

## Trafficking of Person (Prevention, Protection and Rehabilitation) Bill, 2018:

### HAQ Suggestions and Comments

#### Over all Observations in the Context of Trafficked Children

The Trafficking of Person (Prevention, Protection and Rehabilitation) Bill, 2018 (“Bill”) intends to address the deep ingrained human rights issue of trafficking of human beings under the following broad heads – (i) prevention of trafficking, (ii) rescue and rehabilitation of victim, (iii) prosecution of offenders. There are a slew of new legislations in the last couple of years. At HAQ: Centre for Child Rights, we strongly believe that the **concentration must be on better enactment and implementation rather than creation of new laws**, especially Special Laws.

These comments on the Bill that we will be placed before the cabinet.

1. **Does the solution lie in enacting more and more laws or strengthening the ones we already have?:** India had the Immoral Trafficking in Persons Act, 1956. Amendments to this Act have been under consideration since 2006. Why was this not enacted? In the meantime, Section 370 was introduced in the IPC through a criminal act amendment, which redefined trafficking. Barely had the country got used to using this provision, a new bill was introduced. Is that necessary?
2. **What happens to the existing laws on trafficking?** There is no provision in the Bill to suggest whether it will replace the Immoral Traffic (Prevention) Act, 1956 (ITPA). On the contrary, Section 59 of the Bill states that it is in addition to existing laws dealing with trafficking and will have an overriding effect in case of any inconsistency with provisions of the other existing laws. Is there a need for ITPA if a new law is being brought into place dealing with the same subject? Will the investigating and justice delivery mechanisms laid down under the ITPA work parallel to those provided in this Bill? The Bill is completely silent on such crucial aspects, only allowing victims to be shunned from one authority to another.
3. **How does the Bill relate to other child related laws?:** While recognising that the trafficked person may be a child, the Bill makes specific references to the Juvenile Justice (Care and Protection of Children) Act 2015 (JJAct). However, given that children are also trafficked for labour (this is recognised under Section 370 of the IPC) as well as for marriage, it is not clear how this law will intersect with the other relevant laws for children such as the Prohibition of Child Marriage Act, 2006 and Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. Neither is it clear that in case of sexual exploitation of children, how it intersects with the Protection of Children from Sexual Offences Act (POCSO Act), 2012. These laws do not find mention in the Bill.

4. **Justification for a new law on grounds of treating some forms of trafficking as “aggravated” is fallacious.** A policy on what is to constitute as “aggravated” and on “sentencing” must precede any effort to introduce new offences through new laws. The Bill must be put on hold until such policies are clearly laid down. The basis of classification of offences into “aggravated” and “non-aggravated” and corresponding basis for punishment or sentence must be clearly spelt out. In the absence of such a basis, every new incident that causes public outcry and finds no place in the law will result in more and frequent amendments to the law, which is not a healthy legal reform process for any nation. Moreover, Section 370 of the IPC is sufficient to deal with all cases of human trafficking.

Further, the Bill is flawed in its treatment of some offences as aggravated forms of trafficking. Some acts have been clubbed as “aggravated”, while some others are kept out of the ambit. For example, abetting illegal migration for trafficking is treated as aggravated form of trafficking, while promoting, procuring or facilitating the commission of trafficking is not.

5. **The proposed Bill does not cover all forms of trafficking of children.** Many recognised and well documented forms of child trafficking such as trafficking for and through adoption, or trafficking of children by placement agencies for domestic servitude find no mention in the Bill.
6. **Will not creation of new bodies create more confusion?:** The Anti-Trafficking Units at the state and district levels will only lead to multiplicity of authorities as there are already the State and District Child Protection Units that are in place, along with the Child Welfare Committees that have been mentioned in the Bill. With children also being trafficked for adoption, and the proposal to make the District Collectors the authority responsible for adoptions, there is yet another layer of confusion that is expected.

The Child Protection Committees right down to the village level child protection committees are meant to be bodies responsible for creating a ‘prevention’ mechanism. How these bodies will intersect/coordinate with the proposed prevention mandate of this law, is not clear.

As such, given the past experience of creation of bodies at the state and district level, while these new anti-trafficking committees may be ‘parking lots’ for some people with political patronage (that is the experience with the Child Welfare Committees (CWC) and even the children’s commissions), it is not clear what additional purpose they will serve. Conversely, they will become yet another set of institutions that will intervene into the lives of victim children, leading to further victimisation and confusion.

What is more, there is every likelihood, with multiplicity of institutions and authorities the child victim of trafficking will fall between the cracks and be denied justice and rehabilitation. Here are some examples.

- Section 26 (1) of the proposed bill makes it worse by allowing either the District Anti-Trafficking Committee or the Child Welfare Committee to deal with repatriation of victims, allowing scope for both to avoid taking responsibility while the victim continues to suffer.
- As per Section 17 of the Bill, the Magistrate has been given the power to pass an order regarding rehabilitation of the child after it is established that the child is a victim. And, despite references to the JJ Act and CWCs in the Bill. (As per the JJ Act, it is the responsibility of the CWC to ensure care and protection of a child in need of care and protection –which a trafficked child is).
- Yet another example is the inclusion of registration of Protection and Rehabilitation Homes under Section 23 of this Bill. The JJ Act already includes childcare institutions that are to be registered under the Act for housing child victims. Now with the, will it mean child care institutions will need more than one registration?
- There are Special courts to be designated in each district court for the purposes of trial of cases under this Bill. What does this mean for children? Will these cases be tried by the Special Courts for Trafficking or will it be the Children’s Courts? – Yet another example of lack of clarity.

**Specific Comments:**

<b>S.No.</b>	<b>Provisions of the Trafficking Bill</b>	<b>Issue</b>	<b>Suggestion/Comments</b>
1.	<p><b>Section 2: Definitions</b></p> <p>Sub-clause (2) of Section 2 states that the terms which have not been defined in this Bill shall have the meaning as prescribed in IPC, Code of Criminal Procedure, 1973 (Cr.P.C.), Information Technology Act, 2000, Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act,2015).</p>		<p>In order to make the Bill comprehensive, the said provision should also include acts such as - Immoral Traffic (Prevention) Act, 1956, Protection of Children from Sexual Offences Act (POCSO Act), 2012, Bonded Labour System (Abolition) Act, 1976, Prohibition of Child Marriage Act, 2006 and Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.</p>
2.	<p><b>Section 17: Safety, care and protection of persons rescued</b></p> <p>Provision (3) of Section 17 states that after age inquiry by the Magistrate if it is found that the victim is a child, then the Magistrate will pass such order as he deems necessary for the care and protection of the child.</p>	<p>Once it has been determined that the victim is a child, the Child Welfare Committee (CWC), under the JJ Act, 2015, has been conferred with the power and responsibility for the care and protection of the child.</p>	<p>In order to clear the ambiguity in the role and powers of the authorities, the provision may be amended to state that upon conducting age inquiry, the Magistrate should send the child victim to concerned CWC for further action with</p>

		<p>However, in the present provision, the Magistrate has been given the power to pass necessary orders in regard to care and protection of the child.</p>	<p>regard to the care and protection of the child.</p>
3.	<p><b>Section 21 and 22: Protection Home and Rehabilitation Home</b></p>	<p>Protection Home under Section 21 and Rehabilitation Home under Section 22 have not been specifically defined under Bill.</p> <p>For the purpose of Section 22(2), the appropriate government may utilize any existing shelter home for the purposes of rehabilitation home - It is not clear that whether the older victims apart from children will also be placed in these shelter homes.</p>	<p>As terms like shelter home, observation homes, special homes etc. have been categorically defined under JJ Act, 2015, similarly important terms like protection home and rehabilitation homes should also be categorically defined for the purpose of this Bill to distinguish them from the Children's Homes.</p> <p>It must be made clear that adult victims of trafficking will not be housed with children and for children it will be the Children's Homes to which they will be sent on order of the CWC.</p>
4.	<p><b>Section 23: Registration</b></p> <p>Protection and Rehabilitation Homes shall be registered under this Bill. Further, in the event that any person in-charge of the Protection or Rehabilitation Home, contravenes the aforesaid provision, the aforesaid person-in-charge shall be made punishable.</p>	<p>Whether the existing shelter home as defined under JJ Act, 2015, also used for providing rehabilitation services for the purpose of the Bill is required to separately registered under Section 23(1) of this Bill?</p> <p>Registration of institutions housing rescued children under laws other than the JJ Act will not only cause confusion, but is also</p>	<p>The provision may be amended to include regular monitoring of the Protection or Rehabilitation Home by a designated authority who shall have the power to file a complaint in case a protection home or a rehabilitation home is found not complying with the conditions of the registration/license i.e. abusing/harassing the child victims/ lack of adequate</p>

		<p>detrimental to the health of the organisation running such institutions as they will have to maintain different compliance standards under the different laws governing their registration, which may also be conflicting.</p>	<p>space/ poor sanitation and housing facilities, etc. the registration would be cancelled and any further action may be taken as suggested under Section 23(2) of the Bill.</p>
5.	<p><b>Section 24: Application for providing care and protection</b></p> <p>The victim or any person (rescued on behalf of the victim) may make an application to the Magistrate, in whose limits the victim or other person is trafficked or suspected to be trafficked, for an order to be kept in rehabilitation home.</p> <p>In the event the victim is a child, the provisions of JJ Act shall apply.</p> <p>The Magistrate shall, before taking a final decision with respect to rehabilitation, consult the District Anti-trafficking Committee.</p>	<p>What does the term “person rescued on behalf of him” mean?</p> <p>Whether the CWC shall be consulted in the event the victim is a child? Section 37 of the JJ Act gives power to the CWC to decide whether the child is in need of care and protection and accordingly pass orders for rehabilitation of the said child.</p>	<p>Sub- clause (3) should be amended to specifically lay down that the Magistrate shall, before taking a final decision with respect to rehabilitation, consult the District Anti-trafficking Committee and in case the victim is a child, then the authority for deciding the rehabilitation and protection of the child shall solely lie with the CWC.</p> <p>Proviso to Section 24(1) should apply to all the sub clauses of Section 24.</p>
6.	<p><b>Section 31: Offences and penalties</b></p> <p>Defines the forms of Aggravated trafficking</p>	<p>There is no clear basis for arriving at what form of trafficking should be classified as “aggravated”. Neither is there a clear basis for determining the quantum of punishment / sentence. In the absence of a policy in this regard, a question may be raised as to why certain forms of trafficking have been treated as “aggravated”</p>	<p>For the purposes of definition of aggravated form of trafficking, the provision must include that if any of the forms of trafficking, as mentioned in the section, are in relation to a child, the same should be construed as a part of definition of ‘aggravated form of trafficking’.</p> <p>A policy on what is to constitute as “aggravated”</p>

		<p>and others kept out of the ambit.</p> <p>Such decisions cannot be based on an emotions. In the absence of a policy, there is scope for laws being subjected to frequent amendments to accommodate new incidents that arouse public emotion and reactions.</p> <p>To qualify as a case of an “aggravated” form of trafficking, every element required under the different clauses of Section 31 will have to be present and satisfied.</p> <p>In a situation where the element of trafficking is not found to be present but other elements such as grievous injury, or administration of narcotic drug or psychotropic substances, or death can be made out, the victim will not be able find relief under Section 31 of the Act. This reduces the chances of conviction if any one element is missing. It also amounts to denial of opportunity to the victim to find relief under other existing laws dealing with the specific elements of crime that are found in the case.</p> <p>For example, Section 31 (vi) treats hurt or grievous injury or death resulting from trafficking as</p>	<p>and on “sentencing” must precede any effort to introduce new offences through new laws. Since Section 370 of the IPC is sufficient to deal with the cases of human trafficking, the Bill must be put on hold until such policies are clearly laid down.</p> <p>While there is no need for a new law on trafficking as Section 370 provides a wide definition and is capable of covering all forms of trafficking, if the government still wishes to go ahead with the Bill, it must provide for trafficking of children for adoption or for domestic servitude.</p>
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7.	<p><b>Section 47: Designated Courts</b></p> <p>Special courts shall be designated in each district court for the purposes of trial of cases under this Bill.</p>	<p>In a case in which provisions of the Bill have been violated along with offences under POCSO Act, whether the trial will be conducted before the special courts designated</p>	<p>The Bill must clarify the definition of Special Courts with respect to children’s cases.</p>

		<p>under Section 46 of this Bill or special courts designated under POCSO Act?</p> <p>It is also not clear if in case of trafficking of children, the Special Courts mentioned in the Bill will be the same as the Children's Courts mandated to be set up under the Commissions for Protection of Child Rights Act, 2005 to deal with all kinds of offences against children.</p>	
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