

Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021

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The Ministry of Women and Child Welfare invited suggestions and comments for its Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021. The Bill has increased the scope of the nature of offenses of trafficking as well as the kind of victims of these offenses, with stringent penalties including life imprisonment, and even the death penalty in cases of an extreme nature.

In news: Draft anti-trafficking Bill widens scope of offences, includes stringent penalties

Placing it in syllabus: Law & Policy

Dimensions:

- Need for Anti trafficking bill
- Key provisions
- Existing Constitutional and statutory provisions against trafficking
- Trafficking in persons report 2021
- Key statistics on trafficking in India

Content:

Need for Anti-Trafficking bill:

- Trafficking in persons is a serious crime affecting a large number of people across the globe.
- The Trafficking in Human Beings (THB) is a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits.

- Human trafficking not only affects women and children but also men.
- Such exploitation may take many forms, for example commercial sexual exploitation, child labour, forced labour, bonded labour or illegal organ removal etc.
- India is witnessing cross-border as well as internal (intra-country from one state to another) trafficking.
- Traffickers often exploit the vulnerabilities of people by making false promises of a new job, better income, better living conditions and support to their families etc.
- While such promises of perpetrators appear legitimate to people, unfortunately it makes men, women and children easy prey for exploitation.
- Once trafficked, the victims fall prey to many forms of unfair treatment such as forced prostitution, forced labour, forced begging, forced marriages, drug peddling, child pornography etc.
- However, in India, the offence of trafficking is dealt with under different laws.
- These laws regulate trafficking for specific purposes. For instance, the Immoral Traffic (Prevention) Act, 1956 deals with trafficking for the purpose of sexual exploitation. Similarly, the Bonded Labour Regulation Act, 1947 and Child Labour Regulation Act, 1947 deal with exploitation for bonded labour.
- India's efforts to protect victims of trafficking vary from state to state, but remain inadequate in many places.
- Each of these laws operate independently, have their own enforcement machinery and prescribe penalties for offences related to trafficking
- These laws are criticised as being antiquated, bureaucratic, and loophole-packed.
- Thus a comprehensive law for investigation of all types of trafficking, and rescue, protection and rehabilitation of trafficked victims is required.

In India, trafficking is primarily an offence under the Indian Penal Code, 1860. It defines trafficking as (i) recruitment, (ii) transportation, (iii) harbouring, (iv) transfer, or (v) receipt of a person for exploitation by use of certain forceful means.

Key provisions

- The legislation will extend to all citizens inside as well as outside India, persons on any ship or aircraft registered in India wherever it may be or carrying Indian citizens wherever they may be.
- Property bought via such income as well as used for trafficking can now be forfeited with provisions set in place, similar to that of the money laundering Act.
- Besides women and children, the draft also extends the protection to transgenders as well.
- The definition of trafficked victim has been changed and now one need not be transported from one place to another to be identified as a victim of trafficking.
- The scope of the Bill vis a vis offenders will also include defence personnel and government servants, doctors and paramedical staff or anyone in a position of authority.
- The draft says that a public servant, police officer, military or paramilitary personnel, doctor or lawyer who “misuses” the relationship with the victim will face life term in jail and a fine of up to Rs 30 lakh, which could be increased by the court.
- While the penalty will hold a minimum of seven years which can go up to an imprisonment of 10 years and a fine of Rs 5 lakh.
- In most cases of child trafficking, especially in the case of the trafficking of more than one child, the penalty will now be life imprisonment.
- According to the draft, an accused could face death sentence if he is convicted for a second time for aggravated form of trafficking law like acting against a

child below 12 years or against a woman for the purpose of repeated rape. For the first offence, the accused will be punished with rigorous imprisonment for 20 years which can extend to life.

- Aggravated form of trafficking includes death or injury caused to a victim or their dependent, victim exposed to AIDS, silicosis or TB, administering chemical substances or hormones for the purpose of early sexual maturity, victim becoming mentally ill or disabled due to trafficking, forced labour and abusing one's position or authority among others.
- Trafficking committed in the garb of "apparently innocuous and legally permitted activities or enterprises" such as massage parlours, spas, placement agencies, travel agencies and circus as well as those subjecting victims to illegal bio-medical research and unauthorised clinical drug trial come under "aggravated" offences.
- The Bill requires the central or state government to set up Protection Homes, to provide shelter, food, counselling, and medical services to victims.
- In order to punish trafficking, the Bill provides for the setting up of investigation and rehabilitation authorities at the district, state and national level.

Existing Constitutional and statutory provisions against trafficking

Constitutional and Legislative Provision in India are as follows:

- Trafficking in Human Beings or Persons is prohibited under the Constitution of India under **Article 23 (1)**
- **Protection of Children from Sexual offences (POCSO) Act, 2012**, which has come into effect from 14th November, 2012 is a special law to protect children from sexual abuse and exploitation.

- **The Immoral Traffic (Prevention) Act, 1956 (ITPA)** is the premier legislation for prevention of trafficking for commercial sexual exploitation.
- **Criminal Law (amendment) Act 2013** has come into force wherein Section 370 of the Indian Penal Code has been substituted with Section 370 and 370A IPC which provide for comprehensive measures to counter the menace of human trafficking.
- There are other specific legislations enacted relating to trafficking in women and children:
 - Prohibition of Child Marriage Act, 2006,
 - Bonded Labour System (Abolition) Act, 1976,
 - Child Labour (Prohibition and Regulation) Act, 1986,
 - Transplantation of Human Organs Act, 1994,
- **Sections 366(A) and 372 of the Indian Penal Code**, prohibits kidnapping and selling minors into prostitution respectively. Penalties under these provisions are a maximum of 10 years' imprisonment and a fine.
- State Governments have also enacted specific legislations to deal with the issue. (e.g. The **Punjab Prevention of Human Smuggling Act, 2012**)

Trafficking in Persons Report 2021

The U.S. State Department has released an annual study called Trafficking in Persons report, 2021 recently.

About the report

- The Annual report uses the Trafficking Victims Protection Act of 2000 (TVPA) to define "severe" human trafficking as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act" is not 18.
- The definition also includes "the recruitment,

harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude”.

- It ranks countries in tiers based on their compliance with the minimum standard for eliminating human trafficking according to the TVPA

Key Highlights

- According to the report, Covid 19 pandemic resulted in an increase in vulnerability to human trafficking and interrupted existing anti-traffic efforts.
- It cites a report from the Office of Security and Cooperation in Europe’s Office for Democratic Institutions and Human Rights and UN Women which highlights that almost 70 percent of trafficking survivors from 35 countries reported that their financial well-being was heavily affected by COVID-19.
- It has determined that governments of twelve countries, including China, had a policy of trafficking in the reporting period (year ending March 31).
- The concurrence of the increased number of individuals at risk, traffickers’ ability to capitalise on competing crises, and the diversion of resources to pandemic response efforts has resulted in an ideal environment for human trafficking to flourish and evolve.

Observations on India

- The report says that while India did not meet the minimum standards to eliminate trafficking, the government was making significant efforts, although these were inadequate, especially when it came to bonded labour.
- For India, the report said the government is not meeting the minimum standards to eliminate trafficking but is making significant efforts to do so.

- The government, in the US administration's view, had increased efforts in the latest reporting period relative to the previous one, taking into account the impact of the pandemic on anti-trafficking efforts, resulting in India retaining a Tier 2 classification.
- The report said the efforts included identifying more victims of trafficking and prosecuting more cases.
- Overall anti-trafficking efforts, especially against bonded labor, remained inadequate.

Key statistics on trafficking in India

- According to the National Crime Records Bureau, 8,132 human trafficking cases were reported in India in 2016 under the Indian Penal Code, 1860.
- In the same year, 23,117 trafficking victims were rescued. Of these, the highest number of persons were trafficked for forced labour (45.5%), followed by prostitution (21.5%). The table below provides details of persons trafficked for various purposes (as of 2016).

Table 1: Victims rescued by type of purpose of trafficking

Purpose	2016	(as a %)
Forced labour	10,509	45.5
Prostitution	4,980	21.5
Other forms of sexual exploitation	2,590	11.5
Domestic servitude	412	1.8
Forced marriage	349	1.5
Petty crimes	212	0.9
Child pornography	162	0.7
Begging	71	0.3
Drug peddling	8	0
Removal of organs	2	0
Other reasons	3,824	16.5
Total persons	23,117	100

- Around 80% of the human trafficking across the world is done for sexual exploitation and the rest is for bonded labor.
- India is considered as the hub of this crime in Asia.
- As per the statistics of the government, in every 8 minutes a child goes missing in our country.

- In 2011 about 35,000 children were reported missing.

Mould your thought: Why does India need a comprehensive law for preventing human trafficking? Discuss the provisions of the draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 in this regard.

Approach to the answer:

- Introduction
- Discuss the meaning of Human Trafficking
- Discuss its prevalence in India
- Discuss the problems with the present legislation and give opinion
- Write about the key provisions of the new draft bill
- Conclusion