

# THE CONCERNED FOR Working Children

## Critique of the Trafficking of Persons (prevention, protection and rehabilitation) Bill, 2018

*The Concerned for Working Children (CWC)*

In its intent to be an overarching bill on trafficking, the bill has pulled in and attempted to cumulate definitions and provisions that already exist in several different instruments of legislation be it Section 370 of the IPC, ITPA, or other problematic pieces of legislation. Further it has incorporated mitigation strategies and stakeholders in a very didactic, hierarchical and uni-dimensional approach. It has several contentions, which have to be scrutinised and contested.

Below are some of the contentions from the perspective of The CWC:

- 1. Lopsided definition and focus on Victims to the extent of enabling their criminalisation**—Most measures to deal with trafficking in the Bill focus solely on the victims. The Perpetrators of the crime thus have very little concrete and actionable liability as placed by this bill (a lot of the process to arrive at determining the offenders is circumstantial. This gives ample opportunity to actual offenders to escape the net, and pin the liability on other vulnerable proxies who cannot defend themselves effectively. This concern clubbed with the focus on the victims to the extent that bill has, very often pushes them (victims) and their support systems (be it family, community etc.) into criminalisation. This is especially true for those groups that are moreso on the fringe, like child workers, transgendered community, consensual sex workers, to name a few. An interesting angle is young people who go against their religious, familial, larger communal norms to marry out of caste and religion (and everyone who assists or supports them to exercise their constitutional rights to freedom of choice and personal liberty), could now come under the net of offenders / traffickers.
- 2. Complete negation of Consent and Agency of Victims**—The Bill has completely negated the agency of the victim, both children and adults. Thus it has completely ignored the concept of consent. This problematic paradigm holds not only for the adult's covered under the term of victim but equally for children who would fall under its gamut. While most of the critique on the same is from the point of view of the consenting adult, CWC would like to add to the debate, the agency and consent of children – be it working children, children who have been exploited as child labourers/bonded

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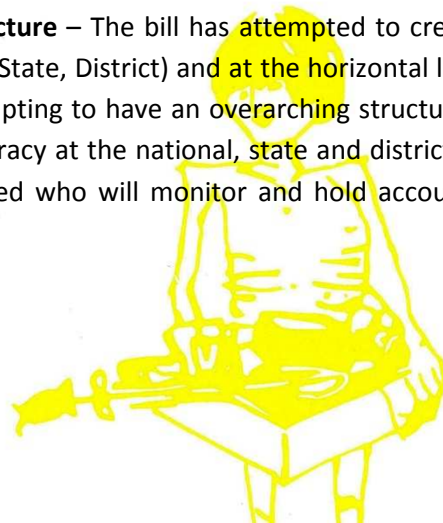
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labourers, victims of sexual /commercial sexual exploitation or any other children who have been trafficked/affected by trafficking. Be it in the understanding of victimhood or in rescue, rehabilitation or repatriation, the contextual needs, experiences, expectations and consent of the children are not at all factored in. This bill will thus further what is already a very over looming problem, i.e in the name of rescue and rehabilitation, putting the children directly or indirectly into more harmful and debilitatingsituations.This is highlighted in the fact that the participation of victims / victims' groups are not factored into any of the various investigation or rehabilitation committees that this bill has outlined (be it the National Anti-Trafficking Bureau[*ch III*] or the National Anti-Trafficking Relief and Rehabilitation Committee[*ch IV*])

3. **Negating the nuanced understanding of child workers** - A very problematic situation is that the Bill has defined child as "child means a person who has not completed the age of eighteen years"[*Ch I-2e*]. It has not taken into consideration a more nuanced understanding of childhood and associated paradigms that policies like the (Child Labour (Prohibition & Regulation) Act, 1986) has taken into account. Thus as per the Child Labour Act, children above 14 years can work in non-hazardous occupations. However the Bill has not alluded to this nuanced definition of child work. Hence, it leaves to interpretation whether an individual who assists / facilitates the child above 14 years to get non-hazardous employment is a trafficker or not.
4. **Danger of labeling all child work as child labour related trafficking** - In continuation with the above, with regards to the children themselves, many are by law (Child Labour (Prohibition & Regulation) Act, 1986) allowed to engage in works that donot impair their safety, or development. The bill however has adopted a very narrow, one dimensional lens to the issue. It has not put in checks to ensure that child work in general is not pulled into the realm of trafficking and all child workers are not considered as victims of trafficking (thus exposing them to raids and rescues etc).
5. **A non-accountable and all powerful enforcement structure** – The bill has attempted to create an enforcement structure at all vertical levels (of National, State, District) and at the horizontal level of Prevention, Relief and Rehabilitation. However in attempting to have an overarching structure, the bill has created complex, powerful and parallel bureaucracy at the national, state and district level, with little to no accountability. The bill has not directed who will monitor and hold accountable these committees and bureaus.



6. **Negation of agency and protagonism of the ‘victims’ in determining prevention, rescue and rehabilitation measures-** This is in violation of the recommendations by the Supreme court special panel on the issue of trafficking, which clearly recommended that victims themselves be on planning and mitigation committees set up under this and any other legislation. However there is no such provision in any of the committees or bodies prescribed under this bill, be it the Anti-Trafficking Bureaus at the National, State or District level, or the National Relief and Rehabilitation committees. This lapse is clearly visible in the very partisan and distant mitigation strategies that have been laid out to be actioned. There is no contextual understanding or consultation of the victimized group itself in these committees.
7. **Adoption of outdate and failed provisions and instruments of raid , rescue, institutionalisation and other non-consensual rehabilitation methods** -As has been the case with several acts in the past, especially ITPA and other instruments alluding to trafficking, the bill has not factored in socio economic, cultural realities, while laying out its purview; especially regarding rescue and rehabilitation. Very problematic is the fact that its strategy of rehabilitation has been approached in a very didactic, over simplified manner.
- a. Thus in the guise of protection and prevention, the bill directs that victims will be sent to rehabilitation ‘homes’ and institutions [chVII-21 & 22] . The process of institutionalisation of the victim reeks of punitive measures towards the victim rather than perpetrator. The United Nations Special Rapporteur on Trafficking in Persons<sup>1</sup>, especially Women and Children, has explicitly noted that “..detention of victims of trafficking is incompatible with a rights-based approach to trafficking because it inevitably compounds the harm already experienced by trafficked persons and denies them the rights to which they are entitled”.

In fact in the High Court Suo Moto case in 2012, in our submission highlighting the fragmented Legal Aid System set up under the Juvenile Justice Act, CWC<sup>2</sup> highlighted that while, “*The Indian National Government (“Indian Government”) has also accepted to subscribe to the values and principles of the United Nations Convention on the Rights of the Child (“CRC”) and to implement*

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<sup>1</sup>Joint statement from the UN Special Rapporteurs on Contemporary Forms of Slavery as well on Trafficking in Persons calling on the government to rethink the Trafficking Bill.

<sup>2</sup>Compatibility Study of Juvenile Justice (Care and Protection) Act 2000 with International Conventions signed by India- The Concerned for Working Children, India

& Submission by The CWC - Recommendations on the Legal Aid system set up under Juvenile Justice Act.



*the following four principles of the CRC to protect the children in India: the right to be heard, the right to non-discrimination, the primary consideration of the child's best interests and the right to life and development.....police brutality against children, abuse in Government Homes and unjustifiable periods of detention of children typify a system unable to effectively secure children's basic human rights"*

This concern is deplorably highlighted in an audit report conducted by TISS, Mumbai,<sup>3</sup> mentioning that minor girls, in a government home in Muzzafarpur were victims of grave instances of violence and sexual abuse.

Further, in its comment on the bill, the Lawyer's Collective<sup>4</sup> states, that *"There is ample evidence of the ineffectiveness and harm of "rescue, raid and rehabilitation" imposed on sex workers under the ITPA. As a result, sex workers have developed alternate community-led models of peer-support and oversight and self-regulatory boards, which have been more effective in removing unwilling persons from sex work. Instead of examining such approaches and finding alternative means to offer support, the Anti-Trafficking Bill proposes to continue and extend rescue and institutional rehabilitation to all victims of trafficking."* This perspective holds true for all victims of trafficking, especially child labourers.

- b. Similarly in the name of 'community based interventions' the bill directs that 'victims' are repatriated to their 'places of origin'. This is a very didactic, one dimensional interpretation of a more complex socio-economical context. The understanding that 'places of origin' may have been problematic in the first place is not acknowledged. Further, as CWC repeatedly has learned, these 'places of origin' are not viable or even safe options, as children may no longer have any support and facilitative mechanisms. In the case of a lot of child workers, they come and live in the cities with their families and / or have developed sound support mechanisms in their new communities. They may have absolutely no links to their villages/ places of origins.
8. **Lack of Checks and Mechanisms** - Sound checks and provisions have not been articulated to ensure that rescue and rehabilitation or mitigation strategies against trafficking are not misused. Thus the possibility of the latter being misused for other vested interests and gains are very high, especially in the current contextual realities of moral policing, ideology based vetting etc.

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<sup>3</sup><https://www.thehindu.com/news/national/other-states/in-bihar-girl-shelters-under-the-scanner/article24541688.ece>

[http://timesofindia.indiatimes.com/articleshow/64432034.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/64432034.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>4</sup>The Lawyers Collective - "The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 - Comments"



9. **Vague and loose way of dealing with offenses and facilitation of the same – facilitating potential misuse to criminalise persons and places** (chapter XI – 34, 3,36) - The Bill gives overarching and unquestionable authority to the police and law enforcement to determine and act against anything they consider is a “*place of trafficking*”. This is a very problematic situation as places of trafficking are very loosely referred to as “*Premises used as a place of trafficking*”, which could include land, location or conveyance. This could be a home, community, factory, farm or a vehicle used for public transport. Applied in the context of labour, the law would allow family run and other factories and farms to be sealed and / or closed down, or entire settlement communities to be criminalized and relocated merely on the basis of a suspicion by the Police or complaint by any other person who claims that the said premises is to be used for trafficking. A specific example would be to children from the migrant urban communities who engage in domestic work in the surrounding buildings. The children as well as the communities in general are already subjected to suspicion and objection from surrounding shop owners, building and neighbourhood communities. The clause in this bill could very well be interpreted to indicate trafficking agents as being part of the community and either individual homes (namely adults who help the children procure work, whether it is their own family member or a community member) or the entire community to be targeted as abettors to trafficking. Similarly families where children aid in family run work, like agricultural work, shepherding etc. could be affected.

Thus while attempting to address trafficking, the bill has not factored in the contextual realities that exist namely issues of poverty, livelihood, displacement and security. People have and will always move for work, whether out of distress or for better opportunities. Adopting a carceral approach to what is largely a socio-economic phenomenon will only compound the problem, creating off-shoot problems and issues – such as gray markets, disguised trafficking, misinformed and unintended criminalisation.

