

TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2018

LEGISLATIVE BRIEF



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The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 proposes to create a comprehensive and holistic legislative response to the organised crime of trafficking in India by building convergence within existing anti-trafficking efforts, creating robust and responsive institutions, ensuring effective identification and prosecution of offenders and facilitating protection and rehabilitation of survivors.

I. KEY HIGHLIGHTS OF THE BILL

- **Holistic Framework for the Prevention, Protection, Investigation and Rehabilitation in cases of Trafficking.**
- **Three-Tier Institutional Framework at National, State and District Level Dedicated to Counter Inter- State and Cross Border Trafficking**
- **Time-Bound Investigation, Rehabilitation, Repatriation and Trial.**
- **Presumption of Crime.**
- **Burden of Proof on the Offender.**
- **Preventive Action.**
- **Aggravated Forms of Trafficking with Increased Penalties.**
- **Attachment and Forfeiture of Property.**
- **Dedicated Rehabilitation Fund.**
- **Dedicated Courts and Special Public Prosecutors.**

Trafficking of Persons is the largest organised crime in the world operating across borders by organized criminal syndicates. Global estimates state that the organized crime of trafficking generates approximately \$150 billion dollars annually (ILO, 2014). Trafficking is a process involving multiple criminal activities which is largely perpetuated for child labour, forced labour, sexual slavery, removal of organs, drug peddling and other forms of heinous exploitation. Women and children are disproportionately affected as victims of trafficking. In India, 3.2 million people are engaged in prostitution out of which 1.2 million are minors (Ministry of Women and Children Development, 2007). The Crime in India Report 2016 revealed that 15,379 victims were trafficked during the year 2016 of which 9034 were children and 10150 were girls and women.

Presently, India only defines and criminalises trafficking of persons under Section 370 of the Indian Penal Code 1860. Similarly, Immoral Traffic (Prevention) Act, 1956 refers to

procuring, inducing or taking person for the purpose of prostitution. The existing legal framework does not provide for comprehensive solution to the organised nature of the crime, to provide end-to-end protection to the victim and stringent deterrence for offenders.

The Hon'ble Supreme Court in its order dated 09.12.2015 in the matter of Prajwala vs. Union of India & Ors. in WP(C) No. 56/2004 directed Ministry of Women and Child Development to prepare a comprehensive legislation on trafficking of persons. In this regard, the Ministry of Home Affairs was also directed to set up 'Organized Crime Investigation Agency' for the investigation of human trafficking cases. Accordingly Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 (Anti-Trafficking Bill, 2018) was prepared in consultation with line Ministries, departments, NGOs and domain experts. The Anti-Trafficking Bill, 2018 was also discussed in the Group of Ministers and the Union Cabinet approved the same on 28th February, 2018.

The Anti-Trafficking Bill, 2018 is formulated as a comprehensive legislative solution to provide for the institutional and rehabilitative framework to counter the organized nature of human trafficking. The Anti- Trafficking Bill, 2018 aims "to prevent trafficking of persons, especially women and children and to provide care, protection and rehabilitation to the victims of trafficking, to prosecute offenders and to create a legal, economic and social environment for the victims and for matters connected therewith or incidental thereto."

II. KEY FEATURES OF THE BILL

1. Three-Tier Institutional Framework in the Form of a Convergent Model: The Anti-Trafficking Bill, 2018 creates for a three-tier institutional mechanism at the District, State and National level to extend prevention, protection, rehabilitation and investigation of trafficking cases. It does so by tying together and vesting additional responsibility to already existing institutions to avoid overlapping and duplicity of institutions. It creates one umbrella institution through the National Anti-Trafficking Bureau (NATB) to address the transnational nature of the crime and bring convergence within the institutions. Some of the key functions of the NATB are:

- Facilitate efforts at source, transit and destination points.
- Strengthen collection, analysis and dissemination of intelligence.
- Coordinate with international and inter-State investigating agencies including facilitation of transfer of evidence and witnesses.
- Creation and monitor national database on crimes under the Act.
- Coordinate overall prevention and rehabilitation activities and develop minimum standards of care, etc.

2. Burden of proof on the offender in case the victim is a child, woman or a differently-abled person: Taking into consideration the heightened vulnerabilities, social disadvantage and lack of access and opportunity faced by women, children and differently-abled people,

the Bill places the burden of proof on the offender. Data of the Crime in India Report 2016 also shows that over 60% of the trafficked victims were women and children.

- 3. Prevention as a statutory function of institutions:** The State and District Level Anti-Trafficking Committees are mandated with the responsibility of carrying out interventions to prevent trafficking through education, livelihood programmes, implementation and access to government schemes, vulnerability mapping and annual reports on trafficking status and trends, amongst others.
- 4. Immediate and Long-Term Protection and Rehabilitation:** The Bill provides for immediate and long-term protection and access to institutional rehabilitation to the victims by setting up 'Protection Home' for immediate protection and 'Rehabilitation Home' for long-term protection and rehabilitation purposes. Access to institutional rehabilitation is provided as a matter of right and choice to adult survivors, in the absence of any alternate safe or comfortable recourse available to them. The Bill will also provide for monitoring and regulation of these institutions through minimum standards of care to survivors.
- 5. Mandatory registration of the institutions (Homes) and to maintain minimum standards of care and protection:** It is a penal offence for not registering homes established under the Act. It is the duty of the appropriate Government to develop minimum standards for the management and monitoring of such homes to ensure safety, protection, physical and psychological well-being of the victim. These standards will be elaborated in the Rules.
- 6. Statutory Rehabilitation as a Matter of Right to the Victim:** The Anti-Trafficking Bill, 2018 sets up a dedicated fund, 'Rehabilitation Fund' for the physical, psychological and social well-being of the trafficked victim, which includes access to education, skill development, health care including psychological and physiological support, economic empowerment, legal aid and assistance, safe and secure accommodation, etc. Further, the rehabilitation of the victim is not contingent upon criminal proceedings being initiated against the accused or the outcome thereof.
- 7. Timely monetary relief:** The Anti-Trafficking Bill, 2018 also provides interim relief immediately within 30 days and further appropriate relief within 60 days from the date of filing of charge sheet to address their physical, mental trauma etc., suffered by the victims.
- 8. Economic Deterrence through Attachment and Forfeiture of Property:** Trafficking is essentially an economically driven offence. In order to break the organized criminal nexus and to hit the economics of trafficking both at the national and international level, the Bill provides for the attachment and forfeiture of property, and proceeds of crime to be remitted to the 'Rehabilitation Fund' and utilized for the welfare of the victims of trafficking.
- 9. Aggravated forms of trafficking and enhanced penalties:** The Anti-Trafficking Bill, 2018 criminalises those forms of trafficking which exacerbate and prolongs victims' vulnerable conditions and sufferings. This includes trafficking for the purpose of bearing child,

begging, forced marriage, trafficking by administering chemical substance or hormones to make the victim attain early sexual maturity, trafficking by encouraging or abetting any person to migrate illegally in to India or Indians to some other country, etc. The punishment for same ranges from 10 years to imprisonment for life and minimum fine of Rs. 1 lakh.

10. Promotion of trafficking as an offence: The Anti- Trafficking Bill, 2018 penalises promotion or facilitation of trafficking. This includes production, printing, issuing or distributing unissued, tampered or fake certificates, registration or stickers as proof of compliance with Government requirements; or commits fraud for procuring or facilitating the acquisition of clearances and necessary documents from Government agencies. This is an important step in the prevention of trafficking, especially cross borders.

11.Non- disclosure of identity- a step to provide safety to the victims, witnesses and complainants and to enhance prosecution: The Anti- Trafficking Bill, 2018 maintains the confidentiality of victims, witnesses and complainants by not disclosing their identity. It also provides for the recording of statements of victims and witnesses through video-conferencing in appropriate cases and for in camera trials.

12.Immunity to victims of trafficking: The Anti- Trafficking Bill, 2018 provides immunity to those victims who have committed an offence that is punishable by death or imprisonment for life or for ten years, committed under coercion, or compulsion, or intimidation, or threat, or undue influence by a person and where and at the time of committing the offence, or if the victim is subjected to reasonable apprehension of his death, grievous hurt or injury to him or to any other person whom he is interested in.

This preposition has been derived from Section 94 of Indian Penal Code 1860 after making certain changes as per the nature of the circumstances involved in the offence of trafficking.

13. Time bound investigation, trial and repatriation of victims: For speedy trial of cases, the Anti- Trafficking Bill, 2018 provides that within two months from the date of commencement of the Act (Trafficking), the State Government, in consultation with the Chief Justice of the High Court, by notification should designate for each district, a Court of Session. It also provides for the appointment of Special Public Prosecutors to conduct cases of trafficking of persons. The Anti- Trafficking Bill, 2018 mandates time bound trial to be completed within one year from taking in to cognizance of the trafficking case. It also provides for time bound repatriation of the victims to be completed within three months for inter-State and within six months in case of cross border repatriation from the date of their rescue.

III. TRAFFICKING OF PERSONS (PREVENTION, PROTECTION, AND REHABILITATION) BILL, 2018 AND OTHER LINKED LAWS: A COMPARISON

NOTE:

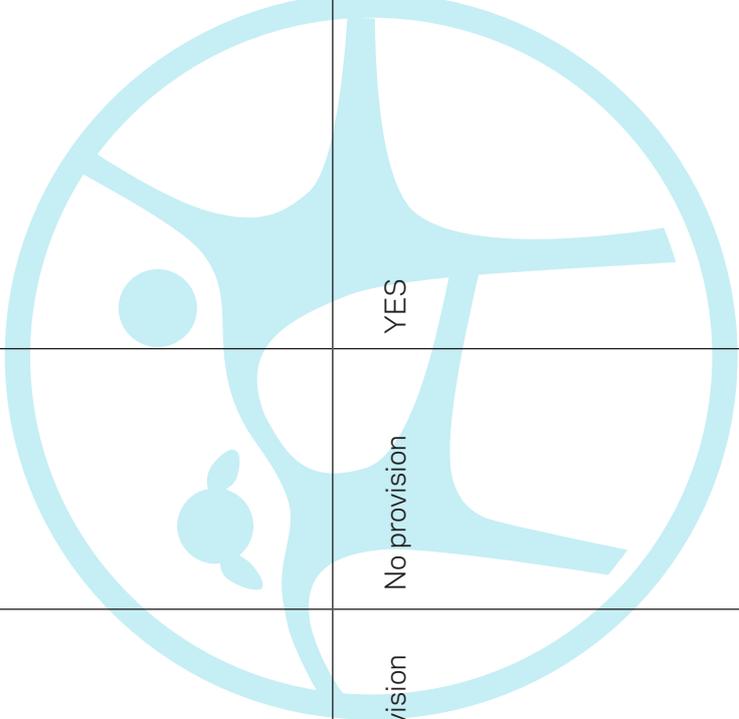
1. The Bill States that in the case of a child, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 shall apply as far as care, protection, treatment, development and rehabilitation and protection of identity of the victims.
2. Section 59 of the Bill states that- The provisions of this Act, shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

Feature	Criminal Code: IPC, Cr.PC, IEA	Bonded Labour (Abolition) Act, 1976 (BLSA Act)	Immoral Traffic Prevention Act, 1956 (ITPA Act)	Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act).	Trafficking of Persons (Prevention, Protection and Rehabilitation Bill, 2018 (The Bill)
Institutional mechanism for Investigation, Rescue, etc.	The provisions of Cr.PC with regard to search and seizure shall mutandis apply.	The provisions of Cr.PC with regard to search and seizure shall mutandis apply.	The provisions of Cr.PC with regard to search and seizure shall mutandis apply.	The provisions of Cr.PC with regard to search and seizure shall mutandis apply.	<p>Along with the provisions of Cr.PC with regard to search and seizure applying mutandis-</p> <p>The Bill sets up a three tier mechanism from District, State level, National level. This includes: District Police Nodal Officers, State Police Nodal Officers, etc.</p> <p>At the National level, the National Anti-trafficking Bureau (NATB) shall investigate cases referred by two or more States, and shall coordinate investigation in cross-border trafficking. NATB shall also be responsible for investigating cases from organised crime perspective.</p>

<p>Search & rescue</p>	<p>The provisions of Cr.PC with regard to search and seizure shall mutatis mutandis apply.</p>	<p>The provisions of Cr.PC with regard to search and seizure shall mutatis mutandis apply.</p>	<p>The provisions of Cr.PC with regard to search and seizure shall mutatis mutandis apply.</p>	<p>The provisions of Cr.PC with regard to search and seizure shall mutatis mutandis apply.</p>	<p>The provisions of Cr.PC with regard to search and seizure shall mutatis mutandis apply.</p>
<p>Prevention of Trafficking.</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>	<p>YES. The rules lay out provisions related to prevention of crime against children and has been mentioned under the Rules.</p>	<p>YES. The Bill institutionalizes already existing schemes and efforts towards prevention of trafficking by assigning the responsibility of District, State and National Level Agencies. This includes vulnerability mapping, awareness generation, community mobilization, livelihood programmes, etc.</p>
<p>Institutional Rehabilitation for Care and Protection of the Victim.</p>	<p>No provision</p>	<p>No provision</p>	<p>Protective Home</p>	<p>YES, in the form of registered Childcare Institutions (CCIs)</p>	<p>YES. The victim has a right to access short term and long term institutional care under the following set up institutions:</p> <ul style="list-style-type: none"> • Protection Home for short term care & protection • Rehabilitation Home for long term rehabilitation • Existing homes may be utilized, like protective homes in ITPA and CCIs in JJ Act. <p>The standards for the management of these homes shall be elaborated in the Rules.</p>

<p>Statutory Rehabilitation as a Right to the Victim.</p>	<p>No provision</p>	<p>No provision</p>	<p>No. It only sets up institutional rehabilitation in the form of Protective Home. Corrective Homes are set up with the view of the victims as offenders.</p>	<p>Yes. Institutional and Non-Institutional rehabilitation for children in need of care and protection and children in conflict with law.</p>	<p>YES. The Bill extends statutory rehabilitation as a right to the victim. It includes - education, skill development, healthcare (psychological ad physiological) medical, economic empowerment, legal aid and assistance, safe & secure accommodation. Access to rehabilitation is also not contingent upon criminal proceedings initiated against the accused and the outcome thereof. Dedicated District, State level and National Anti- trafficking Relief and Rehabilitation Committee to provide timely rehabilitation to the victim.</p>
<p>Repatriation</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>	<p>YES, but it is not time bound.</p>	<p>YES. It mandates time-bound repatriation. - Inter-state repatriation: within 3 months - Cross border repatriation: within 6 months</p>
<p>Monetary relief/ compensation</p>	<p>Under Section 357 A Cr.PC.</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>	<p>YES. The Relief amount under this Bill will be in addition to any other compensation, or scheme of the Govt. or any other order of the Court including Sec. 357 A of Cr.PC, the following is also included: - Interim relief (within 30 days), other relief (within 60 days of the filing of charge sheet). - Backwages.</p>

<p>Tackles organized nature of trafficking- Forfeiture and attachment of property, etc.</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>	<p>YES. The three-tier institutional framework established under the Bill aims to counter trafficking as an organized crime within the country as well as cross border.</p> <ul style="list-style-type: none"> • Closure of premises used for the commission of crime. • Forfeiture and attachment of property- Same to be authorized for the realization of fine imposed by the court and the proceeds to be remitted for the rehabilitation fund. • Recovery of fine specified u/s 421 of Cr.PC (remitted to Rehab. Fund) • Freezing of account after conviction (remitted to Rehabilitation Fund).
<p>Rehabilitation Fund</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>	<p>YES</p>	<p>YES. The Rehabilitation fund shall be constituted by the Central Government for the welfare and rehabilitation of the victims under this Act. Any fine recovered from an offence under this Act will also be remitted to the Rehabilitation Fund.</p>



<p>Offences related to trafficking.</p>	<p>Indian Penal Code, 1860 Sec. 370 defines and criminalises trafficking of persons. Section 370A deals with exploitation of a trafficked person. Such exploitation is limited to sexual exploitation only.</p>	<p>BLSA Act is limited to offences related to- engaging bonded labour. It does not take into account the crime of trafficking.</p>	<p>The ITPA is limited to offences relating to prostitution. It does not address trafficking for various forms of exploitation and the means used for the purpose of trafficking as defined u/s 370 of IPC.</p>	<p>JJ Act criminalizes buying and selling of children for exploitation. It does not criminalizes all elements of trafficking.</p>	<p>While the Bill utilizes the existing Section 370 IPC as the definition of trafficking, it builds on the gaps in the current leg framework and includes 22 offences relating to the offence of trafficking:</p> <ul style="list-style-type: none"> • Non-registration of rehabilitation institutions. • Aggravated forms of trafficking (11 offences). • Trafficking of person on more than one occasion. • Keeping or allowing premises to be used as place for trafficking of persons. • Closure of premises and eviction of offenders. • Promoting or facilitating trafficking of person. • Abetment of offences under the Act. • Omission or failure to perform a duty entrusted under this Act by a person for providing care, protection and rehabilitation to the victim, or while performing such duty, knowingly causes physical, mental injury or hardship, or trauma to the victim . • Buying or selling of any person. • Hiring or taking possession of trafficked person. • Offences related to media-trafficking of a person with the aid of print and electronic media, etc. • Disclosure of identity of victim. • Attempt of offences under the Act. <p>In case the victim of any offence is a child, the provisions of JJ Act shall also be applicable, so far as the rescue, rehabilitation, care and protection of such child is concerned.</p>
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<p>Non-disclosure of identity of victims and witnesses.</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>	<p>YES: It lays a prohibition on disclosure of identity of child victim and witnesses, and children in conflict with law.</p>	<p>YES. No audio-visual media or any other form of communication can disclose any information of the victim or witness at any stage unless allowed for by the Court when it is in the best interest of the victim.</p>
<p>Immunity to the victim with regard to an offence (exceptional cases) committed by them under coercion, compulsion, etc.</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>	<p>No provision</p>	<p>YES. The Bill states that nothing is an offence which is committed or attempted to have been committed by a victim when such offence is punishable with death or imprisonment for life or for imprisonment for ten years and under the following circumstance:</p> <ul style="list-style-type: none"> • Coercion or compulsion or intimidation or threat or undue influence by any person and where, • Reasonable apprehension of his death, grievous hurt or any other injury to him or to any other person at the time of commission of crime.
<p>Designated Court</p>	<p>No provision</p>	<p>No provision</p>	<p>A Special Court of Judicial Magistrates of the first class, or, as the case may be, Metropolitan Magistrates, in such district or metropolitan area may be established as a Special Court. if needed.</p>	<p>YES. Court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.</p>	<p>YES. For the purposes of providing speedy trial of cases under this Act, the State Government shall, in consultation with the Chief Justice of the High Court, by notification, designate for each district, a Court of Session, within two months from the date of commencement of this Act, to try any offence under the Act.</p>

Special Public Prosecutors	No provision	<p>YES. Special Public Prosecutors will be appointed for all Designated Courts.</p> <p>No offender will be released on bail till the Special Public Prosecutor has been given an opportunity to oppose the application for such release and the victim is heard.</p>				
Time bound trial	No provision	<p>YES. Trial to be completed within one year, as far as possible.</p>				
Victim, witness protection	No provision	<p>YES. The Bill provides for</p> <ul style="list-style-type: none"> • Victim, witness and complainant protection. • In camera trial and if required, testimony of the victim through video-conferencing. 				

