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Does the Anti-Trafficking Bill Address Trafficking?

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(This is The Hindu's 'Yes, No, It's Complicated' for the 10th of August; it addresses a vital concern regarding anti-trafficking legislation.)

Name of the Bill in the debate: The Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018

Background: Despite the passing of the Criminal Law (Amendment) Act, 2013 that substituted Section 370 of the IPC with newer Sections 370 and 370A which defined trafficking and laid out the punishment for it, data shows that instances of trafficking have increased.

What goes for the Bill? The Bill goes beyond criminalization; it tries to combat the organized nature of trafficking

- The Bill aims to **systematically combat the organized nature of trafficking** as it ties together prevention, rescue and rehabilitation of victims into one policy framework. It will develop and monitor a database for every crime committed under this act and also use this information for systematic surveillance of offenders - this should help not only in preventing human trafficking but may also preempt it to a certain extent.
- The Bill **introduces aggravated forms of trafficking** such as trafficking for the purposes of begging or bearing children, or for marriage, through an administration of narcotic drugs, hormones or chemical substances (for the purposes of reaching early sexual maturity), etc.
- The Bill **provides for witness protection**. Also, the Bill seeks to maintain the confidentiality of victims by providing for recording of statements via video conferencing and/or by using in camera proceedings.

- The Bill also **introduces for the first time a rehabilitation fund** for victims of trafficking. This fund will be used for the physical, psychological and social well-being of victims. The Bill further seeks to help victims rebuild their lives by providing them with capital, infrastructure, education and skill development. This should empower victims enough to give them access to justice and also to prevent their future re-victimization.
- Most importantly, the Bill, for the first time, **seeks to coordinate with foreign countries and international organizations** so as to facilitate an inter-State and international transfer of evidence. Taking point at the national level will be the National Anti-Trafficking Bureau; at State and District levels there will be State and District Anti-Trafficking Committees respectively.
- Lastly, the Bill proposes that in order to break the organized nature of human trafficking, there will be **attachment and forfeiture of property of those involved in this crime**. The proceeds from this will be added to the above-mentioned rehabilitation fund. Moreover, there are provisions for freezing bank accounts of those involved which should cripple the organized trafficking networks.

What goes against the Bill? It fails in its fundamental purpose, i.e. it does not address the issue of trafficking.

- The Bill **fundamentally criminalizes** offences **that are already marked as** offences **under various laws**. For example, 'trafficking for the purpose of begging' is a new offence under this Bill but it already is an offence under anti-begging laws. Another example, "encouraging or abetting any person to migrate illegally into India or Indians into some other country" which is a provision in the Bill is already dealt with under the Passports Act, 1967 and the Foreigners Act, 1946.
- The Bill also **leaves the door wide open for opinionated interpretations** with not-so-properly-defined phrases like "aggravated form of trafficking". It is common knowledge that more the laws and the vaguer they are, more the legal loopholes. Especially when laws overlap with one another there could be a misinterpretation, which could be disadvantageous to both law enforcement and victims alike.
- The Bill also **impinges on certain freedoms**. Consider this extract: "Whoever solicits or publicises electronically, taking or distributing obscene photographs or videos or providing materials or soliciting or guiding tourists or using agents or any other form which may lead to the trafficking of a person shall be punished with rigorous imprisonment. (emphasis added)" This means that one can be arrested or websites can be shut down without the need for any trafficking to actually take place. Such provisions are vague and over-board and have been previously struck down by the Supreme Court under the Information Technology Act, 2000.

- The Bill also requires that **trafficking** be **established only under Section 370** and its various subsections of the IPC. This means that before someone can be termed a victim he/she will have to prove that he/she had been “transported, recruited, harboured, received or transferred for the purposes of exploiting her/him by using force, abduction, deception, or by abuse of power”. Without this prior proving, the provisions of the Bill cannot be invoked which turns the Bill into a difficult albeit firm legislation.

Complications in the Bill? A wasted opportunity?

- The Bill had been revised multiple times before arriving at its current structure. This shows a level of commitment in bringing out a good and genuine legislation. Satisfactory features of the current Bill include “search and seizure; rescue and medical examination of persons; and safety, care and protection of persons rescued”. Future iterations of the Bill could even include a provision for punishment of government officials including the police, for omission or neglect of duty.
- The Bill is silent on many important types of specialised human trafficking like: “trafficking for supply chains, commercial surrogacy, clinical trials, human organ trade, intergenerational trafficking, orphanage tourism and sex tourism”. Especially, the Bill is silent on ‘demand reduction’, a concept that says that we have reduced demand for commercial sex in order to reduce human trafficking; the Bill is also silent on ‘non-institutionalised rehabilitation’ an example of which can be ‘community-based rehabilitation’ of bonded labourers, sex-workers etc. Currently, the world over, the ‘institutional approach to victim care’ is being actively discredited and demands for non-institutional care is growing. Thus, the adding of two new vaguely defined institutions viz. ‘protection homes and rehabilitation homes’ is not entirely progressive.
- Fundamentally, the Bill does not properly define the term ‘victim’. The established practice is that a ‘victim’ is someone who is ‘rescued’ by the police. In the strict legal parlance, those rescued by NGOs, parents, friends etc. are not victims under the law, which is a disturbing thought.
- On the ground, the reality is shocking. According to activists, a lot of the times traffickers themselves get ‘rescued’ by the police (by pretending to be one among the victims) in order to ‘keep an eye on the rescued victims and silence them’. Especially if the traffickers are hand in glove with corrupt policemen they will be able to not only get away with their crimes in the above-mentioned manner but also pretend to be a victim and claim compensations, rehabilitation, small capital for business etc. - things that were meant to help only genuine victims.

- Lastly, it is unclear how far justice will be served simply by notifying existing sessions courts as designated courts (for human trafficking purposes). The Bill does not provide new courts or judges for its purpose. District courts too, do not need to hear such cases on a priority basis. Thus, there is a possibility that this Bill may undo the gains gotten from decades of 'evolving more sensitive and specialised courts such as Immoral Traffic (Prevention) Act courts, Protection of Children from Sexual Offences courts, and family courts'. Also, in what can be a blunder, the Bill makes the rehabilitation fund 'available to the bureaucracy for the purposes of prevention, protection, prosecution', things which are by definition not rehabilitation. The Bill as such completely misreads the concept of rehabilitation and therefore is in the need of a thorough revision.

It should be clear from the above discussion that The Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018, is far from complete. An opinion can be that laws like these need time to evolve, and gradually after time, we may get to what one may call a final version of the Bill. In any case, this Bill scores points for being able to take the first step towards a very important issue i.e the stopping of human trafficking.