

Legislative Brief

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 was introduced in Lok Sabha on July 18, 2018.

It was passed in Lok Sabha on July 26, 2018.

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October 30, 2018

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October 30, 2018

Highlights of the Bill

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

Key Issues and Analysis

- ◆ Certain forms of trafficking specified in the Bill (like forced labour and sexual exploitation) are also covered by existing laws. Some provisions of the Bill are different from provisions for similar circumstances in such laws. As these laws are not being repealed, there may be uncertainty in the implementation of the Bill.
- ◆ The Bill punishes an owner or lessor of a premise if he knowingly allows trafficking to be carried out on the premise. Under the Bill, the owner or lessor is presumed to have knowledge of the offence, unless they can prove otherwise. This provision may violate Article 21 of the Constitution.
- ◆ The Bill provides immunity to a victim only if he commits an offence punishable with imprisonment of more than ten years and not for lesser offences. The high threshold may defeat the purpose for providing immunity.
- ◆ The Bill provides for punishment of persons who distribute or publish material which may lead to trafficking. It is unclear as to how it will be determined if the act is likely to result in trafficking.
- ◆ The Bill classifies certain forms of trafficking as 'aggravated', which attract a higher punishment than other forms. Therefore, the punishment for some of the aggravated offences such as begging is higher than the punishment for some other offences such as slavery.

PART A: HIGHLIGHTS OF THE BILL

Context

In India, trafficking is primarily an offence under the Indian Penal Code, 1860. It defines trafficking as (i) recruitment, (ii) transportation, (iii) harbouring, (iv) transfer, or (v) receipt of a person for exploitation by use of certain forceful means. In addition, there are also other laws which regulate trafficking for specific purposes. For instance, the Immoral Traffic (Prevention) Act, 1986 deals with trafficking for the purpose of sexual exploitation. Similarly, the Bonded Labour Regulation Act, 1986 and Child Labour Regulation Act, 1986 deal with exploitation for bonded labour. Each of these laws operate independently, have their own enforcement machinery and prescribe penalties for offences related to trafficking.

According to the National Crime Records Bureau, a total of 8,132 cases of human trafficking were reported in India in 2016 under the Indian Penal Code, 1860.¹ This is 15% increase from the number of cases reported in the previous year. In the same year (2016), 23,117 trafficking victims were rescued. Of these, the highest number of persons were trafficked for forced labour (45.5%), followed by prostitution (21.5%). Table 1 provides details of persons trafficked for various purposes (as of 2016).

In 2011, India ratified the United Nations Convention Against Transnational Organised Crimes, 2000, including its Protocol to Prevent, Suppress and Punish Trafficking in person.² In 2015, pursuant to an order of the Supreme Court, the Ministry of Women and Child Development constituted a Committee to examine the feasibility of a comprehensive legislation on trafficking.³

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 was introduced in Lok Sabha by the Minister of Women and Child Development, Ms. Maneka Gandhi on July 18, 2018 and passed in that House on July 26, 2018. The Bill provides for the prevention, rescue, and rehabilitation of trafficked persons.

Table 1: Victims rescued by type of purpose of trafficking

Purpose	2016	(as a %)
Forced labour	10509	45.5
Prostitution	4980	21.5
Other forms of sexual exploitation	2590	11.5
Domestic servitude	412	1.8
Forced marriage	349	1.5
Petty crimes	212	0.9
Child pornography	162	0.7
Begging	71	0.3
Drug peddling	8	0
Removal of organs	2	0
Other reasons	3824	16.5
Total Persons	23117	100

Source: Human Trafficking, Crime in India, 2016, National Crime Records Bureau.

Key Features

The Bill states that its provisions will be read in conjunction with other laws and its provisions will apply only in the case of any inconsistency. Key features of the Bill include:

- **Definition of Trafficking:** The Bill defines trafficking to mean: (i) recruitment, (ii) transportation, (iii) harbouring, (iv) transfer, or (v) receipt of a person for exploitation, by using certain means. These means are the use of threat, force, abduction, fraud, deception, abuse of power or through inducement. Exploitation includes physical or sexual exploitation, slavery, or forced removal of organs.
- **Aggravated Trafficking:** The Bill also classifies certain purposes of trafficking as ‘aggravated’ forms of trafficking. These include trafficking for the purposes of: (i) forced labour, (ii) bearing children, (iii) inducing early sexual maturity by administering chemical substances or hormones, or (iv) begging. The punishment for aggravated trafficking is higher than for simple trafficking.
- **Rescue and Investigation:** The Bill sets up various authorities at the district, state and national levels for rescue of trafficked persons and investigation of offences.
- At the district level, the state government will appoint anti-trafficking police officers and constitute Anti-Trafficking Units for one or more districts to rescue persons and investigate offences. Rescued persons will be produced before a Magistrate or Child Welfare Committee (in case of child victims). The authorities are required to close the investigation of the offence within a period of 90 days from the date of registration of the FIR. The functions of the district authorities will be monitored by a District Police Nodal Officer, to be appointed by the state government.
- At the state level, the state government will appoint a nodal office to: (i) combat trafficking in the state, (ii) monitor functioning of district anti-trafficking officers, and (iii) coordinate and monitor inter-state and trans-border transfer of victims, witnesses, evidence, and offenders. The District Police Nodal Office will report to the state nodal officer.
- At the national level, the central government will constitute a National Anti-Trafficking Bureau, which may take over investigation of cases referred to it by two or more states.

- **Protection and rehabilitation:** The Bill requires the central or state government to set up Protection Homes, to provide shelter, food, counselling, and medical services to victims. Further, the central or state government will maintain Rehabilitation Homes in each district, to provide long-term rehabilitation to the victims. The Bill requires the central and state governments to set up anti-trafficking committees at the district, state and national levels to ensure the rehabilitation of victims.
- Once the district anti-trafficking authorities rescue a person, they are required to inform the district anti-trafficking committee about the rescue operations. The committee will then provide interim relief and rehabilitation services to the rescued persons. The district committee will also: (i) pass directions to Protection and Rehabilitation Homes to ensure protection, rehabilitation and restoration of victims, and (ii) facilitate inter-state repatriation of victims subjected to bonded labour.
- At the state level, the anti-trafficking committee is responsible for: (i) arranging training and sensitization of personnel, and (ii) providing assistance and inputs for prevention of offences, especially ones having inter-state ramifications or features of an organized crime.
- At the national level, the anti-trafficking committee is responsible for: (i) ensuring relief and rehabilitation to victims through concerned ministries and statutory bodies, (ii) seeking reports from appropriate government, and state and district anti-trafficking committees on quality of services and functioning of Homes, and (iii) monitoring the Rehabilitation Fund.
- Rehabilitation of victims will not be dependent on criminal proceedings being initiated against the accused, or the outcome of the proceedings. The central government will also create a Rehabilitation Fund, which will be used to set up Protection and Rehabilitation Homes.
- **Preventive Measures:** The district and state anti-trafficking committees will undertake measures to protect and prevent vulnerable persons from being trafficked. These measures include: (i) facilitating implementation of livelihood and educational programmes for vulnerable communities, (ii) facilitating implementation of various government programmes and schemes for prevention of trafficking, and (iii) developing law and order framework to ensure prevention of trafficking.
- **Special Courts:** The Bill provides for setting up designated courts in each district, which will seek to complete trial of trafficking cases within a year.
- **Penalties:** The Bill specifies various penalties. Key penalties are specified in Table 2. All offences are cognizable (i.e. police officer can arrest without a warrant) and non-bailable. Note that if a person is found guilty under the Bill and also under any other law, the punishment which is higher will apply.

Table 2: Punishment for offences under the Bill

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

Sources: Indian Penal Code, 1860; The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018; PRS.

- **Attachment and Confiscation:** The Bill permits attachment of property if there is an apprehension of commission of an offence. Upon conviction, such properties shall be forfeited to the government. The government may sell the properties and remit the sale proceeds to the Rehabilitation Fund.

PART B: KEY ISSUES AND ANALYSIS

Comparison of existing laws and provisions under the Bill

Presently, there are several laws which deal with specific forms of trafficking. For instance, the Immoral Traffic (Prevention) Act, 1956 covers trafficking for commercial sexual exploitation while the Bonded Labour System (Abolition) Act, 1976 deals with punishment for employment of bonded labour. These laws specify their own enforcement mechanism. As per the Statement of Objects and Reasons of the Bill, the Bill intends to serve as a comprehensive law to deal with all cases of trafficking. However, the Bill continues to also retain all existing laws on trafficking. This may create a parallel legal framework and enforcement machinery to deal with trafficking in certain cases. Since each of these laws have different procedures, there could be confusion as to which procedure to apply in such cases of trafficking.

For instance, under the Immoral Traffic (Prevention) Act, 1956, Protective Homes have been set up for rehabilitation of trafficked victims of sexual exploitation. The Bill also contemplates setting up of Protection Homes. When a victim of sexual exploitation is rescued, it is unclear as to which of these Homes she will be sent to. Also, each of these laws designate special courts to hear offences. The question arises as to which of these courts will hear the case. A comparison of some of these laws and the Bill is provided in Table 3. Note that the Bill clarifies that the Juvenile Justice (Care and Protection of Children) Act, 2015 will apply to rehabilitation of children.

Table 3: Comparison of trafficking under the current Bill with other laws

Feature	2018 Bill	Bonded Labour Act	Immoral Traffic Act	Juvenile Justice Act	IPC
Purpose of trafficking	<ul style="list-style-type: none"> Any purpose including for bonded labour, or sexual exploitation. 	<ul style="list-style-type: none"> Exploitation of persons as bonded labour. 	<ul style="list-style-type: none"> Trafficking for commercial sexual exploitation. 	<ul style="list-style-type: none"> Children at risk of trafficking 	<ul style="list-style-type: none"> Any purpose including for slavery or sexual exploitation.
Rescue and Investigation	<ul style="list-style-type: none"> Anti-Trafficking Police Officer and Anti Trafficking Units to investigate offences and rescue persons. 	<ul style="list-style-type: none"> District Magistrate implements the Act (including ensuring investigation of offences and rescue of persons). 	<ul style="list-style-type: none"> Trafficking Police Officers to investigate offences and rescue persons. 	<ul style="list-style-type: none"> Child Welfare Police Officers investigate offences and rescue children. 	<ul style="list-style-type: none"> Police officers (including anti human trafficking units) investigate offences and rescue persons.
Relief and Rehabilitation	<ul style="list-style-type: none"> Protection Homes to provide care and rehabilitation. Also provides for Rehabilitation Homes to provide long-term rehabilitation. 	<ul style="list-style-type: none"> Vigilance committees focus on providing economic rehabilitation, and credit to freed labour. 	<ul style="list-style-type: none"> Protective Homes provide for care and rehabilitation. Also provides intermediate safe custody of victims. 	<ul style="list-style-type: none"> Child Welfare Committee decides whether to send the child to his parents or a rehabilitation home. 	<ul style="list-style-type: none"> Not provided.
Adjudication	<ul style="list-style-type: none"> Special Court to hear cases. 	<ul style="list-style-type: none"> State government may empower Executive Magistrate to hear cases** 	<ul style="list-style-type: none"> Special Court hears cases 	<ul style="list-style-type: none"> Special Court hears cases 	<ul style="list-style-type: none"> No special court designated.

Sources: 2018 Bill; Indian Penal Code, 1860; The Immoral Traffic (Prevention) Act, 1956; Bonded Labour System (Abolition) Act 1976; The Juvenile Justice (Care and Protection of Children) Act, 2015; Project on “Strengthening The Law Enforcement Response In India Against Trafficking In Persons Through Training And Capacity Building”, Ministry of Home Affairs; PRS.

** In Hanumantsing Kubersing vs. State of Madhya Pradesh (1996 (0) MPLJ 389), the MP High Court struck down the provision conferring judicial power on an executive magistrate as unconstitutional for violating separation of powers between executive and judiciary.

Penalties and Offences

The Bill specifies penalties for various offences including for (i) trafficking of persons, (ii) aggravated trafficking (such as, for bonded labour and begging), and (iii) promotion of trafficking.

Whether the burden of proof on an owner of premises is a violation of Article 21

The Bill punishes an owner if he knowingly allows the offence of trafficking to be carried out on his premise. Under the Bill, it is presumed that the owner had knowledge of the commission of the offence on his premise. The burden is placed on him to prove that he did not have such knowledge. In criminal cases, usually the prosecution has the onus to prove the guilt of an accused beyond all reasonable doubt. The Bill reverses this burden of proof. There are other laws, where the burden of proof on the owner is reversed, but those laws contain safeguards. This Bill does not have such safeguards. The question is whether this provision of the Bill violates Article 21 because it places the burden of proof on the accused without safeguards found in other

Bill:
Explanation
to Clause
34(2)

similar laws.⁴ Article 21 states that no person can be deprived of their right to life or personal liberty, except by law. Courts have interpreted this to say that any law or procedure established should be fair and reasonable.⁵

The Immoral Traffic (Prevention) Act, 1986 provides an example where the burden of proof on the owner is reversed. It punishes an owner if he knowingly permits his premise to be used as a brothel. The Act has some safeguards. That is, it presumes knowledge on the part of the owner only if: (i) a newspaper report is published to report that the premises have been found to be used for prostitution, or (ii) a copy of all things found during the search of the premise are given to the person. Similarly, the Narcotics and Psychotropic Substances Act, 1985 punishes an owner for knowingly permitting the premise to be used for committing an offence under the Act. Again, knowledge is presumed only if the prosecution can prove that the accused was connected with the circumstances of the case. Using this rationale, Courts have held that owners of trucks (used for transporting drugs) cannot be presumed to know that an offence is being committed only on the basis of their ownership of the truck.⁶ Knowledge may be presumed where, for instance, the prosecution was able to also prove that the owner was driving the vehicle in which the drugs were transported.⁷

Rationale for presuming guilt of accused for certain classes of victims is unclear

Bill:
Clause 19 The Bill punishes a person who commits, aids or abets commission of offences related to trafficking of persons. Under the Bill, if the victim is a woman, a child, or a mentally/physically disabled person, it is presumed that the accused person committed the offence. That is, in such cases, the burden of proof is on the accused person to show that he is not guilty. There are two issues to consider here.

First, it is not clear why the burden of proof is reversed in these cases. Second, it is not clear why there is a distinction between women, children and disabled persons on the one hand and adult males on the other.

Threshold for claiming victim immunity may be too high

Bill:
Clause 45 The Bill provides immunity to a victim who commits an offence punishable with death, life imprisonment or imprisonment for 10 years. Further, such an offence must have been committed under: (i) coercion, intimidation, or undue influence, and (ii) where there is a reasonable apprehension of death or grievous injury. This raises two issues.

Immunity may be desirable to ensure that trafficked persons are not prosecuted for their involvement in crimes which are a direct consequence of them being trafficked.⁸ However, the Bill provides immunity only for serious crimes. For instance, a trafficked victim who commits murder under coercion of his traffickers may be able to claim immunity from being tried for murder. However, if a trafficked victim commits petty theft (e.g. pickpocketing) under coercion of his traffickers, he will not be able to claim immunity.

Second, the immunity is only available when the victim can show that the offence was committed under coercion, threat, intimidation or undue influence, *and* there was a reasonable apprehension of death or injury, at the time of committing the offence. Therefore, it may be argued that the threshold to claim immunity from prosecution may be too high and may defeat the purpose for providing such immunity.

Offence relating to solicitation and publication of obscene photos may be broad

Bill: Clause
39(2) The Bill punishes those persons whose activities ‘may’ lead to trafficking of persons. These activities include: (i) electronic publication or solicitation, (ii) taking or distributing of obscene photographs or videos, or (iii) solicitation of tourists. Persons convicted under the offence may be imprisoned for a term of a minimum of five years up to 10 years, along with fine of a minimum of Rs 50,000 up to one lakh rupees. The Bill does not require the offender to show ‘intent’ to commit trafficking. Therefore, it is unclear as to how it will be determined if the act is likely to result in trafficking.

Rationale for punishing acts unconnected with trafficking unclear

Bill: Clause
41(2) Under the Bill, distribution or sale of material showing sexual exploitation or assault for the purpose of extortion, coercion, or unlawful gains, is punishable with imprisonment of three to seven years and fine of at least one lakh rupees. The provision does not require an association of such acts with the commission of an offence of trafficking. It is unclear as to why the Bill mandates punishment for acts which may not bear any connection with trafficking of persons. Note that Section 383 of the Indian Penal Code, 1860 deals with the offence of extortion and punishes it with imprisonment of up to three years and/or fine.

Rationale for gradation of punishment unclear

Bill:
Clauses
32, 33, 40
IPC:
Section
370 The Bill classifies some forms of trafficking as aggravated trafficking. Aggravated trafficking includes trafficking for the purposes of forced labour, begging, child bearing or by causing grievous hurt. Physical or sexual exploitation, slavery and forced removal of organs are not included as aggravated trafficking. While simple trafficking attracts an imprisonment between seven and ten years, aggravated trafficking attracts a minimum imprisonment of ten years up to life imprisonment. It may be argued that the punishment for some of the aggravated offences may not be proportionate when compared to the punishment for the offences of simple

trafficking. For example, trafficking for the purposes of begging attracts a higher term of imprisonment than forced removal of organs or sexual exploitation.

Further, the Bill states that whoever ‘hires’ a person for trafficking will be punished with imprisonment between three to five years along with a fine of at least one lakh rupees. However, under the Bill, the definition of a trafficker includes persons who ‘recruit’ other persons for exploitation. Such persons may be imprisoned up to seven years along with fine. It is unclear why the punishment for a ‘hirer’ and ‘recruiter’ are different.

Comparison of punishment under the Bill with other laws

The Bill specifies various penalties in connection with the offence of trafficking. If a person is found guilty under the Bill and also under any other law, the punishment which is higher will apply. Table 4 compares the penalties prescribed under some of these laws with the penalties prescribed under the Bill. Note that in most cases, the punishment provided under the Bill is higher than the punishment provided under other laws.

Table 4: Comparison of punishment under the Bill and other laws

Offence	Penalty under the Bill	Penalty under Existing Laws
Trafficking for prostitution	<ul style="list-style-type: none"> Imprisonment of 7-10 years, and fine. 	<ul style="list-style-type: none"> ITPA: Trafficking for prostitution is punishable under difference offences, ranging from imprisonment of 3-14 years, and fine.
Sexual exploitation of trafficked person	<ul style="list-style-type: none"> Imprisonment of 7-10 years, and fine of at least Rs 1,00,000. 	<ul style="list-style-type: none"> IPC: Imprisonment of 3-5 years, and fine.
Compelling a person to perform bonded labour	<ul style="list-style-type: none"> Imprisonment of 10 years up to life imprisonment, and fine. 	<ul style="list-style-type: none"> BLSAA: Imprisonment of up to 3 years, and fine of up to Rs 2,000.
Trafficking of minors	<ul style="list-style-type: none"> Imprisonment of 10 years up to life imprisonment, and fine. 	<ul style="list-style-type: none"> ITPA: Trafficking a minor (between 16-18 years) for prostitution is punishable Imprisonment of 7-14 years, and fine. ITPA: Trafficking a minor (below 16 years) for prostitution is punishable with imprisonment of 7 years up to life imprisonment, and fine. IPC: 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. JJ Act: Compelling a minor to perform bonded labour is punishable with imprisonment of up to 5 years, and fine of one lakh rupees.
Buying or selling minors	<ul style="list-style-type: none"> Imprisonment of 7-10 years, and fine of at least Rs 1,00,000. 	<ul style="list-style-type: none"> IPC: Imprisonment of up to five years, and fine of one lakh rupees.
Trafficking by administering narcotic drug	<ul style="list-style-type: none"> Imprisonment of 10 years up to life imprisonment, and fine. 	<ul style="list-style-type: none"> IPC: Imprisonment of up to 10 years, and fine.
Kidnapping for marriage	<ul style="list-style-type: none"> Imprisonment of 10 years up to life imprisonment, and fine. 	<ul style="list-style-type: none"> IPC: Imprisonment of up to 10 years, and fine.

Notes: IPC - Indian Penal Code, 1860; ITPA - The Immoral Traffic (Prevention) Act, 1956; BLSAA - Bonded Labour System (Abolition) Act 1976; JJ Act – Juvenile Justice (Care and Protection of Children) Act, 2015; PRS.

- ‘Crime in India’ 2016, National Crime Records Bureau.
- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, 2000, OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>.
- Prajwala vs. Union of India 2016 (1) SCALE 298.
- Noor Aga vs. State of Punjab (2008) 16 SCC 417.
- Maneka Gandhi vs. Union of India 1978 AIR 597.
- Bhola Singh vs. State of Punjab (2011) 11 SCC 653.
- Sushant Gupta vs. Union of India 2014 (308) ELT 661 (All.).
- Guideline 7, ‘Recommended Principles and Guidelines on Human Rights and Human Trafficking’, OHCHR, <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

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