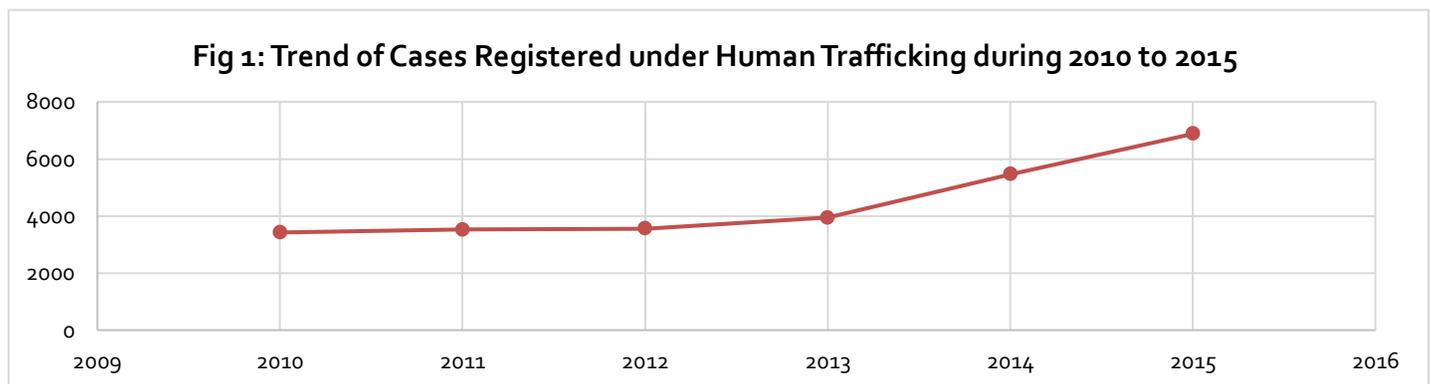


Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

I. Introduction

Human trafficking is a deplorable human rights violation that occurs worldwide. Trafficking in persons for labour and/or sexual exploitation is a form of modern-day slavery, a human rights violation that constitutes a crime against the individual and the State. It is also a widespread and serious problem in India. According to UN Office of Drugs and Crime, South Asia, with India at its centre, is the fastest growing region for human trafficking. In India, 90 percent of trafficking occurs domestically (intra-state or inter-state), and 10 percent occurs across national border¹. The United States Department of State's 2013 Trafficking in Persons Report estimates the number of persons trafficked for forced labour in India within the range of 20 to 65 million. Approximately 25,000 young girls are forcefully engaged in prostitution.

As per the Crime in India Report, 2016 released by National Crime Record Bureau (NCRB), there were 8,132 cases reported under Indian Penal Code (IPC) related to human trafficking in 2016 as against 6,877 cases in 2015, with the highest number of cases reported in West Bengal (i.e. 3579), followed by Rajasthan at 1422. The data also show that there were 19,717 cases related to human trafficking awaiting trial in 2015, of which 15,144 were cases from 2014. The findings released by NCRB show West Bengal as the hub of human trafficking in India, followed by Rajasthan, Gujarat, Maharashtra, Tamil Nadu and with Delhi as the transit point. The number of women trafficked has risen by 22 percent to 10,119 in 2016.



Source: Crime in India Report, 2016(National Crime Record Bureau)

¹Sadika Hameed Et Al, Human Trafficking in India: Dynamics, Current Efforts and Intervention Opportunities For The Asia Foundation Vi (2010), Available At <http://asiafoundation.org/resources/pdfs/StanfordHumanTraffickingIndiaFinalReport.pdf>.

**Top 5 States with Highest Victims
Trafficked in 2016**

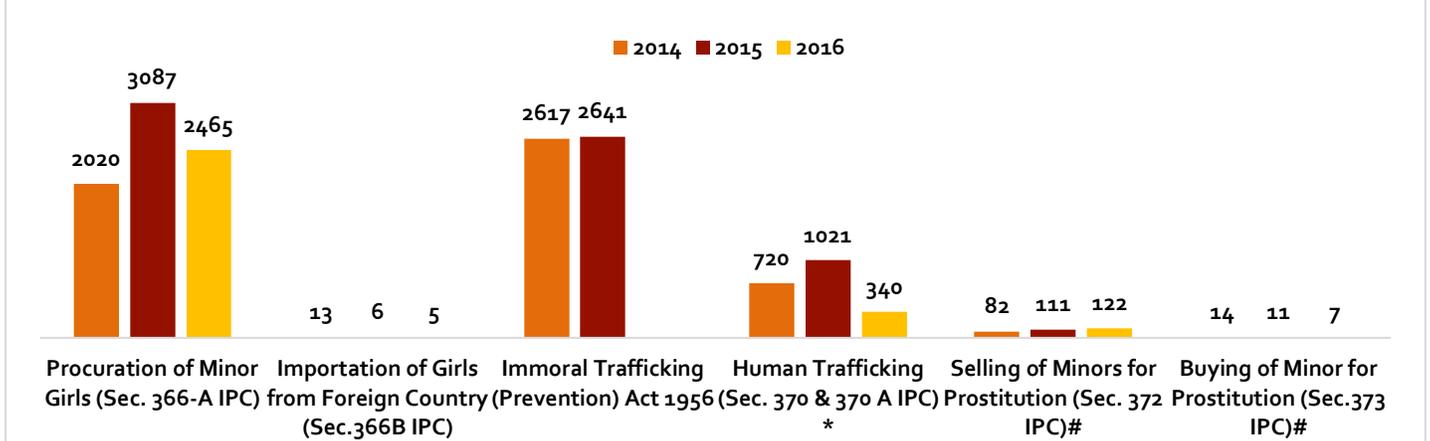
**Top 5 States with Highest Victims
Rescued in 2016**

Name of State	Victims Trafficked	Name of State	Victims Rescued
West Bengal	4164	Rajasthan	5767
Rajasthan	2854	Madhya Pradesh	4817
Tamil Nadu	1449	West Bengal	2793
Maharashtra	1145	Tamil Nadu	2371
Karnataka	1012	Maharashtra	1141

Source: Crime in India Report, 2016(National Crime Record Bureau)

The National Human Rights Commission (NHRC) reveals that **40,000 children** are kidnapped yearly, out of which **11,000 could never be traced**. Due to the complex cross-border nature, human trafficking requires a coordinated, multi-disciplinary national and international response. Until recently, there was no comprehensive definition of human trafficking in Indian law. The Constitution of India, under **Article 23** specifically prohibits trafficking of human beings and forced labour, but does not define either term. Currently, the legal regime to trafficking of women, children, men for commercial and sexual exploitation includes **Indian Penal Code (IPC) 1860, The Immoral Traffic (Prevention) Act of 1986 (ITPA), Bonded Labour System (Abolition) Act, 1976, Child Labour (Prohibition and Regulation) Act, Juvenile Justice (Care and Protection of Children) Act, 2000.**

Fig 2: Crime Head-wise Incidence under Human Trafficking during 2014, 2015 and 2016



Source: Crime in India Report, 2016(National Crime Record Bureau). Note: The IPC sections for the crimes mentioned above are as follows-Procurement of minor girls (Sec. 366-A IPC), Importation of girls from foreign country (Sec. 366-B IPC), Selling of

girls for prostitution (Sec. 372 IPC), Buying of girls for prostitution (Sec. 373 IPC), Human Trafficking (Sec 370 & 370A IPC. Note*- Data for Immoral Trafficking for 2016 not available.

In May 2011, India ratified the three protocols of the United Nations Convention against Transnational Organized Crime, including the UN Trafficking Protocol. Yet despite its ratification of the Protocol, India continued to lack a unified comprehensive policy for human trafficking. To bring in a significant change, the Ministry of Women and Child Development (MWCD) released a draft of Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016 on May 30th 2016. Later, the Union Cabinet chaired by Prime Minister Shri Narendra Modi, approved the Bill for introduction in Parliament on 28th February, 2018. This was then introduced in Lok Sabha by the Hon'ble Ms. Maneka Gandhi on 18th July, 2018 and was passed by the lower house on 26th July, 2018. In this context, the brief analyses the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 with respect to its salient features and highlights the key issues that could be further amended with concrete discussion in the Parliament.

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

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 is India's first-ever comprehensive anti-human trafficking law. The Bill aims to unify existing anti-trafficking laws, prioritise survivors' need, prevent victims such as those found in brothel raids from being arrested, focus on rehabilitation of survivors and provide speedy investigation. The object of the Bill reads as, *"to prevent trafficking in person, 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 against trafficking of persons and for matters connected therewith or incidental thereto"*.

Salient Features of the Bill

The Bill seeks to provide stringent legislative framework to issues under human trafficking. The Bill's greatest strength lies in recognizing rehabilitation as a right of the victim. Mentioned below are the salient features of the Bill:

- **Setting up National Anti-Trafficking Bureau:** The Bill seeks to establish National Anti-Trafficking Bureau for the prevention, investigation of the trafficking of person's cases and protection of the victims of trafficking. Even though, law and order is under state supervision, trafficking is intra, inter and transnational issue. Cases consisting of different source, transit and destination points, create difficulty in providing timely justice to the victims. Thus, cases involving multiple states will be dealt by the National Bureau when referred by two or more states. The bureau constitutes of a team of police officers and other experts to ensure effective discharge of their duties. In addition to this, the bureau will facilitate to enhance international co-operation and co-ordination with concerned authorities in foreign nations and international organisation, for facilitating universal action for prevention and suppression of trafficking.
- **Setting up State and District Anti-Trafficking Committees:** The Bill states the provision for setting up **National Anti-Trafficking Relief and Rehabilitation Committee** for providing relief and rehabilitation services to the victims of trafficking in form of immediate and long term sustainable rehabilitation. Along with this, the Bill also lays a provision to set up **State Anti-Trafficking Committee** to oversee the implementation of the Bill and advise on matters relating to prevention of trafficking, protection,

repatriation and rehabilitation of victims of trafficking in persons and would report to National Anti-Trafficking Bureau as well as to National Anti-Trafficking Relief and Rehabilitation. The **District Anti-Trafficking Committee** would exercise the power and performing functions in relation to prevention, rescue, protection, medical care, psychological assistance, need based rehabilitation of victims and redressal of grievances. It would create programmes for awareness generation, community mobilization and empowerment of vulnerable social groups against trafficking. In addition to this, both committees would act as a single window system for survivors in each district, for all services and interventions. This is because experience over the last decade shows that the expectation that multiple offices will coordinate and work together to ensure comprehensive services for each survivor and that victim must also access these services from different service providers have failed and thus, the single window service is essential to deal with the convergence problem at the service delivery level.

- **State and District Police Officers:** The Bill lays the provision to appoint state police nodal officer who shall monitor the functioning of District Anti-Trafficking Officers and Anti Human Trafficking Unit state wise. Also, the Bills states the role of the District Police Nodal officer who shall oversee the functioning of Anti-Human Trafficking Unit and provide necessary assistance to them for the effective discharge of their duties.
- **Offences:** The Bill has expanded the ambit of what constitutes trafficking through the inclusion of the following offences:
 - Trafficking leading to mental illness or disability.
 - Trafficking for the purpose of forced labour or bonded labour by using violence, intimidation, inducement etc.
 - Trafficking for the purpose of bearing child.
 - Trafficking leading to serious injury amounting to grievous hurt or death including suicide.
 - Trafficking of a pregnant woman or resulting into pregnancy.
 - Giving narcotics drugs or psychotropic substance, or alcohol, for the purpose of trafficking.
 - Administering chemical substance or hormones for the purpose of attaining sexual maturity and exploitation.
 - Punishment for keeping a place of exploitation or allowing premises to be used as a place of exploitation.
 - Trafficking leading to life threatening illness.
 - Trafficking of child for the purpose of human shield or child soldiers.
- **Rehabilitation Funds:** The Bill makes provision to create a rehabilitation fund for the welfare and rehabilitation of the victims. Either Central or State governments will make adequate budgetary allocation towards the fund. Voluntary donations, contribution under Corporate Social Responsibility may be

credited to the Fund and this would be made available to the State and District Anti-Trafficking Committees.

- **Special Court for speedy prosecution of trafficking cases:** Under this Bill, Special Courts will be established to exclusively try cases of human trafficking. It is presumed that the special nature of the court would ensure speedier trial of such cases.
- **Plea Bargaining:** The Bills provides for plea bargaining as per the procedure given in **Chapter XXIA** of the Criminal Procedure Code, 1973.
- **Forfeiture and Attachment of Property:** A person accused of having committed an offense and possess or owns any property, if convicted, the property shall be confiscated and stand forfeited and the same may also be used by way of auction and other methods for the purpose of realisation of any fine imposed by the Special Court and be remitted to the state level rehabilitation fund.
- **Protection Homes and Rehabilitation Homes:** The Bills provides for comprehensive long term and short term physical, psychological and social rehabilitation of victims. As per the Bill, Protection Homes would be established to provide immediate care and protection to the victims. Rehabilitation Homes would be established in each district for the purpose of providing long-term rehabilitation.
- **Monetary Relief for victims:** Under this Bill, the rescued child will be provided **interim relief** as deemed appropriate considering all aspect, including physical, mental trauma and the requirement of the victim not later than 30 days, taking into consideration all aspects. Also, the District Legal Services Authority will provide **appropriate compensation** to the victims, during filing FIR, charge sheet and at the disposal of the cases.
- **Penalties:** The Bill has imposed the following punishments for the offenders:
 - When an aggravated form of trafficking of person is committed, the offender shall be punished with rigorous imprisonment for term not less than 10 years and this may extend to imprisonment for life and shall be liable to fine not less than 1 lakh rupees.
 - When convicted for more than one occasion of trafficking, the punishment will cover imprisonment for life and liable to fine not less than 2 lakh rupees.
 - When the offender keeps or manages, or acts or assist in the keeping or management of premises to be used for trafficking, a punishment of imprisonment extend to 5 years along will be imposed along with fine of 1 lakh rupees.
- **Victim and Witness Protection:** The Bill provides for protection of identity of victims and witnesses in order to protect them from intimidation and violence from the trafficker or their associates. It would also take immediate action in respect of any complaint relating to harassment of a victim, informant and witness.

How is the Current Bill different from the Existing Laws?

Existing laws in India do not recognise and penalise all forms of trafficking to the extent required by the United Nations Trafficking Protocol. Section 370 of IPC, which was amended in 2013, defines trafficking as per UN

Convention but **does not include forced labour** in its definition. Currently, the other existing laws on forced labour in India do not adequately address the intricate problems involved in the trafficking. There are areas in which the laws do not comply with the UN Trafficking Protocol's requirements and recommendations, including a) labour trafficking, b) prevention and c) safety and rehabilitation. Thus, there are gaps in formulation of laws and somehow these laws have failed to cater to the immediate needs of the trafficked victims in India. In line with the present scenario, the proposed bill (Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016)), aims to bridge the apertures existing in the current laws.

Consistently, India failed to recognise labour trafficking as a form of human trafficking which is evident in its Bonded Labour System (Abolition) Act, 1976. The Act failed to state that the person may be trafficked for the purpose of bonded labour. In addition to this, Section 370 does not recognise bonded and child labour as part of human trafficking. Section 370 IPC is a penal section which is meant for just punishing the offender and does not define rehabilitation. Various studies have stated that without rehabilitation, victims do not cooperate with during persecution. In general, **IPC is restricted only to sex trafficking**. The current bill on other hand, not only recognises bonded and child labour but also provides rehabilitation as the right to the victims. Similarly, ITPA, 1986 focuses only on sexual exploitation and on prosecution of the accused. It remains silent on investigation of trafficking cases as organised crime and fails to focus on prevention of trafficking. Here, rehabilitation is a welfare service which may or may not be provided to the victims. The current bill caters to all the existing gaps in ITPA,1986. It focuses on **prevention, protection and prosecution**, incorporates trafficking for exploitation, bonded labour, organ trade, surrogacy, forced marriage, clinical trials etc. in the definition of human trafficking, **creates central investigation agency** that would treat trafficking of all form, **creates mandatory provision for rehabilitation** and includes **preventive strategies**.

Under the proposed bill, welfare perspective is being changed to a **right based perspective**. For instance, rehabilitation is an **entitlement** under this bill, which can be legally claimed and has to be provided by the implementing agencies. Also, the bill provides a new perspective to rehabilitation. Instead of providing only economic rehabilitation, the bill focuses on providing rehabilitation in **community centric manner** where the victims get to choose their desires/ appropriate methods of rehabilitation. Besides, the focus of the bill has been changed from **accused centric to victim centric** in term of the interpretation. It creates a balance between the rights of the victims and the rights of the accused.

Analysis of Key Issues/Shortcomings

While the general principles and salient features highlights the strength of the Bill in providing an inclusive law, there are certain key issues, which creates further gaps in catering to the main aim of the Bill.

- The Bill fails to consider the prevention of **re-trafficking**.
- **Absence of reporting procedures** for the National Anti-Trafficking Bureau. Reporting Procedure implies that the Bureau should be answerable to the higher authority such as Central Govt. or Parliament. National Commission for Women, National Commission for Protection of Child Rights, NHRC etc. have requirements of submitting the reports on their performance to the Parliament or to appropriate State

Legislatures. The current bill addresses the reporting mechanism for District and State level agencies. But the bill doesn't mention about the reporting mechanism for National Ant- Trafficking Bureau.

- The crime of human trafficking is largely an organized movement of persons for profit. In India especially, it is conducted in a systematic fashion, through trafficking mafias. The approach taken in the bill **does not effectively** take into account this ground reality. Presently, while penalties are imposed on all persons involved in the crime, this is done more from a perspective of aiding and abetting of a crime, rather than an involvement in a syndicate. Similarly, monitoring and investigating agencies have **not been specifically tasked with mandate of probing these crime rings**, but they are limited to coordinating activities of states and looking into individual cases of trafficking. In order for the bill to be successful, it is essential for agencies to systematically tackle this issue at the source by collapsing trafficking syndicates, rather than looking at these crimes on a case-to-case basis.
- Provision of registration of protective homes **fails to protect the victims**. Violation of registration attracts a penalty for the offender, but there are no measures for protection of victims who are currently living in and deceived by these agencies.
- The setting up of a '**rehabilitation fund**' has been proposed to fund implementation, but **no financial commitment from the government is specified**. Instead there is emphasis on voluntary donations, which heavily dilutes the effectiveness and impact of such a fund. Funds like the 'Nirbhaya Fund' have specified amounts to be disbursed, thereby ensuring a certain level of financial support.
- Provisions regarding search and rescue operations for victims of trafficking have **no mention of protocol**, and thus there is a lack of protection of the rights and dignity of the victims. Presently, police conduct during raids is extremely violent, with abuse of power, towards the victims involved, especially in cases of sex trafficking. Only protection is that '**respectable persons**' are to be present, which is a very equivocal provision.

III. Conclusion

Overall, the Bill is certainly a step forward to bring impartiality to the victims of human trafficking. It acknowledges rehabilitation as their right and paves way for faster justice. However, the key issues mentioned above need to be addressed to make the bill sustainable in long run. The aim is to ensure that this latest Bill provides more robust and goes a long way in uprooting the practises of human trafficking in India. The Bill will be able to do justice if the focus is just not only on the number of victims recused but on the position post an effective rehabilitation process.

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