



Global Village Foundation

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REVIEW AND COMMENTS

ON

DRAFT TRAFFICKING OF PERSONS BILL, 2016

MINISTRY OF WOMEN AND CHILD DEVELOPMENT

Submitted By

Global Village Foundation, New Delhi¹

The Global Village Foundation (GVF) is a research institute working primarily and engaged in social and economic research and assists States as well as Centre in developing, framing and assessing, the policies. Its mission and driving force is to achieve an equitable society sustained by holistic and responsive development.

We, at GVF have been observing the developments with regard to tackling Trafficking and related issues and challenges in India and the consequent social discourse, judicial recourse through PILs and the consequent, Higher judiciary's guidelines for the Ministry for formulating a Protocol for victim's protection.

While the Honorable Women and Child Development Ministry's efforts are laudable and praiseworthy in bring out the Draft of Trafficking of Person's Bill, 2016 on May 31, 2016 because for the first time there is a serious effort that aims to unify all existing anti-trafficking laws, that holistically tackle all forms of trafficking and also emphasize on the rehabilitation of survivors and provide for special committees and courts to ensure speedy investigations and trials of trafficking cases.

¹ Global Village Foundation – is a research institution based in New Delhi. It primarily works on developmental, socio, economic and political issues and assist governments in its varied stages of policy formulation, assessment and implementation. You can reach GVF at www.gvf.co.in or write to preetibhardwaj@gvf.co.in and infogvffoundation@gmail.com



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We, at GVF, have organized and have been part of varied consultations and discussions deliberating on this draft Bill, with the likeminded organizations and institutions and individuals, specifically on the issue of Trafficking. We would like to present our submissions and observations as an independent research institution. The outline of our statement on the draft Bill is **to provide our section-by-section review, remarks along with our construal** of the draft Bill.

The opening paragraph and objective of the draft Bill is to **PREVENT, PROTECT AND REHABILITATE** trafficking and trafficking persons in consonance with the constitutional guarantees and following our obligations with International bodies – UN².

“ to prevent trafficking of persons and to provide protection and rehabilitation to the victims of trafficking and to create a legal, economic, and social environment against trafficking of persons and for matters connected therewith or incidental thereof.”³

In this reference:

The draft Bill – titled as - ‘Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2016, **nowhere elucidates or particularizes the specified content of the title**. Clear, concise definitions of terms – viz, like placement agencies, even if provided, are not comprehensive or coherent and leave much to the interpretation.

To start with, the very **crime of Trafficking⁴ has not been defined** in the Bill. Section 370⁵ of Indian Penal Code although defines trafficking⁶, it does not cover many aspects of trafficking like other forms of trafficking. A new

² The objective of the draft Bill is to provide support and protection to the victims following the accession and ratification of the government of India to the Transnational Convention Against Organised Crime and the optional protocol therein, the Convention of the Rights of the Child and the Convention against all forms of Discrimination against Women, it is not addressed as the prime concern.

³ Trafficking of Person’s Bill, 2016 - <http://wcd.nic.in/acts/trafficking-persons-bill-2016-draft>

⁴ 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.- <http://scroll.in/article/809682/draft-anti> visited on 27th June 2016.



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definition of trafficking should be framed which would cover all aspects. Besides, we think that the definition as has been provided in the UN protocol is sufficiently comprehensive and should be adopted.

Trafficking is defined as:

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the 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 the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organ⁷.

Also, there is no specific provision in the Bill that deals with **Prevention of trafficking** - as has been reflected in the objective in the draft. Though the bill is titled as prevention; but it is a misnomer, as **nowhere in the bill, prevention of trafficking** has been dealt with. We need to link the existing governmental programs to ensure the most vulnerable are empowered through education and provided skills for their survival and duly integrated in the mainstream society to lower the chances of re-trafficking.

Certain steps would be required to this end:

⁵ Section 370 Indian Penal Code - Trafficking means - Buying or disposing of any person as a slave.—Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

⁶ which had been amended to include the definition from Palermo Protocol which was framed in the year 2000. There is need to revisit the definition given in section 370

⁷ <http://www.catwinternational.org/Content/Images/Article/83/attachment.pdf> visited on 25th June 2016.



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- There is no reference to the "sex buyers",⁸. Without addressing this, it does not control the supply and demand aspects, without which any other control is very difficult to address. The Act refers to 370-373 of the IPC, it needs to include sections 366⁹, and 374¹⁰ as well.
- Mapping of the whole country into varied supply and demand areas,
- Identifying what generates and triggers trafficking with obvious and due attention to economic and social pressures that instigate trafficking needs to be chalked out.
- Awareness campaigns, stricter law enforcement, stringent implementation of laws, as well as linking them with enabling and sustainable social and economic livelihood programs, networking/ convergence with different stakeholders would be needed.

The objective of the draft Bill is to provide support and protection to the victims, but it has not been addressed as the principal concern. Trafficking is an organized crime that is peculiar in its multi levels of crime and with multiple jurisdictions.

Therefore, in order to deter traffickers and bring them to justice, it is necessary:

- to appropriately criminalize human trafficking and related offences,
- prescribe appropriate punishment/s,
- give priority to the investigation and prosecution of trafficking offences and
- Assist and protect the victims of such offences.

⁸ Sex buyer is also not defined or made a reference to even in ITP Act.

⁹ 366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 1[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid].

¹⁰ Section – IPC 374. Unlawful compulsory labour.—Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.



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While the draft Bill has been titled as Trafficking **in Persons**, there is **no cataloguing and classification of different types of trafficking** has been mentioned in the draft Bill. Therefore, need to re-title the Bill should be looked into.

In few section/s although there is reference of “commercial sexual exploitation” and “trafficking for labor” but the **emerging areas of trafficking** in the very recent years, for instance - medical trafficking, trafficking for adoption purposes and trafficking for surrogacy, organ trafficking did not find any place or any reference in the draft Bill. It is submitted, that **unless we have an all-encompassing definition** that includes all forms of trafficking – both existing and newly emerging, the trafficking Bill will remain incomplete.

Also, a very significant section of trafficked population, **Child prostitution and child labour** which is a heinous crime have not receive explicit prominence in the Bill, nor does it attract stringent and exemplary penalties. Therefore, better recognition needs to be given to the issue concerning children who are victims and/or are witnesses and are particularly, vulnerable. They require special protection, adequate assistance and support that is appropriate to their age, gender, level of maturity and special needs so as to prevent further hardships and physiological trauma.

COMPOSITION OF COMMITTEES AT VARIOUS LEVELS:

District Anti-trafficking Committee

Section 3 and 4

Section 3 - talks about District Anti-Trafficking Committee. There is no role assigned to the police in the committee, which means that prevention and rescue aspects are unlikely to be addressed. Secondly, there is no definition of Social Worker. This opens a possibility of grave misuse. Thirdly, there is no role for PRIs in this, which is important if prevention and rehabilitation issues have to be addressed. Fourthly, the functions of the envisaged committee are not defined in the Act.



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Besides, the Section refers to producing the victim after rescue, before the Member Secretary of the District Committee. However, the **activities prior to the rescue** of the victims or pre rescue provisions/procedures adopted are completely absent. Besides, there is no protocol laid down in the section for producing and neither there is any scope for it to be framed in the expected Rules as the section does not mention the term - '**as prescribed**'.

Further, there is also **no mention of the medical examination that normally should follow after rescue**. This seems to be major lacunae in the Bill that needs to be addressed and adequately attended, to prevent instances of – re-trafficking, re-rescuing the trafficked.

It also lacks **clarity on designated persons** who can produce the victim before the Committee. While it is ambiguous to state that **any public servant or any social worker or public spirited person** is eligible, it may have serious implications as the bonafides of such people are unknown. Anybody, including the trafficker, can claim to be a public spirited person.

At the district level anti trafficking committee, **District magistrate** has been given too many responsibilities, which will only lead to hasty or partial fulfillment of the duties leading to ineffective implementation of the act. Hence, it is suggested that either empower DM to appoint someone or ADM/somebody immediately junior to DM can effectively carry out the responsibilities charted out for the DM.

The section does not indicate the next steps to be taken on, after rescue and producing before the Committee, whether she/he should to be taken to a medical facility, or to protection home.

The **district level anti trafficking committee assumes an omnibus committee** role in the current draft where the members are supposed to be aware of each and every form of trafficking, *per se*. **Specialists need to be included in the committee**. For instance, role of doctor is important in understanding the situation related to organ trafficking or medical trial trafficking.



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District magistrate should have the power to select/appoint the social worker forming the part of the anti-trafficking committee. Also, **selection of social worker** without a clearly laid out criteria can create possibilities of members of organized crime group becoming part of the anti-trafficking committee.

In the draft Bill, the roles of the committee have been reduced to advisory committee, which serves minimal purpose. **A member secretary should be made a part of the committee** who will ensure that the meetings of the committee are held regularly and shall keep a record of the meetings.

State Anti-Trafficking Committee

Section 5.

Under this, the State has been given the responsibility of overseeing and advising on the Act. There is no clarity if the State Committee would supervise the work of the District committee? Or would the District committee be required to submit regular reports to the State committee? Further, there is no provision for a Member Secretary in the State Committee which is quite asymmetrical and unbalanced, since the Member Secretary normally administers the work of such committee/s. Further, assigning Chief Justice to nominate Social Workers seems impractical. The main functions of the committee have to be clearly, laid down, with a provision that these functions can be further expanded in the rules.

Section 6 is largely insufficient as there is no reference of the concerned ministries to form the Coram of the Committee.

Besides, the well drafted and laid rules and accompanying procedures for selection of the committees need to spelled and duly included in the Bill.

P.R.Is (Panchayati Raj Institutions) should be involved in the anti-trafficking committees for a greater involvement of the society and proper implementation of the law.



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SPECIAL AGENCY

Section 7

This section seeks **more clarification and parameters as to the exact role and responsibilities of the Special Agency**. This can lead to conflict of interests. Besides, the special agency should work under Ministry of Home Affairs, needs to be clearly mentioned. What would be the role of the local police if the Special Agency is set up! The local police are better equipped to handle cases of trafficking. Instead of relying on a special agency, S.H.O. can be given the responsibility. Special agency can be formed only to look into cases where a large-scale traffickers networking is identified and need to be acted upon.

Further, as per this section, the special agency would investigate the offences under this Act. Does that mean that all cases under this Act are to be centrally investigated!

If that is the case, then the purpose of appointing investigating officers by appropriate government under Section 28¹¹ is defeated?

It came from our deliberations that that **cases in which investigation spills or trips over to more than two States, only those should be investigated by a centrally established Special Agency and otherwise, the investigation should be by the State agencies.**

Creation of specific Database at central level that provides list of all Protection Homes is called for easier access. Besides, requirements for the Protection Homes need to be made uniform as far as possible.

Also, **Establishment of Protection Homes** in each sub-division of a each district is called for.

¹¹ Section 28. Investigating Officer - The State Government shall designate a police officer of the rank of Gazetted Officer to be an Investigating Officer for investigating offences under this Act and under section 370 to 373 of the Indian Penal Code, 1860.



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SUPPORT SERVICES under the draft Bill – formed with 3 Sections leaves one with seeking more clarity.

Protection Home

Section 8 does not describe on what is the protocol to be followed before a victim is brought into the Protection home. Secondly, there is no mention if the protection homes, as referred in draft Bill are same as given in other Acts , such as the Juvenile Justice Act, ITP Act.

Special Homes

Section 9 does not describe as to when the victim would be moved from protection home to a special home and what are processes are to be exhausted before that. The role of the district administration and other stakeholders have to be specified.

In addition to establishment of shelter homes, the draft can focus on **establishment of trauma centers** which not only focus on the physical injuries but the mental health of the rescued people.

Registration of Homes

Section 10

The term - registration of homes under Section 10 needs to be defined with centrally defined uniform procedure to register homes to minimize overlapping with State rules and procedures.

ON REHABILITATION AND SOCIAL INTEGRATION – a chapter and a section – 11 has been apportioned.

Section 11 (2) mentions about specialized schemes for women victims of sex trafficking but there is no mention about any scheme for victims of other forms of trafficking and also victims other than women, like men, children and transgender. .



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Besides, it is pertinent to note that, **children of denotified tribes** are one amongst the most vulnerable group targeted by trafficking syndicate. Their integration in the society is also, of utmost importance. This can be done by providing them identity cards and tracking their movements, which can help in reduction of the trafficking instances/cases.

One of the most important requirements for effective conviction of the trafficker is the evidence given by the victim. Often, the witness is intimidated or threatened by the trafficker to desist from giving evidence. To prevent this, it is necessary to give **adequate protection and support to the witness**, so that she/ he is economically comfortable in secure and safe surroundings. Therefore, the entire issue of Witness Protection which is crucial for the security of the witness and for successful conviction of the trafficker needs to be incorporated in the Bill.

PLACEMENT AGENCY

Section 2(h) and Section 12 'Placement Agency' has been very roughly defined. It brings within its ambit all and any agency which would find job placements, would have to register under this draft Bill. This could result in traffickers/ organised crime networks setting up placement agencies. This also would mean that placement agencies registered for corporate sectors will have to mandatorily register under this Act, which is meaningless.

PENAL/PUNISHMENT PROVISIONS

Section 13 mentions about punishment for **violations relating to registration**. It is pertinent to note that it does not specify the procedural and protocol violations.

Section 15 is punishment for **disclosing of identity**. Here it could be expanded to shaming and punishing the perpetrator, and also putting some burden on intermediary carriers like Face Book, You tube, etc, as is done in cases of terrorism.

Section 16 and 17 – that provides for using **narcotic drugs, psychotropic or alcoholic substances for trafficking** needs to be made duly comprehensive.



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Besides, a **protocol has to be given in Rules which should include immediate blood and urine test of the victim that has been rescued along with medical examination** of any physical injury, to assist in compliance. For it, a due procedure need to be formed alongwith provision for adequate funds for medicals test, emergency situations and conducting relevant tests to ascertain age etc.

There is no mention in the Bill about penalties for the trafficker, the pimp, the brothel keeper in case of commercial sexual exploitation, or middle men / brokers or companies using trafficked labor, except in sections 16 and 17 certain penalties have been spelt out for use of narcotics drugs or chemical substances on trafficked persons. Also, the very crime of trafficking per se has no penalties prescribed in the draft Bill.

Section 17 mentions use of **chemical substances or hormones** for the purpose of exploitation. However, the punishment has been limited to use only for inducing for sexual maturity. It must be noted that these substances/hormones can be used for other purpose of exploitation as well. Besides, the punishment under this section is restricted to certain segment - women, girls or a child. **Its usage on males is missing.** Digging further, if the words Chemical Substances or hormones, if adequately defined or framed, it can also cover exploitation of victims in clinical drug trials and other related matters as well.

Section 18 is all-purpose, and multi-use provision for Centre. A further explanation and specific intent is implored.

Section 21 talks about burden of proof only with respect to property. Instead the **burden of proof should be on the accused for commission of offence.**

Section 24 again talks about offence committed under section 16, 17 of this Act and section 370-373¹² of IPC. In fact it needs to encompass 366¹³, 366A, 367¹⁴ and 374 of the IPC along with offences of relevant Acts.

¹² Trafficking In persons, dealing in slaves, Selling Minor for the purpose of prostitution,

¹³ Section 366 IPC . Kidnapping, abducting or inducing woman to compel her mar-riage, etc, Section 366A - 366A. Procuration of minor girl, Section 367 - IPC. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc Section 374 – Unlawful Compulsory Labour.



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Section 27 an elaborate procedure should be laid out in Rules to meet the expectations of the Act. The role of Police has to be defined and included for effective implementation.

Section 28 the role of Anti Human Trafficking Units (AHTUs) should be specified. It would be practical to designate officers posted at AHTUs so that it strengthens they system. Certain funds should be allocated so that they can immediately help the victims rescued and provide immediate medical relief.

Section 30 - Procedure for mandatory reporting, a protocol should be defined for protection of the victim along with medical care and treatment, as deliberated above.

Section 31-32

With regard to inter-state trafficking, it is important to repatriate the survivor with her/his consent and after due completion of all established and verification presses and procedures.

With regard to Repatriation in case of rescued foreigners, is further marred with gaps. In matters related to foreigners the amount of time required to process the complaint and file a report through proper official channel imply that the 90 days' period will be over when the culprit can apply for bail. Once bail is granted, jumping the bail is not difficult for the culprits as they are part of an organized syndicate dealing with trafficking. The time lapse needs to be taken into account especially in the case of victims belonging to different nation.

Therefore, **a clear plan for rescue, especially of the foreign victims**, need to be laid in the draft since the process of repatriation is very lengthy and long drawn, the draft Bill does not provide any new direction. There should be a designated officer in Ministry of External Affairs to facilitate and a timeline should be set to process the papers for early repatriation once it is decided by authorities concerned under the Act. Further, it needs to be distinctly looked into and provided that the repatriation process of victims of commercial sexual exploitation is different from that of trafficked labour. Therefore, the same has to be reflected in the Bill.

Discussion should be held for **Section 35** so as to ensure uniformity of action.



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Section 41:

The last section of the draft bill, has been imprecisely worded, and can lead to misinterpretation. The section requires further elaboration in presence of already existing, specific laws.

CONCLUSIVE OBSERVATIONS:

Besides, additional significant points that emerged from our deliberations and is produced for your reference:

- Trafficking is not only limited to sexual exploitation and slavery but also **encompasses a whole range of trafficking activities** like surrogacy, medical trials, egg donation, organ transplantation, adoption trafficking.
- These, other forms of Trafficking need to be included **to give meaning to the title, objective and purpose of the draft Bill**. All these forms of Trafficking need to be defined and laid out clearly so that ambiguities do not feed the organized culprits.
- The **Draft Bill need to adopt latest terminologies** related to trafficking populace and related activities so as to broaden and deepen its impact and reach.
- The Draft Bill should **alter usage of certain words, which are disempowering** the disadvantaged – for instance **‘survivor’ or ‘rescued’ instead of victim and ‘prostituted’ instead of ‘prostitute’**.
- Certain definitions in the bill may not be in consonance with the definition of the same term laid out on previous other acts. For instance, the **definition of shelter homes**.
- The district anti-trafficking committees envisioned in the draft bill would stand in relation to the existing **Anti Human Trafficking Units (AHTUs)** of special police officers constituted under the Immoral Traffic (Prevention) Act. Since AHTUs have been in existence for more than a decade and are a success, so we need to consider if we really need AT District Committees, as such.



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- The District Committees have been given tremendous powers, including repatriation of victims within the country, which is quite unhealthy in a democratic set up.
- It is felt that the law needs to be promulgated or repealed or made, **only after all stakeholders are consulted**. Therefore, consultation with wider and interested sections should be called for.
- Under the draft, **it is required to work out on exit strategies** that link trafficked persons to anti-poverty programs, and the skill development schemes, as touched upon under section 11 of the draft Bill. **An assessment of the “Ujjwala scheme”** needs to be urgently done, as many stakeholders, including NGOs directly involved in this issue dissent that there are many hurdles to obtaining relief this initiative.
- Besides, we believe, that accompanying rules would follow the draft Bill. Therefore, **it would be expedient if the adjunct rules, which are likely to be framed soon, to be also duly put up for review and/or for comments**.

In retrospect, it is submitted that the latest statistics from NCRB has provided 65% increase in trafficking of minor girls, while human Trafficking cases, *per se* have risen to shelling 92% from 2009-2014. At the same time, the gloomy conviction rate in these cases has gone further down. It is proposed, that we need to come up with an incontrovertible and impermeable legislation which will ensure speedy justice and convictions. Besides, we need to tie up social schemes with victim rehabilitation to prevent instances recidivism and re-offense.