

Quick and summarised comments on the Anti-trafficking Bill -2018

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1. **The Bill is based upon a complete misdiagnosis of the problem of trafficking and relies too much on police, courts and jails.** South Asia does not have well organized criminal syndicates that undertake trafficking. There are neighbourhood people who do the job often in connivance of the family members and the economic compulsions and backwardness of the victims' fuel trafficking. Hence it requires corrections in the social economic arrangements rather than a crime and punishment model operating with more police, more courts, more jails and more institutions. The civil society sector has repeatedly stated that the problem is not the lack of laws but that of appallingly poor implementation of the laws. Promulgating more and more harsher laws with deadly punishment, it is feared puts victim into the danger of dire consequences and gives maximum benefit of the doubt to the accused.
2. **The Bill adds too many uncalled for bureaucratic mostly police dominated bodies.** It adds too many government bodies with a very wide range of powers and functions but sloppily articulated provisions thereby creating problems of coordination and burdening the tax payers. There is a need to make the existing structures deliver results and not add some more.
3. **The Bill relies upon the rejected and problematic institutional solution.** There is a growing disapproval of institutional solutions and demand for deinstitutionalization of the solutions. The Bill adds two more types of institutions and makes rehabilitation conditional to institutionalisation.
4. **The Bill clashes with the existing well established and functional mechanisms and creates confusion.** There are already well-established institutions with the name 'Protective Home' meant for the adult women rescued from sex trade. Bill adds an ill-defined 'Protection Home' leading to confusion. While already there are Children's Homes under JJ Act to look after the rehabilitation and while the Protective Homes and Ujjwala Homes to look after rehabilitation the Bill adds yet another ill-defined and uncalled for 'Rehabilitation Home'.

5. **The Bill gives a mere lip service to prevention.** Most criminal laws have title and scope in Sec 1, Definitions in Sec 2 and Sec 3 starts with stating the offences and penalties and the bureaucratic bodies required for the enforcement come in the end. Bill-2018 on the other hand opens Sec 3 with creating a national bureau and goes on creating such bureaucratic bodies till Sec. 14. The offences come much late under Sec 31.
6. **The Bill wrongly claims that it offers a comprehensive law covering all types / forms of trafficking.** The main justification put forth for the creation of a new law was a PIL in the Supreme Court of India (Writ Petition No 56/2004). Initially it was claimed to be a single omnibus law. Then in face of criticism it was dropped. The new law was claimed to be addressing all types of trafficking as it is mentioned also in the text of the Bill. Actually, the Bill is silent on trafficking for commercial surrogacy, online trafficking, trafficking in supply chains, trafficking for clinical trials.
7. **The Bill illogically separates aggravated offence from the main offence and keeps them in two different laws.** The definition and the offence of trafficking continues to remain in remains in Sec 370 IPC newly added through the 2013 criminal laws amendment, while the offences mentioned in the Bill (Sec 31) are - as the Bill Section 31 itself states, the aggravated forms of trafficking which should have been actually appended to Sec 370 of IPC. Now the police station will have to refer to two laws in determining the offence.
8. **The Bill instead of making enforcement easier unnecessarily adds one more law which is not required.** The special laws on sex trafficking (ITP Act -1956), Bonded Labour (BLA Act 1976), Child labour continue to remain operative. Laws against commercial surrogacy, online trafficking, trafficking in supply chains, trafficking for clinical trials are missing and as and when they come they will remain independent laws. The procedural laws like CrPC and JJ Act (for persons under 18 years) continue to remain in operation. So, the police, prosecution and judiciary will have to continue to refer to those procedural laws.
9. **The Bill does not operationally define the most important term Victim thereby boosting corruption.** The law defines the term victim when it is better defined under CrPC. It does not give an operational definition. Through Sec 59 it assumes overriding powers unto itself. It puts claim on the victim compensation made under Sec 357 CrPC and a loosely defined victim gets entitled to such hefty funds. It is sure to breed

corruption as going by the established practices a victim is anyone who is rescued by the raiding officer of the local police.

10. **The Bill violates Article 14 of Constitution and provides dangerous immunities that will absolve the traffickers.** To add to that the Bill gives immunity for all legal consequences to a victim for any serious crime if it is done under threat and undue influence of a person. The provision is mentioned carelessly and hence one can imagine how it will be misused. It loosely defined term victim will lead to rampant corruption with hand in gloves operation of the police and the traffickers which is the old ailment of the society. The loosely articulated and unclear provision of immunity is bound to cause havoc. The traffickers, pimps and brothel keepers will get exonerated even from murder if they plead that they were once victims and operating under threat.
11. **The Bill is confused about Rehabilitation.** It puts Prevention, Protection and Prosecution under Rehabilitation.
12. **The Bill claims to facilitate faster justice but adds nothing by way of announcing Designated Courts. It adds no judges or courts.** Closer look at Chapter XIII Sec 46 makes it clear that the government will only issue a circular declaring that the existing sessions courts at the district levels will also function as designated courts. They will not be special courts, or courts full time dedicated to trafficking cases, neither will they take trafficking cases on priority basis. Looking at the time for disposal of cases by the POCSO Act courts and the pendency of cases, there is no reason to believe justice will be delivered faster.