

Note for Advocacy for Parliamentarians

Human trafficking is not a new crime, rather it is an old age practice prevalent in the form of 'slavery' and was an accepted economic practice. While that traditional form of slavery exists no more, it continues to survive in the changed form of human trafficking, often termed as 'modern slavery'. Trafficking has now emerged as a significant problem all over the world and is the third largest international criminal enterprise, generating an estimated \$150 billion dollars annually (ILO, 2014). The entire process of trafficking is a transnational organised crime, starting from the identification of the victims, their transportation and lastly their exploitation, which operates seamlessly across national as well international borders. It is a market, which exhibits serious violation of human rights where victims are treated like commodities, bought, sold, traded and used to meet the worldwide demand for sex, cheap labour, slavery, human organs and pornography, etc.

Currently, the crime of trafficking is covered under Section 370 and 370A of IPC, which came into effect in 2013 through the Criminal Law Amendment Act, 2013. Trafficking for the purpose of commercial sexual exploitation is covered under the Immoral Traffic (Prevention) Act of 1956. Despite these provisions, the statistics collected by NCRB every year shows an increasing trend of cases of trafficking such as these increased by 14.3% in 2019 as compared to the previous year. The problem was inadequacy of law to deal with several aspects of this organised crime. Some of the inadequacies are listed below:

- Absence of any specialised agency to conduct investigation and combatting the complex crime of trafficking
- No categorisation of aggravated offences or crimes, which would entail higher punishment, which means if the victim is a child or victim dies or is attacked by acid or gets infected by any life threatening disease or sold in brothel, etc. the punishment is same.
- The organised aspect of the crime which involves organised crime syndicates was not covered under the law
- There was no provision for attachment or forfeiture of property of the trafficker, which was either used for the commission of crime or was obtained by the trafficker by committing the crime

- Rehabilitation, restoration of victims and their re-integration into the society was completely absent in the current legal framework. Although provisions existed for children under the Juvenile Justice (Care and Protection of Children) Act, there was nothing for adults and especially transgender
- No homes existed for facilitating rehabilitation of trafficked victims, which was a huge gap as once the victim is rescued his or her rehabilitation should be the prime focus.
- There were no provisions of victim friendly procedures in court or any timelines for conclusion of trial leading to long delays and traffickers getting away
- Role of media not only in terms of disclosing the identity but also use of media by the traffickers for committing the crime was not covered under the law. Media includes all forms such as print, digital or electronic or internet or cyberspace, etc.

Thus, there was an urgent for a special law that plugs all the gaps mentioned above and deals with every aspect of trafficking such as, its prevention, combatting, specialised agencies for investigation, special courts for trial, rehabilitation, etc..

The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 being introduced by the Government addresses these aspects very effectively and comprehensively, if passed by the Parliament, it will become a landmark in dealing with this complex crime of trafficking. Some of significant provisions of the Bill are listed below:

- The Trafficking Bill includes a well-established, fully functional and prestigious Agency –NIA - for combatting trafficking. This provision will give teeth to the investigation process and help in faster arrest of offenders, who are not generally individuals but syndicates and organised criminal groups.
- The Bill provides for stringent provisions when the victim is a child. In case of a child, the means used by traffickers such as threat, force, etc. are immaterial and are not to be considered in describing the offence of trafficking. Even the consent of child is immaterial. If any trafficker transports or transfers or receives a child for exploitation then it means that child is trafficked.

- The punishment is higher and graded if the crime is committed against a child. This means punishment gets higher if child is below 12 years of age or if there are more than one children.
- The current pandemic has shown that trafficking is taking place online and also from within the homes of victims. The Bill includes a provision which says that physical movement or transportation of the victim is not necessary to define the crime of trafficking. This new provision will help to combat new forms of trafficking adopted by traffickers during the pandemic.
- The Bill includes 23 form of aggravated form of trafficking. Aggravated basically implies higher punishment. Some of the significant forms of aggravated forms included in the Bill are: forced or bonded labour, travel agencies, circus, acid attack, genital mutilation, persistent vegetative state, trafficking by abuse of position of authority, by public servant, etc.
- The protection homes for immediate protection of victims and rehabilitation homes for long term rehabilitation will help the victims to come out of the trauma and lead a normal relief later in life.
- Separate protection and rehabilitation homes for transgender is the first of its kind in a law. This is a neglected category and has different needs. Separate homes for such persons is a welcome move by the Government.
- Many times, rehabilitation of victims remains a distant reality as the court cases drag on for years, offenders are not arrested, etc. Whereas a victim of trafficking face not just physical wounds but also psychological and emotional trauma that needs specialised treatment. There is constant threat to their safety as the traffickers can go to any extent to save themselves. The trafficking Bill addresses all these aspects and states very clearly that rehabilitation is not dependent on criminal proceedings and not

even on its outcome. The rehabilitation is to begin immediately once the FIR is registered. This provision is a great relief for the victims.

- The Bill also provides for immediate relief to the victim within 30 days of filing of FIR. The police has to give a copy of FIR to DLSA and District level Anti Human Trafficking Committee. This immediate relief by these authorities will help to fulfil their medical, psychological, material and other needs.
- An important part of immediate relief is that it is over and above the compensation that will be awarded to the victim under the State Victim Compensation Scheme. The Government is making all efforts to ensure victims are rehabilitated and live a happy and secure life.
- Many times it is seen that victims are unable to receive any relief and rehabilitation support and services due to lack of dedicated funds for the purpose with the State Governments. The orders of rehabilitation remain on paper and victims are either re-trafficked or live difficult and painful lives. The Bill has addressed this issue seriously and has made it mandatory for the Government to provide adequate funds for the purposes of aid, relief and compensation within one month from the date of commencement of the Act. The short time period of creating such fund and its mandatory nature will help thousands of victims to rehabilitate and reintegrate into the society.
- Re-trafficking of victims has always been a serious concern and this issue is addressed at many places in the Bill such as, its prevention, special care during rehabilitation and by making re-trafficking an aggravated form of trafficking with higher punishment of not less than 10 years which can go up to life imprisonment and a fine which can be up to Rs 10 lakh.
- Anti-Human Trafficking Committees at National, State and District level will help in coordination and proper implementation of the law. The crime of trafficking is not

limited to single area, it has source, transit and destination areas. Further, the proceeds of crime are in terms of cash, bank accounts, property, etc. A coordinated effort of multiple agencies is the key to handling these cases. The Committees proposed in the Bill will support coordination and effective implementation of the Bill.

- Appointment of a Nodal person not below the rank of Director in the State is also a very useful provision to effectively monitor the law. This reflects the seriousness and commitment of the Government.
- Women, children and physically and mentally disabled persons are given extra protection in the law by including them under the provision of “presumption of offences”. This means that when the victims are women, children and physically and mentally disabled persons then the traffickers will be presumed to have committed the crime and during the trial they have to prove they are innocent. This is reversal of the general principle of criminal law, which is - the accused is innocent until proven guilty!
- In order to break the organized syndicates and nexus, both at the national and international level, the Bill provides for the attachment and forfeiture of property and bank accounts.
- A significant provision in the Bill relates to using proceeds of crime collected and accumulated by traffickers, will be used for the relief and rehabilitation of the victim.

The above mentioned highlights of the Bill strengthen our belief and trust in the Executive who has well drafted a comprehensive and much needed law. Our belief and trust in the Legislature is no less and we are confident that they will treat the Bill as an issue of utmost urgency and priority and will support its passage in the Parliament.
