



Analysing the New Anti-Trafficking Bill

This article is based on the opinion piece published in Livemint “Anti-trafficking Bill may lead to

censorship” and contains inputs from various other sources as well. //

Human trafficking is one of the major concerns of the 21st century that has taken to rapid growth due to the advent of free movement and free trade under the globalisation. India is not immune to this menace and has been ranked as “Tier 2” countries by the US Department of State with respect to Human Trafficking, although India has been one of the pioneer countries to enact strict labour laws to curb exploitation.

The recent **Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018** is on one hand being counted as an effort to keep a tight rein on human trafficking in India and on the other hand being criticized for being an inefficacious and superficial legislation.

Human Trafficking

The United Nations defines human trafficking as:

“The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

The 3 most common types of human trafficking are sex trafficking, forced labour, and debt bondage. Forced labour, also known as involuntary servitude, is the biggest sector of trafficking in the world. Debt bondage is another form of human trafficking in which an individual is forced to work in order to pay a debt.

International Conventions, Protocols and Campaigns

- **Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children in 2000** as a part of the **UN Convention Against Transnational Organised Crime**. This protocol was adopted by the United Nations General Assembly in 2000. The United Nations

Office on Drugs and Crime (UNODC) is responsible for implementing the protocol. It offers practical help to states with drafting laws, creating comprehensive national anti-trafficking strategies, and assisting with resources to implement them.

- **Protocol against the Smuggling of Migrants by Land, Sea and Air.** It entered into force on 28 January 2004. This also supplements the UN Convention Against Transnational Organised Crime. The Protocol is aimed at the protection of rights of migrants and the reduction of the power and influence of organized criminal groups that abuse migrants.
- **Universal Declaration of Human Rights (1948)** is a non-binding declaration that establishes the right of every human to live with dignity and prohibits slavery.
Blue Heart Campaign: The Blue Heart Campaign is an international anti-trafficking program started by the United Nations Office on Drugs and Crime (UNODC).
- **Sustainable Development Goals:** Various SDGs aim to end trafficking by targeting its roots and means viz. Goal 5 (Achieve gender equality and empower all women and girls), Goal 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all) and Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels).

Legislations in India

- **Article 23 (1)** in the constitution of India prohibits trafficking in human beings and forced labour.

Article 23(1)

Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

Article 21

The Supreme Court held that the right to live is not merely a physical right but includes within its ambit the **right to live with human dignity**.

- The **Immoral Traffic (Prevention) Act, 1986 (ITPA)** penalizes trafficking for commercial sexual exploitation.
- India also prohibits bonded and forced labour through the **Bonded Labour System (Abolition) Act 1976, Child Labour (Prohibition and Abolition) Act 1986, and Juvenile Justice Act.**
- **Sections 366(A) and 372** of the **Indian Penal Code**, prohibits kidnapping and selling minors into prostitution respectively.
- Apart from this, the **Factories Act, 1968** guarantees the protection of rights of workers.

How Is the New Bill Not Enough to Tackle Human Trafficking?

- The bill has been accused of **adopting a punitive approach rather than a victim-centred one**. The bill does not focus on human rights and views trafficking as just a crime. It rather does away with just enacting a legislation instead of going for a rigorous, and comprehensive addressal.
- **Loose wording:** The act has many “general statements” which may be used as a legal loophole by the perpetrators to get away and by others to frame innocent people.
For eg. The phrase “any propaganda material that promotes trafficking of person or exploitation of a trafficked person in any manner” has wide amplitude, and many unconnected or even well-intentioned actions can be construed to come within its ambit as the Bill does not define what constitutes “promotion”.
- The bill is also **against the spirit of criminal laws** which need a guilty “act” and “malafide intention” to prosecute someone, as it says “which may lead to the trafficking of a person, shall be punished”.
- It goes **against many international conventions**. It holds any intermediary party such as online content providers, social media platforms, Internet Service Providers (ISPs) etc., liable for content posted on them which is against **Manila Principles on Intermediary Liability**.
- It endorses a **simplicistic raid-rescue-rehabilitation model**. While NITI Aayog has vehemently argued against the 2017 Global Estimates on Modern Slavery (GEMS) produced by the International Labour Organization, the government has adopted the same approach prescribed in it.

- The vague definitions in the proposed bill leave **scope for blocking the so-called immoral or indecent things** including literary or artistic work which may engage with sensitive topics.

What needs to be done?

Trafficking is very often related to exploitation in the name of work - be it domestic or industrial. Thus, **making labour laws more stringent** is a more humane and fundamental way of dealing with the problem.

Secondly, it is important that we **draw a line between prostitution (voluntary sex service) and sex trafficking**. This will help us identify the victims in a better manner and form legislations specifically according to their need.

We can **take lessons from the Sex Buyer's Law of Sweden and Norway**, which is a highly effective legal framework for preventing commercial sexual exploitation. It criminalises buying sex acts while decriminalizes selling it. It also provides for those exploited through prostitution. This law has prevented the further victimization of people who have already been victims of poverty, trafficking and violence.

Thirdly, lawmakers should seek the **consultation of relevant stakeholders** before passing a bill with such wide implications. This may include the victims of sex trafficking, overexploited labour, representatives from trade unions, people in prostitution, rehabilitated child labourers and experts from the field.

Fourthly, it is important that the government devises **vigilance mechanisms** to check such cases in the first place. Any pro-active endeavour is better than waiting for such incidences to happen and delivering justice post-incident.

Last but not the least, trafficking is not an issue in isolation but is interconnected with other issues like **immigration, urban migration, unemployment and women safety**. Thus, the law needs a more holistic view to deal with such a vast question.

Apart from being a grave human rights concern, trafficking has **impacts on trade, Foreign Direct Investment and tourism** among other things. Thus, it is high time we strategically emaciate this blotch on our country's image.

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