

Saturday, August 6th 2016

HUMAN TRAFFICKING

Draft anti-trafficking bill confusing, doesn't define the crime it seeks to address, say activists

Social workers, lawyers say that the bill doesn't even define trafficking, even though it has been touted to be the most 'comprehensive' law to tackle it.



Image credit: Mansi Thapliyal/Reuters

Jun 12, 2016 · 09:15 am Updated Jun 12, 2016 · 01:21 pm

Aarefa Johari

On May 31, when Women and Child Development minister Maneka Gandhi [released](#) a new bill to tackle human trafficking, her ministry projected it as India's "first-ever comprehensive anti-human trafficking law". According to the ministry, this draft bill aims to unify all existing anti-trafficking laws, focus on the rehabilitation of survivors

and provide for special committees and courts to ensure speedy investigations and trials of trafficking cases.

The vision may be grand, but in the 10 days since it was released, the draft Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill has left anti-trafficking social workers and lawyers dissatisfied and completely baffled.

The draft bill, they claim, is anything but comprehensive, makes no mention of the existing Immoral Traffic (Prevention) Act and does not even contain a definition of the term “trafficking”.

Existing laws

Trafficking of men, women and children for bonded labour, prostitution, or forced marriage is one of the most pressing social problems in South Asia, the second-largest region for human trafficking in the world. India has been recording a steady rise in registered human trafficking cases over the years – with 5,466 cases in 2014, a 90% [increase](#) over five years – even as [conviction rates](#) have fallen. But registered cases form barely a fraction of the figures on the ground. In 2013, the United States Department of State [estimated](#) that the number of people trafficked in India for forced labour could be anything between 20 and 65 million.

The [Immoral Traffic \(Prevention\) Act](#) of 1956, the only law explicitly dealing with trafficking in India so far, defines trafficking exclusively in the context of commercial sexual exploitation – the buying, selling, transport or recruitment of girls and women for prostitution. Outside of forced sex work, legal provisions to tackle other kinds of trafficking are disparate. [Section 370](#) of the Indian Penal Code, for instance, criminalises the trade of any person for the purpose of slavery. The Juvenile Justice Act

recognises that children can be trafficked, while the Bonded Labour System (Abolition) Act criminalises bonded labour.

Activists working to end human trafficking have, for decades, found the Immoral Traffic (Prevention) Act to be narrow in its scope and have called for more comprehensive legislation that addresses all forms of trafficking in one place.

In November 2015, the Women and Child Development ministry [submitted](#) an affidavit to the Supreme Court committing to prepare such a legislation, one that would plug the gaps in the existing laws and focus on being more sensitive to victims of trafficking.

A wider scope?

This has now come in the form of the new [draft bill](#), the highlight of which is the creation of special anti-trafficking committees at the level of each district and state, overseen by a central advisory board. The task of each district anti-trafficking committee would include prevention, rescue, protection and rehabilitation. The bill also specifically makes the use of drugs and alcohol for trafficking a punishable offence, and places significant emphasis on the need to reimburse victims for all the unpaid work they were made to do.

“One good thing about the bill is that it mentions the regulation of [employment] placement agencies, which have been playing a huge role in trafficking labour for domestic servitude,” said Satya Prakash, a programme manager at FXB India Suraksha, a non-profit organisation working with marginalised populations. The mention of placement agencies indicates that the bill, without being specific, goes beyond commercial sexual exploitation to include even labour trade under the ambit of trafficking.

But for social activists in the field, this does not take away from the lack of specifics and the problems arising from that.

No definition of the crime

“There is no definition of ‘trafficking’ anywhere in the bill,” said Smarajit Jana, advisor to the Durbar Mahila Samanwaya Committee, a collective of commercial sex workers in Kolkata. “The Immoral Traffic (Prevention) Act defines trafficking in one way, while Section 370 of the Indian Penal Code has a different definition. And the bill is completely silent about this.”

Activists said the bill seems to work on the presumption that the crime of trafficking and the penalties for it are pre-defined elsewhere and jumps directly into addressing the crime through the formation of committees, special courts and rehabilitation services.

Activists are also concerned about the final section of the draft bill, which states that the new Act would override all other laws on the subject and are clueless whether that would also include the Immoral Trafficking (Prevention) Act, which is not mentioned anywhere in the bill.

“Where does the draft bill stand vis-a-vis the Immoral Traffic (Prevention) Act? It is not clear, and it does not clarify what happens in the event of a clash in the provisions of the two laws,” said Aarthi Pai, a lawyer with Sangram, a non-profit working for sex worker’s rights in Maharashtra.

Pai is unclear about where the district anti-trafficking committees envisioned in the draft bill would stand in relation to the existing Anti Human Trafficking Units of special police officers constituted under the Immoral Traffic (Prevention) Act.

“The Anti Human Trafficking Units have been hailed as a success story by anti-trafficking groups, so what is the need for district committees?” said Pai. “Also, the district committees have been given tremendous powers, including repatriation of victims within the country, which is quite unhealthy in a democratic set up.”

The Women and Child Development ministry is accepting suggestions and objections to the bill from the public up till June 30, and various social workers and non-profits are already preparing to send in their objections. “If the bill was actually comprehensive it could have replaced the Immoral Traffic (Prevention) Act,” said Jana. “But this bill has been drafted in a very confusing manner.”

We welcome your comments at letters@scroll.in.