Most clauses of the Bill have little to do with trafficking and more do to with imposing surveillance and restricting freedoms through punitive overkill.

Interplay with existing laws

The rhetoric around the Bill will also dissipate when we understand its interplay with existing laws, which have not been overruled or repealed. The anti-trafficking Bill relies on Section 370 of the IPC to define and establish that an offence of trafficking of persons has taken place. Section 370 was introduced in 2013 on the recommendation of the Justice Verma Committee. In order to

try offences under the Bill, the prosecution will have to first prove the subsections of Section 370, which are that the victim was transported, recruited, harboured, received or transferred for the purposes of exploiting her/him by using force, abduction, deception, or by abuse of power. Only then will the provisions of the Bill take effect.

For the police and the courts, implementing the numerous anti-trafficking laws will be a nightmare. Only persons accused of trafficking will benefit from the legal mess. It is common knowledge that if more laws are applied, the easier it will be to find loopholes and secure an acquittal. How is this a leap or an advance in anti-trafficking legislation?

Tripti Tandon is deputy director of Lawyers Collective, an NGO working on human rights issues

The Bill is well-intentioned and has some positive features, but is a wasted opportunity

The anti-trafficking Bill aims to solve an institutionalised socio-economic problem with a 'crime and punishment' model, relying on police stations, courts and jails.

First, the positive features. The fact that the Ministry of Women and Child Development revised the Bill many times before arriving at the final version indicates its genuine intention to bring out a good legislation. The following sections of the Bill are satisfactory: search and seizure; rescue and medical examination of persons; and safety, care and protection of persons rescued. Punishment for omission of duty can be welcomed too, if it does not omit the government officials, including the police, from its ambit.

Drawbacks of the Bill

Having said that, the Bill is silent on many types of trafficking, such as trafficking for supply chains, commercial surrogacy, clinical trials, human organ trade, intergenerational trafficking, orphanage tourism and sex tourism. It also doesn't incorporate the long-pending demands for 'demand reduction' and 'non-institutionalised rehabilitation'.

Instead of strengthening the existing anti-trafficking laws, the Bill calls for another law, one that is uncalled-for and sloppily drafted. The Bill clashes with existing laws, which will lead to confusion.

In an age when an institutional approach for victim care is rapidly discredited and the demand for non-institutional approach is growing, the Bill adds two more unnecessary and vaguely defined institutions: protection homes and rehabilitation homes.

The term 'victim' appears several times in the Bill but is shoddily defined. Through Section 59, the Bill overrides a better definition of 'victim' given in the Code of Criminal Procedure. Going by the established practice, a victim is one who is 'rescued' by the raiding police. So, those rescued by NGOs, parents, friends, and so on are not victims.

Rescue and rehabilitation

Going by the public statements of an activist championing the Bill, traffickers get themselves 'rescued' by the police so that they can keep an eye on the rescued victims and silence them. In the absence of clarity, such traffickers who operate hand in glove with the police will be the first to get themselves 'rescued' and claim hefty compensations, rehabilitation, small capital for business, and worse, an absurd immunity for committing serious offences that are punishable. Such traffickers can simply plead to have committed the crime under threat or "undue personal influence", as provided in the Bill. In South Asia, often a trafficker is a person known to the

victims. Section 2(x) makes such traffickers eligible for several benefits, independent of arrests, trial or its outcome.

How it is possible to expedite justice when the government is mandated by the Bill to merely issue a circular notifying the existing sessions courts as designated courts is not clear. No new courts or judges are mentioned. The district courts are neither exclusively dedicated to trafficking cases nor will they address such cases on priority. This move will only undo the gains of the past many decades of evolving more sensitive and specialised courts such as Immoral Traffic (Prevention) Act courts, Protection of Children from Sexual Offences courts, and family courts.

The drafters of the Bill don't understand 'rehabilitation'. Section 30 (5) makes the rehabilitation fund available to the bureaucracy for prevention, protection and prosecution. The Bill is by a well-intentioned Ministry with wrong advisers and is a wasted opportunity.

Pravin Patkar is the founder of Prerana, an anti-trafficking centre based in Mumbai

This refers to the tendency to form friendships and other forms of interpersonal relationships with people we come across often in our daily lives.

Our existing notification subscribers need to choose this option to keep getting the alerts.

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com