

## HUMAN TRAFFICKING LAW AND ITS IMPLIMENTATION IN INDIA;A Legal Study

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### **Abstract**

In the past decade, International human rights have grown, deepening and expanding what human rights are and how to protect them? So, accordingly if these principles of human rights are so well developed, then why are these human rights abused and ignored from time to time all over the world. The problem is that, in general, it is not very simple to universally enforce these rights on anyone neither punish the transgressor. The Universal Declaration on Human Rights, a body of UN despite being highly authoritative and respected is only a declaration, not a rigid law. Also, the interesting element is that between trafficking and exploitation, there has been an emphasis upon the states on passing trafficking legislations and on that expanse, maybe the countries are forgetting about the exploit of that same legislation on top of it. This research paper had drawn a focus upon the repressive debatable laws used by the authorities with the frame of reference against the concrete legal context of gender justice & human right laws in the India and through that would explore the diverse facets by which India is strained, by the most significant of the human right violations contending the law with problems like sex-trafficking, torture and rape, prostitution and forced labour instead of nurturing the democratic vox populi in the country and providing more expanded meaning on human rights in domestic as well as in the international contextt

**Keywords:** *Human Rights. Trafficking, Universal Declaration on Human Rights*

## **Introduction**

Human trafficking is generally understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain. Trafficking can occur within country or may involve movement across borders. Women, men and children are trafficked for a range of purposes, including forced and exploitative labour in factories, farms and private households, sexual exploitation, and forced marriage.

Trafficking affects all regions and most countries of the world. While it is difficult to secure reliable information about patterns and numbers, our understanding about why trafficking happens has improved. Inequalities within and between countries, increasingly restrictive immigration policies and growing demand for cheap, disempowered labour are just some of the underlying causes that have been identified. The many factors that increase individual vulnerability to trafficking include poverty, violence and discrimination. The exploitation of individuals for profit has a long history and international efforts to address it can be traced back at least a century, well before the birth of the modern human rights system.

However, it is only over the past decade that trafficking has become a major concern. During that same period, a comprehensive legal framework has developed around the issue. These changes confirm that a fundamental shift has taken place in how the international community thinks about human exploitation. It also confirms a change in expectations of what Governments and others should

be doing to deal with trafficking and to prevent it. Hence, the victim-centered approach is also gathering increased support from the international community.

Human rights form a central plank of the new understanding and there is now widespread acceptance of the need for a human rights-based approach to trafficking. As explained further in this Fact Sheet, such an approach requires understanding of the ways in which human rights violations arise throughout the trafficking cycle and of the ways in which States' obligations under international human rights law are engaged. It seeks to both identify and redress the discriminatory practices and unequal distribution of power that underlie trafficking, that maintain impunity for traffickers and that deny justice to victims.

This Fact Sheet seeks to provide a brief but comprehensive overview of human trafficking law and implementing in India.

### **India's obligation to uphold the UN Trafficking Protocol**

Almost a decade after signing the United Nations Convention against Transnational Organized Crime (UNTOC), India officially ratified the Convention and its three Protocols, including the UN Trafficking Protocol, on May 5, 2011. The process of ratification formally indicated the State's consent to be bound by the terms and provisions of the UNTOC and its Protocols. However, India has a dualist regime with regard to international law and international treaties. This means that, according to the Indian Constitution, ratified treaties do not automatically have the force of law in domestic courts.

However, the Indian Constitution states that the Government of India must adhere to its treaty obligations and “endeavor to...foster respect for international law treaty obligations in the dealings of organized peoples with one another.”<sup>1</sup>

In *Gramophone Co. of India v. Birendra Bahadur Pandey*<sup>2</sup>, the Indian Supreme Court declared that the Constitution itself must be interpreted in light of any international treaties that India has ratified.

In addition, the Supreme Court in *Vishaka v. State of Rajasthan*<sup>3</sup> established that provisions of international treaties might be read into existing Indian law in order to “expand” their protections. Moreover, in the absence of domestic law, “the contents of international conventions and norms are significant for the purpose of interpretation”.

Thus, although India has not expressly incorporated the entirety of the UN Trafficking Protocol into its national law, the Indian government is nonetheless required to adhere to all of its obligations under the Protocol. Moreover, in line with the judicial precedents discussed above, the anti-trafficking provisions of the Indian Constitution, Penal Code, and other domestic legislation should be interpreted in light of the UN Trafficking Protocol and other international treaties to which India is a party.

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<sup>1</sup>Justice Hosbet Suresh, All Human Rights are Fundamental Rights,119 (Universal Law Publishing Co., New Delhi, 2010 Edition)

<sup>2</sup>(1984) S.C.C.2(INDIA)

<sup>3</sup>AIR 1997 SC 3011

## Constitutional Protections and Trafficking

India has addressed trafficking both directly and indirectly in its Constitution. There are three Articles spread over Fundamental Rights in Part III and Directive Principles of State Policy in Part IV which address trafficking related issues.

### Provisions on Trafficking in the Constitution of India

**Article 23<sup>4</sup>:** Fundamental Right prohibiting trafficking in human beings and forms of forced labour.

**Article 39(e)<sup>5</sup>:** Directive Principle of State Policy directed at ensuring that health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength.

**Article 39(f)<sup>6</sup>:** Directive Principle of State Policy stating that childhood and youth should be protected against exploitation.

India has a written Constitution, and though the above provisions make India's mandate on trafficking clear, penalizing and tackling trafficking is dealt with by legislation. The Constitution specifically mentions trafficking in human beings as well as forced labour and also indicates the special protection to be provided to vulnerable groups in society.<sup>7</sup> The Constitution of India discusses provisions on trafficking at two levels - one, at the level of Fundamental Rights which are basic rights available to all, irrespective of caste, creed, sex, place of birth, etc., and two, at the level of Directive Principles of State Policy.

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<sup>4</sup> Article 23, Constitution of India

<sup>5</sup> Article 39(e), Constitution of India

<sup>6</sup> Article 39(f), Constitution of India

<sup>7</sup> J.N. Pandey, Constitutional Law of India, 77 (Central Law Agency, Allahabad, 52<sup>nd</sup> Edition 2015)

Fundamental Rights are justifiable and can be directly enforced in a court of law, whereas Directive Principles of State Policy are non-justifiable and cannot be directly enforced in a Court of Law. However, Directive Principles play a major role in shaping the policy of the State and may sometimes be the basis that legislation is built on. As a Fundamental Right in Article 23, trafficking in human beings is prohibited as are all forms of forced labour. According to Directive Principles of State Policy

Articles 39(e) and (f), the health and strength of workers should not be abused. It prohibits exploitation of persons to perform work which is unsuitable for them. It also specifically protects children and youth against exploitation of any kind. While the provisions in the Directive Principles of State Policy do not mention trafficking, it mentions exploitation which is a key element in trafficking.

### **Immoral Traffic Prevention Act, 1956**

India's Immoral Traffic Prevention Act, 1956 is the only legislation specifically addressing trafficking. However, it does mix up issues of trafficking and prostitution and is currently pending amendment.<sup>8</sup> It penalizes trafficking of women and children for commercial sexual exploitation. Keeping a brothel is a punishable offence, as is living on the earnings of the prostitution of others. The latter would inadvertently also cover family members or dependents of the woman, which was not the intention of the legislation. There have been cases at times where the trafficked woman has herself been charged under this provision.

Some of the major elements of trafficking are covered by the enactment. These include procuring, inducing or taking a person for prostitution, detaining a person in premises where prostitution is carried on and soliciting. Soliciting has also been

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<sup>8</sup>[wcd.nic.in/act/amendment-proposed-immoral-traffic-prevention-act-1956](http://wcd.nic.in/act/amendment-proposed-immoral-traffic-prevention-act-1956) (visited on 20 Jan 2020, 09:07 p.m.)

used against women themselves and is sought to be addressed by the proposed amendment which seeks to drop the provision. If a person is found with a child in a brothel, there is a presumption that the child has been detained in that place for sexual exploitation. It is a presumption which can be rebutted by the defense on production of appropriate evidence.

On rescue and rehabilitation, the Act also provides for rescue on the directions of a Magistrate.<sup>9</sup> In order to ensure that the women rescued are not harassed, it requires that two women police officers be present during the search procedures and also that the interrogation be done by a woman police officer. There is a provision for placing the woman or child in intermediate custody in a safe place and to refrain from placing her with those who might have a harmful influence on her. If trafficking has been by the members of the family, or there is suspicion that they may be involved, the trafficked persons may not be released to their families.

**Miscellaneous Legislations Relevant To Trafficking<sup>10</sup> are as follows:**

<b>Legislations</b>	<b>Section</b>	<b>Details of the provision</b>
Indian Penal Code, 1860	366	Kidnapping, abducting or inducing a woman to compel marriage.
	366A	Procuring a minor girl.
	366B	Importation of a girl below 21 for sexual exploitation.
	367	Kidnapping/ abducting to subject person to grievous hurt, slavery.
	370	Buying or disposing of person as slave.
	371	Habitual dealing in slaves.

<sup>9</sup><https://wcd.nic.in/document/human-trafficking> (Visited on 20 Jan 2020, 09:28 p.m.)

<sup>10</sup><https://www.lawnn.com/human-trafficking-india/> (visited on 28 Jan, 2020, 11:39 a.m.)

	372	Selling minor for prostitution.
	373	Buying minor for prostitution.
	374	Compelling a person to labour.
Prohibition of Child Marriage Act, 2006	12	Child marriage void, if after that the minor is sold or trafficked or used for immoral purposes.
Children (Pledging of Labour) Act, 1933	4-6	Penalties for pledging labour of children (under 15 years).
Bonded Labour System(Abolition) Act, 1976	16	Compelling a person to render bonded labour or forced labour.
Child Labour (Prohibition and Regulation) Act, 1986	3	Child work in certain employments.
Juvenile Justice Act, 2000	2(vii)	A child in need of care and protection includes one who is vulnerable and likely to be trafficked.
	24	Employment of child for begging.
	26	Procuring juveniles for hazardous employment or bonded labour is punishable
Scheduled Castes and Scheduled Tribes	3(vi)	Compelling or enticing a member of a Scheduled Caste or Scheduled Tribe.

### **Domestic Law of India**

Domestic law in India lacks a comprehensive definition of trafficking at the Central level. The ITPA, does not define trafficking, but it defines 'prostitution' to mean sexual exploitation or abuse of persons for commercial purposes, which has elements of trafficking. It has a number of provisions which punish forms of trafficking without actually defining trafficking. The Act is in the process of being amended, and these amendments also include a proposed definition of trafficking as follows:

Whoever recruits, transports, transfers, harbors, or receives a person for the purpose of prostitution by means of:

- (a) Threat or use of force or coercion, abduction, fraud, deception.
- (b) Abuse of power or a position of vulnerability.
- (c) Giving or receiving of payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons.

**Explanation:** Where any person recruits, transports, transfers, harbors or receives a person for the purposes of prostitution, such person shall, until the contrary is proved, be presumed to have recruited, transported, transferred, harbored or received the person with the intent that the person shall be used for the purpose of prostitution.

As of now, though there is no Central Legislation defining trafficking comprehensively, one of the States, i.e., Goa, has a legislation which, though limited to child trafficking, gives a detailed definition of trafficking. The Goa Children's Act, 2003, defines 'child trafficking'<sup>11</sup> to mean the procurement,

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<sup>11</sup> Section 7, The Goa Children's Act, 2003

recruitment, transportation, transfer, harboring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of giving or receiving or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise. While the definition complies with the standards laid down in the Protocol, it applies only to children and, that too, only within the State of Goa.

### **Landmark Judicial Pronouncements having a Bearing on Human Trafficking**

In most references to judicial decisions or to 'landmark cases' on trafficking, reference is usually made to decisions of the Supreme Court of India, or to one of the High Courts. However, the bulk of cases on trafficking are dealt with by lower courts. These cases are not reported unlike those of the High Courts and the Supreme Court. However, studies have shown that convictions have been abysmally low and that very often victims have been re-victimized in the process.

There have been some principles laid down by the High Courts and the Supreme Court which have had a positive impact on the approach of the judiciary to cases of trafficking. Broadly speaking, these decisions deal with three main concerns - victim's rights, giving appropriate directions to government, and special protection to the child.

**(a) Victim's Rights:** Many judicial decisions in India have been focused on the protection of 120 victims of trafficking. In *Prajwala v Union of India*<sup>12</sup>, the implementation of a victim protocol was demanded. There have been cases where compensation has been ordered to be paid by a perpetrator of crimes to victims of the crime as in *Bodhisattwa Gautam v*

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<sup>12</sup>(2006) 9 SCALE 531

*Subhra Chakraborty*<sup>13</sup>, where a person had promised marriage to a woman and even went through with a wedding ceremony which turned out to be false. This has been applied to foreign nationals as well.

In cases of trafficking too, this principle has been used, as seen in *PUCL v Union of India*<sup>14</sup>, where compensation was ordered to be paid where children were trafficked/ bonded for labour.

**(b) Directions to State functionaries to tackle the problem of trafficking:** *Vishal Jeet v Union of India and Others*<sup>15</sup> was a landmark decision where the Supreme Court took it upon itself to give directions for the protection and rehabilitation of those who had been dedicated as devdasis by their families or communities for cultural reasons and were currently in prostitution. While devadasis and jogins are from different states in India, this also could apply to Nepali women who are also dedicated, albeit in Nepal, and find themselves in brothels in India. In *Gaurav Jain v Union of India*<sup>16</sup>, the court affirmed that the State had a duty to rescue, rehabilitate and enable women to lead a life of dignity.

The Court has also at times taken serious note of what it referred to as the indifferent and callous attitude of the State Administration in identifying, releasing and rehabilitating bonded laborers in the country. It observed that whenever it is shown that a laborer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance received by him and is, therefore, a bonded laborer. The burden of

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<sup>13</sup>(1996) 1 S.C.C 190

<sup>14</sup>1998(8) S.C.C 485

<sup>15</sup>(1990) 3 S.C.C 318

<sup>16</sup>AIR (1997) S.C 3021

rebutting this presumption is upon the employer. The Court made these 126 observations in *Neerja Chaudhary v State of Madhya Pradesh*<sup>17</sup>.

- (c) **Special protection to children:** There has been two categories of children that courts have looked at - children who have been trafficked themselves and children who are in need of care and protection (those vulnerable to being trafficked). *Prerana v State of Maharashtra*<sup>18</sup>
- (d) Clearly held that children who have been trafficked themselves should also be considered as children in need of care and protection, and not as children in conflict with the law. Gaurav Jain among other things also dealt with children of sex workers who were vulnerable. The Court held that they should not be allowed to live in their homes as their surroundings were undesirable.
- (e) Yet another case was *Lakshmikant Pandey v Union of India*<sup>19</sup> which examined the vulnerability of children being trafficked in adoption rackets due to the lack of an effective protection mechanism. The court went on to create an appropriate mechanism to fill the gap, especially in the context of inter country adoptions.

### **The 2016 Anti-Trafficking Bill**

The 2016 Anti-Trafficking Bill is only the latest (proposed) addition to the existing patchwork of Indian laws against trafficking. The bill in its current form will not achieve its objectives of preventing trafficking and providing protection and rehabilitation to trafficked victims. This is because there are at least three sets of laws applicable to the various manifestations of domestic trafficking: the

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<sup>17</sup>AIR (1984) S.C 1099

<sup>18</sup> AIR 1984 SC 1099

<sup>19</sup>AIR (1984) S.C 469

generally enforceable IPC; the specialist criminal law, that is, the ITPA, which is applicable to the sex sector, and several specialist labour legislations covering bonded labour, contract labour and interstate migrant work.<sup>20</sup> They all arise from different legal sources and harbor varied ideas about what constitutes „trafficking“ or extreme exploitation, emerging in turn from divergent political understandings of coercion and exploitation. Finally, they envisage radically different regulatory mechanisms to counter exploitation.

The differences in these approaches are visible in many respects. While the IPC and ITPA are carceral, laws on bonded, contract and migrant labour envisage elaborate local-level administrative and labour law mechanisms. While criminal laws target bad men traffickers, labour laws presume that exploitations endemic and use both penal and labour law doctrines to impose obligations for better working conditions on all intermediaries. While the older IPC provisions are rarely used, and it is too soon to assess Sections 370 and 370A, the huge enforcement gap of labour laws, despite activist judges, the NHRC and several dedicated IAS officers, is a painful reminder of the callous indifference on the part of sections of the executive and Indian society towards labour exploitation.

The anti-trafficking Bill seeks to build an infrastructure around the hastily-passed Section 370. However, India needs a comprehensive and effective anti-trafficking law that consolidates not only these varied streams of anti-trafficking laws, but also the very different political visions of extreme exploitation and the best regulatory means to address them. Unfortunately, the trafficking Bill is not that piece of legislation that consolidates.

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<sup>20</sup><https://www.indiatoday.in/india/story/anti-trafficking-draft-bill-is-toothless-reports-326413-2016-05-31> (visited on 29 Jan 2020, 02:17 p.m.)

### **The Key Features of the Bill**

- The anti-trafficking Bill envisages creating district and state-level anti-trafficking committees with government officers and NGO representatives to mobilize efforts to prevent, rescue, protect and 30 rehabilitate victims of trafficking, in addition to providing medical care, psychological assistance and skills development.
- Under its current layout, a rescued victim is to be initially brought to the district committee or a police station, by the investigating officer, public servant, social worker or the victim herself.<sup>21</sup> The bill envisages creating protection homes to provide shelter, food, clothing, counseling and medical care to rescued victims, and special homes to provide long-term institutional support.
- The government is to formulate program for rehabilitation, support, after-care and reintegration services. The state governments are to form specialized schemes for women in prostitution or who have been the victims of other forms of commercial sexual exploitation.

There is, additionally, an underdeveloped provision on the registration of placement agencies – the violation of which attracts a fine, but there are no protective measures for victims duped by such agencies.

### **Implementation of Human Trafficking Law in India**

#### ***The Trafficking of Person (Prevention, Protection Rehabilitation) Bill, 2018***

- The Bill creates a law for investigation of all types of trafficking, and rescue, protection and rehabilitation of trafficked victims.

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<sup>21</sup><https://iasjunior.com/2019/03/19/upsc-mains-2019-the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018/> (visited on 30 Jan 2020, 02:34 p.m.)

- The Bill provides for the establishment of investigation and rehabilitation authorities at the district, state and national level. Anti-Trafficking Units will be established to rescue victims and investigate cases of trafficking. Rehabilitation Committees will provide care and rehabilitation to the rescued victims.
- The Bill classifies certain purposes of trafficking as ‘aggravated’ forms of trafficking. These include trafficking for forced labour, bearing children, begging, or for inducing early sexual maturity. Aggravated trafficking attracts a higher punishment.
- The Bill sets out penalties for several offences connected with trafficking. In most cases, the penalties set out are higher than the punishment provided under prevailing laws.

Offence	Punishment
<b>Direct Offences<sup>22</sup></b>	
Trafficking	<p><i>Trafficking of one person:</i> Imprisonment of 7-10 years, and fine;</p> <p><i>Trafficking of more than one person:</i> Imprisonment of 10 years to life, and fine; <i>Trafficking of minor:</i> Imprisonment of 10 years to life imprisonment, and fine;</p> <p><i>Trafficking of more than one minor:</i> life imprisonment, and fine;</p> <p><i>Trafficking involving public servant or public official:</i> life</p>

<sup>22</sup>[Prsindia.org/billtrack /trafficking-person-prevention-protectionandrehabilitation-bill-2018](https://prsindia.org/billtrack/trafficking-person-prevention-protectionandrehabilitation-bill-2018)  
(visited on 02 Feb 2020, 09:52 p.m.)

	imprisonment, and fine.
Aggravated Forms of Trafficking	Imprisonment of 10 years to life imprisonment, and fine of at least Rs 1,00,000.
Repeat Trafficker of Aggravated Offences	Life Imprisonment, and fine of at least Rs 2,00,000.
Buying or selling persons	Imprisonment of 7-10 years, and fine of at least Rs 1,00,000.
Trafficking with the aid of media	Imprisonment of 7-10 years, and fine of at least Rs 1,00,000.

<b>Connected Offences<sup>23</sup></b>	
Manager of premises of trafficking	First time conviction: Imprisonment of up to 5 years with fine of up to Rs 1,00,000; Subsequent conviction: at least 7 years with fine of up to Rs 2,00,000.
Owner/Occupier of premises of trafficking	First time conviction: up to 3 years imprisonment with fine of up to Rs 1,00,000; Subsequent conviction: at least 5 years with fine of up to Rs 2,00,000.
Publication or distribution of obscene material which may lead to trafficking	Imprisonment of 5 - 10 years, and fine of Rs 50,000 – 1,00,000.

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<sup>23</sup> Ibid

Omission of Duty by an authority	First time conviction: fine of minimum Rs 50,000; Subsequent conviction: up to one-year imprisonment with fine of at least Rs 1,00,000.
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**Table: Punishment for offences under the Bill<sup>24</sup>**

Offence	Penalty under the Bill	Penalty under Existing Laws
Trafficking for prostitution	Imprisonment of 7-10 years, and fine.	<b>ITPA:</b> Trafficking for prostitution is punishable under difference offences, ranging from imprisonment of 3-14 years, and fine.
Sexual exploitation of trafficked person	Imprisonment of 7-10 years, and fine of at least Rs 1,00,000.	<b>IPC:</b> Imprisonment of 3-5 years, and fine.
Compelling a person to perform bonded labour	Imprisonment of 10 years up to life imprisonment, and fine	<b>BLSAA:</b> Imprisonment of up to 3 years, and fine of up to Rs 2,000.
Trafficking of minors	Imprisonment of 10 years up to life imprisonment, and fine.	<b>ITPA:</b> Trafficking a minor (between 16-18 years) for prostitution is punishable Imprisonment of 7-14 years, and fine. <b>ITPA:</b> Trafficking a

<sup>24</sup> PRS LEGISLATIVE RESEARCH, Ministry of Women and Child Development (visited on 04 Feb 2020, 08:15 p.m.)

		<p>minor (below 16 years) for prostitution is punishable with imprisonment of 7 years up to life imprisonment, and fine.</p> <p><b>IPC:</b> Procuring a minor girl (below 18 years) or importing a foreign girl (below 21 years) for sexual exploitation is punishable with imprisonment of up to 10 years, and fine.</p> <p><b>JJ Act:</b> Compelling a minor to perform bonded labour is punishable with imprisonment of up to 5 years, and fine of one lakh rupees.</p>
Buying or selling minors	Imprisonment of 7-10 years, and fine of at least Rs 1,00,000.	<b>IPC:</b> Imprisonment of up to five years, and fine of one lakh rupees.
Trafficking by administering narcotic drug	Imprisonment of 10 years up to life imprisonment, and fine.	<b>IPC:</b> Imprisonment of up to 10 years, and fine.
Kidnapping for marriage	Imprisonment of 10 years	<b>IPC:</b> Imprisonment of

	up to life imprisonment, and fine.	up to 10 years, and fine.
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The bill creates new offences. It criminalizes using a narcotic substance, alcohol or psychotropic substance for trafficking (Section 16), administering any chemical substance or hormone to a trafficked woman or child to enable early sexual maturity (Section 17) and revealing the identity of a victim or witness to a crime of trafficking. If such information is published in the media, the offending individual and owner of the media venture are both liable to be punished. The bill also penalizes the contravention of the registration requirements for protection homes, special homes and placement agencies.<sup>25</sup>

Offences relating to the administration of chemicals and hormones are cognizable and non-bailable. Other provisions enable the confiscation, forfeiture and attachment of property when offences are committed under Section 16 and 17 or under Sections 370-373 of the IPC. The latter deals with trafficking, engaging a trafficked minor or person for sexual exploitation, habitual dealing in slaves and selling, disposing of or hiring a minor for prostitution. The burden of proof for these offences is also reversed: the commission of the crime is presumed unless otherwise proven.

Special courts are to be instituted for prosecuting offences under Sections 370-373 of the IPC and offences under the Bill; experienced prosecutors are to be appointed as special public prosecutors. The Bill also provides for the payment of back wages – a welcome move. An „anti-trafficking fund“ is to be set up to fund implementation, but with no financial commitment from the government (unlike say the Nirbhaya fund); the fund is supposed to attract voluntary donations –

<sup>25</sup> <https://ohchr.org/document/publications/traffickingen.pdf> (visited on 05 Feb 2020, 06:34 p.m.)

which is, perhaps, an invitation to philanthro-capitalists to bankroll the government anti-trafficking initiatives.<sup>26</sup>

In effect, the anti-trafficking Bill proposes a separate criminal law infrastructure on trafficking. The district trafficking committee is the first port of call where a range of social actors, governmental and otherwise, must report a victim. It is unclear which agency undertakes the raid and rescue, but the victim is housed at the protection home, the police investigates the crime and the special public prosecutor initiates prosecution in a special court.

This classic raid-rescue-rehabilitation model is grounded in a robust criminal law system with stringent penalties, reversals of burden of proof, and provisions for defending traffickers by stripping them of assets and parallel adjudication machinery consisting of special courts and special public prosecutors.

The Anti-Trafficking Bill thus proposes to make the prosecution of trafficking under Section 370 meaningful. However, the Indian legal system has historically been unable to meaningfully translate the law into action. The raid-rescue-rehabilitation model built into the ITPA has similarly been a failure; protective homes under the ITPA have perversely resulted in state officials sexually abusing women and colluding with brothel-keepers and pimps.<sup>27</sup>

Compounding the replication of the failed model of rescue and rehabilitation is the complete lack of clarity regarding how the proposed infrastructure is to interact with existing vigilance committees under the bonded labour laws and protective homes under the ITPA. Without any financial commitments from the government, the anti-trafficking bill is an empty gesture, meant to appease

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<sup>26</sup>Guideline 7, "Recommended Principles and Guidelines on Human Rights and Human Trafficking", OHCHR

<sup>27</sup> Supra note 22

modern-day abolitionists and secure a better ranking in the Global Slavery Index, moving it away from its current hotspot status.

Worse still, India has a strong history of sex work exceptionalism; policy makers have often viewed trafficking purely through the lens of sex trafficking and sex work – whether it was the changes to the ITPA proposed in the wake of US TIP reports, or the bias in Section 370A towards users of sex trafficked victims. Several provisions of the trafficking bill highlight this continued emphasis on sex work, including the creation of offences under Sections 16 and 17 and rehabilitative measures to facilitate women exit from sex work.

Recollect that Indian anti-trafficking NGOs are predominantly anti-sex work abolitionist groups, whereas organizations working against bonded labour find little resonance with the trafficking label. The bill thus seems directed primarily at victims of commercial sexual exploitation, a convenient

### **Conclusion**

At the same time as summarizing major responses to trafficking in persons initiated over the past decade, this paper also points to numerous ways in which these anti-trafficking policies and initiatives could be made more effective. In particular, it emphasizes the vital role of collecting evidence about the numbers of people being trafficked and the forms of exploitation to which they are being subjected, so that prevention initiatives and virtually all other anti-trafficking efforts are tailored to meet the task before them. The corollary is that anti-trafficking initiatives should not be inspired by well-publicized but unsubstantiated estimates that have sometimes vastly exaggerated the number of people being trafficked or seriously underestimated them. In relation to protection and assistance for trafficked persons, it mentions numerous international standards that have been established to guide States and their

agencies. No single body or mechanism within the United Nations system is responsible for ensuring that these standards are adhered to or for giving advice to States where the level of protection and assistance is significantly lower than called for in the standards.

Not surprisingly, the result is that many trafficked persons prefer not to make contact with government agencies to protect or assist them, which has unfortunate consequences for the trafficked person, who is not able to get assistance, and for the States, which are hindered in their efforts to bring criminals to justice. It seems to be a clear priority to raise these standards and to develop mechanisms for mutual accountability between States on the quality of the protection and assistance they provide. With so many different (and sometimes contradictory) recommendations made to Governments by international and regional governmental organizations and, it is perhaps not surprising those responses to trafficking have been so diverse. The attention given in recent years to identifying “good practice” is encouraging, but the procedures for allowing different institutions and States to discuss and reach agreement about what constitutes good practice are still not in place. Overcoming this challenge and making it a priority to agree on what constitutes “good practice” in the future should ensure that anti-trafficking initiatives become more effective and that money allocated to stopping trafficking in persons is used more effectively.

### **Suggestions**

Here are some critical measures to prevent this social evil in India;

1. **Foster the spread of education** India has the world's biggest education system, yet sees low literacy due to poor enrolment and high dropout rates - resulting in people having low self-esteem and lack of opportunities. Uneducated parents are

easily convinced by conmen to give them a better life in the city (a very common ruse for trafficking). Educated children and their families are much more aware, alert and mature, and they can comprehend the risks of child trafficking quite well. Compassionate and understanding teachers guide children and parents to find opportunities for higher growth and employment, creating a community driven by ambition where traffickers cannot thrive.

## **2. Spread awareness among parents and communities**

Lack of awareness can create situations that traffickers can exploit. A lot of India's poor children find themselves trapped in substance abuse which can further lead to them getting trafficked. Educated communities are capable of understanding, and effectively responding to the various ways traffickers source children. Aware of their rights as Indian citizens, and opportunities for growth, education, employment, and enterprise, these communities can stand strong. Community events, using sports, arts and theatre are being used by civil society to educate communities about vital services as well as opportunities they can explore. Grassroots activism assists communities to fight poverty and exploitation, the basis of trafficking. NGOs like Save the Children are empowering communities by creating income resources, educational resources, and enabling them to get access to information services.

## **3. Strict laws in place to prevent child trafficking**

Effective policymaking is critical to reform. NGOs like Save the Children constantly research, document, and showcase findings of the need for reforms and engage with various government agencies, urging them to have better legislation in place for tackling child trafficking. Many cases have been filed under the recent Protection of Children Against Sexual Offences Act (2012) and Immoral Traffic

(Prevention) Act, which have successfully translated in increased convictions, demonstrating how legislating can curb child trafficking.

#### **4. Encouraging business to not use child labour**

An ecosystem for child trafficking gets silent approval when demand for child labour is commonly used in businesses like retail, hospitality, etc. NGOs have established a dialogue to sensitize trade organizations to end this social evil that will save them a few rupees. At the same time, locals have been made vigilant to report instances of child labour at businesses, so that it is actively discouraged