

## **10 REASONS WHY THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2018 NEEDS A COMPLETE RE-WRITE**

### **1- The Bill merely adds to legislative clutter and will be an implementation disaster – defeating the very purpose of the exercise**

At least 10 different laws currently address activities that constitute “trafficking of persons” - sometimes at cross purposes with each other.

This Bill adds yet another legislation to this list. Worse still, it proposes to set up a parallel anti-trafficking bureaucracy with at least 10 new agencies.

This, despite the Government’s undertaking in 2015 to the Supreme Court of India that it will draft a comprehensive legislative framework by harmonising and integrating existing laws into one.

For police, prosecutors and Judges, enforcing multiple laws will be a nightmare. Accused will stand to benefit from this.

### **2- The Bill provides nothing ‘new’ or ‘different’ – only a poor rehash of existing legal provisions**

Existing laws, under which Police have been registering and prosecuting thousands of cases of human trafficking, already provide:

- a. a comprehensive definition of ‘trafficking’ and ‘exploitation’ in Section 370 of the IPC, which prohibits all forms of trafficking of persons – whether begging, sexual exploitation, forced marriage and forced labour in domestic, farm or factory work
- b. stringent punishment, starting with a minimum of 7 years imprisonment and extending upto life
- c. stiffer penalties for repeat offenders, and for trafficking of more than one person
- d. measures for prevention, rescue and rehabilitation of victims

### **3- Oddly enough, the Bill proposes that trafficking for the purposes of begging is graver offence than trafficking for sexual exploitation and forced removal of organs**

Trafficking for the purposes of begging is considered “aggravated” under the Bill, whereas trafficking for sexual exploitation and forced removal of organs is simple trafficking, even though the MWCD maintains that its primary concern is sexual abuse and exploitation of women and children. Further still, “*slavery and practices similar to slavery and servitude*”, which capture the most egregious forms of coercion and bondage under domestic and international law, are also simple trafficking.

### **4- Worrisome that the Bill attempts to criminalise migration the guise of trafficking**

The Bill categorizes a person who encourages another person “*to migrate illegally into India or Indians to some other country*”, as having committed an act of ‘aggravated form trafficking’, punishable with 10 years imprisonment.

Conflation of migration, which is voluntary movement of persons, with trafficking, which necessarily involves coercion, fraud, deception and exploitation is dangerous, especially for refugees and other vulnerable immigrants

### **5- Strangely enough, according to this Bill, factories and farms can be “closed down” based on a mere complaint**

- a. The Bill introduces offences in relation to, and authorizes closure of premises, which are “*to be used*” as a “*place of trafficking*”. “Premises”, which is widely defined to include land, location and conveyance, may be a home, factory, farm or a vehicle used for public transport.

- b. Applied in the context of labour trafficking, the law would allow factories and farms to be “closed down”, merely on the basis of a complaint by the Police or any other person that the said premises is ‘to be used’ for trafficking.
- c. A public transport bus in which a trafficked person may travel could also be seized. These are absurd consequences, to say the least.

#### **6- Travesty of justice: victims of trafficking will continue to be arrested and prosecuted**

Successive govts have promised that victims of trafficking must not be treated as criminals – but this Bill merely provides protection to victims for crimes that are punishable with death, life imprisonment or 10yrs.

In reality, trafficked victims are charged for ‘minor’ offences like travelling without a passport [in case of foreign nationals], soliciting [in the case of sex work] or working without authorization or employment papers [in the case of labour trafficking]. Victims will continue to be charged and tried for these violations, like before.

Further, the Bill requires the victim to satisfy the Court that she was subjected to reasonable apprehension of being killed or subjected to grievous hurt or any other injury to herself or to another person who she was interested in. This is a very high burden, which few, if any, victim will be able to satisfy.

#### **7- Completely ignores the recommendations of the Supreme Court-appointed panel in relation to sex work**

The following key recommendations of the Court appointed panel are NOT reflected in the Bill:

- to adopt community-based rehabilitation, i.e. alternatives that are not contingent on trafficked women staying in state-run “homes”.
- to revise laws like the ITPA so as to distinguish between those coerced into sex work and those who engage in it voluntarily, so that interventions are tailored to those who need them.

#### **8- The Bill provides solutions which have been rejected by the UN**

‘Protection homes’ and ‘rehabilitation homes’ - which are the mainstay of rehabilitation under the Bill, have been proven to be sub-optimal, even counter-productive solutions.

The United Nations Special Rapporteur on Trafficking in Persons, especially Women and Children, has **explicitly noted** that such measures *“inevitably compound the harm already experienced by trafficked persons and denies them the rights to which they are entitled”*.

#### **9- The Bill is blind to the negative health and social development outcomes it will facilitate**

Contrary to claims that the Bill does not affect sex workers, offences such as trafficking related pregnancy exposure to HIV and AIDS reveal a clear intention to target sex work. (Punitive laws like the Immoral Traffic (Prevention) Act, 1956, IPC and Police Acts will continue to apply against sex workers.) This will only increase health risks and reverse the momentum gained in controlling the HIV epidemic among sex workers

The Bill is antithetical to efforts currently underway to empower sex workers. The ‘scheme for para-legal volunteers’, the ‘single window’ initiative and similar programmes that have helped sex workers access basic rights and entitlements will crumble without requisite policy support, under the weight of the overly punitive framework proposed in the Bill.

#### **10- Not informed by research or analysis**

The last available study of the problem of Trafficking in Women and Children in India person by the National Human Rights Commission dates back to 2002-2003.

The Bill is completely and deliberately blind to the emerging challenges as well as innovative anti-trafficking initiatives that have been successfully tried out since then.