

**Brief Note on the dreadful effects of the 3<sup>rd</sup> Draft of anti trafficking law /Bill as released by the MWCD Govt of India**

<b>The Claim</b>	<b>The Fact</b>
It is a first single comprehensive law against human trafficking	Incorrect. It only shifts the definition of trafficking from its existing place in Sec. 370 of IPC after distorting and making it ineffective. It is silent on trafficking for surrogacy, bride trafficking, organized beggary, organ trade except for listing them under explanation of forms of exploitation in Sec 1. It drops prostitution or sexual exploitation as a form of exploitation under the definition of trafficking
It for the first time acknowledges rehabilitation as a right	Rehabilitation has been acknowledged by several instruments and policies for years
It for the first time it considers protection against e trafficking	Incorrect! The Constitution has given it long ago
	Criminal injuries have been in the Cr. P.C. for decades and have been revised by adding Sec 357-A to Cr PC
It strengthens the anti trafficking law	Incorrect! On the contrary it weakens the law immensely.
	Incorrect. It shifts Sec 370 the definition of trafficking from the main criminal law of the land The IPC. The importance of the crime of trafficking gets drastically reduced at the police station once it goes out of the IPC
	With the new law the provision to penalize a sex trafficking customer currently in IPC Sec Section 370-A gets cancelled. It gets added in Sec 8 in a very diluted and confused form which is simply non enforceable.
	The Cr P C Sec 357 & 357 – A become inapplicable. A Head of National Bureau an unwanted structure to be added gets the powers to disburse all funds without any judicial supervision
It addresses trafficking for all types of crimes	Incorrect! First and foremost it removes trafficking for prostitution as a crime
	It drops the globally most progressive definition of prostitution is currently there in the Sec 2(f) of

	the ITP Act
	It drops the concept of commercial sexual exploitation as a crime of trafficking completely so much so that it does not use the term even once in the entire draft
	While the UN Protocol 2000 which is binding on India as India has ratified the Protocol in 2011 and because of which in the criminal amendment 2013 Sec 370 of IPC was changed and the UN Definition of trafficking was inserted in its place. This inclusion was done with a small but important exclusion ' the abuse of position of vulnerability of a person' as a means of trafficking was dropped in this inclusion.
	The UN Protocol's definition mentioned <b>Prostitution of others</b> as the purpose of trafficking The new proposed new law completely drops that and uses a general term exploitation instead.
	The proposed new law completely drops prostitution as a form of exploitation. Sec 4 Explanation(1) gives the explanation of the term exploitation which excludes the terms prostitution, sexual exploitation, sex trade as forms of exploitation
	It mentions Sexual Exploitation in Explanation (2) which has no meaning or significance at all since it is not a part of the statement of offence and does not figure there at all. You give explanation of the terms which are used in the statement of the offence. Since prostitution sexual exploitation are not used the Explanation is misleading and useless with no significance. Specific and elaborate provision against procurement for prostitution or commercial sexual exploitation as exists in the current law the ITPA Sec 5 goes away with the new law
	The specific and elaborate provision against seducing someone in one's custody for prostitution or commercial sexual exploitation as exists in the current law the ITPA Sec 9 goes away with the new law
	The specific and elaborate provision against keeping of brothels for prostitution or commercial

	<p>sexual exploitation as exists in the current law the ITPA Sec 3 goes away Hence brothel keeping is no more a crime under the new law</p>
	<p>The new law mentions maintaining a place of exploitation as a crime but since prostitution or commercial sexual exploitation is not included in the statement of the offence the provision against providing a place for running of a brothel as it exists in the Sec 3 of the current law ITPA goes away. <b>Hence brothel keeping is no more a crime under the new law</b></p>
	<p>The clear, specific and elaborate provision against pimping on someone's prostitution which is an offence under Sec 4 of the existing law ITPA goes away with the new law. <b>Hence pimping is no more a crime as per the new law</b></p>
	<p>Specific and elaborate provision against procuration for prostitution or commercial sexual exploitation as exists in the current law the ITPA Sec 5 goes away</p>
	<p>The specific and elaborate provision against detaining anyone for prostitution or commercial sexual exploitation as exists in the current law the ITPA Sec 6 goes away</p>
	<p><b>Hence detaining in whichever manner anyone (e.g. withholding passport, work permit, other document, payments, savings, jewelry, child, or clothes) in a brothel is not a crime under the new law</b></p>
	<p>A clear, specific and elaborate provision against soliciting in public places by the pimps as it exists in the current law ITPA Sec 8(b) goes away with the new law. <b>Which means pimps can solicit anywhere in public places and offer prostitute's services to anyone. It will not be a crime anymore.</b></p>
	<p>A clear, specific and elaborate provision against carrying out prostitution in the vicinity of schools colleges, temples and places of worship, hospitals etc as it exists under Sec 7 of the ITP Act goes</p>

	<p>away with the new law. <b>Which means prostitution can be carried out right outside schools, colleges, temples, mosques, churches and hospitals.</b></p>
	<p>A specific provision against carrying out prostitution in a residential building at the annoyance of the other residents of that building as it exists under Sec 20 of the current law ITPA goes away with the new law. <b>Which means anyone can carry out prostitution in your residential building and cause annoyance to you and have shady characters visiting all the time in your building without having any legal consequences for them</b></p>
<p>The new law makes one single provision to address all of these offences.</p>	<p>Completely misleading and incorrect. The new law makes h\just one single provision under its Sec 8 as follows, <b>‘Whoever, knowingly or having reason to believe that a person is a victim of trafficking in person, (extremely difficult for the prosecution to prove it in the court) subjects such a victim to exploitation in any manner shall be punished with rigorous imprisonment .....</b>’</p> <p><b>It is necessary that the person (here the customer) must knowingly exploit the other person (victim) or must have reason to believe that the other person is a victim of trafficking. Otherwise it is not a punishable offence.</b></p> <p><b>This ‘knowledge or reasons to belief’ have to be established by the prosecution and not by the defendant.</b></p> <p><b>For which first and foremost the prosecution will have to also establish that the persons subjected to exploitation is a ‘victim of trafficking’.</b></p> <p><b>Because subjecting a non- victim to exploitation is not a crime as per the above statement.</b></p> <p><b>The presumption of guilt elsewhere utilized even against the service provider NGOs is not invoked</b></p>

	<p>here.</p> <p>Additionally as stated above 'Exploitation' does not include prostitution or commercial sexual exploitation as per Sec 4 of the new law.</p>
	<p>This means</p> <ul style="list-style-type: none"> <li>➤ Keeping or managing brothel (Sec 3)</li> <li>➤ Pimping on other person's prostitution (Sec 4)</li> <li>➤ Procuring person for prostitution (Sec 5)</li> <li>➤ Detaining a person for prostitution (Sec 6)</li> <li>➤ Seducing one under one's charge for prostitution (Sec 9)</li> <li>➤ Providing premises for selling of sex or for keeping a brothel (Sec 3 &amp; 7)</li> </ul> <p>Are no more punishable offences under the new law</p>
	<p>This sufficiently proves that the new law is a clear and bold step to make the sex trade open and legal and to decriminalize the hitherto criminals like traffickers, pimps, brothel keepers, pimps, brothel managers, customers, premise providers. It is also to make the public place available for them for soliciting.</p>
It tries to coordinate the anti trafficking activity	<p>Misleading and incorrect!</p> <p>It only attempts to add a couple of completely uncalled for unjustified high power structures like the National Bureau, National Agency, District Rehabilitation Committee etc.</p>
	<p>In the last 4 decades not a single source has ever suggested the creation of such high power bodies Namely;</p>
	<ol style="list-style-type: none"> <li>1. Obligation due to having ratified a UN Convention or Protocol</li> <li>2. Popular demand as seen in the case of the Delhi Gang case</li> <li>3. Outcome of a series of evaluative research studies by disinterested parties</li> <li>4. Any Court Order</li> <li>5. Demand or recommendation made by any stake holders</li> <li>6. Demand or recommendation made by Victim Collectives</li> </ol>

	<p>7. Recommendations of any conferences or seminars</p> <p>8. Best practice by any country</p>
Create National Bureau on Trafficking	<p>None of the above 8 sources of policy making have ever suggested that!</p> <p>Why out of the blue this high power structure</p> <p><b>Which officer is being rehabilitated?</b></p>
The Head of NAB be the head of investigation, rehabilitation and repatriation and should be in control of the Rehabilitation Fund	<p>None of the above 8 sources have ever suggested such as absurd concentration of powers?</p> <p><b>Which officer is being rehabilitated?</b></p>
The head of National Bureau should have the status of Minister of State	<p>What is the basis to give him the status of a Minister of State? None of the above 8 sources of policy have ever suggested that.</p> <p><b>Which officer is being rehabilitated?</b></p>
	<p>When in 2005 the Central Bureau of Investigation ( CBI)) was already appointed as the Trafficking Police Officer under Sec 13 of the ITP Act to tackle extra territorial crime what is the need for a new structure?</p>
The appointment should be for straight for 5 years	<p>What is the basis to making the appointment straight for 5 years.</p> <p>Which officer is being rehabilitated?</p>
The law is NGO friendly	<p>Completely misleading.</p> <p>There is not a single provisions that makes it NGO friendly, encourages social participation or suggests increased participation by the civil society sector</p>
	<p>In fact ironically it makes the police the prime agency for prevention when the problem is a complex socio cultural and economic one.</p>
	<p>Sec 14 of the new law jumps to imprison the service providers (mostly NGOs) for disclosing the victim identity without making any provisions for checking if it is first time offence, intentional, knowingly done, or by sheer oversight, minor negligence.</p>
Creates Special Courts	<p>Incorrect!</p> <p>It scraps the existing law ITP act whereby the exclusive Special Courts created under the ITPA cease to exist.</p>

	<p>Instead it recommends the cases to be handled by the Courts of Sessions but not as exclusive trafficking courts not even as on priority. It creates more confusion when in a case there are child victims and adult victims. As Court of Sessions being general their architecture and superstructure is not child friendly.</p>
For every other types of destination crime of trafficking	<p>The new law suggests to go to the individual specialized law (e.g. bonded labour System Abolition Act, Transplantation of Human Organs Act, Prohibition of Beggary Act, etc.</p>
The new law on procedures	<p>The new law suggests to proceed with the existing procedural laws like the Criminal Procedure Code, Juvenile Justice Act etc</p>
	<p><b>This makes it clear the new law is only to scrap the existing anti prostitution law and make the sex trade decriminalized. And to rehabilitate someone by offering all the benefits</b></p>
<p>Although the police does have a limited role to play in combating it but sex trafficking is a complex phenomenon enmeshed in the sociopolitical, economic and cultural structure of the society. Trying to solve it with a police heavy Crime and Punishment model is completely absurd. An intervention based on egalitarian development, gender justice, human rights, creation of optional wage opportunities, prevention of erosion of sustainable life styles, limiting the vulnerabilities will solve the problem.</p>	