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FROM TRAINING TO TRANSFORMATION: ELEVATING CAPACITY BUILDING AND VICTIM SUPPORT IN INDIA LEGAL RESPONSES TO CHILD SEXUAL EXPLOITATION

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ABSTRACT

India has robust legal safeguards against offences pertaining to the exploitation of minors for sexual purposes. In addition, the nation is a party to numerous international and regional frameworks and has ratified the majority of significant international conventions pertinent to the fight against the *sexual exploitation of minors*. In order to comply with its regional and international obligations, India has also progressively adopted and modified national laws pertaining to child sexual exploitation. It is noteworthy to applaud the passage of the Protection of Children from Sexual Offences Act 30 and subsequent modifications to make sure this is gender-neutral. The recently proposed Trafficking in Persons (Prevention, Care and Rehabilitation) Bill for 2021, if it becomes law, would be another step in the right direction towards bringing Indian legislation up to date with global norms.³¹ But there are significant flaws in the bill as well, like the death penalty. The *Trafficking in Persons (Prevention, Care and Rehabilitation)* draft Bill 2021, which is anticipated to be introduced during the winter session of Parliament, has shortcomings that the Indian Leadership Forum Against Trafficking (ILFAT) has pointed out in a letter to the Ministry of Women and Child Development. This paper will examine the main ideas of the bill as well as a few of its shortcomings.

Keywords

Sexual exploitation, Minors, Rehabilitation, Trafficking, Prevention

Questions

- 1) What are the potential changes that need to be bought to this bill to make the rehabilitation more efficient?
- 2) Are all the spectrum of abuses and the punishment cover in this bill?

¹⁹⁵³ Child sexual abuse is the term used to describe sexual acts done against minors by adults or peers. These acts typically involve a person or group abusing their position of authority. Offenders frequently use authority, power, manipulation, or deception in addition to the potential use of force. The same abusive behaviours are involved in child sexual

exploitation. A further component, though, is also necessary: the exchange of something, such as cash, housing, tangible goods, immaterial things like safety or a relationship, or even just the assurance of such. It can happen offline, online, or through a mix of the two. The phrase "child sexual abuse" refers to sexual acts committed by peers or adults against minors. These actions usually involve an individual or group abusing their power. In addition to the possible use of force, offenders frequently resort to manipulation, authority, power, or deception. Child sexual exploitation involves the same abusive behaviours. However, something else is also required: the exchange of something, like money, housing, material goods, or even just the guarantee of something like safety or a

¹⁹⁵³ <https://www.unicef.org/protection/sexual-violence-against-children>

relationship. It may occur through a combination of online and offline channels. Of course, the number of reports of trafficking is probably much lower than what is actually known. The situation's actual reality probably affects a lot more people. Furthermore, there have been reports of ongoing cross-border child trafficking; earlier studies have shown that, for example, girls from Nepal are trafficked to major Indian cities for sex-related purposes.¹⁹⁵⁴ According to research, children from tribal communities are more likely to be trafficked for sex purposes and to be used as props in prostitution.

Given that vulnerability to sexual exploitation is exacerbated by poverty and limited access to livelihood opportunities, the COVID-19 pandemic and related job losses in India are likely to have increased the risks of children

In India, girls face restrictions on their freedom of movement, access to education, employment, marriage, and social interactions. Gender discrimination is a serious problem.¹⁹⁵⁵ Gender norms also impact boys; a patriarchal society and expectations of masculinity lead to a lack of attention to men's susceptibility to sexual abuse and exploitation, which in turn fuels men's violence against women and girls.¹⁵ High levels of shame, stigma, and silence surrounding sexual abuse and exploitation also affect children of all genders, which lowers the number of such crimes that are reported. Furthermore, although a child from any caste can be the victim of sexual exploitation, for some castes this vulnerability can also be made worse by the stigma, poverty, and social exclusion that go along with it.

¹⁹⁵⁶ The laws of India still have limitations. For instance, since many crimes pertaining to children are included with those pertaining to adults, the laws protecting children from being exploited in prostitution may be strengthened.

Defining child exploitation in prostitution in accordance with international standards and establishing distinct offences for minors, including clauses that expressly forbid children from being prosecuted for prostitution, could support prosecution efforts. The Indian legislation has several gendered provisions that only protect girls, leaving boys without protection. Legal provisions must not contribute to the underrecognition of boys' vulnerability to sexual offences in India, where there is a lack of awareness that they may be victims. For instance, the Penal Code contains a specific clause about the "procurement of minor girls." 2,471 instances of this crime were reported in 2020, according to crime statistics, highlighting the continued widespread use of the provision and raising the possibility that similar crimes against boys may go unreported.

There are gender-specific provisions for child rape in the Indian Penal Code as well.¹⁹⁵⁷ Since Section 375 only addresses the rape of girls and excludes boys, the Index assigns a score of 0/100 to the protection of boys from child rape laws. This is particularly troubling in light of the fact that India does not have a close-in-age exemption shielding peers who engage in mutually consenting sexual activity from legal consequences. This implies that boys, even if they were both willing partners, could be prosecuted for child rape if they have sex with a girl under the age of 18. The Prohibition of Child Marriage Act only punishes "adult males" for marrying minors, which may spare female adult offenders from punishment.

¹⁹⁵⁸ The National Child Protection Policy, which established guiding principles that federal, state, and local governments must adhere to in their actions and initiatives, was approved in 2013. The government's National Plan of Action for Children addresses some types of child sexual exploitation, but it ignores others. Research on the sexual exploitation of minors in India is extremely limited. Furthermore, there is

¹⁹⁵⁴ https://link.springer.com/chapter/10.1007/978-3-031-33875-5_23

¹⁹⁵⁵ <https://aarambhindia.org/sexual-abuse-boys-india-story-numbers/>

¹⁹⁵⁶ <https://mediaindia.eu/society/dangerous-silence-around-male-sex-abuse-in-india/>

¹⁹⁵⁷ <https://mediaindia.eu/society/dangerous-silence-around-male-sex-abuse-in-india/>

¹⁹⁵⁸ <https://ncpcr.gov.in/>

no breakdown or classification of the scant official data that authorities and police in India have collected on child sexual exploitation. Because the problem's extent is unknown, this makes it more difficult for the nation to respond to it. India does release crime statistics to the public for some crimes involving the sexual exploitation of minors, but these figures are sparse, ambiguous, and not broken down by category. Since so little research and evidence-gathering have been done on the subject, it is very challenging to determine the precise extent of child sexual exploitation. To gain a better understanding of the country's prevalence and the vulnerabilities of various populations, more comprehensive data may be utilised. Improved data facilitates the development and implementation of focused preventive initiatives, as well as the customisation of responses for impacted children.

¹⁹⁵⁹The Ministry of Women and Child Development received a letter from the Indian Leadership Forum Against Trafficking (ILFAT) pointing out deficiencies in the draft Bill 2021 titled Trafficking in Persons (Prevention, Care and Rehabilitation). Although the Bill offers survivors rehabilitation, it does not go beyond shelter homes in terms of relief. A community-based rehabilitation model is needed, one that offers the health care, legal support, welfare program access, and employment opportunities that are essential for the "all-round reintegration of victims" back into their families and communities. It was not in compliance with international human rights laws, according to UN human rights experts.

¹⁹⁶⁰The Bill appeared to combine trafficking, migration, and sex work. The Bill faced criticism for approaching trafficking from a criminal law standpoint rather than combining it with a victim-centered and human rights-based strategy. It was also criticised for encouraging

police "rescue raids" and institutionalising victims under the pretence of rehabilitation. It was brought up that some ambiguous provisions would criminalise acts that aren't always related to human trafficking.

¹⁹⁶¹It covers all citizens, both inside and outside of India; individuals on any ship or aircraft registered in India, wherever it may be; foreign nationals or stateless people residing in India at the time of the commission of an offence under this Act; and any offence involving the trafficking of persons that has cross-border ramifications. It now protects transgender people as well as anybody else who might become a victim of human trafficking, going beyond the protection of women and children as victims. Additionally, it removes the requirement that a victim must be moved in order for them to be considered victims. Those in positions of authority, such as government employees, doctors, and paramedical staff, as well as defence personnel, will also be considered offenders. a minimum of seven years, with the possibility of ten years in prison and a fine of Rs five lakh in the majority of child trafficking cases.

¹⁹⁶²The penalty for trafficking multiple children is currently life in prison. In order to prevent and combat human trafficking, the National Investigation Agency (NIA) will serve as the national investigating and coordinating agency. Following the law's enactment, the Centre will notify the relevant parties and form a National Anti-Human Trafficking Committee to oversee the law's overall effective implementation.

Various ministries will be represented on this committee, which will be chaired by the home secretary and co-chaired by the secretary of the women and child development ministry. Committees to combat human trafficking will also be established at the state and district levels. To save enforcement agencies from being confused or faced with duplication, the

¹⁹⁵⁹ <https://www.drishtiias.com/daily-updates/daily-news-analysis/trafficking-in-persons-prevention-care-rehabilitation-draft-bill-2021>

¹⁹⁶⁰ <https://cip.org.in/wp-content/uploads/2021/07/DRAFT-TRAFFICKING-IN-PERSONS-PREVENTION-CARE-AND-REHABILITATION-BILL-2021-1.pdf>

¹⁹⁶¹ <https://www.jurist.org/commentary/2021/08/mili-gupta-india-trafficking/>

¹⁹⁶² <https://pib.gov.in/PressReleasePage.aspx?PRID=1732617>

Bill ought to be more closely aligned with the current provisions of the Juvenile Justice Act and other pertinent Acts. It would be beneficial for the Central Government to create model rules that the States could use, as the successful execution of the Act depends on clear and uniform regulations.

¹⁹⁶³The Bill mandates that the federal or state governments establish Protection Homes and offer victims food, clothing, counselling, and medical care. In addition, each district will have Rehabilitation Homes maintained by the federal or state governments to offer victims long-term rehabilitation. In order to guarantee the victims' rehabilitation, the Bill mandates that the federal and state governments establish anti-trafficking committees at the district, state, and federal levels. ¹⁹⁶⁴Upon rescuing an individual, the district anti-trafficking committee must be notified of the rescue efforts by the anti-trafficking authorities. Additionally, the district committee will: (i) give instructions to Protection and Rehabilitation Homes so that victims are protected, rehabilitated, and restored; and (ii) assist in the interstate repatriation of victims who were forced into bonded labour. The state anti-trafficking committee is in charge of the following: (i) setting up staff training and sensitisation; and (ii) offering support and suggestions for the prevention of offences, particularly those with interstate consequences or characteristics of organised crime. The national anti-trafficking committee is in charge of the following: (i) making sure victims receive relief and rehabilitation through relevant ministries and statutory bodies; (ii) requesting reports on the effectiveness of the Homes and the quality of services from the appropriate government, state, and district anti-trafficking committees; and (iii) keeping an eye on the Rehabilitation Fund. The initiation of criminal proceedings against the accused or the resolution of those proceedings will not impact the rehabilitation of the victims. In order to

establish Protection and Rehabilitation Homes, the central government will also establish a Rehabilitation Fund. ¹⁹⁶⁵The state and district anti-trafficking committees will take action to safeguard and stop the trafficking of individuals who are vulnerable. These steps consist of: (i) assisting in the implementation of educational and livelihood programs for disadvantaged communities; (ii) assisting in the implementation of various government initiatives and plans aimed at preventing human trafficking; and (iii) creating a framework for law and order to guarantee the prevention of human trafficking.

A victim of an offence punishable by death, life in prison, or ten years in prison would be immune under the Bill. Furthermore, for there to be an offence, there must have been: (i) coercion, intimidation, or undue influence; and (ii) a reasonable fear of death or serious injury. This brings up two points. In order to prevent people who have been trafficked from being prosecuted for crimes they have committed that directly relate to their trafficking, immunity may be desirable. But the Bill only grants immunity for serious offences. For instance, a victim of human trafficking who kills someone while being forced to do so by his traffickers may be able to argue that they are not subject to a murder trial. But if a victim of trafficking steals small amounts of money while being forced to by his traffickers, he will not be able to claim immunity. Second, the victim must demonstrate that the offence was committed under duress, threat, intimidation, or undue influence, and that there was a legitimate fear of harm or death at the time of the offence in order for immunity to be granted. As a result, it could be claimed that the bar for claiming immunity from prosecution is too high, which would defeat the intention behind granting it.

¹⁹⁶⁶The Bill penalises individuals whose actions "may" result in human trafficking. These practices consist of the following: (i) electronic

¹⁹⁶³ <https://www.nextias.com/ca/current-affairs/14-06-2022/trafficking-in-persons-prevention-care-and-rehabilitation-bill>

¹⁹⁶⁴ <https://www.slideshare.net/slideshow/draft-trafficking-in-persons-prevention-care-and-rehabilitation-bill-2021-1-1/249794843>

¹⁹⁶⁵ https://www.legalserviceindia.com/legal/article-3245-human-trafficking-laws-in-india-.html#google_vignette

¹⁹⁶⁶ <https://www.mea.gov.in/human-trafficking.htm>

publication or solicitation; (ii) taking or disseminating pornographic images or videos; and (iii) enticing tourists. If found guilty of the crime, a person may face a minimum five-year sentence, a maximum ten-year sentence, and a fine ranging from Rs 50,000 to Rs one lakh. The offender is not required by the Bill to demonstrate a "intent" to commit trafficking. As a result, it is unclear how the likelihood that the act will lead to trafficking will be assessed.

¹⁹⁶⁷A fine of at least one lakh rupees and a prison sentence of three to seven years are the penalties for distributing or selling materials that depict sexual exploitation or assault for the purpose of extortion, coercion, or illegal gains, according to the Bill. The clause does not require that these actions be connected to the commission of a trafficking offence. Why the Bill requires punishment for actions that might not have anything to do with human trafficking is unclear.

¹⁹⁶⁸Certain types of trafficking are classified as aggravated trafficking under the Bill. Trafficking for the purposes of forced labour, begging, child bearing, or causing great harm is considered aggravated trafficking. Slavery, forced organ removal, and physical or sexual exploitation are not considered forms of aggravated trafficking. Aggravated trafficking carries a minimum ten-year sentence and a maximum life sentence, whereas simple trafficking carries a sentence of seven to ten years in prison. One could argue that, in comparison to the penalties for simple trafficking offences, the penalties for certain aggravated offences may not be appropriate. For instance, forced organ removal or sexual exploitation are subject to shorter prison sentences than trafficking for the purpose of begging.

The Bill also stipulates that anyone who "hires" a person for human trafficking will be imprisoned for three to five years and fined at least one lakh

rupees. Nonetheless, the Bill defines a trafficker as someone who "recruits" other people for the purpose of exploitation. Such individuals may face a fine and a maximum seven-year prison sentence. Why there is a difference in punishment between a "hirer" and a "recruiter" is not clear. The problem of child trafficking and sexual exploitation is widespread and complex, and it needs immediate attention. It has serious repercussions for children's physical, emotional, and psychological wellbeing and violates their fundamental human rights. This paper has examined this horrible crime's numerous aspects, such as its frequency, its root causes, and its terrible effects on victims.

¹⁹⁶⁹A multifaceted strategy is required to effectively combat child sexual exploitation and trafficking. To begin with, preventative measures need to be put in place to inform kids, parents, and communities about the risks associated with this crime. Campaigns to raise awareness can enable people to spot and report suspicious activity, and educational initiatives can give kids the tools they need to stay safe. Second, law enforcement organisations must improve their ability to look into and bring charges against offenders. This entails making investments in specialised units, educating officers, and forging successful alliances with global organisations. Third, in order to offer survivors comprehensive care and rehabilitation, victim support services need to be easily accessible. This covers legal aid, psychological counselling, and medical assistance. Ultimately, long-term prevention of child sexual exploitation and trafficking requires addressing the underlying causes of these issues. Children who experience poverty, inequality, and social marginalisation are more susceptible to being exploited. In order to address these root causes, it is imperative that initiatives to advance economic development, increase access to healthcare and education, and fortify social safety nets be undertaken. In conclusion, there is a need for a global effort

¹⁹⁶⁷ https://www.unodc.org/documents/human-trafficking/India_Training_material/Resource_Book_on_Legal_Framework.pdf

¹⁹⁶⁸ <https://uphome.gov.in/images/pdf/draft-trafficking-of-persons-bill-2016.pdf>

¹⁹⁶⁹ <https://www.nextias.com/ca/current-affairs/14-06-2022/trafficking-in-persons-prevention-care-and-rehabilitation-bill>

from individuals, communities, governments, and international organisations to address the issue of child sexual exploitation and trafficking. We can work towards a world where children are safe and protected from harm by putting into practice efficient preventive strategies, bolstering law enforcement, offering thorough victim support, and addressing the underlying causes of this crime.

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