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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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AN OVERVIEW AND ANALYSES ON DRAFT OF TRAFFICKING IN PERSONS (PREVENTION, CARE AND REHABILITATION) BILL, 2021 AND ITS IMPLICATIONS.

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INTRODUCTION

Human Trafficking in India is an menace and it is practiced in India from time immemorial and some of the human Trafficking has been Customarily practiced in India which hugely affect the Vulnerable people in the Indian Society. The Traditional Form of Human trafficking in India Such as Sati practices, Child Marriage, Devadasi Schemes and Slavery and Bonded Labour especially in the Agricultural Sectors and Child Labour had been in Long practice. Some of the Pre- Independence British Legislation such as Child Marriage Prohibition Act, 1929, Sati Abolition Act, 1829 and Indian Slavery Act, 1843 and there are some provisions in India Penal Code, 1860 with regarding to the Human Trafficking. After Independence there are Constitutional provisions to safeguard Human Trafficking under Article 23 and 24 of Indian Constitution. The Statutory provisions for Human Trafficking has been discussed in Child Labour Abolition Act, 1986, Bonded Labour Abolition Act, 1976, POCSO,2012, Sexual harassment of women at workplace act 2013, Immoral Traffic (Prevention) Act, 1986 (ITPA), Juvenile Justice Act, 2000 and few provisions in Indian Penal Code against human Trafficking.

There is no Separate Legislation since Independence against the Anti Trafficking in India to provide Prevention, Rehabilitation and Compensation to the Victims of Human Trafficking and issues. The provisions regarding Human Trafficking has been segregated under different legislative ambit. Hence there are several attempt made by the Parliamentarian to introduce Separate Laws regarding Human

Trafficking so private bills had been introduced by Parliamentarians such as **The Prohibition of Human Trafficking of Indian Citizens Abroad and Welfare of Overseas Indians Bill, 2014** introduced by Shrimathi Jayashree in 2014 and it has been lapsed. Second attempt made by M.P Mr.Sunil Kumar Singh Shri in 2015 to introduce **The Girl Child (Prevention of Commercialised Trafficking, Rehabilitation and Welfare) Bill, 2015** and has been Lapsed.

Third attempt was made by Rajesh Ranjan (Pappu Yadav) Shri by introducing **The Prevention of Trafficking of Girl Child for Commercial Purposes Bill, 2015** and it is pending for Consideration. In 2017, MP Rahul Ramesh Shewale Shr had introduced bill known as **The Human Trafficking (Prevention) Bill, 2017** and it get Lapsed. Hence the Central Government proposed to bring the separate legislation to Prevention, Rehabilitation, Rescue and Compensation to the Human Trafficking and introduced **The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018** in Lok Sabha on 18.07.2018 and it has been passed in the Lok sabha on 26.07.2018 but lapsed due to the dissolution of Lok Sabha. Now the Central Government invited suggestions from the general Public about the New Draft proposal of Trafficking in Persons bill (Prevention, Care and Rehabilitation) Bill, 2021 and the Central Government also introduced certain changes in new bill of 2021 from the old Proposed Draft bill of 2018.

AIM AND OBJECTIVE OF STUDY

1. This Research Article attempts to overview and analyses the provisions of New Draft proposal of Trafficking in Persons bill (Prevention, Care and Rehabilitation) Bill, 2021 and its implications.
2. This Research Article attempts to find out the drawbacks in the New Draft proposal of Trafficking in Persons bill (Prevention, Care and Rehabilitation) Bill, 2021.
3. This Research Article aimed to give appropriate Suggestions to the Drafting Committee of proposed new bill to ensure the protection of Human Trafficking issues.
4. This Research Article aimed to give highlights of the New Proposed bill on Human Trafficking issues.

SKELETON OF THE BILL

The Skeleton of the Draft bill described as follows:-

The Short Title of bill is Trafficking in Persons bill (Prevention, Care and Rehabilitation) Bill, 2021.

The Long Title of the bill is to prevent and counter trafficking in persons, especially women and children, to provide for care, protection, and rehabilitation to the victims, while respecting their rights, and creating a supportive legal, economic and social environment for them, and also to ensure prosecution of offenders, and for matters connected therewith or incidental thereto.

The Chapter-I deals with the Short Title, Extent and Commencement, Definition Clauses. The Chapter-II deals with Prevention and Combating of Trafficking in persons and other offences. The Chapter –III deals with Anti Human Trafficking Committee and Nodal Officers in National, State and District Level. The Chapter-IV deals with Preventive measures by State and District Anti-Human Trafficking Committees. The Chapter-V deals with Search, Rescue or Emergence, And Post-Emergence Activities Including Care, Protection and Rehabilitation Of Victims. The Chapter – VI deals with Repatriation and Reintegration of Victims. The Chapter- VII deals with Monetary Relief and Compensation. The Chapter-VIII deals with Offences and penalties under this Act. The Chapter IX deals with offences relating to the property. The Chapter X deals with Miscellaneous provisions. The Chapter XI deals with Amendment Of Certain Enactments .and contain one schedule referring Section 55(1) of this Act and describing Cognizable and bail of offences under this Bill ¹

APPLICATION OF THE BILL

According to the draft bill, Law will apply to all citizens of India, within and outside the country, persons on any ship or aircraft registered in India wherever it may be or carrying Indian citizens wherever they may be, and a foreign national or a stateless person who has residence in India.

The Crux of Draft bill is its applicability to offence under Cross-Border Implications. This Draft Bill provide the Extra-Territorial operation in International Context and having applicability in International Level.

¹ Trafficking in Persons bill (Prevention, Care and Rehabilitation) Bill, 2021 official Notification by Ministry of Women and Child Welfare.

DEFINITION UNDER THE BILL

The Interpretation Clause of the Bill define then words under Section 2 with 30 Clauses. These interpretation Clause contains the interpretation of the words Exploitation, Debt-Bondage, Cross Border Implication, Sexual Exploitation, property, Rehabilitation and Rescue and Commercial Carrier. The special Reference has been gone to certain legislatures to define certain Words such as Child, Mental illness, Disabled person, Agency, Organized Crime, Proceed of Crime. The Interpretation Clause did not contain the General Definition for the term Human Trafficking is major drawbacks in definition part.

AGENCIES TO PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS AND OTHER OFFENCES: CENTRAL GOVERNMENT

The Central Government has given power under Section 3(1) to take Coordinate measures on preventing and Combating of Trafficking in persons by taking the adequate measures and Steps through Public Functionaries and International entities by obliging the international norms.

NATIONAL INVESTIGATION AGENCY

The National Investigation Agency established under the NIA Act, 2008 has been given responsibility under Section 3(2) as National Investigation and Coordination agency to the Trafficking in persons and Combating the issues as per this Act and in Interstate and International Context.

ANTI HUMAN TRAFFICKING COMMITTEES & NODAL OFFICERS

The Central Government under Section 5 of the Draft Bill Should Constitute the National Anti-Human Trafficking Committee, for ensuring overall effective implementation of the provisions of this Act, for coordination as needed for prevention and countering of the offences under this Act, and for matters relating to emergence, rescue, protection, medical care, psychological assistance, recovery, relief, rehabilitation, repatriation and reintegration of victims.

The Appropriate Government within the State or State Government under Section 6 of the Draft Bill Should Constitute the State Anti-Human Trafficking Committee for ensuring overall effective implementation of the provisions of this Act within the State, for coordination where necessary in prevention and countering of the offences under this Act, for matters relating to emergence, rescue, protection, medical care, psychological assistance, recovery, relief, rehabilitation, repatriation and reintegration of victims, and to advise the State Government and District Anti-Human Trafficking Committees on these and related matters. The Section 7 of the Draft Bill constituted the State Anti-Human Trafficking Nodal Agency officer in the Rank of Additional Director General of Police to coordinate and Combating the trafficking in persons. The State Anti- Human Trafficking Nodal Agency officer would be acts as Liason for both the National and State Level Anti Human Trafficking Committee.

The District Anti-Human-Trafficking Committees should be Constituted by State Government under 8 in every district to for ensuring overall effective implementation of the provisions of this Act within the district, for ensuring timely action and coordination where necessary in prevention and countering of the offences under this Act, and for matters relating to emergence, rescue, protection, medical care, psychological assistance, recovery, relief, rehabilitation, repatriation and reintegration of victims. The District Anti-Human Trafficking Committee shall have the authority under sub section 6 of Section 8 to dispose of cases for care, protection, treatment, relief and rehabilitation of the victims under this Act and in case of child victims, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 shall apply.

The District Anti-Human Trafficking Committee shall furnish a report under sub section 5 of Section 8 to the State Anti-Human Trafficking Committee on quarterly basis. The District Anti-Human Trafficking Committee shall maintain a list of support persons and maintain a panel of Support person from Panchayat and Ward level and they may be appropriately reimbursed.

PREVENTIVE MEASURES UNDER THE PRESENT BILL

The State and the District Anti-Human Trafficking Committees shall undertake under Section 9 all measures and recommend strategies and plans to protect and prevent vulnerable persons from being trafficked through measures taken with relevant Local Bodies, Statutory bodies, agencies and

organization. The State and District Committee shall take steps to prevention of any re-traumatisation or re-trafficking of or recurrence of any offence under this Act against any victim. The State Government has duty to take steps to create public awareness on the provisions of this Act.

The National Anti Trafficking Committee and Agency should formulate Standard of Procedures for identification and reference of the Victims. The Aadhar enrollment of the identification and referral of Victim or Vulnerable persons should be mandatory for effective implementation of the provisions.²

SEARCH, RESCUE OR EMERGENCE, AND POST-EMERGENCE ACTIVITIES INCLUDING CARE, PROTECTION AND REHABILITATION OF VICTIMS

The Police officer in cadre of Sub Inspector of Police should produce the Victim before the Child Welfare Committee or Magistrate and take actions to sent for Medical Examination. The Police officer should inform the District Anti-Human Trafficking Committee about the rescue and Rehabilitation Activities. The Search and Seizure under this bill would be happened as adherence to the Criminal Procedure Code.

This bill proposed for establishment of Protection Homes and Observation Homes and mandatory registration of this homes. The Bill Mandate the Authorities to the inspect once for every three months on the status of these homes.

REPATRIATION AND REINTEGARTION OF VICTIMS

This bill vested the power on Anti-Human Trafficking Committee or Child Welfare Committee to the Repatriation and Reintegration of the Victims into the Society and the Family. The repatriation of the victims under this Chapter shall be completed within six weeks for intra-State repatriation, within three months for inter-State repatriation, and within six months in case of inter-country repatriation, from the date of production of a victim or his dependents, if any, before the District Anti-Human Trafficking Committee or the Child Welfare Committee. The bill express that every repatriation under

² Trafficking in Persons bill (Prevention, Care and Rehabilitation) Bill, 2021 official Notification by Ministry of Women and Child Welfare.

this Chapter from one place to another within India shall be subject to the informed consent of the victim taken after adequate psychological Counseling.

MONETARY RELIEF AND COMPENSATION

This bill mandates the Investigating Authorities to forward the First Information Report to the District Legal Services Authorities and District Anti-Trafficking Committee to provide immediate relief to the victim and dependent, if any, including aid and assistance for medical and rehabilitation needs, as maybe required after due assessment, within seven days of the receipt of the same.³

This bill mandates the District Legal Services Authority shall award interim relief to a victim or any dependant within a period of thirty days of an application submitted by or on behalf of him in this regard, after due assessment.

OFFENCES AND PENALTIES

- (i) The person who trafficking the another is punishable with imprisonment for a term which shall not be less than 7 years but which may extend to 10 years and shall also be liable to a fine which shall not be less than one lakh rupees.
- (ii) Punishment for aggravated form of trafficking in persons. Whoever commits the offence of aggravated form of trafficking of a person shall be punishable with rigorous imprisonment for a term for ten years but which may extend to imprisonment for life and shall also be liable to fine which may extend to ten lakh rupees.
- (iii) Trafficking in persons by organized crime syndicates, organized criminal groups. Every person, belonging to or associated with an organized crime syndicate or an organized criminal group which commits an offence under this Act, including an offence with cross border implications, shall be punished on conviction-
 - (a) if such offence has resulted in the death of a victim, with death or with rigorous imprisonment for life, which shall mean the remainder of the natural life of that person, and shall also be liable to a fine up to fifty lakh rupees,

³ Trafficking in Persons bill (Prevention, Care and Rehabilitation) Bill, 2021 official Notification by Ministry of Women and Child Welfare.

(b) in any other case, with rigorous imprisonment for ten years but may extend to rigorous imprisonment for life and shall also be liable to a fine up to twenty lakh rupees. The court may, for reasons to be recorded in writing, impose a fine higher than the upper limit prescribed under this section for an offence.

- (iv) Where the offence involves trafficking of a child of more than twelve years of age, it shall be punishable on conviction with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than ten lakh rupees and which may extend up to fifteen lakh rupees. In case of offence involves trafficking of more than one child shall be punishable on conviction with rigorous imprisonment for fourteen years but which may extend to imprisonment for life and shall also be liable to fine up to thirty lakh rupees.
- (v) Where a person is convicted of an offence under this section against a child of less than twelve years of age, or against a woman for the purpose of repeated rape, the person shall be punished with rigorous imprisonment for twenty years, but which may extend to life, or in case of second or subsequent conviction with death, and with fine which may extend up to thirty lakh rupee

OFFENCES AND PENALTIES RELATING TO PROPERTY

This draft bill shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and with a fine of not lesser than two lakh rupees but which may extend to one Crore rupees and such property shall also be liable for attachment and forfeiture of the Property. The provisions also penalizing the keeping and allowing the premises for committing the Human Trafficking. The Draft Bill also speaks about the Closure of the premises and eviction of the offenders from property.⁴

DESIGNATED COURTS

The Designated Courts under the Cadre of District Session Court has been Constituted under the present bill. The Designated Court Should be constituted in every District with Jurisdiction to take

⁴ Trafficking in Persons bill (Prevention, Care and Rehabilitation) Bill, 2021 official Notification by Ministry of Women and Child Welfare.

the Cognizance under the provisions of this Act to try exclusively the issues regarding the Human Trafficking in Concerned Jurisdiction. The provisions for Special Public Prosecutor for every Designated Courts has been enumerated under this Act. The Limitation for the Completion of Trial has been Fixed as one year. The procedures for Video Conferencing, In Camera Proceedings and Victim Friendly procedure has been enshrined in this bill. The appeal under the provisions of Act shall be lie on the High Court within a period of sixty days from the date of judgment, sentence or order.

AMENDMENT OF CERTAIN ENACTMENTS

This Draft bill proposed to amend Certain Legislations such as Legal Services Authorities Act under Section 2(g) the Trafficking in persons (Care, Protection and Rehabilitation) Act, 2021 has been inserted and amended the National Investigation Agency Act,2009 by adding Schedule-9. The bill also proposed to bring certain Amendments in Money Laundering Act, 2002. The provisions under Section 370 and Section 370-A of the Indian Penal Code, 1860 has been deleted.⁵

HIGHLIGHTS IN THE BILL

The Highlights and Pros of the present Bill has been detailed discussed hereby

1. The Proposed New Bill has discussing about the Trafficking in Persons with Extra-Territorial operations and Cross Border Implication. Persons committing Trafficking of Persons from any nation can be punished under the provisions of the present bill.
2. The Proposed New bill has created the National level, State Level and District Level Anti Human Trafficking Committee with Exclusively dealing and Preventing and Combating in Trafficking in Persons.
3. The Designated Courts has been Constituted with Special Public Prosecutor for speedy and Victim Friendly Disposal of the Cases with Statutory Limit of One Year, Virtual Video Conferencing and In Camera proceedings of the Victim.
4. The New proposed Bill contains the provisions for Rescue, Rehabilitation, Repatriation and Reintegration of Victims and Aadhar Enrollment of Victims.

⁵ Ibid

5. The New Proposed Bill contains provisions for Registration of Protection and Observation homes exclusively for protecting Trafficking in person and mandatory visit of the Executive Magistrate in those homes.
6. The Soul heart Feature of the proposed bill is providing the Compensation and Monetary Reliefs to the Victims periodically through the District Legal Service Authorities.
7. This Draft Bill discussing about the Trafficking in persons committed by the Organized Crime groups.
8. The Draft bill encourage the Volunteers/ Support persons from Local panchayat and Urban Body Level.

LACUNAE UNDER TRAFFICKING IN PERSONS (PREVENTION, CARE AND REHABILITATION) BILL, 2021

The Lacunae under the bill after the Careful Scrutiny of the bill has been described as below

1. The Bill does not Contains the Provision regarding the Definition of the Term “Trafficking in Persons” or Human Trafficking.
2. The Bill impose undue Dual Role on the National Investigation Agency and at the same time National Anti- Human Trafficking Committee to Coordinate and oversee the Combating and prevention of Trafficking in person which creates Lot of Ambiguity.
3. The New Proposal bill did not address the Trafficking issues regarding the Vulnerable groups such as Transgender, Disabled persons, Women, Migrant Workers, Tribal people, Sex Workers, Minimum wage issues and Old aged persons.
4. This New Proposal bill only discussing about the Indian Penal Code, Prevention of Money Laundering Act, 2002., National Investigation Agency Act, 2008, POCSO Act, 2012, and Legal Services Authority Act, 1987. The New Proposal bill did not bring certain specialized trafficking Legislation such as Child Marriage Act, 2007, Bonded Labour Act, 1976 and Child Labour Act, 1986 and Immoral Traffic (Prevention) Act, 1986 (ITPA) a are not came to picture in the new Draft Bill, 2021 which is major drawback in the bill and which may leads to Contradiction in Implementation of Human Trafficking issue.

5. The Proposed bill did not contain provisions regarding the Bio- Medical malpractices Human Organ Trafficking such as Sale and Transplantation of Organs in Illegal Manners and Medical Malpractices happening in Hospital sectors.
6. The New Proposed bill imposed Dual Role on the District Anti Human Trafficking Committee and Child Welfare Committee on Child Rights issues and Child Abuses.

SUGGESTIONS

1. My Research Article Suggest that in order to give Consolidate and Uniformity in Trafficking Laws in India, these Draft Proposed bill should be consolidated with existing Legislative enactments and to be introduced as in the Form of Consolidated Code as New Draft proposal of Trafficking in Persons (Prevention, Care and Rehabilitation) Code, 2021.
2. The Second Suggestion is the Burden on the National Investigation Agency is Lifted and should be imposed on National Anti-Human Trafficking Committee.
3. The Third Suggestion is the Ministry of Child Welfare and Women Should be Renamed as Ministry of Child Welfare, Women Empowerment and Anti-Human Trafficking.

CONCLUSION

The New Draft proposal of Trafficking in Persons bill (Prevention, Care and Rehabilitation) Bill, 2021 had contains provisions regarding the Statutory Establishment of Anti Human Committee and Nodal Agencies in National Level, State Level and District Level agencies to Monitoring the Human Trafficking issues. The Provisions regarding the rescue and Rehabilitation of the Victims and Registration of Rehabilitation homes has been discussed under the New Proposed Draft Bill. The provisions made responsibility of District Anti Trafficking Unit upon the Repatriation and Rehabilitation of the Victim and provide Monetary and Compensatory Reliefs to the Victims. The Maximum Punishment for the Offender is Rigorous Life Imprisonment for Subsequent offender. This New Draft proposal emphasizes the Designated Courts to exclusively try cases.

Trafficking in human beings, especially children, is a form of modern day slavery and requires a holistic, multi-sectoral approach to address the complex dimension of the problem. It is a problem that violates the rights and dignity of the victims and therefore requires essentially a child rights

perspective, while working on its eradication. In the fight against trafficking, governmental organizations, non-governmental organizations, civil society, pressure groups and international bodies, all have to play an important role and work in concert. Law cannot be the only instrument to address complex social problems

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