

My comments on the 9th or 10th Draft of the anti trafficking law proposed by the Min of Women & Child Development, Govt of India.

Dr. Pravin Patkar

Background:

Since the year 2005 the Govt of India has been intermittently releasing the drafts of amendment in the Immoral Traffic Prevention Act (ITPA)-1956. The ITPA is limited to sex trafficking. There are many other pieces of legislation to deal with the other offences of human trafficking such as labour trafficking or trade in human organs and organized beggary etc.

In response to a Writ Petition the Govt of India in Nov 2015 constituted a national level Committee. Coming up with a new single anti trafficking law was one of its major objectives. The details are as follows;

As per the letter of Mr. Samir Sinha the Under Secretary Ministry of Women and Child Development dated 17th November 2015 (Ref. Cabinet Secretariat's I.D. No.293/1/3/2015-CAV dated 12th November, 2015) the Government of India constituted a Committee for preparing a Comprehensive Legislation on Trafficking.

i) The Committee was comprised of the following bureaucrats;

- Secretary or their representative not below the rank of Joint Secretary, Ministry of Home Affairs, M/o Women & Child Development, M/o Labour & Employment, M/o External Affairs, M/o Overseas Indian Affairs, M/o Health & Family Welfare and D/o Legal Affairs
- Member-Secretary, National Commission for Women
- Member-Secretary, National Commission for Protection of Child Rights
- Principal Secretary/Secretary of Dept. of WCD/Social Welfare from State/ UT Govt. of West Bengal, Maharashtra, Andhra Pradesh, Karnataka, Jharkhand, Chhattisgarh, Delhi and Odisha.
- Representative from National Legal Services Authority (NALSA), NALSA is a semi government body constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes. It is mostly composed of judges.
- Dr. P.M. Nair, Chair-Professor, TISS, Mumbai (TISS is a hugely government aided university that follows Govt of India service rules)

ii) and the following members from civil society organizations;

- Mr. Ravi Kant, Shakti Vahini (New Delhi)
- Ms. Sunita Krishnan, Prajwala (Andhra Pradesh)

- Mr. Ajit Singh, Gudia Sansthan (Varanasi-UP)
- Mr. Roop Sen, Sanjog (Kolkata)

The Committee was to submit its report in six months from the date of its constitution i.e. in May 2016.

The Terms and Reference of the committee were as follows:

- To study the various Acts/Legislations under the purview of different Ministries/Departments relating to various aspects of trafficking.
- **To consider the gaps in the existing legislation, from the point of view of prevention, pre-rescue, rescue, post-rescue and rehabilitation aspects.**
- **To Strengthen victim protection protocol so as to ensure that victims are treated as victims not as offenders.**
- **To draft a comprehensive legislative framework covering all aspects of trafficking, as may be considered necessary.**
- To provide for adequate shelter homes for the rescued victims.
- To prepare a comprehensive policy for law enforcing agencies, including for lady police officers for handling the victims of trafficking.

The above entries in **bold** are most relevant to the present Draft as the output on those points should have reflected in the Draft of the proposed new law.

When there were so many success stories, lessons learnt, and good practices evolved by some of the Indian anti human trafficking civil society organizations operating at the ground level and many impressive recommendations pending for the revision of the individual anti trafficking laws it is disappointing to come across a Draft that ignores them. It also shows gross ignorance about the existing legal provisions and ground realities. It indicates a lack of broad based, genuine and participatory consultations. The sense of priorities is missing too.

Although in this note and at this stage I am not giving my exhaustive comments and recommendations for the proposed new law (in the first place in the last three decades in India I have never come across any significant demand for an integrated single piece of legislation against human trafficking) at this stage I am only offering my limited comments on the individual provisions in the Draft of the proposed new law circulated by the Govt of India.

My comments are given in my individual capacity. They are in red fonts given in between the text of the draft.

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- The original text is in black fonts
- My general comments are in blue fonts
- My comments on respective provision are in red fonts in between the original text

Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2016- DRAFT

A

Bill

to prevent trafficking in person, to provide care, protection and rehabilitation to the victims of trafficking, to prosecute offenders and to create a legal, economic, and social environment against trafficking of persons and for matters connected therewith or incidental thereto

WHEREAS, article 21 of Constitution of India guarantees that no person shall be deprived of his life or personal liberty except according to the procedure established by law;

AND WHEREAS, clause (1) of article 23 of Constitution of India prohibits trafficking in human beings and *begar* and other similar forms of forced labour, making a contravention of the same a punishable offence;

The old provision Sec 370 against slavery should not have been repealed. It should have been retained. The definition of “Trafficking” should have been added in addition to that of “Slavery” and not to replace it.

Similarly the above constitutional (Art 23) provision would have been respected by addressing the problem of labour trafficking in the supply chains. Such an important area has been grossly ignored.

It is good that the Government has given up its earlier proposal to shift IPC Sec 370 from the the IPC and put it in the new law. I fully appreciate that.

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:-

The problem of human trafficking in South Asia is quite different from that in the advanced world like UK, USA, or West Europe. All the Drafts have suffered from one glaring flaw ... misunderstanding, misinterpretation and misdiagnosis of the problem of human trafficking in South Asia or India.

The problem is essentially a complex socio economic and cultural problem driven by acute issues of survival, recourselessness, compounded by rising inequalities, marginalization and environmental degradation. It is predominantly cultural with the Dalits being the maximum victims of the phenomenon.

Whenever and wherever such problems have been partly solved it has been possible due to effective economic measures such as a large scale creation of optional, alternative wage opportunities.

The persistent flaw of the various Drafts is in perceiving and presenting the problem in a myopic 'Crime and Punishment' model to be solved with a police heavy intervention.

Of course no doubt that the police has an important and indispensable role in the anti trafficking intervention. But the entire intervention cannot be police heavy unlike indicated in these Drafts.

CHAPTER I

PRELIMINARY

1. Short title, extent, commencement and application.-(1) This Bill may be called Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

I start by highly appreciating the openness of the Ministry of WCD Govt of India in promptly and unhesitatingly abandoning the earlier (1st 2nd 3rd and the 4th) Drafts of the proposed law on realising their flaws through public discussions. The intentions and the gesture of the Ministry are laudable.

My comments in this note are limited to offering a constructive critique of the 9th or the 10th Draft (*with a couple of exceptions no authentic versions of the various Drafts have been shared publicly*) of the proposed Anti Human Trafficking (AHT) law released by the MWCD-GoI for public comments. For its better appreciation readers may make reference to my earlier comments on the previous Drafts especially the 3rd and 4th Drafts released earlier.

This note is not meant to give inputs for the proposed single law or for the improvisation of the 9th or 10th Draft. Nonetheless, I have made some indications in this note in that direction.

The reason being the 9th or 10th Draft like the earlier Drafts right in the beginning forecloses certain options and severely limits the scope for public discussion. It sticks to the premise of having a new single law on human trafficking no matter what. I sincerely disagree with that very premise.

- The previous Drafts have brought out one prominent deficiency in the entire exercise, that of carving out a single, comprehensive law addressing the essence of human trafficking with or without addressing each of the destination crimes of human trafficking substantially. With the insertion of a new offence of trafficking under IPC Sec 370 (and 370A) this had already become unnecessary. At the most the IPC Sec 370 & 370A could have been moderately amended and strengthened. e. g. the term from the original definition of trafficking given in the Palermo Protocol ‘of the abuse of a position of vulnerability’ dropped from IPC Sec 370 could have been restored.
- Most of the existing separate laws dealing with the known destination crimes of human trafficking (e.g. sex trade, sweatshops, beggary rackets, human organ trade, exploitation of children in the labour sector, bonded labour, etc.) are, by and large, adequate (exception the recent amendments in the Child Labour (P&R) Act 2016). Some of them like The Immoral Traffic Prevention Act 1956 (ITPA) and Bonded Labour Systems (Abolition) Act (BLSAA) 1976 require some marginal amendments. The offences like commercial surrogacy will require a dedicated and comprehensive law. A comprehensive law proposed in the 9th or 10th Draft is far from meeting any of these requirements.

- As we have stated in our comments on the very 1st Draft each law addressing the destination crimes and its enforcement procedures and structures (e.g. nodal departments, special courts, special/specialised prosecutors, specialized lawyers, specialised magistrates, service providers etc) are distinct and relatively well institutionalised. Bringing all of the laws together in one law will only be possible by physically pinning the pages of the distinct laws together with a single cover page. It will not be a new organic identity.
- If I am correct, no one has ever justifiably asked for a single comprehensive law against human trafficking. If at all there has been any criticism on that ground (sometimes it happens on international platforms) it is borne out of ignorance about the Indian laws. It should be answered effectively and conclusively.
- I have myself always spoken highly about the progressive, pro-victim, pro-women ITP Act of India and especially about the definition (Sec 2-f) of prostitution therein. I have also pointed out forcefully that it decriminalised the victim women decades before the Nordic law which is highly lauded all over the world for decriminalising the victim women and penalizing the sex buyers.
- None of the following legitimate bases for policy and law making has suggested a new single law.
 - i. popular movement or demand,*
 - ii. pending recommendations made over the previous years by experienced positive stakeholders,*
 - iii. series of research findings or evaluative or policy research,*
 - iv. outcome of several nationwide rounds of open consultations,*
 - v. expert opinions,*
 - vi. Best practices set by the Courts,*
 - vii. Orders of any High Court or Supreme Court*
 - viii. experiences and insights of the field practitioners*
 - ix. International Obligation generated by ratifying any UN or SAARC Convention/protocol*
 - x. Any Best Practice in the world*
- Looking at the drastic difference in the substance of the 1st , 2nd 3rd and the 4th Draft one

feels that this law making process has nothing definite to offer except introducing some uncalled for high power bureaucratic structures like the National Bureau on Trafficking (NBT). That is the only provision that has been maintained and given disproportionately large space in all the Drafts.

- The need of the hour is to **implement the existing law with determination** and not to have some more unnecessary bureaucratic structures.
- The entire exercise of law making as reflected in the various Drafts indicates that the process was **not adequately informed by field level experiences**, success stories (e.g. Elimination of Second Generation Trafficking as a highly effective child protection measure evolved by us at Prerana), best practices (Co-Management of State run Shelter homes as prescribed by Mumbai High Court and demonstrated by Prerana in Mumbai), informed tools (South Asian Protocol on Minimum Standards in Care and Support Services for Victims of Trafficking and Other Forms of Violence) international legal innovations (the Nordic model to hit the Demand factor), techniques (Kerb Crawling vigilance or the amendment in the Canada Highway Act) new areas of intervention (Supply chain transparency as practiced by some states in the USA and Brazil), New technology (Software based Victim Tracking Registry to curb re-trafficking, monitor post rescue scenario and avoid huge wastage of resources in the rehabilitation phase as evolved by the South Asian Regional Action Forum and pioneered by us at Prerana in Mumbai's State run Home in Deonar).
- The 9th or 10th Draft like the earlier Drafts completely lacks **Demand Reduction** measures. (Proper labour protection to Truckers unlike what is being enjoyed by the drivers, conductors, motormen and guards of the state run transportation sectors like ST buses and railways) could bring down the demand for trafficked girls at the Dhabas every night as a trucker would spend his night with his family instead of staying away from them for weeks.
- There is no effort whatsoever to introduce **non institutionalised victim assistance services**
- Traffickers have been using cell phones routinely in their operations and hence are

physically missing from the 'scene of crime'. There is a higher use of websites for procuring, soliciting as well as providing actual sexual 'services' audio visually. The Draft has shown incapability or unwillingness to take note of or address the fast emerging **problem of digitalizing of the crime.**

- Keeping the identity records including some biometric readings of the children from the known high supply areas and matching them with the data of the children found in "Found but Untraced" situations in the destination areas could have been strengthened by the instrument of law as a powerful measure of protection and restoration. The 9th or 10th Draft like the earlier Drafts is a stranger to this need.
- The newer and growing areas of concern as baby farming (commercial surrogacy), bride farming/bride sharing false marriages, etc. get no attention in the Draft.
- The **3 E's** Entertainment, Even Management and Escort Services are fast emerging as the legitimizing fronting for trafficking of adolescent girls. All the Drafts seemed ignorant or unconcerned about that.
- **Orphanage Tourism** is no more a foreign reality. In cities like Mumbai there have been hoardings offering opportunities to domestic and foreign tourists to intermingle with the children placed in shelter facilities against donations. The tour operators (especially the sex tour operators) in India have already started approaching the NGOs running shelter facilities and luring them with handsome donations for allowing foreign tourists to visit their Homes and intermingle with the children placed therein. The Drafts showed utter ignorance about the problem and the measures to address it.
- While the gross abandonment of the earlier Drafts shows openness on the part of the Ministry to convictions it also implies that it (especially the Committee set up for this purpose) has nothing definite in its mind to offer. The only persistent thing in the Drafts is the creation of some bureaucratic structures and agencies and irrationally equipping them with excessive power. In the given situation of witnessing the appalling substance of the earlier Drafts articulated by the Committee and their gross abandonment by the Ministry it is only natural to suspect the real intention behind the exercise.
- In absence of any justification for the creation of such bodies the exercise raises a doubt if

the Ministry is being taken for a ride by some so called 'experts'.

A major problem in accepting the 9th or 10th Draft

- Besides the several other areas of clash and confusion consequent upon accepting the 9th or 10th Draft there is one very prominent multiplicity of structures, overlapping and conflicting provisions, remote control, and avoidable issues of coordination.
 - ✓ For the definition of the offence of trafficking the enforcement will refer to the IPC Sec 370
 - ✓ IPC 370 will continue to have a small list of aggravated crimes
 - ✓ To get the remaining situations of aggravated crimes the enforcement will be required to go to the new law suggested by the 9th or 10th Draft
 - ✓ For the procedures in case of adult victims the enforcement will have to go to the Criminal Procedure Code
 - ✓ For the procedures in case of child victims the enforcement will have to go to the Juvenile Justice Act
 - ✓ For the procedures on an accused juvenile the enforcement will have to go to the Juvenile Justice act-2015
 - ✓ For bonded labour related cases the enforcement will have to go to the Bonded Labour Systems Abolition Act (BLSA Act)-1976
 - ✓ For trying the offences of commercial sexual exploitation the enforcement will have to go to the ITP Act -1956
 - ✓ For non commercial sexual exploitation of children the enforcement will have to go to the POCSO Act -2012
 - ✓ For organ harvesting and trading related crimes the enforcement will have to go to the THO Act.
 - ✓ Etc.
- Since often an overwhelming majority of the rescued victims are children and minors the enforcement and the government service providers will be in a state of confusion whether to go as per the new law (9th or 10th Draft) or to follow the JJ Act since the 9th

or 10th Draft is overriding all the other laws (Ref. Sec 61 of the Draft) but it also states that for substantial purposes follow the individual law which it (New law vide the 4th Draft) lacks completely. Will the rescued children and adolescent girls be placed in the new Rehabilitation Home / Protection Home provided under the 4th Draft or to the conventional Shelters and Children's Homes under the JJAct?

- As per the recently made provisions the trial magistrates had started granting the criminal injuries compensation under Sec 357 & 357A of the Cr P. C. and under the various state laws newly passed. Now the procedure will be lengthened without adding any value whatsoever
- Then why does one at all need a new law as given in 4th 9th or the 10th Drafts?

2. Definitions.-

In this Act, unless the context otherwise requires, –

- (a) “Anti-Trafficking Police Officer” means a police officer appointed by or on behalf of the State Government to be in charge of police duties for the purpose of this Act or previously notified under any Act. And also include any officer of Anti Human Trafficking Unit established for the purposes of this Act by the State Government under section 22 of this Act;

In general, adding structures and authorities must be avoided. This need has never been felt. Assigning a Special Police Officer (U/S 13(3) of ITP Act who will attend to the trafficking cases exclusively where there is a high density of offences and or on priority basis where the incidence is not so very high is a better move. Besides becoming a burden on the tax payers it creates problems of coordination and in absence of strict liabilities they remain unaccountable. For more comments ref to comments on Sec 22)

- (b) “appropriate Government “means the Central Government or a State Government, as the case may be;

- (c) “child” means a person who has not completed eighteen years of age;

The J J Act considers a child as a person below 18 years of age. The child labour law considers as a person under 14 years of age. The Immoral Traffic Prevention Act considers it to be a person under 16 years of age. The child marriage related law considers a person male child if he is below 21 years of age. **First, these discrepancies need to be removed.**

- (d) “District Anti-Trafficking Committee” means a Committee established by the appropriate government under section 30;

In general adding structures and authorities must be avoided. This need has never been felt. Besides becoming a burden on the tax payers it creates problems of coordination and in absence of strict liabilities they remain unaccountable. There is an acute need to establish accountability and transparency on the part of the existing structures. Take for example there is immense dissatisfaction over the functioning of the Child Welfare Committees set up under the J J Act. There are complaints of high handedness, child unfriendliness, corruption, work shirking, and non accountability.

- (e) “District Police Nodal Officer” means a police officer appointed by State Government under section 21 of this Act;

In general adding structures and authorities must be avoided. This need has never been felt. Besides becoming a burden on the tax payers it creates problems of coordination and in absence of strict liabilities they remain unaccountable.

- (f) “narcotic drugs” shall have the same meaning assigned to it in clause (xiv) of section 2 of Narcotic Drugs and Psychotropic Substances Act, 1985;

- (g) “National Anti-Trafficking Bureau” means a bureau established by Central Government under section 19 of this Act;

This is a huge and completely uncalled for burden on the tax payers. In general, adding structures and authorities must be avoided. It is time to make them deliver. Besides becoming a burden on the tax payers it creates problems of coordination and in absence of strict liabilities

they remain unaccountable. For more specific comments on NTB go to the comments on Sec 20 below.

- (h) “National Anti-Trafficking Relief and Rehabilitation Committee” means a committee established by Central Government under section 28 of this Act;
- (i) “notification” means a notification published in the Official Gazette;
- (j) “Placement Agency” means any agency, registered or unregistered, including individuals, carrying on business in connection with the employment of persons in any capacity, including recruiting, receiving or arranging persons for employers for employment by them, whether for the purpose of financial gain, benefit or reward or otherwise;

Single altruistic individuals trying to facilitate employment of a couple of neighbouring youth will also come under the purview of this Section.

- (k) “place of exploitation” means any location, place, or premises where the offence of trafficking is committed or attempted and it includes source, transit and destination of trafficking;
- (l) “premises” includes any land, building, structure or conveyance and any part thereof;
Did not require definition as in this case it has no special significance unlike the definition of ‘Brothel’ in ITP Act which is very well justified in that law.
- (m) “prescribed” means prescribed by rules made by appropriate government under this Act;
- (n) “Protection Home” means a home established or maintained in every district or a group of districts, by the appropriate Government directly, or through voluntary or non-governmental organisations, for the immediate care and protection of victims and for the purposes specified under section 34 of this Act;

Creates confusion and clashes with the provision of Sec 21 of ITP Act which provides for ‘Protective Home’ while this law (9th or 10th Draft) provides for ‘Protection Home’. With overriding effect the ITPA provision U/S 21 will be lost. That will create a huge breakdown in the post rescue scenario.

Section 34 and 35 in this Draft are shabbily drafted and shall only add to confusion and conflict and with their overriding effect they will create huge breakdown of functions currently carried out under ITPA and JJAct. The JJAct provides for **Children's Homes** and **Shelters** for immediate care of the children in need of care and protection including rescued children which are more than half of the overall persons rescued from sex trade, labour trafficking, adoption rackets, and organized beggary.

- (o) “psychotropic substances” shall have the same meaning as assigned to it in clause (xxiii) of section 2 of Narcotic Drugs and Psychotropic Substances Act, 1985;
- (p) “Rehabilitation” shall mean all “sets of measures and a process for the physical, psychological and social well-being of the trafficked victims and it including access to health care having psychological and physiological support, medical services, economic empowerment, legal aid and assistance, safe and secure accommodation;
- (q) “Rehabilitation Home” means an institution, established or maintained, in every district or two or more districts by the appropriate Government, either directly or through a voluntary or non-Governmental organisation for the long term rehabilitation of the victim under section 35 of this Act;

- The term ‘long term rehabilitation’ implies there is also something called ‘short term rehabilitation’. The Draft does not clarify that.
- Clashes with the other institutions created under the J J Act and ITP Act for long term care of the rescued victims and other children in need of care and protection.
- As this Draft proposes to override the other laws it will create gaps and breakdowns in the services and procedures in connection especially with children and with adult women rescued from the destination crimes of trafficking. While the other laws have treated their subject matter with reasonable care and in sufficient details the 4th Draft is hugely deficit and casual.

- (r) “State Nodal Officer” means an officer appointed by State Government under section 31 of this Act;
- (s) The current authorities created under the individual distinct laws addressing each

destination crime of human trafficking are appropriate. They may be strengthened by minor revisions in those laws, more importantly by a strong administrative willpower. This need has never been felt. In general adding structures and authorities must be avoided. Instead the existing structures should be made to deliver. Besides becoming a burden on the tax payers it creates problems of coordination and in absence of strict liabilities they remain unaccountable.

(s) “State Police Nodal Officer” means a police officer appointed by the State Government under section 20 of this Act;

- In general adding structures and authorities must be avoided. This need has never been felt. Besides becoming a burden on the tax payers it creates problems of coordination and in absence of strict liabilities they remain unaccountable.

(t) “State Anti-Trafficking Committee” means a Committee established by the State Government under section 29 of this Act;

(u) “recruits” means and included any act of hiring, supplying, obtaining, selecting, approving or inducting labour or services of any person either by way of compensation or otherwise.

(v) “Trafficking of person” has the same meaning as assigned to it in section 370 of Indian Penal Code, 1860.

(w) “victim” means men, women and children (why not transgender???) on whom the offence of trafficking has been committed or attempted by any other person or persons and it includes the dependents and legal heirs of the deceased victim for the purpose of receiving compensation (any relatives? Including those who are a party to the crime, or who were highly negligent?) and other reliefs as the case may be;

(s) Words and expressions used but not specifically defined in this Act but have been defined in any other law of the country shall have the meanings respectively assigned to them in that Act unless it is specified in this Act.

3.General Principles.-

(1) Principle of dignity, rights and freedom: All human beings shall be treated with equal dignity and rights.

- (2) Right of the trafficked person: In consonance with Article 23 of the Constitution, rehabilitation of a trafficked person shall be deemed to be a right of the person.
- (3) Principle of non-waiver of rights: No waiver of any of the right of the victim is permissible or valid, whether sought by the victim or person acting on behalf of the victim, and any non-exercise of a fundamental right shall not amount to waiver.
- (4) Principle of equality and non-discrimination: There shall be no discrimination against a victim on any grounds including sex, gender, caste, ethnicity, nationality, place of birth, disability and equality of access.
- (5) Principle of best interest: All decisions regarding the victims shall be based on the primary consideration that they are in the best interest of the victims.
- (6) Principle of right to privacy and confidentiality: Every victim shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.
- (7) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

CHAPTER II

OFFENCES AND PENALTIES

4. Trafficking for the purpose of forced labour or bonded labour.–

Notwithstanding anything contained in any other law for the time being in force, whoever traffics a person for forced labour or bonded labour through the use of violence, intimidation, inducement including promise of payments, deception or coercion, or by more subtle means, including accumulated debt, retention of identity papers, or threats of denunciation to authorities, with or without payment of wages, or with payment of wages less than minimum wages fixed by appropriate Government, shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

- ‘Forced labour’ not defined here or elsewhere. The definition of bonded labour as per the BLSA-Act includes trafficking as well as the act of exploitation (the destination crime). This section adds some more means. Trafficking for bonded labour will then mean trafficking for trafficking. As regards trafficking for bonded labour the IPC Sec 370 already describes some means. Which means will be considered? From both the laws of from the 4th Draft since it has overriding power?
- Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

5. Trafficking for the purpose of bearing child.-

Notwithstanding anything contained in any other law for the time being in force, whoever commits the offence of trafficking of a person for the purpose of bearing child either naturally or through assisted reproductive techniques for commercial purposes, shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

6. Giving narcotic drug or psychotropic substance, or alcohol, for the purpose of trafficking.-

Notwithstanding anything contained in any other law for the time being in force, whoever gives any narcotic drug or psychotropic substance, or alcohol to a person, for the purpose of trafficking shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

7. Administering chemical substance or hormones for the purpose of attaining sexual maturity and exploitation.-

Notwithstanding anything contained in any other law for the time being in force, whoever administers any chemical substance or hormones to a trafficked woman or girl for the purpose of early sexual maturity and exploitation shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

8. Trafficking for the purpose of marriage or under the facade of marriage.-

Notwithstanding anything contained in any other law for the time being in force, whoever commits the offence of trafficking for the purpose of marriage or under the facade of marriage, shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

9. Causing serious injury amounting to grievous hurt or death including suicide.-

Notwithstanding anything contained in any other law for the time being in force, whoever commits the offence of trafficking causing serious injury amounting to grievous hurt, or death of the victim including death as a result of suicide as a consequence of trafficking shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

10. Trafficking of a pregnant woman or resulting into pregnancy.-

Whoever commits the offence of trafficking of person of a pregnant woman or the offence of trafficking results in to the pregnancy of the victim shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

11. Causing life threatening illness.-

Whoever commits the offence of trafficking of person and as a consequence of trafficking the victim is exposed to a life-threatening illness, including HIV/AIDS shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

12. Trafficking of person for the purpose of begging.-

Whoever commits the offence of trafficking of person for the purpose of begging shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

13. Trafficking of person suffering from mental illness or disability.-

Whoever commits the offence of trafficking of person suffering from mental illness as defined in clause (q) of Section 2 of the Mental Health Act, 1987 or disability as defined in clause (i) of the Persons with Disabilities Act, 1995, or as a consequence of trafficking the victim becomes mentally ill or disable, shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

14. Trafficking of a child for the purpose of human shield or child soldiers.-

Whoever commits the offence of trafficking of a child for the purpose of human shield or child soldiers or for the commission of crime shall be punished with imprisonment for a term which shall not be less than ten years, but which may extend to life imprisonment and shall also be liable to fine which shall not be less than one lakh rupees.

Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370 which is more appropriate. The unnecessary division of some aggravated offences under two different laws will create confusion and deviance from the well established system.

15. Trafficking of persons on more than one occasion.-

If a person is convicted of the offence of trafficking on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of the person's natural life, and shall also be liable to fine which shall not be less than two lakh rupees;

- This need not be a separate section. Most statements of offences have a provision for higher punishment for second and subsequent offences.)
- Sections 4 to 15 should go in the list of aggravated offences in the statement of trafficking offence in IPC Sec 370. It will be more appropriate and functional. The unnecessary separation of the aggravated offences under two different laws will only create confusion and deviance from the well established system.

16. Exploitation of trafficked persons.-

(1)Whoever, knowingly or having reason to believe that a person is a victim of trafficking in person, subjects such a victim to exploitation in any manner shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine which shall not be less than five lakh rupees.

(2)Whoever subjects a victim of trafficking in person, who is a child or a person suffering from any physical or mental disability, to exploitation in any manner shall be punished with rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to seven years, and shall also be liable to fine, not less than five lakh rupees.

- The term **exploitation** will be borrowed from the IPC Sec 370 as the 4th Draft does not define it.

IPC Sec 370 - The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

- Will exploitation include organised beggary, surrogacy, forced marriages, human sacrifices,
- Impossible to enforce! The prosecutor will have to first prove that the person exploited is a victim of trafficking.
- The act of exploiting a person itself is an offence but this Section will not cover that as he/she is already not a trafficking victim.
- The prosecution will have to also prove the impossible i.e. the accused has exploited the person **knowingly or having reason to believe that a person he is exploiting is a victim of trafficking in person. By what technique will the prosecution prove the knowledge and belief on the part of the accused?** It is a non enforceable provision. Why is the 'presumption of guilt and burden of proof' provisions used elsewhere is not used in this case?

17. Punishment for keeping a place of exploitation or allowing premises to be used as a place of exploitation.-

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a place of exploitation shall be punishable on first conviction with rigorous imprisonment for a term which may extend to four years and also with fine which may extend to one lakh rupees and in the event of a second or subsequent to conviction with rigorous imprisonment for a term which shall not be less than seven years and with fine which may extend to two lakh rupees.

(2) Any person who—

- (i) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a place of exploitation, or
- (ii) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a place of exploitation, or is wilfully a party to the use of such premises or any part thereof as a place of exploitation, shall be punishable on first

conviction with imprisonment for a term which may extend to two years and with fine which fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

Explanation- For the purposes of sub-section (2), it shall be presumed until the contrary is proved, that any person referred to in clause (i) or clause (ii) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a place of exploitation or, as the case may be, has knowledge that the premises or any part thereof are being used as a place of exploitation.

(3)Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (i) or clause (ii) of sub-section (2) of any offence under this Act in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

- So even a tenant using a place for exploitation will cause the owner to lose the place?

18. Punishment for promoting or facilitating trafficking in person.-

(1)A person is said to promote, procure or facilitate the commission of trafficking in person if that person –

- (i) produces, prints, issues or distributes unissued, tampered or fake certificates, registration or stickers of any government agency which issues the certificates, registration or stickers as proof of compliance with government requirements for promoting trafficking in person; or
- (ii) advertises, publishes, prints, broadcasts or distributes, or causes the advertisement, publication or distribution by any means, including the use of information technology or any brochure, flyer or any propaganda material that promotes trafficking in person; or
- (iii) assists in the conduct of misrepresentation or fraud for purposes of procuring or facilitating the acquisition of clearances and necessary exit documents from government agencies for the purpose of trafficking in person; or
- (iv) facilitates or assists in the exit and entry from or into India for the purpose of trafficking

of person.

(2) Whoever commits an offence mentioned under sub-section (1) of section 20 shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine which shall not be less than one lakh rupees.

- Why not any specific responsibilities or sections with respect to the trafficking and exploitation in the Supply Chain which is the growing problem of labour trafficking?

CHAPTER III

INVESTIGATION AUTHORITIES

19. (1) The Central Government shall establish **National Anti-Trafficking Bureau** for the prevention, investigation of the trafficking of persons cases and protection of the victims of trafficking.

(2) The National Anti-Trafficking Bureau shall perform under the overall supervision of the Ministry of Women and Child Development.

(3) The National Anti-Trafficking Bureau shall be headed by Director General of Police assisted by Additional Director General of Police.

(4) National Anti-Trafficking Bureau shall have a team of police officers and other experts to ensure the effective discharge of their duties in the manner as may be prescribed.

(5) The National Anti-Trafficking Bureau shall perform the following functions:

The NATB Completely unnecessary.

- ✓ None of these changes are founded on any of the following legitimate factors namely;
 - xi. popular movement or demand,
 - xii. pending recommendations made over the previous years by experienced positive stakeholders,

- xiii.series of research findings or evaluative or policy research,
- xiv.outcome of several nationwide rounds of open consultations,
- xv.expert opinions,
- xvi.Best practices set by the Courts,
- xvii.Orders of any High Court or Supreme Court
- xviii.experiences and insights of the field practitioners
- xix.International Obligation generated by ratifying any UN or SAARC Convention/protocol
- xx.Any Best Practice in the world
- ✓ The CBI has already been appointed as the TPO under the ITP Act way back around 2004. Has the role and performance of CBI as the Trafficking Police Officer appointed under Sec 13-3 of ITPAct ever been evaluated? Have there been complaints about the incompetence of CBI?
- ✓ Why can't there be a special desk within the CBI to combat trafficking in general of all kinds including labour trafficking and organ trade? This can be accomplished by marginal amendments in the separate laws which are anyway going to be in force.

(a) PREVENTION

- (i) coordinate and monitor surveillance and preventive efforts along the known or probable trafficking routes.
- (ii) conduct surveillance and enforcement at source, transit and destination points.
- (iii) maintain coordination between various law enforcement agencies.
- (iv) strengthen the intelligence apparatus to improve the collection, collation, analysis and dissemination of operational intelligence.
- (v) increase international co-operation and co-ordination with concerned authorities in foreign countries and concerned international organisations, both in operational and long term intelligence as in investigations, mutual legal assistance, to facilitate universal action for prevention and suppression of trafficking of persons and to implement

obligation under the various international conventions and protocols that are in force in respect of counter measures taken against trafficking.

- (vi) coordination of actions and enforcement by various bodies and other authorities established under this Act and any other law for time being in force.
- (vii) coordination of actions taken by the other concerned Ministries, Departments and Organizations in respect of matters relating to trafficking of persons.
- (viii) review measures to combat trafficking of persons and formulate coordinated strategy of action by various enforcement agencies.
- (ix) to make sustained efforts for capacity building and training of agencies involved in the field of prevention and protection of trafficking of persons.

- Take the case of cross border trafficking. The app. 4000+ km long Indo Bangladesh border had too many problems of porosity all these years. It was very easy to cross the border with legal or illegal means. After the 2015 decision of fixing the disputed borders and with the proposed construction of a non porous fence (which is anyway required to the national security purposes) the trafficking from Bangladesh is expected to get curbed except for the corruption in the border maintaining forces.
- The app. 1600 km long border between India and Nepal is completely open and without any migration procedures. The offence of exploitation is not completed in the transit. It looks like an apparently legal process of migration till the exploitation actually takes place. With the victim eager to defend the accused it is all the more difficult to prove trafficking. What will the police do there?
- Sealing the Indo-Nepal border could be one important step and deploying police is not.
- The Draft has misunderstood the trafficking problem as that of 'crime and punishment'. It is a complex socio cultural and economic problem requiring socio economic solutions. Inputs by seasoned social scientists completely missing.
- The existing police system is good enough to deliver what it should. Only the administrative will to do so is lacking.
- Unlike some other countries in South Asia the trafficking activity is diffused and not centralised, operated by many unconnected operators and not controlled by a handful

organized gangs. It does not operate as a 'Stranger Danger' model.

(b) INVESTIGATION

- (i) co-ordinate investigating activities among the districts, States and with other countries in case of cross border trafficking of persons cases.
- (ii) take cognizance of trafficking cases having inter-state and cross border ramifications if such request is being made by Anti Trafficking Police Officer appointed under section 22 of this Act with the approval of State Police Nodal Officer appointed under section 20 of this Act.
- (iii) May *suo-motu* take up cases of trafficking across the country where it has reasons to believe that the case involves inter- state or international linkages and cases involving cross border trafficking.

Under the existing system the CBI is supposed to take *suo motu* action. The NDA government in the past had done that. It is currently limited to sex trafficking. Its jurisdiction can be expanded to cover the other destination crimes of trafficking.

- (iv) develop and monitor a database on crimes related to trafficking, traffickers and other offenders connected with trafficking of persons in co-ordination with the CCTNS.

(No point is creating a new structure. The National Crimes Record Bureau should cover this crime at the national level and the CID at the state level as it is under the current system. It will avoid duplication and lack of coordination. Basically the trafficking issue is misunderstood and mis-painted as the issue of operation of centralized professional international criminal gangs. It is a complete mis-projection. That is not the case in India or South Asia.)

- (v) co-ordinate with other investigative and law enforcement agencies, including but not limited to Central Bureau of Investigation, National Investigation Agency, Research and Analysis Wing, Intelligence Bureau, Narcotics Control Bureau, Interpol and other international law enforcement agencies.

It is better to leave research to professional researchers, universities and academic institutions. We have witnessed the appallingly poor quality of research of the past decade that abundantly proves gross ignorance about research by the researchers. First, let the available research be discussed and evaluated by research experts and universities.

- (vi) Facilitate modern secure storage facilities to ensure that all best evidence is preserved and protected.
- (vii) facilitate frequent meetings of the State Police Nodal Officers to monitor and evaluate the establishment and functioning of Anti Human Trafficking Units.
- (viii) provide necessary support for investigation purposes to Anti Human Trafficking Units, if such requests is being made.

Borne out of a gross mis-projection and mis-diagnosis of the problem of human trafficking. It is a complex socio economic and cultural problem operated by growing vulnerabilities, inequalities, push and pull factors. Police raj cannot solve that problem. It will make the society a prison and every person a trafficker. There is something fundamentally and grossly wrong in this 'police heavy' approach.

(c) PROTECTION

- (i) protection of prosecution witnesses, victims and affected families as the case may be.
- (ii) review and monitoring of Protection Homes.
- (iii) monitor victim and witness protection protocols and rules.
- (iv) and such other functions as may be prescribed.

The pending victim witness protection bill may be tabled.

(6)The appropriate Government shall make rules under this Act prescribing the manner of functioning and reporting National Anti- Trafficking of Persons Bureau.

20. State Police Nodal Officers.-

- (1) The State Government shall appoint a State Police Nodal Officer, to be notified by the Director General of Police.
- (2) The State Police Nodal Officer shall not be below the rank of Inspector General of Police.

(3) The State Police Nodal Officer shall monitor the functioning of District Anti-trafficking Officers and Anti Human Trafficking Unit state wide.

(4) The State Police Nodal Officer shall also co-ordinate and monitor inter-state transfer of a rescued person and offenders.

(5) The State Police Nodal Officer shall work in liaison with State Nodal Officer as appointed under section 31 of the Act and National Anti-Trafficking of Persons Bureau.

(6) The State Police Nodal Officer shall also perform such other functions as may be prescribed.

- Unwanted unnecessary. Instead strengthen the local police station and monitor it well. The experience of the Mumbai police is a good example.

21. District Police Nodal Officers.-

(1) The State Government shall appoint a District Police Nodal Officer, to be notified by the Inspector General of Police .

(2) The District Police Nodal Officer shall not be below the rank of Deputy Superintendent of Police.

(3) The District Police Nodal Officer shall act as a convenor to the District Anti-Trafficking Committee established under section 30 of this Act and shall report to State Police Nodal Officer in matters related to rescue, investigation and inter-state transfer of a rescued person and offenders.

(4) The District Police Nodal Officer shall monitor the functioning of Anti Human Trafficking Unit and provide necessary assistance to them for the effective discharge of their duties.

(5) The District Police Nodal Officer shall also perform such other functions as may be prescribed.

- Unwanted and unnecessary! Instead, strengthen the local police station and monitor it well. The experience of Mumbai police is a good example.

22. Anti-Trafficking Police Officers.-

(1) The State Government shall establish for a district or group of districts an Anti- Human Trafficking Unit for the prevention, rescue, investigation and protection of the offences mentioned under this Act.

Provided all local police officers shall, wherever such Anti Human Trafficking Units are not functional, undertake all activities in matters of rescue, investigation, prevention and protection.

Provided further, where both Anti- Human Trafficking Unit and local police station co-exist, then on receipt of information of any offence under this Act, either Anti- Human Trafficking Unit or local police station whoever receives such information first shall take all necessary action for immediate rescue and protection and then transfer the case to the Anti-Human Trafficking Unit.

- The section is about Anti Trafficking Police Officers and actually describes Anti Human Trafficking Unit–AHTUs which are already in existence at the district and city levels.
- It is pointless creating AHTUs in every police station.
- As the ITPA Act continues to be in force the recently enforced system of appointing Special Police Officers U/S 13(3) of ITP Act which is doing well it will come in conflict with this provision.
- As this Act proposes to be overriding then Sec 13(3) of ITPAct will get repealed which is hugely counterproductive.
- As it gets repealed the role of Advisory Bodies (U/S 13(3)b) facilitating the representation of the local anti trafficking and other civil society organizations to work in collaboration with the SPO will also come to an end. The participation of the civil society sector will further shrink.
- Unnecessary and unjustified duplication of structures. The special need for the AHTu is not explained. As it is the provision itself admits that teh task of the AHTU can be done by the regular police stations, then where is the need for a separate or additional structure?

Instead an officer not below the rank of the Inspector of Police may be assigned to act as a Special Police Officer in ITPA as well as have special responsibilities under the other laws such as Bonded Labour System (Abolition) Act, Prohibition of Beggary Act, etc

(2) The State Government shall notify any police officers not below the rank of Sub-Inspectors as Anti-Trafficking Police Officers and vest him with all the powers to investigate a crime committed within his local jurisdiction.

Provided that in case involving inter-district or inter-state trafficking, Anti-Trafficking Police Officers shall investigate the crime in collaboration with the concerned Anti-Trafficking Police Officers or local police as the case may be, with the prior approval of State Police Nodal Officer.

• **Too complicated a procedure)**

(3) The State Government shall appoint for every Anti Human Trafficking Unit such number of subordinate police officers including women police officers as it deems necessary for the discharge of its functions.

(4) The District Anti-Trafficking Committee as defined under section 30 shall also appoint a body of (not more than) five leading social workers including women to advise and assist Anti-Human Trafficking Units within their local jurisdiction.

(5) The District Superintendent of Police shall, without any delay within 60 days of the notification of the Act, ensure training and appointment of the officers of the Anti- Human Trafficking Unit.

CHAPTER IV

RESCUE, SEARCH AND OTHER INVESTIGATION RELATED MATTERS

23. Search.-

(1) Where a magistrate has reason to believe from information received from the police or from any person authorised by the appropriate Government in this behalf or otherwise, that any person(s) is being subjected to trafficking he may direct the nearest Anti-Trafficking Police Officer or a police officer not below the rank of a sub-inspector to enter such premises, and to

rescue such person and search the said premises and also take action against the offenders, in accordance with the provisions of this Act.

- Provision already well established in ITPA. Can be extended to the other laws

(2) Notwithstanding anything contained in any other law for the time being in force, whenever any Anti-Trafficking Police Officer or the local police has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in any premises and that search of -such premises with warrant cannot be made without undue delay, such officer shall, after recording reasons, enter and search such premises without a warrant and rescue the victims.

Provided, the reasons for any delay shall be recorded and submitted in writing to the State Police Nodal Officer.

- Already exists in ITPA. Can be extended to the other individual laws

(3) Before making a search under sub-section (1), Anti-Trafficking Police Officer or local police officer as the case may be shall call upon members of any reputed welfare organization for victim support including counselling, and other roles and responsibilities under this Chapter.

- Already exists in ITPA. Can be extended to the other individual laws

(4) Before conducting search and rescue, the Anti-Trafficking Police Officer or local police as the case may shall call upon two or more respectable persons (at least one of them shall be a woman) to attend and witness the search and rescue, and may issue an order in writing to them or any of them to do so.

- Already exists in ITPA. Can be extended to the other individual laws

(5)The Anti-Trafficking Police Officer or local police as the case may be, during search and rescue operation under this section shall be accompanied by at least two woman police officers.

- Already exists in ITPA. Can be extended to the individual other laws.

- In their drives against child labour in Mumbai the various stakeholders and duty bearers had formed a multidisciplinary team without adding a single office or post and done an excellent job at rescuing children. Even the CWC members were present on the site to immediately take custody of the children. There is so much to learn from the best practices and success stories in the field. Instead of that the 4th Draft is trying desperately to push an unwanted high power police heavy structure.

(6)The Anti-Trafficking Police Officer or local police as the case may be, has reason to believe that victims of trafficking for forced labour, bonded labour are to be rescued, such District Anti-Trafficking Police Officer or local police as the case may be, shall form a search and rescue team comprising of officials from District Administration including Labour Department.

- This could be a part of a Govt Order or GR or protocol

(7)District Anti-Trafficking Police Officer or local police as the case may be, has reason to believe that it is necessary to rescue without undue delay because the victim is in imminent danger, the offender(s) may abscond or any other reasonable ground, and the District Administration Officials or Labour Officer or both are unavailable, the Special Police officer shall carry out the rescue in presence of independent witnesses and observing other protocols under the Code of Criminal Procedure, 1973, (2 of 1974).

Provided that the police officer conducting such rescue will intimate the District Magistrate and Labour Officer without any delay.

Provided further, unless it is expressly provided under this Act, the provisions related to search and rescue mentioned in the Code of Criminal Procedure, 1973, (2 of 1974) shall be applicable.

(8)Anti-Trafficking Police Officer or local police as the case may be, shall after rescue take necessary action for the medical examination of the victim by a registered medical practitioner for the purposes of determination of the age, the detection of any injury, disease incidental thereto.

Explanation—For the purpose of this sub-section, “registered medical practitioner” shall have the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956).

(9) The Anti-Trafficking Police Officer or local police as the case may be, shall inform the District Anti Trafficking Committee about the rescue conducted and the Committee shall take appropriate actions for providing interim relief and further rehabilitation services to the victim.

(10) The appropriate Government shall make such rules for search, pre-rescue and rescue procedure as may be consistent with this Act.

- Repetitive.
- These unnecessary details need not be in the text of the law. Some of them already exist in some other laws and need to be made common in all the separate laws.

24. Safe Care and Protection of victims rescued under this Act:-

(1) Wherever the rescued person is a child, he shall be produced before the Child Welfare Committee as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

(2) Wherever the rescued person is a victim of forced labour, bonded labour, he shall be produced before the District Magistrate or Labour Officer or any other such officer in accordance with the provisions of the Bonded Labour System (Abolition) Act, 1976 and other labour laws.

(3) Wherever the rescued person is a victim of sexual exploitation he shall be produced before the appropriate Magistrate having jurisdiction to try such cases or nearest Magistrate of any class who shall pass such orders as he deems proper for his safe care and protection.

(4) When the victim is produced before the Magistrate, he shall after giving him an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received with regard to the age of the victim. In addition, a home investigation shall be carried out by the body of social workers associated with Anti-Trafficking Police Officer as notified under section 22 of this Act. The home investigation report shall be submitted to the Magistrate within such time and manner as may be prescribed and a copy of the same shall be forwarded to District Anti-Trafficking Committee by Anti-Trafficking Police Officer within 24 hours of its receipt.

(5) The Magistrate may, while an inquiry is made into a case under sub-section (4) pass such orders as he deems proper for the safe care and protection of the person:

Provided, where the Magistrate is satisfied, after making an inquiry as required under sub-section(4) and within a reasonable time, after taking into account the recovery status of the victim and his own wishes regarding his rehabilitation, that the information received is correct; and that he is in need of care and protection, he may, make an order for reasons to be recorded in writing that such person be placed for such reasonable period, as may be specified in the order, in a protection home or rehabilitation home.

Provided further, if the person rescued and produced before the Magistrate is an adult and he voluntarily makes an application supported by an affidavit for his release and if the Magistrate upon inquiry is of the opinion that such application has not been made voluntarily, the Magistrate may reject such prayer after recording his reasons in writing.

(6) In discharging his functions under this section, a Magistrate may summon a panel of five persons, three of whom shall be women, and at least one should be a mental health professional or a trained psycho social counsellor, to assist him and may, for this purpose, in consultation with the District Anti-Trafficking Committee and District Legal Services Authority, keep a list of experienced social workers, particularly women working on the issue of trafficking.

- Are such people available in every district? Why will they work?

25. Investigation and Evidence.-

(1) The Anti-Trafficking Police Officer or local police as the case may be, shall ensure that investigation including search and seizure must be conducted in accordance with the provisions laid down in Criminal Procedure Code, 1973 and any other law for the time being in force.

(2) Notwithstanding anything contained in Criminal Procedure Code, 1973, the Anti-Trafficking Police Officer or the local police as the case may be, shall submit the final police report before the Court within 90 days.

- Unnecessary in the text of the law. Can go in administrative/procedural memos

(3) The Anti-Trafficking Police Officer or the local police as the case may be, shall submit a copy of the report to the Deputy Superintendent of Police who in turn will immediately forward the report to the State Police Nodal Officer.

• Unnecessary in the text of the law. Can go in administrative/procedural memos

(3) The Anti-Trafficking Police Officer or the local police as the case may be, shall ensure that all forensic evidence including and not limited to electronic records, medico-forensic records and other such documentary evidence as may be prescribed, be submitted as part of his final report.

Provided where an accused has been previously convicted of an offence defined under this Act, or any other Act, the Anti-Trafficking Police Officer shall apply to the appropriate authority for the freezing of bank accounts of said accused.

• Unnecessary in the text of the law. Can go in administrative/procedural memos

(5) The National Anti-Trafficking of Persons Bureau shall facilitate and guide to ensure that every District Anti Trafficking Unit is equipped with modern secure storage facility to ensure preservation of evidence.

• Unnecessary in the text of the law. Can go in administrative/procedural memos

(6) In cases of inter State or cross border trafficking, the Anti-Trafficking Police Officer may seek the assistance from National Anti-Trafficking Bureau with the written approval of State Police Nodal Officer.

26. Presumption of Offences.-

(1) Where a person is prosecuted for committing or abetting or attempting to commit any offence under this Act and related offences, in respect of a child or a person suffering from physical or mental disability, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

(2) Where a child or minor found in a place of exploitation, is on medical examination, detected to have been physically or sexually abused, or with a disease or illness commonly contracted in the course of the exploitation being carried on, it shall be presumed, unless the contrary is proved, that the child or minor has been trafficked for purposes of exploitation or, as the case may be, has been subjected to exploitation.

- Already exists in the ITPAct .can be extended to other individual laws .

(3) Whenever any debt is claimed by a bonded labourer, or anybody on his behalf, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.

- Already exists in the BLSA Act and other laws.

27. Non-liability of victims of Trafficking in Person.-

(1) A victim of trafficking in person shall not be held criminally or administratively liable and shall not be punished, fined or otherwise penalized.

- The implications of this statement are extremely dangerous!

(2) A victim of trans-border trafficking shall not be arrested or charged criminally or administratively for offences mentioned under the Foreigners Act, 1946, the Immigration Act, 1990, and the Passport Act, 1967.

- Already there in the SAARC Convention 2002 and the UN Palermo Protocol 2000. Both have been ratified by India.

CHAPTER V

RELIF AND REHABILITATION AUTHORITIES

28.(1)The Central Government shall establish **National Anti-Trafficking Relief and Rehabilitation Committee** for providing relief and rehabilitation services to the victims of trafficking.

(2) The composition of the National Anti-Trafficking Relief and Rehabilitation Committee shall be as follows:

- (i) Secretary, Ministry of Women and Child Development- Chairperson

- (ii) Head, National Anti- Trafficking of Persons Bureau –Member Secretary
- (iii) Representative, Ministry of Home Affairs - Member
- (iv) Representative, Ministry of Labour and Employment - Member
- (v) Representative, Ministry of Social Justice and Empowerment – Member
- (vi) Representative, Ministry of Panchayati Raj - Member
- (vii) Representative, Ministry of Health and Family Welfare - Member
- (viii) Representative, Ministry of Human Resource and Education - Member
- (ix) Four representatives from registered civil society organisation active in the prevention, rescue and rehabilitation of victims of trafficking- Member
- (x) Such other members as may be prescribed.

(3)The National Anti-Trafficking Relief and Rehabilitation Committee shall perform following functions:

- (i) The National Anti-Trafficking Relief and Rehabilitation Committee shall facilitate and ensure rehabilitation and relief services including compensation, repatriation, re-integration to the victims of trafficking through concerned Ministries, Departments and Commissions.
- (ii) The National Anti-Trafficking Relief and Rehabilitation Committee shall provide for Protection and Rehabilitation Homes to enable the immediate and long term sustainable rehabilitation of victims.
- (iii) The National Anti-Trafficking Relief and Rehabilitation Committee shall ensure the effective coordination between the concerned authorities both within the country as well as with other countries for the repatriation of victims.
- (iv) The National Anti-Trafficking Relief and Rehabilitation Committee shall seek reports from appropriate Government, State Anti-Trafficking Committee, District Anti-Trafficking Committee, as established under section 29 and 30 of this Act on the quality of services and the functioning of Protection and Rehabilitation Homes.
- (v) TheNational Anti-Trafficking Relief and Rehabilitation Committee shall maintain and monitor the rehabilitation fund as established under section 32 of this Act;
- (vi) The National Anti-Trafficking Relief and Rehabilitation Committee shall perform such other functions as may be prescribed.

29. (1) The appropriate Government shall establish **State Anti-Trafficking Committee** to oversee the implementation of this Act and advise the State Government and District Anti-Trafficking Committee on matters relating to prevention of trafficking, protection, repatriation and rehabilitation of victims of trafficking in persons;

(2) State Anti-Trafficking Committee constituted for a State, shall consist of the following members, namely:-

- (i) The Chief Secretary- Chairperson;
- (ii) State Police Nodal Officer- Member Secretary;
- (iii) State Nodal Officer- Member;
- (iv) Secretary, Department of Women and Child- Member;
- (v) Secretary, Home Department - Member;
- (vi) Secretary, Labour Department- Member;
- (vii) Secretary, Health Department- Member;
- (viii) Director General of Police- Member;
- (ix) Secretary, State Legal Services Authority - Member;
- (x) Two social workers out of which one shall be a woman- Member, and
- (xi) Such other member as may be prescribed.

No need to create such high level administrative bodies. They don't get time to meet as often as they are required to.

(3) The State Anti-Trafficking Committee shall perform the following functions-

- (i) The State Anti-Trafficking Committee with the help of District Anti-Trafficking Committee shall identify the roles and responsibilities of each department at State or district levels for effective implementation of the Act and the rules and inform them through Chief Secretary.
- (ii) The State Anti-Trafficking Committee on the recommendations of District Anti-

- Trafficking Committee shall arrange for appropriate training and sensitization of functionaries of all personnel (Government and Non-government) working under the Act;
- (iii) The State Anti-Trafficking Committee in liaison with District Anti-Trafficking Committee shall develop effective networking and linkages with local non-governmental organisations for specialized services and technical assistance like vocational training, education, health care, nutrition, mental health intervention, drug de-addiction and legal aid services.
 - (iv) The State Anti-Trafficking Committee set up, review and monitor the functioning of District Anti-Trafficking Committee;
 - (v) The State Anti-Trafficking Committee shall make necessary funds available to the District Anti-Trafficking Committee for providing or setting up required facilities to implementation the Act; and
 - (vi) Perform such other functions and duties as maybe prescribed.

Unnecessary in the text of the law. Can be given in a G.O., G.R, Advisories, or Manuals

(4)The State Anti-Trafficking Committee shall report to National Anti-Trafficking Bureau as well as to National Anti-Trafficking Relief and Rehabilitation Committeein the manner as may be prescribed.

30.(1)The appropriate Government shall, by notification, constitute for every district, a **District Anti Trafficking Committee**for exercising the powers and performing such functions and duties in relation to prevention, rescue, protection, medical care, psychological assistance, need based rehabilitation of victims and redressal of grievances.

(2) The District Anti Trafficking Committee shall consist of the following members, namely:-

- (i) District Magistrate or Additional District Magistrate- Chairperson;
- (ii) District Police Nodal Officer – Convenor;
- (iii) District Officer, Department of Women and Child Development - Member
- (iv) Representative, District Legal Services Authority - Member;
- (v) Representative, Labour Department- Member;
- (vi) Representative,Panchayati Raj Institution- Member;
- (vii) Representative, Child Welfare Committee- Member;

- (viii) Two social workers out of which one shall be a woman – Members; and
- (ix) Any such other members as may be prescribed.

(3) The District Anti-Trafficking Committee shall perform the following functions-

- (i) direct the Superintendent of the Protection Home or Rehabilitation Home, as the case may be, to conduct social investigation and need based assessment of victims placed in such home and submit an individual care plan to the District Anti-Trafficking Committee; **The system of Social Investigation Report already exists in J J Act and is operating under judicial supervision. Hence a new provision unnecessary. Since as per this Draft itself the J J Act will have to be followed then what is the need for a separate provision and unnecessary delay and bureaucratic structure in between. At the best it could be extended to cover the adults as well. The composition of these Committees even at the District level clearly shows how difficult it will be for them to meet often. This will make it a ritual and cause delay in victim assistance and rehabilitation.**
- (ii) ensure care, protection, appropriate rehabilitation or restoration of all victims, based on each victim's individual care plan and by passing necessary directions to Protection Homes, or Rehabilitation Homes in this regard;
- (iii) conduct at least one inspection visit per month to the Protection Home or the Rehabilitation Home, as the case may be, and recommend action for improving the quality of services to the appropriate Government.
- (iv) coordinate with other State agencies/departments i.e. Education Department, Integrated Child Development Services, SarvaShikshaAbhiyan, National Rural Health Mission, PanchayatiRaj Institutions etc. to keep a close check on the drop- out children and those children who are covered by various schemes and has stopped accessing the benefits of these schemes and inform such cases to State Anti-Trafficking Committee and take appropriate actions;
- (v) facilitate in a time bound manner or in the manner as may be prescribed in the Rules, the inter-state repatriation of victims of trafficking for bonded labour; **(No separate structure and procedure required. It will only cause delays. The existing mechanisms may be strengthened with digital technology and better manpower)**
- (vi) conduct surveys of the areas and vulnerable population to identify source, transit and

destination areas and based on the information received draw an action plan for the prevention and protection of people who are vulnerable to trafficking. The action plan shall include linking of these vulnerable population to the existing government schemes;

Quite unnecessary. These are small time tasks. Identification and protection fo specially vulnerable population in a district does nto require such a high level structure. The District Women and Child Development Officer and Social Justice & Empowerment Officer Tribal Development Officer should do these tasks with extra manpower.

- (vii) create programmes for awareness generation, community mobilisation and empowerment of vulnerable social groups against trafficking; and
- (viii) any such other functions as may be prescribed.

(4) The appropriate Government shall provide adequate resources to District Anti-Trafficking Committee for carrying out prevention, protection and rescue procedures in the manner as may be prescribed.

(5) The District Anti-Trafficking Committee shall furnish a report to the State Anti-Trafficking Committee on quarterly basis.

31. State Nodal Officer.-

(1) The State Government shall appoint a State Nodal Officer, to be notified by Secretary, Women and Child Department.

(2) The State Nodal Officer shall not be below the rank of Director, Women and Child Department.

(3) The State Nodal Officer shall be responsible to provide relief and rehabilitation services through District Social Welfare Officer.

(4) The State Nodal Officer shall work in liaison with State Police Nodal Officer and National Anti-Trafficking of Persons Bureau for Relief and Rehabilitation.

(5) The State Nodal Officer shall also perform such other functions as may be prescribed.

CHAPTER VI

REHABILITATION FUND

32. Rehabilitation Fund.-

- Clashes with many state laws and schemes recently created as per the Supreme Court Orders (The Kerala state law is also recommended by the SC as the guide in a situation of lack of clarity)
- This will clash with CrP.C. Sec 357 which is well institutionalised and is under judicial supervision.

(1) The appropriate Government shall create a fund called the Rehabilitation Fund for the welfare and rehabilitation of the victims of trafficking children dealt with under the Act and the Rules framed therein.

(2) The appropriate Government shall make adequate budgetary allocations towards the Rehabilitation Fund.

(3) Any voluntary donations, contributions or subscriptions or funds under Corporate Social Responsibility, whether or not for any specific purpose, may be credited to the Rehabilitation Fund.

(4) The Rehabilitation Fund shall be utilized by the appropriate Government for:

- (i) the establishment and administration of Protection and Rehabilitation Home;
- (ii) supporting innovative programmes for the welfare and rehabilitation of the victims;
- (iii) strengthening legal assistance and support;
- (iv) providing entrepreneurial support, skill development training or vocational training;
- (v) providing after care facilities and entrepreneurship fund for providing capital and infrastructure to the victims who are ready to integrate in mainstream society by starting up small businesses to support reintegration;
- (vi) providing for victim and witness protection;
- (vii) meeting the expenses of travel for trial including the expenses of the escorts;
- (viii) awareness generation programmes for the prevention of trafficking;
- (ix) creating community-based programmes to identify and report offences of trafficking;

- (x) providing specialized professional services, counsellors, translators, interpreters, social workers, mental health workers, vocational trainers etc. for the victims covered under the Act;
- (5) The Rehabilitation Fund shall be maintained and monitored by the National Anti-Trafficking Relief and Rehabilitation Committee;
- (6) The Rehabilitation Fund shall be made available to the State and District Anti-Trafficking Committee towards prevention, protection and prosecution of matters related to trafficking.
- (7) The appropriate Government shall bring out rules to ensure the accountability of the agencies in generating, disseminating and utilizing the funds.
- (8) Any fine recovered as a part of the sentence for the commission of offence under this Act will be remitted to the Rehabilitation Fund. (Clearly clashes with Sec 357 CrPC)
- (9) The process of recovery of fines shall be as prescribed in section 421 of the Criminal Procedure Code, 1973.

Sounds like a program document than a piece of law!

CHAPTER VII

PREVENTIVE MEASURES

33.(1)The District Anti-Trafficking Committee shall recommend strategies and plans to protect and prevent vulnerable persons from being trafficked and accordingly will seek approval from the appropriate government for the implementation of such strategies and plans.

- Does not even sound like a good program document. Certainly not like a piece of law.

(2)The **State Anti- Trafficking Committee** shall perform the following functions:

- (i) coordinate the implementation of all the programmes, schemes and plans relating to the prevention of trafficking in persons with different agencies in the State which will include but not limited to the State Human Rights Commissions, Women's Commission, Commission for Protection of Child Rights, Child Labour Commission, etc. as well as Panchayat Raj Institutions. **(Duplicates with the existing developmental, welfare administration and the special component schemes and makes them dysfunctional)**
- (ii) facilitate the implementation of livelihood and educational programmes for vulnerable communities. **(Duplicates with the existing developmental, welfare administration and the special component schemes and makes them dysfunctional)**
- (iii) facilitate the implementation of programmes and schemes pioneered by various Ministries. **(Duplicates with the existing developmental, welfare administration and the special component schemes and makes them dysfunctional)**
- (iv) coordinate with corporate sector to implement the various schemes, programmes for the prevention of trafficking in persons.
- (v) make recommendations to the National Anti-Trafficking Bureau in matters related to trafficking in persons.
- (vi) Such other functions as may be prescribed.

It should be in a Plan of Action or national/state development plans rather than in the text of the law.

CHAPTER VIII

PROTECTION AND REHABILITATION SERVICES

34. Protection Homes:-

(1) The appropriate Government shall maintain either directly or through voluntary organisations, as many protection homes selected and managed in the manner, as may be prescribed for the immediate care and protection of the victims.

Clearly duplicates the existing Protective Homes, Special Homes, Children's Homes, and Shelter Homes under the ITP Act and the J J Act.

(2) Protection Homes shall provide for shelter, food, clothing, counselling and medical care that is necessary for the rescued victims and such other services in the manner, as may be prescribed.

- Creates confusion with 'Protective Home' under ITP Act. See more comments in the beginning.

35. Rehabilitation Homes:-

The appropriate Government shall maintain either directly or through voluntary organisations one or more Rehabilitation Homes in each district for the purpose of providing long-term rehabilitation in the manner as maybe prescribed. The appropriate Government may also utilise existing shelter homes for the said purpose.

36. Registration of Homes:-

(1) Notwithstanding anything contained in any other law for the time being in force, the Protection Home and the Rehabilitation Home shall be registered under this Act in such manner as may be prescribed by the appropriate Government.

(2) If any person in-charge of Protection Home or Rehabilitation Home providing shelter and rehabilitation to the victims contravenes any of the provisions of sub-section (1), he shall be punished with imprisonment which may extend to one year or with a fine which shall not be less than one lakh rupees, or with both.

- Registration cannot be done by a voluntary organization running a Shelter/Home. They can only apply and complete the formalities. They cannot register themselves. Registration has to be done by the State. The vagueness and defect in the drafting of this provision in the J J Act has already created many problems at the ground level. Instead, a provision be made in the individual laws that if the service provider/shelter has complete all the formalities and submitted his application for registration then the concerned officer should be punished for not completing the registration formalities and issuing the registration or convey the

decision thereupon.

- This kind of faulty drafting in the J J Act 2000 / 2006 has already caused many problems. In the last decade. Delaying and not issuing registration even after having received all kinds of papers from the agencies has been a source of illegal income for the concerned officers.

Having said that it is also important to state that extreme caution may be taken not to make any provision to the effect that --- if the concerned department does not respond to the application within X months then it shall be presumed that the license is issued/ permission is given--- . Such provisions will lead to huge corruption in the license issuing department and officers therein will take bribe not to respond in time. That will be a smooth backdoor entry to Homes which are run with a sinister plan to exploit the resident children.

37. Application for being kept in a rehabilitation home or for providing care and protection by court.-

(1)A person who is a victim of trafficking may make an application, to the Magistrate within the local limits of whose jurisdiction he is being trafficked for an order that he may be kept in a Rehabilitation Home.

(Why add an unnecessary procedure when today it is happening without any special application. Presumes that the victims understand what is 'trafficking')

Provided that in case the victim is child, the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 will apply.

- Already exists in some laws. Can be added to ensure it exists in each law. One must remember that an overwhelming majority of rescued persons are below 18 years.
- Presumes that the victims understand what is 'trafficking'.

(2)The Magistrate may, pending inquiry under sub-section(4) of section 24, direct that the victim be kept in such care and protection as he may consider proper, having regard to the circumstances of the case.

In the cases of children the J J Act procedure will have to be followed where there are social workers involved. This provision can only apply to adults who are rarely rescued.

(3) If the Magistrate, after hearing the applicant and making such inquiry as he may consider necessary, including the home investigation report submitted under sub-section (4) of section 24, into the desires of the applicant, conditions of home and prospects of rehabilitation of the applicant, is satisfied that an order should be made under this section, he shall, for reasons to be recorded in writing, make an order that the applicant be kept in a Rehabilitation Home, or other registered and recognised institution, or

(4) The Magistrate shall consult the District Anti Trafficking Committee in taking a final decision with respect to the rehabilitation of the victim.

38. Rehabilitation not to be contingent on criminal proceedings

Where the rescued person is a victim of trafficking and offences mentioned under this Act, the District Anti Trafficking Committee shall ensure that the rehabilitation of the rescued person is not contingent upon criminal proceedings being initiated against the offender or the outcome thereof.

This will create a hugely fertile ground for corruption. . The trafficker operating hand in gloves with the field level police can loot the public money as they have to prove nothing. No FIR, no identification of the accused, no arrest, no chargesheet, no trial. Only huge rehabilitation money. The current schemes like Manodhairya in Maharashtra and the money disbursed thereunder raise many doubts about the propriety.

This entire piece of law is extremely myopic based on a police heavy 'crime and punishment' model. Inappropriate approach to handle complex socio economic and cultural problems.

CHAPTER IX

REPATRIATION

39.(1)The State Police Nodal Officer shall be responsible for the inter-state repatriation of victims by liasioning with the concerned State Nodal Officer, State Police Nodal Officer, State Anti-Trafficking Committee and concerned District Anti-Trafficking Committee.

- No! Police cannot and should not replace social workers, health professionals, and other service providers. A society can't be run by police. The police do have a definite and very important role to play. Let them be good at playing that.

(2)The State Police Nodal Officer shall be also responsible for cross border repatriation of victims of trafficking by liasioning with National Anti-Trafficking Bureau, Ministry of External Affairs and other concerned ministries.

- With the 1600+ km open land border with and the subhuman push factors in Nepal what will the police do on Indo Nepal border?

(3)The repatriation of the victims shall be completed within three months for inter-state repatriation and within six months in case of cross border repatriation from the date of rescue.

Provided any delay in this regard shall be recorded with reasons to be reported to National Anti-Trafficking Relief and Rehabilitation Committee and National Anti-Trafficking Bureau.

(4)State Nodal Officer shall obtain informed consent from the victim for repatriation purposes and in case the victim is not in a position to give consent to the State Nodal Officer, he shall make arrangements for the counselling of the victim by trained psycho social professional.

(5) State Police Nodal Officers shall send a repatriation report to the State Government and National Anti- Trafficking of Persons Bureau within 15 days of the repatriation of the victim.

- With strong 'push' and 'pull' factors and open boundaries what is the use of such procedures?

CHAPTER X

SPECIAL COURT AND ITS POWERS

40. Special Courts and Related Provisions.-

(1) All offences under this Act and related offences under any Act for time being in force shall be tried by the Special Court to be notified by the Government of India or the State Government.

The ITP Act already has a provision of setting up a Special Court which is exclusive for trying the trafficking cases. Of course practically there is just one trafficking Special Court (MAzgaon Mumbai) and its conviction rate is superb.

The NCPCR Act has already created children's Courts

The POCSO Act has POCSO Special Courts

What is the point in adding some more Special Courts especially when maximum rescued persons are children?

(2) For the purposes of providing a speedy trial, the State Government shall in consultation with the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act.

(3) While trying an offence under this Act or any other Act for the time being in force, a Special Court shall also try an offence other than the offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

(4) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act including bail and bonds, have all the powers of a Court of Session and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session and the person conducting the prosecution before a Special Court, shall be deemed to be a Special Public Prosecutor.

- It repeats the text from the Cr PC
- The Special Court set up in Mumbai under the ITP Act has performed very well. It is an exclusive trafficking court.
- There are specialised children's courts, labour courts, family courts, and trafficking courts. They are institutionalised well. This new provision will cause breakdown and confusion.

41. Special Public Prosecutors.-

(1) The State Government in consultation with the State Legal Services Authority shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for prosecuting matters under the provisions of this Act and related offences.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate and has proven experience in related field.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly.

(4) The State Government in consultation with the High Court appoint one or more Special Public Prosecutors for prosecuting matter under the provisions of this Act and related offences in the High Court.

(5) The victim has a right to be represented by private lawyers in addition to Special Public Prosecutors. The court may provide an Advocate from the Legal Services Authority or from any organisation or service provider to represent the victim at all stages of the proceedings. Such Advocate shall be duty-bound to apprise the victim of his legal rights and progress in the case.

(6) The Special Court should ensure that the Advocate appearing for the accused or anybody acting on his behalf, shall not appear for the victims.

42. Procedure and Powers of Special Courts and Recording of Evidence.-

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) With regard to offences against children, the Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, ensure that the proceedings are in accordance under sections 33-39 of the Protection of Children from Sexual Offences Act, 2012.

(3) The Special Court shall conduct such other procedures and exercise such other powers as may be prescribed.

- Merely pointing to the other existing laws.

43. Period for recording of evidence of trafficked person and disposal of case.-

(1) The evidence of the victim shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

(3) The Special Court may record the statement of any victim through video conferencing in all cases where the victim is not willing to appear in the court for reasons of security or otherwise. In all matters of trans-border and inter-state crimes where the victims have been repatriated and are not able to come to the court for trial proceedings, video conferencing facility shall be availed to record their testimony.

(4) If the Special Court does not have video conferencing facility, the court will liaise with the District Magistrate and utilise the facility of video conferencing available with National Informatics Centre.

(5) In matters of trans-border crimes, this linkage may be established through the Ministry of External Affairs and the Indian Embassy in the concerned country. The Police Nodal Officer of the State shall undertake the task of coordinating with Ministry of External Affairs and Embassy for providing this video conferencing linkage.

(6) In matters of inter-state and trans-border trafficking, if the victim has been moved to another state or country, the responsibility for supply of documents to the victim as permissible under the law shall be entrusted to a competent Advocate appointed for this purpose by the State Legal Services Authority of the State in which the trial is being conducted. Further, if the language in which the case records are written is different from the language understood by the victim,

translation shall be attended to by the said Advocate appointed by State Legal Services Authority in the shortest possible time.

44. Appeal.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie from any judgment, sentence or order, not being a interlocutory order, of the Special Court to the High Court both on the facts and law.

(2) Every appeal under this section shall be preferred within a period of 60 days from the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days if satisfied that the appellant had sufficient cause for not preferring the appeal within the period of sixty days.

CHAPTER XI

WITNESS PROTECTION

45. Victim/Witness Protection.-

(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim's age or gender or educational disadvantage or poverty.

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court to summon parties for production of any documents or material, witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court trying a case under this Act shall provide to a victim, his dependent, informant or witnesses—

- (i) the complete protection to secure the ends of justice;
- (ii) the travelling and maintenance expenses during investigation, inquiry and trial;
- (iii) the social-economic rehabilitation during investigation, inquiry and trial; and relocation.

(7) The State shall inform the concerned Special Court about the protection provided to any victim or his dependent, informant or witnesses and such Court shall periodically review the protection being offered and pass appropriate orders.

(8) Without prejudice to the generality of the provisions of sub-section (6), the concerned Special Court may, on an application made by a victim or his dependent, informant or witness in any proceedings before it or by the Special Public Prosecutor in relation to such victim, informant or witness or on its own motion, take such measures including—

- (i) concealing the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to the public;
- (ii) issuing directions for non-disclosure of the identity and addresses of the witnesses;
- (iii) take immediate action in respect of any complaint relating to harassment of a victim, informant or witness and on the same day, if necessary, pass appropriate orders for protection:

Provided that inquiry or investigation into the complaint received under clause (iii) shall be tried separately from the main case by such Court and concluded within a period of two months from the date of receipt of the complaint:

Provided further that where the complaint under clause (iii) is against any public servant, the Court shall restrain such public servant from interfering with the victim, informant or

witness, as the case may be, in any matter related or unrelated to the pending case, except with the permission of the court.

- Unnecessary repetition of existing established procedures.

CHAPTER XII

MONETARY RELIEF AND COMPENSATION

46. Interim Relief.-

(1) Upon an application for interim relief by the rescued victim forwarded by District Anti-Trafficking Committee or Child Welfare Committee in case the rescued victim is a child, the District Legal Services Authority shall take immediate steps not later than a month, to award interim relief as deemed appropriate, taking into consideration all aspects, including physical, mental trauma and the requirements of the victim

- What is interim relief?

Is the compensation due;

- Merely on filing an FIR alone?
- Even if the accused is not traced?
- Even if charge sheet is not filed?
- Even if the accused is discharged?
- Even if the accused is tried and acquitted?

Will that not lead to a hand in glove operation among the traffickers, pimps and even someone acting to be a victim to easily siphon off the funds?

(2) The State government shall place adequate amount at the disposal of District Legal Services Authority for this purpose within a period of one month from the commencement of this Act.

47. Victim compensation and other reliefs.-

(1) The District Legal Services Authority shall provide appropriate compensation to the victim, firstly at the filing of the FIR and secondly at the filing of charge sheet and finally at the disposal of the case or in the manner as may be prescribed.

(2) District Legal Services Authority shall inform the District Anti-Trafficking Committee constituted under this Act about release of compensation.

- Procedural matter can go in administrative manuals not required in the law.

(3) This compensation amount shall be in addition to any other compensation or relief, payable either by way of any scheme of government or pursuant to any order of the court under any law in force.

(5) The Special Court shall ensure that the back-wages of the victim have been made payable to the victim who has been trafficked in the initial stages of reporting itself.

- Already an established practice esp under the BLSA Act

(6) The Special Court shall on its own or on application filed by or on behalf of the victim, recommend the award of compensation under Section 357A of the Criminal Procedure Code, 1973, or under any other applicable scheme, at any stage of proceedings, or where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified.

- Already an established practice

(7) The Special Court in appropriate cases, may in addition to the punishment, direct payment of such compensation as may be prescribed to the victim of trafficking for any physical or mental trauma caused to him/her or for immediate rehabilitation of such victim.

(8) Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the victim, pass an order for interim compensation to meet the immediate needs of the victim

for relief or rehabilitation at any stage after registration of the FIR such interim compensation paid shall be adjusted against the final compensation if any.

CHAPTER XIII

CONFISCATION, FORFEITURE AND ATTACHMENT OF PROPERTY

48. Confiscation, Forfeiture and Attachment of Property

(1) Where a person or anybody on his behalf is in possession or ownership of any property, and is accused of having committed an offence under this Act or related offences under any Act, and it is likely that such property be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings, or it is likely that such property has been used or may be used for the commission of an offence under this Act, the Special Court shall attach such property.

(2) Where a person has been convicted of any offence punishable under an offence referred to in sub-section (1), the Special Court shall, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the person or held by anybody on his behalf, which has been used for the commission of that offence or accrued thereby, and which has been attached under sub-section (1), shall be confiscated and stand forfeited to Government and the same may also be used by way of auction and other methods for the purpose of realisation of any fine imposed by the Special Court and be remitted to the state level Rehabilitation Fund.

(3) Notwithstanding the conviction of the accused or any other proceedings under this Act, any property used for the commission of an offence under this Act shall be confiscated and stand forfeited to Government and the same may also be used by way of auction and other methods for the purpose of realisation of any fine imposed by the Special Court and be remitted to the state level Rehabilitation Fund.

(4) Notwithstanding anything contained under sub-section (1), (2) or (3), any order passed by the Special Court for confiscation, attachment or forfeiture of the property, as the case may be, shall not prejudicially affect the claim of any third person who acquired any right, claim or interest in

the property through lawful consideration with lawful object, provided such acquisition was done without the knowledge of the pending proceedings.

The Money Laundering Act made these provisions way back in 2002. Some more crimes may be added in its paragraphs/ schedules. The problem is that there is just no implementation.

Currently the criminal injuries money is supposed to go exclusively to the victim. It is a different story that once released unconditionally such compensation breeds rampant corruption. This Draft aims to take it away from the victim and use it for a variety of purposes which defeats the main purpose of creating criminal injuries compensation.

CHAPTER XIV

MISCELLANEOUS

49. Cognizance and Related Matters.-

(1) All offences under this Act are cognizable and non-bailable.

(2) In addition to the existing provisions of the Criminal Procedure Code, 1973, the following provisions also need to be adhered to:

- (i) Bail shall be denied to habitual offenders and where the victim is a child except upon exceptional, special and compelling reasons with the most stringent conditions.
- (ii) The court shall call for the antecedent report of the accused in all trafficking cases from the District Anti Trafficking Police Officer or local police as the case may be, and consider the same before passing any order of bail and the court shall ensure that such report is filed within a reasonable time, which the court may decide.
- (iii) The victim shall have a right to be heard in bail matters. In this regard, the victim can also be represented by private advocates of their choice. In the event the victim is willing to engage an advocate but cannot afford one, the District Legal Services Authority or State Legal Services Authority, as the case may be, will ensure the appointment of a competent advocate to represent him.

- (iv) Where the Court decides to grant bail it can do so only if the following requirements of the sureties are fulfilled:
- a. Cash bail shall not be allowed.
 - b. There shall be two sureties of which at least one surety shall be a permanent resident and having at least one property within the jurisdiction of the Court and both sureties shall be verified by the District Anti-Trafficking Police Officer.
 - c. No surety shall be accepted except upon proof of record along with copies of original documents of birth, permanent residence and all other residences, education, identity, property, contact details.
 - d. The verification report of the sureties must have the permanent address of the sureties shown in their Aadhar Card, etc. verified with their current residence by the local police and attested and approved by the District Anti-Trafficking Police Officer.

Already an established practices. Unnecessarily added to show that the Draft has some substance other than creating some more uncalled for structures and procedures.

50. Plea Bargaining.-

Notwithstanding anything contained in any other law for the time being in force, plea-bargaining shall be allowed for an offence committed under this Act and the procedure for obtaining the same shall be as provided in Chapter XXIA of the Criminal Procedure Code, 1973.

51. Registration of Placement Agencies

(1) Every placement agency, whether registered under any law for the time being in force or not, shall be registered for the purposes of this Act, within such time and manner as may be prescribed by the appropriate Government.

(2) The period of registration and the conditions for registration shall be in the manner as may be prescribed, by the appropriate Government.

Provided that the placement agency shall be given an opportunity to be heard before any action is taken against it.

• No placement agency can register itself. Registration can be done by the legally/ administratively recognized body which is the government. A placement agency can only be expected to complete all the required formalities and wait. How can they be punished for not registering them? This kind of faulty drafting in the J J Act ahs already caused many problems. Delaying and not issuing registration even after having received all kinds of papers from the agencies has been a source of illegal income for the concerned officers. Single altruistic individuals trying to facilitate employment of a couple of neighbouring youth will also come under the purview of this Section.

(3) State Government shall maintain a database of placement agencies in the manner as may be prescribed.

(4) The Government of India and State governments shall frame rules regarding the regulation and monitoring of the placement agencies.

(5) If any placement agency violates any of the provision mentioned under sub-section (1) and (2) of section 51, the registration of such placement agency is liable to be suspended, cancelled or revoked, as the case may be and in the event of a second or subsequent commission of such offence the proprietor or manager or owner as the case may be shall be punished with rigorous imprisonment for a term which shall not be less than three years or with fine, which may extend fifty thousand rupees or with both.

52. Closure of premises of trafficking for the purpose of sexual exploitation and eviction of offenders from the premises.

(1)The District Magistrate or Sub-Divisional Magistrate or any officer entrusted with the powers of the Magistrate under this law or any earlier law, shall, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof is being run or used for

the purpose of trafficking for sexual exploitation, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, the magistrate is satisfied that the house, room, place or portion is being used as premises for trafficking for sexual exploitation then the magistrate may pass orders—

- (i) directing eviction of the occupier and exploiters within seven days of the passing of the order from the house, room, place or portion;
- (ii) directing that before letting it out during the period of one year, or in a case where a child has been found in such house, room, place or portion during a rescue under section, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the magistrate:

Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

- (iii) A court convicting a person of any offence under in this Act may pass order under sub-section(1) without further notice to such person to show cause as required in that sub-section.
- (iv) Orders passed by the magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal and the said orders shall cease to have validity after the expiry of one year or three years, as the case may be: Provided that where a conviction under section is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used for trafficking for sexual exploitation any order passed by the trial court under sub-section (1) shall also be set aside.
- (v) Notwithstanding anything contained in any other law for the time being in force, when a

magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

- (vi) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (i) (ii) of sub-section (1) he shall be punishable with fine which may extend to one lakh rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under section 18 of this Act and punished accordingly.

53. Punishment for disclosure of identity.-

No report, or any newspaper, or magazine, or audio-visual media, or any other form of communication regarding any investigation, judicial procedure or any other stage, shall disclose the name, address, or any other particulars which may lead to the identification of a victim, or witness of a crime of trafficking of person under this Act, nor shall the picture of any such victim be published without their consent, and in the case of children, the consent of their legal guardian.

Any person who contravenes the provision of clause (1) shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.

Provided that in case the victim is a child, the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 accordingly shall apply.

- Often service provider NGOs happen to make the mistake unintentionally. The punishment is insensitive to that. It does not look into the intention. It does not offer socially utilitarian punishment. It does not offer graded punishment. It has not heard about 'Suspended Punishment'. It proposes to send a service provider straight away to prison even for a first time unintentional and minor error on her part.

54. Punishment for dereliction of duty.-

Whoever commits dereliction of a duty, imposed upon him under this Act, either by an act or omission of an act shall be punished with a minimum fine of 50,000 rupees and in the event of a second or subsequent conviction with rigorous imprisonment for a term which may extend to one year and with a minimum fine of 1 lakh rupees.

Provided that in case the dereliction of duty, imposed under this Act, is committed by a public servant, then penal provisions as provided under section 166A of Indian Penal Code, 1860 shall be applicable.

55. Alternative Punishment.-

Where an act or omission constitutes an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any such law, the offender found guilty of such offence shall be liable for punishment under such law which provides for punishment which is greater in degree.

- Grossly lacks innovative approach in punishments. The penal structure is archaic and harsh to the service providers who often are the NGOs.

56. Protection of Action Taken in Good Faith.-

No suit, prosecution or other legal proceeding shall lie against the Central Government, or the State Government or any person acting under the directions of the Central Government or State Government, any person, including non-governmental organisations acting in good faith as the case may be, in respect of anything which is done in good faith or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.

57. Power of Central/State Government to Make Rules.-

(1)The Centre/State Government shall bring out rules and Standard Operating Procedures on all aspects of implementation of the Act, within six months of the notification of this Act incorporating all the roles and responsibilities of the agencies as well as the procedures to be adopted, including checklist to ensure that the rights of the victims are protected.

(2) In matters of rehabilitation, the rules and Standard Operating Procedures should have adequate scope for the agencies concerned to work according to the need and requirement of the individual concerned.

(3) Every rule made by the Central Government or State Government, as the case may be, under this Act shall be laid, as soon as may be after it is made, before each House of Parliament or State Assembly, while it is in session, within a period of thirty days.

58. Saving Clause.-

In matters relating to children, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Protection of Children from Sexual Offences Act, 2012, will apply. If any anomaly arises, the decision be taken by the Special Court or CWC, as the case may be, in the best interest of the victim will apply.

59. Power to Remove Difficulty.-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided, that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

60. Section 360 of the Code and Probation of Offenders Act not to apply to persons committing an offence under this Act.-

The provisions of section 360 of the Code of Criminal Procedure, 1973 and the provisions of Probation of Offenders Act, 1958 shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this Act.

61. Act to override other laws.-

Save as otherwise provided in this Act, the provisions of this Act or any rule made thereunder or any order made under any such rule shall, have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having the force of law.

- An extremely dangerous provision. Will lead to innumerable clashes, breakdowns and a lot of

confusion. Drafted with little knowledge of the legal environment, the existing laws and their utility.

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