

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

Position Paper



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 is one of the fastest growing organised crimes in India. The Crime India Report 2016 by the National Crime Records Bureau reported that in the year 2016 15,379 victims were trafficked and 23117 victims of trafficking were rescued (this includes persons trafficked in previous year) forced in to various forms of exploitation. It is imperative to mention that there were cases of trafficking of transgenders which clearly implies that offence of trafficking is not limited to a particular class or gender. Moreover 1,11,569 children were reported missing in the year 2016, that are presumed to have been trafficked or abducted for exploitative purposes¹ Out of which 55944 (including previous year data) were recovered raising a serious concern on the existing law enforcement mechanism. apart from criminalizing the offence of trafficking under various heads of offences it is also necessary to look at the aspect of preventive measures; rescue procedures; timely relief, repatriation, disposal of cases and rehabilitation of the victims.

It is response to these glaring questions that the Trafficking of Persons (Prevention, Protection and Rehabilitation Bill, 2018 was passed by the Union Cabinet on 28th February 2018. It is proposed to be tabled in the Rajya Sabha in the upcoming session of Parliament.

Why is the Trafficking of Persons (Prevention, Protection and Rehabilitation Bill 2018 needed?

The current legislative framework provides solely for the criminalisation of trafficking under Section 370 of the Indian Penal Code 1860. Mere criminalisation fails to address the complex nature of trafficking or the challenges faced by its victims and hence is not adequate to for the eliminate trafficking. The organised nature of human trafficking calls for an equally organised and holistic response to prevent

¹ As per BBA vs. UoI WP (C) 75 of 2012 in judgment dt. 10th may 2013.

trafficking, protection of victim and witnesses, rehabilitation and repatriation of victims. The current response mechanisms while focusing on prosecution of offenders, fails to recognize the need for safeguarding survivors.

This paper briefly explains the existing gaps in the legal and institutional to combat trafficking, and how the proposed Bill aims to overcome these gaps (Annexed in tabular form):

1. Prevention of trafficking in persons

Gaps in current framework: Prevention efforts are currently sporadic and arbitrary, with no dedicated and accountable infrastructure for this purpose. The absence of a fortified and institutionalised safety net pushes vulnerable individuals into being trafficked into various forms of exploitation.

Proposed framework: The Bill sets up State and District Anti-Trafficking Committees for institutionalised, organised and coordinated preventive strategy. This will build an institutional safety net of prevention around vulnerable populations especially women and children.

2. Protection of victims of trafficking

Gaps in current framework: If individuals fall through the safety net of prevention, they are met with an uncoordinated and unaccountable law enforcement mechanism that is unfit for dealing with the multifarious nature of the crime. Lack of effective institutions, processes and personnel has led to ineffective rescue and withdrawal procedure for victims of trafficking.

Proposed framework: The Bill proposed to-

- (i) Adopt an Organised Crime Approach by establishing the 'National Anti-Trafficking Bureau' (NATB)' with state and district level bodies for the purpose of coordinating and monitoring efforts of prevention, investigation, prosecution and international coordination. State Nodal

Officers, and State and District Police Officers will permeate this mandate at lower levels of enforcement.

- (ii) Achieve inter-state and international cooperation and convergence to address the transnational nature of the crime. This will help break the economic, political and criminal nexus employed for proliferation of borders.
- (iii) Protect the identity of and prevents disclosure of identity victims, witnesses and complainants.
- (iv) Set up Anti-Trafficking Police Officers, Anti- Trafficking Units and District-level task forces to conduct rescue operation as per standardised procedure to be enshrined in rules.

3. Prosecution of offenders

Gaps in current framework: The current rate of completion of investigation In cases of human trafficking in 46%, while the rate of disposal of cases by court is about 24%. The overwhelming pendency for such cases demonstrates that the existing prosecution mechanism has failed to provide timely justice to survivors or create deterrence against the perpetrators.

Proposed framework: The Bill proposes to-

- (i) Set up designated courts with special public prosecutors, and mandates the completion of trial within one year.
- (ii) Expand the scope of the crime and disaggregate the offence of trafficking with increased punishment and fine.
- (iii) Achieve economic deterrence by providing for seizure and attachment of property that is used for the commission of trafficking.
- (iv) Freeze the accounts in some cases and proceeds of same to be remitted to the Rehabilitation Fund.
- (v) Provide for in-camera trial and trial via video conferencing.

- (vi) Place the burden of proof on the perpetrator keeping in view the vulnerability and psychological disadvantage of victims of trafficking in the trial process.

4. Rehabilitation of survivors

Gaps in current framework: Rehabilitation of trafficking survivors remains the most persistent challenge within its current legislative framework. In the absence of holistic statutory rehabilitation that addresses their specific needs and vulnerabilities, victims lack the motivation or assurance of stepping out of an exploitative environment with the option of an alternate life. Current schemes in this regard are few and inadequate.

Proposed framework: The Bill proposes to-

- (i) The Bill provides survivors with a right to rehabilitation. This is achieved through National, State and District Anti-Trafficking Committees that will be responsible for extending and monitoring the social, psychological and economic and rehabilitation of survivors of trafficking.
- (ii) Registered Protection and Rehabilitation Homes will provide long term and short term rehabilitation.
- (iii) A dedicated Central Rehabilitation Fund, supplemented by the State, will provide survivors with entrepreneurial support, skill development training or vocational training, legal assistance, victim and witness protection and other welfare and empowerment initiatives for survivors.
- (iv) Detach contingency of relief and rehabilitation of survivors will no upon the status of prosecution.
- (v) Provide time-bound repatriation of the victims within three months for inter-State repatriation, and within six months in case of cross border repatriation.
- (vi) Provide for interim relief to the victim within thirty days of reporting of crime.

Why does the Trafficking of Persons (Prevention, Protection and Rehabilitation Bill, 2018 need to be passed?

1. Protection of survivors of trafficking

Thousands of children, women, men and transgender are being trafficked into slavery, forced labour and prostitution on a daily basis. There is an urgent need to set up a mechanism for a survivor-centric legal framework which allows victims to be rescued and rehabilitated. Additionally, there have been large-scale efforts on part of the government and civil society to increase awareness in communities to recognize and report crime. This has measurably increased the prosecution. This massive increase in public reporting and prosecution will only convert into welfare for vulnerable communities and survivors when it is institutionalized with preventive as well as rehabilitative infrastructure and processes. This calls for urgent legislative action, as survivors of trafficking cannot wait.

2. Compliance to International Standards

The UN Sustainable Development Goal 8.7 asks all nations to ‘*Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.*’ If India hopes to achieve this target and set international standards for effective eradication of forced labour, end modern slavery and human trafficking, it must formulate a more robust and organised strategy to do so. This proposed legislation will, like every other legislation should evolve over time to keep up with a dynamic crime; but as the first step in this direction it is necessary to pass this legislation with utmost urgency.

India has also ratified the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime (UNTOC).

3. Augmentation of India's economic growth and development

The growth trajectory of India is driven by the liberalization of its markets, trade and industry. The Indian growth trajectory, however, remains constrained by the slavery of the people. Human trafficking thrives in all parts of the country, with innumerable children, women, men and transgender being bought and sold for the purpose of economic, physical and sexual exploitation every year. Our current instruments for combatting this have proven gravely insufficient in this regard. India is aiming to emerge as global economic power. However, this global economic leadership cannot lie on the foundation of corruption and black money that drives trafficking of persons. A well-paid and regulated workforce in line with international standards multiplies trade and economic growth manifold. There is an urgent need to dedicate greater funds and resources for the prevention of trafficking, in line with the expected returns.