

Legislative Brief

The Immoral Traffic (Prevention) Amendment Bill, 2006

The Bill was introduced in the Lok Sabha on May 22, 2006.

The Bill has been referred to the Parliamentary Standing Committee on Human Resource Development (Chairperson: Shri Janardan Dwivedi).

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Highlights of the Bill

- ◆ The Immoral Traffic (Prevention) Amendment Bill, 2006 amends the Immoral Traffic (Prevention) Act, 1956 to combat trafficking and sexual exploitation for commercial purposes.
- ◆ The Bill deletes provisions that penalised prostitutes for soliciting clients. It penalises any person visiting a brothel for the purpose of sexual exploitation of trafficked victims.
- ◆ All offences listed in the Bill would be tried in camera, i.e., the public would be excluded from attending the trial.
- ◆ The term “trafficking in persons” has been defined with a provision for punishing any person who is guilty of the offence of trafficking in persons for the purpose of prostitution.
- ◆ The Bill constitutes authorities at the centre and state level to combat trafficking.

Key Issues and Analysis

- ◆ While prostitution is not an offence, practicing it in a brothel or within 200 m of any public place is illegal. There seems to be a lack of clarity on whether prostitution ought to be a legitimate way of earning a living if entered into by choice.
- ◆ Penalising clients who visit prostitutes could drive this sector underground, preventing legal channels of support to victims of trafficking.
- ◆ This Bill punishes trafficking for the purpose of prostitution. Trafficking for other purposes (such as bonded labour and domestic work) are not covered by the Bill.
- ◆ The rank of special police officer, who would enforce the Act, is lowered from Inspector to Sub-Inspector. Such powers delegated to junior officers could lead to greater harassment.
- ◆ The Bill constitutes authorities at the centre and state level to combat trafficking. However, it does not elaborate on the role, function and composition of these authorities.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Immoral Traffic (Prevention) Act, 1956² makes trafficking and sexual exploitation of persons for commercial purpose a punishable offence. The Act was passed in line with the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, signed by India on May 9, 1950. Although the Act was amended twice (1978 and 1986), it did not prove to be an effective deterrent to trafficking or sexual exploitation for commercial purposes. The Immoral Traffic (Prevention) Amendment Bill, 2006 aims to punish traffickers and provide for stringent punishment to offenders.

Key Features

This Bill has five main features. First, it deletes the provisions related to prosecution of prostitutes soliciting for customers. Second, it provides for prosecution of clients. Third it defines the term “trafficking in persons” and provides for penalties. Fourth, it increases penalties for some offences. Fifth, it constitutes authorities at the central and state level to combat trafficking. The proposed amendments in the Bill are compared with the provisions of the Immoral Traffic (Prevention) Act, 1956 in Table 1.

Table 1: Comparison of the Bill with the existing law

| | Immoral Traffic (Prevention) Amendment Bill, 2006 | Immoral Traffic (Prevention) Act, 1956 |
|-------------------------|--|--|
| Definitions | <p>“Child” means a person who has not completed 18 years.</p> <p>“Prostitution” means the sexual exploitation of persons for commercial purposes or for consideration in money or any other kind.</p> | <p>“Child” means a person who has not completed 16 years of age. Any person below 18 years but above 16 years is a “minor”.</p> <p>“Prostitution” means the sexual exploitation or abuse of persons for commercial purposes.</p> |
| Offences | <p>Anyone who recruits or transfers a person for the purpose of prostitution by means such as threat, coercion or abuse of power commits the offence of “trafficking in persons”.</p> <p>Any person found in a brothel for sexual exploitation of any victim of trafficking shall, on first conviction, be punishable with imprisonment for up to 3 months or fined up to Rs 20,000 or with both. On subsequent conviction, he can be imprisoned for a maximum period of six months and fined up to Rs 50,000.</p> <p>On first conviction, punishment for keeping or allowing premises to be used as a brothel is one to three years rigorous imprisonment and a fine of up to Rs 10,000. Subsequent convictions are punishable with three to seven years imprisonment and a fine of up to Rs 2 lakh.</p> <p>Trafficking in persons is punishable on first conviction with rigorous imprisonment for a minimum of seven years. On subsequent conviction, the offender would be imprisoned for life.</p> <p>The offence of procuring or inducing a child for the sake of prostitution is punishable by rigorous imprisonment for seven years to life.</p> <p>No provision.</p> <p>No provision.</p> | <p>Not defined.</p> <p>No provision.</p> <p>On first conviction, punishment for keeping or allowing premises to be used as a brothel is one to three years rigorous imprisonment and a fine of up to Rs 2,000. Subsequent convictions are punishable with two to five years imprisonment and a fine of up to Rs 2,000.</p> <p>Procuring or inducing a person for prostitution would be punishable on conviction with rigorous imprisonment for three to seven years and a fine of up to Rs 2,000. If the offence is committed against a person’s will, the penalty would be imprisonment for 7-14 years.</p> <p>The offence of procuring or inducing a child for the sake of prostitution is punishable by rigorous imprisonment for seven years to life. In case of a minor, it would be rigorous imprisonment for 7 to 14 years.</p> <p>Seducing and soliciting for the purpose of prostitution is a punishable offence.</p> <p>Prostitutes can be removed from local jurisdiction of a Magistrate and be prohibited from re-entering the place.</p> |
| In-camera Trial | All offences under the Bill shall be tried in-camera, i.e. the public would be excluded from attending the trial. | No provision. |
| Enforcement | A special police officer, not below the rank of Sub-Inspector, shall be appointed to deal with offences under the Act. | A special police officer, not below the rank of Inspector, to be appointed to deal with offences under the Act. |
| Authority | The central and state governments may establish authorities to combat the offence of trafficking in persons. | No provision. |
| Money Laundering | Trafficking in persons added to the offences listed in the Money Laundering Act, 2002. | No provision. |

Source: Immoral Traffic (Prevention) Amendment Bill, 2006; Immoral Traffic (Prevention) Act, 1956; PRS

PART B: KEY ISSUES AND ANALYSIS

Objective of the Bill

The Bill aims to combat trafficking in persons for sexual exploitation. It does not prohibit prostitution. It addresses the issue of trafficking through both supply side (by measures to punish traffickers) and demand side (penalties for clients) mechanisms. There are three issues that need to be considered. First, whether prostitution ought to be a legitimate way of earning a living if the person enters or stays in the profession out of choice. Second, whether the demand side mechanism of punishing clients would be the best way to tackle trafficking. Third, whether trafficking in persons for purposes other than sexual exploitation would be penalised. These issues are discussed below.

Legality of Prostitution

The Bill defines “prostitution” as sexual exploitation or abuse of persons for commercial purposes and a “brothel” as any house or place which is used for purposes of sexual exploitation for the gain of another person or for the mutual gain of two or more prostitutes. Although the Bill does not penalise an individual if he is in prostitution for his own profit, it penalises prostitution if carried on in a brothel or from any public place within 200 metres of an educational institution, place of religious worship, hotel, hospital, nursing home or any public place notified by the Commissioner of Police or Magistrate. Such clauses, while technically not prohibiting prostitution, make it almost impossible for a person to operate as a prostitute. Thus, the Bill lacks clarity on whether prostitution ought to be a legitimate way of earning a living if the person enters or stays in the profession out of choice.

Punishing Clients

The Bill seeks to penalise any person who visits a brothel for the purpose of sexual exploitation of a trafficked victim. The issues that arise out of such a provision are as follows.

It would be difficult for a person visiting a brothel to distinguish between a trafficked person and a non-trafficked person. A person is penalised only if he sexually exploits a trafficked victim. If the victim is not trafficked, the client would not be penalised.

Any person visiting or found in a brothel can be penalised if the purpose of the visit is sexual exploitation of a trafficked victim. However, as the term “sexual exploitation” is not defined in the Bill, it could lead to harassment of every person who visits a brothel irrespective of the object of his visit.

International experience suggests that the provision to penalise clients may not be an effective way to curb sexual exploitation. For example, Sweden views prostitution as an aspect of male violence against women and children and penalises the act of purchasing sexual services.³ There is a view that this provision has moved the trade underground.⁴

Trafficking Limited to Prostitution

India is a signatory to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime. This Protocol defines “trafficking in persons” as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force... Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁵

While the UN Protocol covers trafficking for situations other than prostitution, the Bill only penalises the offence of trafficking if the victim is used for the purpose of prostitution. Trafficking in persons for other purposes such as domestic labour, bonded labour, begging, camel jockeying, and organ trade do not fall under the purview of the Bill. While there are a number of laws⁶ that penalise certain offences such as slavery, unlawful compulsory labour, and begging, it does not cover every situation where trafficked victims can be exploited. There could be a case for a comprehensive law on trafficking in persons rather than one linked only to prostitution.

Enforcement

The Bill lowers the minimum rank of the special police officer, authorised to enforce the provisions of this Act, from Inspector to Sub-Inspector. A shortage in the number of Inspectors in an area to deal with a case of prostitution might necessitate the need to broaden the pool of trained officers. However, power to search premises suspected of serving as brothels or remove persons from such premises without warrants in the hands of a junior officer could lead to greater harassment of prostitutes. Indeed, cases of police harassment have been reported earlier.⁷

Establishment of Authority

The central government and each state government may establish an authority to combat the offence of trafficking in persons. The Bill leaves it to the rules to specify the role, function and composition of the authority.

Definitions

The phrases “sexual exploitation” and “commercial purposes” have not been defined in the Bill leaving them open to interpretation.

Notes

1. This Brief has been developed on the basis of the Immoral Traffic (Prevention) Amendment Bill, 2006 introduced in Lok Sabha on May 22, 2006. The Bill has been referred to the Parliamentary Standing Committee on Human Resource Development (Chairperson: Shri Janardan Dwivedi) which is scheduled to submit its report within three months.
2. The Suppression of Immoral Traffic in Women and Girls Act, 1956 was renamed as the Immoral Traffic (Prevention) Act in 1986. The Act was amended to cover all persons, male or female, who are exploited sexually for commercial purposes.
3. Fact Sheet on Prostitution and Trafficking in Human Being, April 2005, Ministry of Industry, Employment and Communications, Government of Sweden (see <http://www.sweden.gov.se/content/1/c6/01/87/74/6bc6c972.pdf>).
4. Petra Ostergren, (2004), “Sexworkers Critique of Swedish Prostitution Policy,” (see <http://www.petraostergren.com/content/view/44/38>).
5. On December 12, 2002, India became a signatory to the UN Convention against Transnational Organised Crime, which includes the Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children (see Protocol at <http://www.ohchr.org/english/law/pdf/protocoltraffic.pdf>).
6. The existing legal framework to combat trafficking includes the following.
The Indian Penal Code, 1860: Sections 363, 363A, 366A, 366B, 367, 368, 370, 371, 372, 373, 374. These sections deal with kidnapping (including for begging, for marriage, and for procuring minor girl for illicit intercourse), slavery, buying and selling minors for prostitution, and unlawful compulsory labour.
The Child Labour (Prohibition and Regulation) Act, 1986;
The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979;
The Bonded Labour System (Abolition) Act, 1976;
The Contract Labour (Regulation and Abolition) Act, 1970;
The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
7. In 2003, over 600 sex workers in Chakla Bazar, Surat, were forcibly evicted from their homes by the police. Report of National Commission of Women (see <http://ncw.nic.in/pdfreports/Year%20of%20Endeavour-2003-2.pdf>).

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