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Monthly

BULLETIN

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Announcement

Call for Articles, Op-eds, cartoons, book reviews and other submissions on recent matters related to the theme of social justice.

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COVER STORY

ANALYSIS OF ANTI- TRAFFICKING BILL, 2021

-Vanisha Mishra*

INTRODUCTION

The Ministry of Women and Child Welfare has introduced its Trafficking in Persons (Prevention, Care, and Rehabilitation) Bill, 2021, and has asked for recommendations and comments. [A prior proposal was introduced in 2018](#) and passed by the Lok Sabha amid strong resistance from legislators and academics. It was never introduced in the Rajya Sabha after that. This revised proposed Bill addresses nearly all of the concerns highlighted in 2018. It also differs from the 2018 Bill in terms of jurisdiction and harsh penalties. This bill has also broadened the geographical jurisdiction of offences with cross-border ramifications, as well as the concept of a victim to include transgender people.

PROVISIONS OF THE BILL

Who are covered as victims under this bill:

The bill proposes a comprehensive law that would cover all forms of human trafficking, including sexual exploitation, indentured labour, slavery, sexual servitude, and organ trafficking and offer victims treatment and protection. Physical exploitation, forced labour or services, slavery or activities that are comparable to slavery, servitude or forced organ removal, unlawful clinical drug trials, and illegal bio-medical research are also included. The bill also provides protection to

transgender people and anybody else who might be a victim of human trafficking, in addition to women and children.

This new rule will encompass cases such as forced labour, in which people are enticed into other countries as well as different places within the country, where they are forced to work. Moreover, this bill also eliminates the requirement that a victim be transported from one location to another in order to be considered a victim.

The new rules are applicable on all the citizens of India, as well as persons on any ship or aircraft registered in India, wherever it may be, or carrying Indian citizens, and a foreign national or a stateless person who has his or her residence in India at the time of the commission of an offence under this Act, and to every offence of trafficking in persons with cross-border immigrant status.



Image Source: India CSR Network

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National Investigation Agency

The National Investigation Agency (NIA) will be in charge of investigating and coordinating national efforts to prevent and combat human trafficking. The proposed legislation includes provisions for trafficked persons' rehabilitation, which is not included in Section 370 of the IPC.

Moreover, it imposes certain economic sanctions, (including the use of the Prevention of Money Laundering Act, 2002) to prevent economic crimes arising out of trafficking and vice versa. With provisions in place, property purchased with such income and used for trafficking can now be forfeited.

National Anti-Human Trafficking Committee:

When the Bill becomes law, the Centre would be required to organise a National Anti-Human Trafficking Committee (ATHU), and state and district authorities will be required to form similar bodies and committees at their own level. The National Anti-Human Trafficking Committee will oversee the law's overall successful implementation and working of such committees. The home secretary will serve as chairperson, and the secretary of the women and child development ministry will serve as co-chairperson.

Penalties

The Bill has broadened the scope of human trafficking offences as well as the types of victims, imposing harsh penalties. For instance, A penalty could vary from seven to eight years in prison with fine of Rs. 5 lakhs. Additionally, in some cases with high severity of the offense the punishment might extend up to life imprisonment or death penalties. Defence officers and government

employees, doctors and paramedical professionals, and anyone in a position of authority, who abuses such a standing, will all be covered under the bill as offenders. The penalty for most incidents of child trafficking, especially where more than one child is involved, is now life imprisonment.

MAJOR CRITICISMS OF THE BILL –

Trafficking is a heinous crime for which the government must have zero tolerance, but dealing with it requires precision. The proposed Trafficking in Persons (Prevention, Care, and Rehabilitation) Bill, 2021, appears to be lacking in nuance in its current form, despite its bonafide intentions to combat exploitative trafficking. The provisions of the bill, therefore have been subjected to wide criticisms.

According to the proposed bill, the consent of the victims is irrelevant and determination of the offence of trafficking in persons. This proposition brings with itself a wide sets of problems that haven't been taken care of, by the legislation.

Firstly, prostitution is not the same as human trafficking or sexual exploitation, even then, prostitution and pornography are included in the definition of exploitation. Now, as the bill clearly states that the consent of the victim would be immaterial, this might lead to the incarceration of even willing sex workers, who are not being sexually exploited, but rather, have chosen the profession willingly. However, here even if an adult comes to prostitution willingly, it appears that the authorities will not accept it.

Secondly, the Bill still has a colonial and patriarchal flavour to it, implying that women are not capable of consenting to their bodies and vocations.

Furthermore, there is no comprehensive plan for how sex workers will be adequately rehabilitated once they are no longer allowed to work in the sex industry.

Thirdly, the Bill also lacks a rescue protocol, relying instead on the police officer's use of the term "reason to believe," which is imprecise and gives the police personnel, all the power and discretion. As a result, the role of Anti-Human Trafficking Committees (AHTUs) in rescue and post-rescue activities is obscured. Also, many

women "rescued in raids" are isolated from their families, including minor children. The Bill makes no provision for a victim's right to reunification with her family.

Fourthly, when it comes to rehabilitation of the victim, two provisions of the bill conflict with each other, and therefore the application of each is quite unclear. Section 16 (7) of the bill talks about

the fundamentality of the Magistrate's order and that it will take precedence in determining the outcome of an application filed by the victim for not to be placed in a rehabilitation centre. However, Section 19(4) talks about how a person cannot be made to stay in detention facilities, just because they are classified as a victim. Every citizen has the right to make decisions that affect their lives, as guaranteed by the Constitution. For the objectives of rescue, rehabilitation, and prosecution, the law must take into account the wants of the person at the time. If the aim of the Act is to respect the consent and agency of an adult woman, the preferences of the adult person rescued and not accused of any crime must take precedence, and Section 19 (4) must overrule the prohibitions of Section 16 (7). But on the whole, application of these provisions, and which provision will have precedence over the other, is left quite ambiguous.

CONCLUSION

The bill aims to prevent human trafficking, particularly of women and children, and to provide victims with care, protection, and rehabilitation, as well as to create a supportive legal, economic, and social environment for them. It has also broadened the scope of coverage to include offences committed not only within India but also outside the country and has proposed the formation of anti-trafficking committees at the state and national levels to carry out the provisions once they are enacted.

While sexual exploitation and trafficking can be heinous crimes that elicit public outrage, the state's failure to take a holistic approach to understand the underlying causes, would be equally heinous. The civil society activists and legal experts have criticised various provisions, asserting that an overzealous approach would blur the nuances and understanding of the contributing factors, such as vicious poverty, debt, a lack of opportunity, and development schemes that fall short of their goals. Another major criticism directed at the Bill has been its broad definitions of victims, which appear to be a refusal to consider consensual sexual activity for commercial purposes. This would only result in the criminalization of sex work and the victimisation of the exploited.

Therefore, the Bill should take into account the concerns of the marginalised and underprivileged, and sensitize the police personnel about the same. Instead of providing a defective rescue and rehabilitation procedure that ignores the reality of unequal growth, skewed development, and unfairness, the Bill should address the vulnerabilities faced by women and transgender people, as well as acknowledge their ambitions to move for a better livelihood.

JUDGMENTS IN *FOCUS*

-Mahip Singh Kukreja

Protection of basic human rights of the society is the duty of the State: Karnataka High Court

In a case of **Mahesh vs State of Malebennur** Police where the accused poured acid on the face and body of the two victims, a teacher and a UKG student, just because the teacher refused to marry the accused, the Karnataka High Court states that ‘right to life’ is a basic fundamental right guaranteed under Article 21 of the Constitution of India, and it is the fundamental duty of the state to protect the right.

The court also states that the ‘acid attack’ is not only a crime against a particular victim. But a crime against the entire civilized society. It is a crime which violates the most cherished fundamental right.

The court in this case, orders the accused to deposit a sum of Rs. 9,75,000, which shall be paid to the victim and also to pay Rs. 25,000 to the state government for the defraying expenses.

The rights of the prisoners shall be protected by the police department: Uttarakhand High Court

In the case of **Bharti vs State of Uttarakhand** where the petitioner lodged a complaint against her husband (Pravesh Kumar) under the Protection of Children from Sexual Offences Act, 2012 where he was been arrested and was being kept in judicial custody, where on a sudden day, he was being beaten up very badly by four police constables and was found dead after being beaten up just because he was upset and was making too much noise, where the Uttarakhand High Court said that it is the duty of the police department to protect the rights of the prisoners and are not allowed to do any sort of violence which leads to custodial death of the prisoner.

The court in this case, ordered to transfer the case to CBI and also asked for transfer of the four constables to different district, for a fair investigation.

Where Corruption begins all rights end: Karnataka High Court

In the case **G Krishnegowda vs State of Karnataka**, The Karnataka High Court states that The magnitude of corruption in our public life is incompatible with the concept of a socialist secular democratic republic.

Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against the corruption.

Supreme Court of India on Judicial Independence leading to Social Justice:

In the case of **Madras Bar Association vs Union of India**, the Supreme Court states that the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country.

It is the duty of the governmental and other institutions to respect and observe the independence of the judiciary. The term of office of Judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

The measures adopted by the Judicial Integrity Group at its meeting held in Lusaka, Zambia on 21st and 22nd January, 2010 for effective implementation of the Bangalore Principles of Judicial Conduct referred to the responsibilities of States to ensure guarantees, through constitutional or other means, on judicial independence. One of the guarantees required to be provided by the State to maintain judicial independence is that the legislative or executive powers that may affect Judges in respect of their office, their remuneration, conditions of service or other resources, shall not be used with the object or consequence of threatening or bringing pressure upon a particular Judge or Judges.

NEWS & DEVELOPMENTS

-Vanshja Sengar

1) **Anganwadis to be fully electrified in Kerala:**

Kerala's anganwadi centres will soon be entirely electrified, due to a major decision made by the state's Left-wing government. As part of efforts to upgrade the infrastructure facilities here, a recent meeting held by Health-Women and Child Development Minister Veena George and Power Minister K Krishnankutty resolved to totally electrify all childcare centres.

2) **Uttar Pradesh sets up new afforestation record by planting 25 crore saplings:**

In Uttar Pradesh, a new record of afforestation is being set up by planting 25 crore saplings during the weeklong Van Mahotsav culminating. Chief Minister Yogi Adityanath planted the sapling which is marked as the completion of 100 crore sapling under the plantation drive during his tenure.

2) **Union Education Minister Ramesh Pokhriyal 'Nishank' launched the National Initiative for Proficiency in Reading with Understanding and Numeracy (NIPUN Bharat) :**

Union Education Minister Ramesh Pokhriyal 'Nishank' launched the National Initiative for Proficiency in Reading with Understanding and Numeracy (NIPUN Bharat) for ensuring that every child in the country necessarily attains foundational literacy and numeracy by the end of grade 3, by 2026-27. The mission planned as per the new National Education Policy (NEP) has been launched under the aegis of the centrally sponsored scheme of Samagra Shiksha.

It will focus on providing access and retaining children in foundational years of schooling, teacher capacity building; development of high quality and diversified student and teacher resources and tracking the progress of each child in achieving learning outcomes.

4) **Government creates Ministry of Co-operation for strengthening of cooperatives :**

The Union Government has created a separate Ministry of Co-operation for realizing the vision of ‘Sahkar se Samridhi’. This Ministry will provide a separate administrative, legal and policy framework for strengthening the cooperative movement in the country.

5) **Delhi government formulates policy for street children in view of pandemic:**

The Delhi government has framed a policy for the welfare of street children in view of the pandemic situation which stresses on the role of various stakeholders in promoting Covid-appropriate behaviour and generating awareness about the infection.

6) **Government school in Bengaluru becomes first in India to launch satellites:**

The Malleshwaram Government Boys High School in Bengaluru will achieve a unique feat if things go as planned. It will become the country’s first government school to develop a satellite, Karnataka Deputy Chief Minister C N Ashwathnarayan said.

7) **PM Narendra Modi chairs 1st revamped Cabinet meeting after reshuffle; Over Rs 23,000 crore package announced for emergency response to COVID-19:**

In the first Cabinet meeting after reshuffle, the Union government allocated Rs 23,000 crores package for emergency response to Covid-19. —Rs 23,123-crore package to be given to deal with Covid-19. It will be used jointly by the Central and state governments, said the newly-appointed Union Health Minister Mansukh Mandaviya in the first media briefing of the new cabinet.

8) **Tajikistan becomes first country in world to make COVID-19 vaccines mandatory:**

Tajikistan’s government ordered mandatory vaccination against COVID-19 for citizens over 18 years, making it the first country in the world. The task force recommended that those who come to Tajikistan from abroad should be tested for coronavirus and self-isolate for ten days, regardless of the results of the test.

9) **Cabinet approves proposal of allowing APMCs to use Rs 1 lakh crore Agriculture Infrastructure Fund announced as part of Atmanirbhar Bharat Package:**

Agriculture Minister Narendra Singh Tomar said efforts will be made to provide more resources to the APMCs. Assuring that APMCs will not be done away with after farm laws, Tomar said, —Rs 1 lakh crore allocated under Atmanirbhar Bharat to Farmers Infrastructure Fund can be used by APMCs.

10) **Surat gets Amazon's first Digital Kendra in India:**

Chief Minister Vijay Rupani virtually inaugurated the first Digital Kendra of e-commerce giant Amazon in Surat city that aims to be a physical resource centre for Micro, Small and Medium Enterprises (MSMEs) providing third party services in e-commerce.

11) **RBI unveiled a scheme allowing retail investors to directly participate in the G-securities market:**

The Reserve Bank of India unveiled a scheme allowing retail investors to directly participate in the government securities market. They can open and maintain a 'Retail Direct Gilt Account' (RDG Account) with the RBI through a portal, which will also provide access to primary issuance of G-Secs and the secondary market as well.

12) **Amazon forests are no longer acting as a carbon sink:**

The Amazon forests in South America, which are the largest tropical forests in the world, have started emitting carbon dioxide (CO₂) instead of absorbing carbon emissions.

13) **India's first stadium for physically challenged in Lucknow soon:**

Uttar Pradesh will soon get the country's first stadium for differently abled people. Constructed at the Dr Shakuntala Misra National Rehabilitation University in Lucknow, the facility will be inaugurated by Chief Minister Yogi Adityanath soon. The government is also planning to set up a medical college in Lucknow for the specially abled.

14) Economically Weaker Sections (EWS) reservation being implemented in Andhra Pradesh :

The Andhra Pradesh government has issued orders for implementation of 10 per cent EWS reservation in all government recruitments henceforth. The order is in accordance with The Constitution (103rd) Amendment Act 2019 that provides for the creation of the special EWS quota to be implemented by the state.

15) Uttar Pradesh Chief Minister Yogi Adityanath unveils new state population policy 2021-2030:

In Uttar Pradesh, the government has announced new Population Policy 2021-2030' on the occasion of World Population Day (July 11). The draft law list that has been put on public domain and the government has sought suggestions from people in policy draft.

16) Bishnupur becomes Assam's first smokeless kitchen village:

All 70 households in Cachar's Bishnupur forest village now have a unique cooking stove made of soil, cow dung and rice husk. It not only consumes 40% less firewood but also provides 100% smokeless kitchens in the village. The environment and forest department officially declared it as the first smokeless village in Assam.

17) Centre directs immediate withdrawal of all cases under Section 66A of IT Act:

The Union home ministry asked state governments and police chiefs to immediately withdraw cases registered under the repealed Section 66A of the Information Technology (IT) Act and to stop registering such cases. The move came days after the Supreme Court expressed shock over the continued registration of cases under the repealed Section.

18) UN human rights council passes China's resolution calling for people-centered development for human rights:

The United Nations Human Rights Council passed China's resolution on —The contribution of development to the enjoyment of all human rights at the 47th session, which emphasizes the right to development and that the aim of development is to improve the well-being of the people.

19) Centre rolls out second wave stimulus:

In a first set of measures to mitigate the economic impact of the devastating second Covid wave, Finance Ministry announced a series of steps aimed to push credit off-take in priority areas such as health infrastructure and the severely hit tourism sector by providing interest-rate concessions.

20) EU proposes world's first carbon border tax for some imports:

The European Commission put forward plans for the world's first carbon border tax, on imports of carbon intensive steel, aluminium, cement, fertilisers and electricity, as part of a programme to meet its new climate target.

21) UK publishes world's first 'greenprint' to decarbonise all modes of domestic transport by 2050:

Cleaner air, healthier communities and tens of thousands of new green jobs are set to become reality thanks to the UK's revolutionary Transport decarbonisation plan. Transport decarbonisation plan for cleaner air, healthier communities and tens of thousands of new green jobs.

22) European Union launches big climate plan for —our children and grandchildren:

European Union policy makers unveiled their most ambitious plan yet to tackle climate change, aiming to turn green goals into concrete action this decade and set an example for the world's other big economies to follow. The European Commission, the EU executive body, set out in painstaking detail how the bloc's 27 countries can meet their collective goal to reduce net greenhouse gas emissions by 55% from 1990 levels by 2030 - a step towards —net zero emissions by 2050.

23) Nalsar launches India's first master's programme in animal law:

The Nalsar University of Law, Hyderabad in collaboration with the Animal Law Centre and Humane Society International/India launched India's first master's course in animal law.

National Commission For Protection of Child Rights

- *Alisha Vyas*

The National Commission for Protection of Child Rights (NCPCR) was set up as **statutory body** in 2005, and was operational from March 5th 2007, under the Commission for Protection of Child Rights (CPCR) Act, 2005 of Govt. of India. As defined by the commission, child includes person up to the age of 18 years. Its functions include:

- Examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation.
- Present to the Central Government, annually and at such other intervals, as the Commission may deem fit, Reports upon the working of those safeguards.
- Inquire into violation of child rights and recommend initiation of proceedings in such cases.
- Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disasters, domestic violence, HIV/ AIDS, trafficking, maltreatment, torture and exploitation, pornography, and prostitution and recommend appropriate remedial measures.
- Look into matters relating to children in need of special care and protection, including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures.
- Study treaties and other international instruments and undertake periodic review of existing policies, programs, and other activities on child rights and make recommendations for their effective implementation in the best interest of children.
- Undertake and promote research in the field of child rights.
- Spread child rights literacy among various sections of society and promote awareness of the safeguards available for protection of these rights through publications, media, seminars and other available means.
- Inspect or cause to be inspected any juvenile custodial home or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority including any institution run by a social organization, where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary.

- Inquire into complaints and take notice of matters related to:
 - i. Deprivation and violation of child rights.
 - ii. Non implementation of laws providing for protection and development of children.
 - iii. Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children or take up the issues arising out of such matters with appropriate authorities.
- Such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above function.

Section 13 of the said Act lays down the mandate of the Commission. The Commission is empowered to ensure that all laws, policies, programmes, and administrative mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and the UN Convention on the Rights of the Child. The Commission has the authority to investigate complaints and take suo motu notice of problems involving, among other things, denial of a child's rights and non-application of legislation providing for the protection and development of children. The Commission will examine and analyse the legal safeguards to protect children's rights and provide recommendations for their effective implementation. If necessary, it will propose revisions and investigate complaints or take *Suo motu* notice of incidents involving violations of children's constitutional and legal rights.

For complaints: www.ebaalnidan.nic.in



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