

RGICS

LEGISLATIVE BRIEF

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The Trafficking of Persons (Prevention,
Protection and Rehabilitation) Bill, 2016
(Draft)

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The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016 (Draft)

PART: I Introduction and Background

The union Ministry of Women and Child Development (MWCD) has drafted the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016. The official releasing note by the MWCD reads, “It aims to create a strong legal, economic and social environment against trafficking of persons and for matters connected therewith or incidental thereto¹.” In the month of May and June 2016, the ministry had sought comments and suggestions on its draft Bill. In response, various NGOs, stakeholders such as commercial sex workers, survivor of human trafficking and quasi-judicial bodies such as National Commission for Women have raised various concerns pertaining to objectives and scope of the proposed Bill. Most of these stakeholders have also observed that the Bill in its current form does not adequately address various manifestations of human trafficking. However, the union Minister of Women and Child Development (MWCD) Mrs. Maneka Gandhi is planning to introduce the Bill in winter session of the Parliament (December 2016)². This document briefly highlights major provisions and critique of the Bill along with human trafficking, its manifestation and current legal framework in India.

Human Trafficking

According to the definition of United Nations Office on Drugs and Crime (UNODC), “trafficking is the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs.”

Trafficking serves as a source of profit. The trafficked victims are exploited in various ways. These include sexual exploitation, forced labour, organ removal, committing crime, begging, pornography (including internet pornography), forced marriages, benefit fraud, baby selling, illegal adoption, armed combat and rituals. Two most common forms of exploitation include forced labour and sexual exploitation. Trafficking for the purpose of sexual exploitation is especially high in the regions of Central Asia and Eastern Europe. The share of forced labour in trafficking has increased over the last few years- from 32% in 2007 to 40% in 2011. Forced labour is especially prevalent in South Asia, East Asia and the Pacific making up to two thirds of the detected victims. In South Asia, over 80% of the reported victims are trafficked for forced labour (UNODC, 2014).

¹ <https://www.mygov.in/group-issue/inviting-comments-draft-trafficking-persons-prevention-protection-and-rehabilitation/>

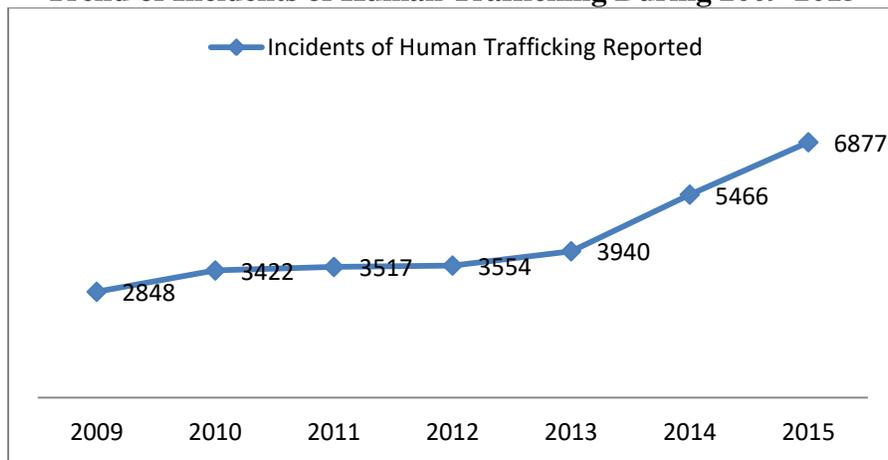
² <http://www.financialexpress.com/india-news/maneka-gandhi-confident-about-passage-of-anti-trafficking-bill-in-december/348960/>

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Trafficking in India

India is the source, destination and transit place for human trafficking. Trafficking flowing to Middle East countries from Nepal and Bangladesh use India as a transit place. Victims, including children, are trafficked to Middle Eastern Countries are exploited and some are even used for sporting activities like camel racing. The domestic trafficking in India is very high as compared to international trafficking. Around 90 percent of trafficking in India is intra-regional, i.e. from one part of the country to another (Hameed *et al*, 2010). Trafficking within India is rising because of “increased mobility and growth in industries that use forced labor, such as construction, textiles, wire manufacturing for underground cables, biscuit factories, and floriculture” (US State Department, 2014). Trafficking takes place from poorer states to more affluent ones. According to Childline India Foundation (an independent organization collaborating with Government of India to curb human trafficking) states like Andhra Pradesh, Karnataka, West Bengal and Tamil Nadu act as origin areas for largest number of people trafficked. Delhi and Goa are the major receiver states. Trafficking from Jharkhand, Chhattisgarh, Bihar, Uttar Pradesh and North Eastern States is also high.

Trend of Incidents of Human Trafficking During 2009-2015



Source: NCRB, 2014, 2015

India is considered both, the largest source and destination of human trafficking in the world. Based on estimates of various NGOs, Childline India Foundation reported about 12,000 - 50,000 women and children are trafficked into the country annually from neighboring states for the sex trade. “Thousands of girls are trafficked from Bangladesh and Nepal. 200,000 Nepalese girls under 16 years are in prostitution in India. An estimated 1,000 to 1,500 Indian children are smuggled out of the country every year to Saudi Arabia to beg during Haj. The forced labor of an estimated 20 to 65 million citizens constitutes India's largest trafficking problem; men, women, and children in debt bondage – sometimes inherited from previous generations – are forced to work in industries such as brick kilns, rice mills, agriculture, and embroidery factories.”(US State Department, 2014).

Trafficking in India is not new, it is been there for centuries to cater to the demand for cheap labour, prostitution, begging, forced marriages, bonded labourer etc and it took very long time to recognize it as crime. Now when there are various laws and policies to prevent human trafficking and punish offenders, the non-implementation of laws, non-reporting and under reporting of trafficking cases remain major challenges.

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However, the NCRB data in last few years show that the increased awareness among people, government and non-government initiatives has encouraged people to report cases of trafficking thus resulting in an increase in reporting of incidents of trafficking. The number of reported incidents saw an increase from 2848 incidents in 2009 to 3940 in 2013 (Around 38% increases). Incidents of trafficking have further increased to 6877 in 2015. However, these cases reported by NCRB are much less compared to the annual estimate of trafficking in India. According to Save the Children, India, every year over one million children are trafficked across India.

Despite rampant prevalence, there are still lacunae of authentic data on trafficking and functioning of the trafficking network. This void in data, among other factors, makes human trafficking a marginalized issue.

Brief Profile of the Victims and Trafficker

According to United Nation Office on Drugs and Crimes a majority of the traffickers worldwide are men whilst the victims are women. 49% of detected victims are adult women, 33% of detected victims are children (21% girls and 12% boys) and about 18% of trafficked victims are men. Males (boys and adult men) make up to 25% to 30% of trafficking victims- this is an increase from the previous period. A primary cause for this increase could be in greater trafficking for forced labour that involve more males than females. Child trafficking too has seen an increase of 5% in between 2010-12 as compared to 2007-2010 (UNODC, 2014).

Women comprise the vast majority of the detected victims who are trafficked for sexual exploitation. Men make up a majority of trafficked victims for forced labour, while women make up nearly one third of detected victims. However, in regions especially Asia, most of the victims of trafficking for forced labour are women. There are high regional variations. “In some areas, child trafficking is the major trafficking related concern. In Africa and the Middle East, for example, children comprise a majority of the detected victims. In Europe and Central Asia, however, children are vastly outnumbered by adults (mainly women)” (UNODC, 2014).

Data reflects that in India, trafficking affects lowest caste Dalits, members of tribal communities, religious minorities, and women are most vulnerable to trafficking. A study by the National Commission for Women found that 62% of women in commercial sex work are from scheduled castes and 30% from scheduled tribes. Similarly, children who are out of school and come from poor families are especially vulnerable to trafficking. Most prevalent sectors where trafficked victims work includes commercial sex work, bonded labour, domestic work, entertainment (circus, camel jockeying) and begging. Children are preferred for labour work because they are “naïve, uncomplaining, easily controlled, vulnerable, desperate and dispensable.”(Hameed *et al*, 2010)

Most traffickers are males. As per the Global Report on Trafficking in Persons 2014, over 72% of convicted traffickers are men and 28% are women. These traffickers were convicted of involvement in domestic as well as transnational trafficking schemes. “When looking at the gender and age of offenders and victims, for the period 2007-2010, countries with high rates of female offending were generally countries where many underage female (girl) victims were detected. This could indicate that female traffickers are more frequently involved in the trafficking of girls.” Other reasons for increased involvement of women in the crime could also be explained because of the role they play in trafficking. Women may be involved in roles as such as guards, money collectors and/or receptionists. These activities are more visible and exposed to risks of prosecution and detection making women more vulnerable to law enforcements (UNODC, 2014).

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In India, the data available to identify traffickers is limited. Available numbers reflect an increasing presence of women in trafficking- 40% of the persons investigated for trafficking in persons in India were females (UNODC, 2014). Groups that carry out trafficking include organized gangs and crime groups, drug dealers, employment agencies and brothel owners.

Policy Responses

International Policies:

United Nations Office on Drugs and Crime (UNODC) is the specialized body of United Nations that deals with the crime related to trafficking and smuggling of migrants. To coordinate international and national flow of trafficking and ensure stringent global action against human trafficking UN general assembly adopted the United Nations Convention against Transnational Organized Crime (UNTOC) on 15th November 2000. To target specific areas within human trafficking, the convention is supplemented by three protocols.

1. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
2. The Protocol against the Smuggling of Migrants by Land, Sea and Air; and
3. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

According to the latest report of UNODC, 90 percent of its member nations have streamlined their domestic laws as per the spirit of the convention and protocols.

Policies in India:

India ratified the UN Convention and Protocol in 2011 and brought about required amendments in the Indian Penal Code (IPC) by inserting section 370A. The Central Bureau of Investigation (CBI), Government of India, has been designated as the Nodal Authority to receive and respond to all requests for assistance as a single point of contact and to act as a liaison between the Ministry of External Affairs and other State parties on matters relating to the Convention as well as the Protocols. The Union Ministry of Home Affairs monitors all issues of law pertaining to human trafficking. The Union Ministry of Women and Child Development look the issues of community awareness, prevention, rescue protection and rehabilitation of trafficked women and children.

Trafficking as described earlier is a multifaceted crime due to the complexity of process and purpose of trafficking, people involved in it, extent and kind of exploitation involved. To address such diversity of crime, India has number of laws in place. The National Crime Record Bureau (NCRB) collects trafficking related data under following laws of the land.

1. Procurement of minor girls (section 366-A IPC)
2. Importation of girls from foreign country ((Sec. 366-B IPC)
3. Selling of girls for prostitution (Section-372 IPC)
4. Buying of girls for prostitution (Section -373 IPC)
5. Human Trafficking (Section 370 and 370A IPC)
6. Immoral Trafficking (Prevention) Act, 1956 (ITPA, 1956)
7. Prohibition of Child Marriage Act, 2006.

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8. Bonded Labour System (Abolition) Act 1976
9. Juvenile Justice (Care and Protection of Children) Act 2000
10. Child Labour (Prohibition and Regulation) Act 1986
11. Transplantation of Human Organs Act 1994.

Despite, a range of laws dealing with various aspect of trafficking, the rate of reporting, investigation and conviction remain very low in India. Various estimates reveal that the millions of people are affected by trafficking in India. Each year, thousands of children, women and men are being trafficked from one part of the country to another. Despite this rampant flow of trafficking very few of them are reported. According to the Anti-Trafficking Cell of Ministry of Home Affairs, in 2013 only 4566 people were reported trafficked and 1665 people were arrested for their involvement in trafficking. Out of 1665 accused, 356 were charge sheeted and only 13 were convicted during the year (MHA, 2014).

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PART: II Key Issues

There has been a demand to review the existing anti-trafficking laws and strengthen them in order to prevent trafficking and provide quality services to trafficked survivors for their rehabilitation and re-integration in society. Various civil society organization working with trafficked victims and stakeholders have been demanding following major changes in policy framework.

- **Too Many Laws and Very less Impact:** There are number of laws, policies and schemes to addresses different manifestations of human trafficking in India. For example, labour laws addresses issues of trafficking for bonded and forced labour. The Immoral Trafficking (Prevention) Act, 1956 addresses issues of trafficking for sexual exploitation and sections of Indian Penal Code (IPC) punishes people engaged in illicit business of human trafficking. In addition schemes such as Childline, Integrated Child Protection Scheme (ICPS), Juvenile Justice (Care and Protection) Act, 2015 (JJ Act) and the Protection of Children from Sexual Abuse Act, 2012 (POCSO Act) provides infrastructural basis around various anti-trafficking laws. Despite this, the entire system is ineffective to prevent trafficking of thousands of girl/women/children every year. It also fails to rescue millions of already trafficked victims in the country. For example in 2015, only 9127 victims in 6877 incidents of human trafficking were rescued by the entire system. Whereas the 'Childline' estimates that annually, 12 to 50 thousand people are trafficked into the country. For the better implementation of existing laws there has been demand to have a comprehensive policy to integrate all these laws, schemes and policies in order to build effective inter-sectoral coordination.
- **Narrow Understanding of Trafficking:** The ITPA is the oldest law in India, that prohibit and trafficking for sexual exploitation. It criminalizes procurement of sex work with or without the consent of the person. It further criminalizes sex worker who may be a victim of trafficking. Such proviso of the Act, is convenient to chase sex workers and ignore hard task of finding the trafficker. It also defines trafficking within the framework of sexual exploitation and ignores other manifestation of human trafficking. There has been demand to strengthen ITPA in order to addresses issues of various manifestations of trafficking, quality rehabilitation and re-integration of trafficked.
- **Trafficking for Domestic Servitude:** Trafficking of poor women and children from relatively underdeveloped areas across India for domestic servitude in metro cities has increased tremendously in last few decades. Placement agencies plays role of intermediary in this business. It has been reported in the past that many such placement agencies are involved in human trafficking to meet increasing demand of low wage domestic servitude in big cities of India. There has been a long pending demand of regulating this business to avoid human trafficking.
- **Sub Standard Shelter Homes:** The shortage of shelter homes where victims of trafficking are often housed along with sub standard facilities in these homes have been highlighted by number of researchers, activists and victims. There is urgent need to invest in these homes not only to increase their number but also ensure quality services to victims by these homes.

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PART: III

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- **Three Tier Anti-Trafficking Committees:** The Bill proposes to constitute district, state and national level anti-trafficking committees to execute and monitor all activities related to prevention from human trafficking and assistance to victims such as rescue, protection, rehabilitation, medical care, psychological assistance and skill development. The proposed 'District Anti-Trafficking Committee' headed by the district collector will be responsible for grass root implementation of these duties and power. The 'State Anti-Trafficking Committee' headed by the chief secretary will be responsible for overseeing of anti-trafficking law and advising state government and district level committees on matters relating to prevention of trafficking, protection and rehabilitation of victims of trafficking in persons. The 'Central Anti-Trafficking Advisory Board' headed by the secretary of Ministry of Women and Child will oversee implementation of the law at national level. It will also advise central government on matter related to human trafficking. (Chapter II, III and IV)
- **Special Investigation Agency:** the proposed Bill envisages creating of a special investigation agency for investigation of offences under provisions of the Act. (Chapter V)
- **Protection Homes and Special Homes:** The Bill proposes creating protection homes to provide for shelter, food, clothing, counselling and medical care that is necessary for the rescued victims and such other services. It also proposes to create one or more Special Homes in each district for providing long- term institutional support for the rehabilitation of victims. The Bill places the responsibility of setting up homes on respective state government. (Chapter VI)
- **Placement Agency:** The Bill makes it compulsory for all placement agencies (whether registered under any law for the time being in force or not), to be registered for the purposes of the proposed law. Various placement agencies have been accused for alleged involvement in human trafficking. (Chapter VIII)
- **Proposed new Offences and Punishment:** In addition to offences listed in the IPC and other laws, the proposed Bill envisages following new offences. The burden of proof for these offences is also reversed: the commission of the crime is presumed unless otherwise proven. (Chapter IX and X)

Offences	Type of Offences	Punishment
Violation of provisions of Protection Homes and Special Homes by the person incharge	Bailable	Imprisonment which may extend to one year or with a fine not less than one lakh rupees, or with both.
Violation of provisions of registration of placement agencies	Bailable	Imprisonment for a term which may extend to 3 years or with fine which may extend one lakh rupees,
Revealing the identity of a victim or witness to a crime of trafficking	Bailable	Imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.

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Using narcotic drugs, psychotropic or alcoholic substances for trafficking	Cognisable and non-bailable	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 one lakh rupees.
Use of chemical substance or hormones to a trafficked women or child to enable early sexual maturity	Cognisable and non-bailable	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 one lakh rupees

- **Special Courts and Prosecutors:** The Bill envisages creating of special court in each district by respective state governments and concerned high courts for offences under section 370 to 373 of IPC and offences under the proposed Bill. For the propose of speedy trial the Bill also proposes to appoint experienced lawyer as special public prosecutor. (Chapter XI)
- **Anti-Trafficking Fund:** The Bill envisages creation of an anti-trafficking fund by each state government for the effective implementation of this Act and also for the welfare and rehabilitation of the victims. (Chapter XII).

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PART: IV Critique of the Bill

Various civil society organizations and stakeholders appreciated the attempt to bring a comprehensive anti-trafficking law by the ministry. It has been seen as a chance to fill critical gap in various types of existing law relating to human trafficking. However, civil society organizations and other stakeholders have raised several issues pertaining to the provisions of the proposed Bill. Major issues raised in public are as follows:

Lack of Clarity:

- The ministry has claimed that the proposed bill is comprehensive. However, it misses on fundamentals such as definition of trafficking and explaining its objective. In the absence of definition and objective of the proposed law, it leaves a lot of ambiguity on the scope of the Bill.
- The power, roles and duties of district level anti-trafficking committee are not adequately defined. National level child right organization 'CRY' argues, "It remains unclear if the mandate and powers of the District Anti Trafficking Committee shall be judicial in nature and therefore production to victim. Even in such cases it raises two anomalies - one a member secretary who is part of the executive cannot act as an authority in isolation. Also a committee who sits one in three months cannot play this judicial role wherein there can be a rescue on any day or everyday."³
- The bill also has some clauses which contradict each other. Action Aid in its submission to the government on this draft Bill reads, "Chapter V, Section 7 mentions about a Special Agency to be set up by the Central Government to investigate offences under this Act while Chapter XII, Section 28 deals with the State Government designating an Investigating Officer to investigate the offences under this Act. These two Sections stand in complete contrast to each other and are not reconciled with in the draft bill. There is also no mention of the Anti Human Trafficking Units which already exist under Union Home Ministry."

Not in Tandem with Existing Legal Framework:

- Instead of simplifying criminal procedure pertaining to trafficking the current Bill creates lots of confusion. Currently there are three different sets of law to deal with various manifestation of trafficking. The Immoral Trafficking (Prevention) Act, 1956 (ITPA) deals with trafficking for commercial sex, various provisions of IPC criminalizes traffickers and labour laws such as bonded labour and contract labour laws deals in economic exploitation of labourer. The Bill has mentioned that the its provision are in addition to the IPC but it does not mention other set of laws such as ITPA and Labour Laws. There is ambiguity on whether this Bill repeals ITPA or not.
- The Bill also does not take into account other existing important laws such as Right of Children to Free and Compulsory Education Act 2009, Prohibition of Child Marriage Act 2006, POCSO Act, 2012 and other related laws and policies as these policies deals with various aspects of trafficking and have already functional working mechanism.

³ https://static.mygov.in/rest/s3fs-public/mygov_14672836364509201.pdf

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Missed Incorporating various Manifestations of Human Trafficking:

- The mention of placement agency in the Bill has been appreciated; but civil society organizations have argued that the Bill does not explain how mere registration of the placement agency would prevent trafficking. There is need to put in place well defined monitoring system to check placement of people by these agencies. It has also been argued that since it involves labourer, the registration of these agencies should be done by labour department.
- Since the Bill misses on definition of trafficking and explanation of overall objective and scope, it is largely limited to the victims of commercial sex and domestic servitude. It does not address other manifestation of human trafficking. 'Action Aid' India in its submission to the government argued that the Bill does addresses victims such as bride trafficking (as the number of females is dwindling due to female foeticide) and child marriage. It also does not address trafficking for various forms of cheap labour including bonded labour, begging as well as trafficking for organ trade, adoption and sale of children⁴.

No Financial Provision:

- The Bill proposes to build infrastructure around provisions of proposed and existing anti-trafficking laws. However, it has not analyzed financial implication of the Bill. Furthermore, it does not commit any financial provision for the effective implementation of the Act.

Victim's Demand:

A letter by 23 survivors of human trafficking from West Bengal to the MWCD on the proposed anti trafficking Bill created news headlines couple of months ago. According to the them, they were either rescued or they fled from prostitution rackets being operated in red light districts, hostels, lodges and flats. The letter reads, "The existing system has helped us, but in most ways, it has not attended to our needs. Our traffickers are still at large, and we are looking at (government of) India to give us justice." The letter further demands that the the Bill to (incorporate) punishment for hostile policemen who discourage victims from lodging complaint against their oppressors. These survivors identified number of problems along with positives of the Bill. Major amendments proposed by the group are as follows⁵:

- The Bill addresses issues of trafficked women and girls but it ignores issues of trafficked men and boys.
- It does not addresses prevention of re-trafficking of victims.
- It does not addresses issues of timely and quality investigation of trafficking, police-traffickers nexus, misbehaviour of certain police personal with victims in order to protect trafficker. The Bill should have provision to punish police officers who do not do their duties properly or misguide victims, or prevent them from giving their statement to the magistrate after rescue. Police also often scare victims and don't let them lodge cases against the traffickers.

⁴ https://static.mygov.in/rest/s3fs-public/mygov_146728024442702394.pdf

⁵ <https://sca.riselearningnetwork.org/wp-content/uploads/sites/4/2016/08/Survivors-Letter-to-Maneka-Gandhi-from-Survivors-of-Trafficking-on-the-bill.pdf>

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- **Nothing is said about investigating the trafficking cases properly.** *“We are often afraid that our cases shall fall through due to lack of evidence. Our fear is that this that as it doesn’t specify any punishment for poor investigation.”*
- **This Bill also does not give any protection to victims from their traffickers.** *“We often get threats from traffickers, they even attempt to harm us or our family members so that we do not move forward with the cases. In absence of protection, it still leaves us vulnerable to them.”*
- **Girls and women staying in the shelter homes are often subjected to torture treatment as well as substandard services.** There’s no mention of punishing people who torture the girls in shelter homes.
- **There’s nothing said about within how much time a girl should be released from the Shelter Homes.** *“We are afraid that girls may be kept there for indefinite periods of time and will not be allowed to return home. We have seen during our stays in homes that many girls are kept there for years.”*
- **The Bill does not provide any mechanism for fighting stigma against survivors of trafficking.** A girl is often tortured by her very own family members after she is back, and she has no other way but to keep silent to protect her dignity in front of others. Stigma is also given by the people in the locality, contributing to further alienation from a survivors’ community.

Objections of National Commission for Women

The Chairperson of National Commission for Women (NCW) Mrs. Lalitha Kumaramanagalam has criticized the bill and has communicated to the Ministry that the Bill in current form is ‘unacceptable’ and ‘untenable’. It has been reported in the media that the NCW wrote a letter in the month of July 2016 and opposed the draft Bill. Major objections of the NCW reported in media are as follows⁶:

- The Bill suggests parallel system from the one that is already existing and ignores the policies and community.
- Instead of a new law, the Immoral Trafficking (Prevention) Act, 1956 needed to be strengthened.
- The Bill does not describe the trafficking as a crime in detail. It ignores end use of trafficking like slavery and organ trade.

⁶ <http://timesofindia.indiatimes.com/india/Manekas-anti-trafficking-draft-bill-unacceptable-says-NCW/articleshow/53235759.cms>

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PART: V Conclusion

The Draft Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016 released by the government in May 2016 seems to be drafted hastily without considering the complexity of the crime and its ramification. There has been long pending demand of strengthen of existing anti-trafficking laws, incorporating various manifestations of human trafficking, developing infrastructure for rescue, protection and rehabilitation of victim and ensuring effective implementation of anti trafficking laws. The government has claimed that the proposed Bill comprehensively addresses human trafficking. However, it has been observed that the document has not addressed many critical issues. Moreover, it has created confusion, as it does not specify its objective and scope. Despite this, the Bill promises various good things pertaining to rescue, protection and rehabilitation of victims. The Bill in its current form has missed various aspects of the illicit crime of human trafficking on one hand and failed to understand existing policy framework pertaining to human trafficking on the other.

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