

## A CRITICAL ANALYSIS OF LAWS AGAINST HUMAN TRAFFICKING IN INDIA

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### Abstract

In the past decade, International human rights have grown, deepening and expanding what human rights are and how to protect them? So, accordingly if these principles of human rights are so well developed, then why are these human rights abused and ignored from time to time all over the world. The problem is that, in general, it is not very simple to universally enforce these rights on anyone neither punish the transgressor. The Universal Declaration on Human Rights, a body of UN despite being highly authoritative and respected is only a declaration, not a rigid law. Also, the interesting element is that between trafficking and exploitation, there has been an emphasis upon the states on passing trafficking legislations and on that expanse, maybe the countries are forgetting about the exploit of that same legislation on top of it.

On a particular note that the states should have been perhaps, a little bit more pragmatic than many of those working at international level, and should work out upon their definition of human rights violation impugning it very intelligibly.

The author(s) in this research paper have drawn a focus upon the repressive debatable laws used by the authorities with the frame of reference against the concrete legal context of gender justice & human right laws in the countries and through that would explore the diverse facets by which India is strained, by the most significant of the human right violations contending the law with problems like sex-trafficking, torture & rape, prostitution and forced labour instead of nurturing the democratic *vox populi* in the country and providing more expanded meaning on human rights in domestic as well as in the international context.

Keywords: Human Trafficking, Bonded Labour, Sex-Trafficking, Human Rights, Women

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## 1.1 INDIA'S LEGAL OBLIGATION & THE UN'S TRAFFICKING PROTOCOL

*“No matter what chains are broken, slavery is a condition of the heart.”*

M. Burke

### INDIA'S OBLIGATION TO UPHOLD THE UN TRAFFICKING PROTOCOL

Almost a decade after signing the United Nations Convention against Transnational Organized Crime (UNTOC), India officially ratified the Convention and its three Protocols, including the UN Trafficking Protocol, on May 5, 2011.<sup>3</sup> The process of ratification formally indicated the State's consent to be bound by the terms and provisions of the UNTOC and its Protocols. However, India has a dualist regime with regard to international law and international treaties. This means that, according to the Indian Constitution, ratified treaties do not automatically have the force of law in domestic courts.<sup>4</sup>

However, the Indian Constitution states that the Government of India must adhere to its treaty obligations and “endeavour to...foster respect for international law treaty obligations in the dealings of organized peoples with one another.”<sup>5</sup> In *Gramophone Co. of India v. Birendra Bahadur Pandey*, the Indian Supreme Court declared that the Constitution itself must be interpreted in light of any international treaties that India has ratified.<sup>6</sup> In addition, the Supreme Court in *Vishaka v. State of Rajasthan* established that provisions of international treaties might be read into existing Indian law in order to “expand” their protections.<sup>7</sup> Moreover, in the absence of domestic law, “the contents of international conventions and norms are significant for the purpose of interpretation.”<sup>8</sup>

Thus, although India has not expressly incorporated the entirety of the UN Trafficking Protocol into its national law, the Indian government is nonetheless required to adhere to all of its obligations under the Protocol. Moreover, in line with the judicial precedents discussed above, the anti-trafficking provisions of the Indian Constitution, Penal Code, and other domestic legislation should be interpreted in light of the UN Trafficking Protocol and other international treaties to which India is a party.

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<sup>3</sup> UN Trafficking Protocol, Current Status, UNITED NATIONS TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en) (last visited Mar. 10, 2015).

<sup>4</sup> See *Jolly George Verghese v. Bank of Cohni*, A.I.R. 1980 S.C. 470, 914 (India). See also NAT'L COMM'N TO REVIEW THE WORKING OF THE CONSTITUTION, A CONSULTATION PAPER ON TREATY-MAKING POWER UNDER OUR CONSTITUTION (2001), available at <http://lawmin.nic.in/ncrwc/finalreport/v2b2-3.htm>.

<sup>5</sup> See Art. 51(c) of the Indian Constitution.

<sup>6</sup> See *Gramophone Co. of India v. Birendra Bahadur Pandey*, (1984) S.C.C. 2 (India) (stating that the comity of nations requires that the rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with Acts of Parliament). See also *Apparel Export Promotion Council v. A.K. Chopra*, A.I.R. 1999 S.C. 625 (India); *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746 (India).

<sup>7</sup> See *Vishaka v. Rajasthan*, A.I.R. 1997 S.C. 3011 (India).

<sup>8</sup> See *id.* at ¶ 7 (“In the absence of domestic law occupying the field, to formulate effective measures to check [certain evils], the contents of international Conventions and norms are significant for the purpose of interpretation...Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.”).

## 1.2 A Battle Half-Won: India's New Anti-Trafficking Law

*"Human Trafficking is Modern Day Slavery"*

### CONSTITUTIONAL PROTECTIONS AND TRAFFICKING

India has addressed trafficking both directly and indirectly in its Constitution. There are three Articles spread over Fundamental Rights in Part III and Directive Principles of State Policy in Part IV which address trafficking related issues.

Provisions on Trafficking in the Constitution of India

Article 23	Fundamental Right prohibiting trafficking in human beings and forms of forced labour
Article 39(e)	Directive Principle of State Policy directed at ensuring that health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength
Article 39(f)	Directive Principle of State Policy stating that childhood and youth should be protected against exploitation.

India has a written Constitution, and though the above provisions make India's mandate on trafficking clear, penalizing and tackling trafficking is dealt with by legislation. The Constitution specifically mentions trafficking in human beings as well as forced labour and also indicates the special protection to be provided to vulnerable groups in society. The Constitution of India discusses provisions on trafficking at two levels - one, at the level of Fundamental Rights which are basic rights available to all, irrespective of caste, creed, sex, place of birth, etc., and two, at the level of Directive Principles of State Policy.

Fundamental Rights are justiciable and can be directly enforced in a court of law, whereas Directive Principles of State Policy are non-justiciable and cannot be directly enforced in a Court of Law. However, Directive Principles play a major role in shaping the policy of the State and may sometimes be the basis that legislation is built on. As a Fundamental Right in Article 23, trafficking in human beings is prohibited as are all forms of forced labour. According to Directive Principles of State Policy

in Articles 39(e) and (f), the health and strength of workers should not be abused. It prohibits exploitation of persons to perform work which is unsuitable for them. It also specifically protects children and youth against exploitation of any kind. While the provisions in the Directive Principles of State Policy do not mention trafficking, it mentions exploitation which is a key element in trafficking.

### **IMMORAL TRAFFIC PREVENTION ACT, 1956**

India's Immoral Traffic Prevention Act, 1956 is the only legislation specifically addressing trafficking. However, it does mix up issues of trafficking and prostitution and is currently pending amendment. It penalizes trafficking of women and children for commercial sexual exploitation. Keeping a brothel is a punishable offence,<sup>9</sup> as is living on the earnings of the prostitution of others.<sup>10</sup> The latter would inadvertently also cover family members or dependents of the woman, which was not the intention of the legislation. There have been cases at times where the trafficked woman has herself been charged under this provision.

Some of the major elements of trafficking are covered by the enactment. These include procuring,<sup>11</sup> inducing or taking a person for prostitution, detaining a person in premises where prostitution is carried on<sup>12</sup> and soliciting.<sup>13</sup> Soliciting has also been used against women themselves and is sought to be addressed by the proposed amendment which seeks to drop the provision. If a person is found with a child in a brothel, there is a presumption that the child has been detained in that place for sexual exploitation.<sup>14</sup> It is a presumption which can be rebutted by the defence on production of appropriate evidence.

On rescue and rehabilitation, the Act also provides for rescue on the directions of a Magistrate.<sup>15</sup> In order to ensure that the women rescued are not harassed, it requires that two women police officers be present during the search procedures and also that the interrogation be done by a woman police officer.<sup>16</sup> There is a provision for placing the woman or child in intermediate custody in a safe place and to refrain from placing her with those who might have a harmful influence on her.<sup>17</sup> If trafficking has been by the members of the family, or there is suspicion that they may be involved, the trafficked persons may not be released to their families.

The chart below gives an overview of the Immoral Traffic Prevention Act, 1956

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<sup>9</sup> Section 3.

<sup>10</sup> Section 4.

<sup>11</sup> Section 5.

<sup>12</sup> Section 6(1).

<sup>13</sup> Section 8.

<sup>14</sup> Section 6(2A).

<sup>15</sup> Section 16.

<sup>16</sup> Section 15(6A).

<sup>17</sup> Section 17.

Legislation	Section	Provisions relating to trafficking
Immoral Traffic Prevention Act, 1956	3	Brothel keeping
	4	Living on the earnings of prostitution of others.
	5	Procuring, inducing or taking person for prostitution.
	6(1)	Detaining person in premises where prostitution is carried on.
	6(2)	Presumption of offence if a person is found with a child in a brothel.
	7	Prostitution in the vicinity of public places.
	8	Seducing or soliciting.
	9	Seduction of a person in custody.
	15	Two women police officers to be present during search, and interrogation is to be done by a woman police officer.
	16	Rescue on Magistrate's directions.
	17	Intermediate custody in a safe place, not with those with a harmful influence over her.

#### MISCELLANEOUS LEGISLATIONS RELEVANT TO TRAFFICKING

LEGISLATIONS	Section	DETAILS OF THE PROVISION
Indian Penal Code, 1860	366	Kidnapping, abducting or inducing a woman to

		compel marriage.
	366A	Procuring a minor girl.
	366B	Importation of a girl below 21 for sexual exploitation.
	367	Kidnapping/ abducting to subject person to grievous hurt, slavery.
	370	Buying or disposing of person as slave.
	371	Habitual dealing in slaves.
	372	Selling minor for prostitution.
	373	Buying minor for prostitution.
	374	Compelling a person to labour.
Prohibition of Child Marriage Act, 2006	12	Child marriage void, if after that the minor is sold or trafficked or used for immoral purposes.
Children (Pledging of Labour) Act, 1933	4-6	Penalties for pledging labour of children (under 15 years).
Bonded Labour System (Abolition) Act, 1976	16	Compelling a person to render bonded labour or forced labour.
Child Labour (Prohibition and Regulation) Act, 1986	3	Child work in certain employments.
Juvenile Justice Act, 2000	2(vii)	A child in need of care and protection includes one who is vulnerable and likely to be trafficked.
	24	Employment of child for begging.
	26	Procuring juveniles for hazardous employment or bonded labour is punishable
Scheduled Castes and Scheduled Tribes	3(vi)	Compelling or enticing a member of a Scheduled Caste or Scheduled Tribe.

(Prevention of Atrocities) Act, 1989		
	3(xii)	Using a position of dominance to sexually exploit a Scheduled Caste or Scheduled Tribe woman.

## DOMESTIC LAW OF INDIA

Domestic law in India lacks a comprehensive definition of trafficking at the Central level. The ITPA, does not define trafficking, but it defines 'prostitution' to mean sexual exploitation or abuse of persons for commercial purposes, which has elements of trafficking. It has a number of provisions which punish forms of trafficking without actually defining trafficking.<sup>18</sup> The Act is in the process of being amended,<sup>19</sup> and these amendments also include a proposed definition of trafficking as follows<sup>20</sup>:

Whoever recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of:

- (a) Threat or use of force or coercion, abduction, fraud, deception.
- (b) Abuse of power or a position of vulnerability.
- (c) Giving or receiving of payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons.

**Explanation:** Where any person recruits, transports, transfers, harbours or receives a person for the purposes of prostitution, such person shall, until the contrary is proved, be presumed to have recruited, transported, transferred, harboured or received the person with the intent that the person shall be used for the purpose of prostitution.

As of now, though there is no Central Legislation defining trafficking comprehensively, one of the States, i.e., Goa, has a legislation which, though limited to child trafficking, gives a detailed definition of trafficking. The Goa Children's Act, 2003, defines 'child trafficking' to mean the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of 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 giving or receiving payments

<sup>18</sup> Dealt with in the section on Laws relating to Trafficking. Broadly these pertain to: Punishment for keeping a brothel or allowing premises to be used as a brothel in Section 3; Procuring, inducing or taking person for the sake of prostitution in Section 5; detaining a person in premises where prostitution is carried on in Section 6; and Seduction of a person in custody in Section 9.

<sup>19</sup> The Immoral Traffic (Prevention) Amendment Bill, 2006.

<sup>20</sup> Vide the proposed amendment Section 5A to the Immoral Traffic Amendment Act, 1956.

or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.<sup>21</sup> While the definition complies with the standards laid down in the Protocol, it applies only to children and, that too, only within the State of Goa.

### **CASE LAW ON TRAFFICKING: LANDMARK JUDICIAL PRONOUNCEMENTS HAVING A BEARING ON HUMAN TRAFFICKING**

In most references to judicial decisions or to 'landmark cases' on trafficking, reference is usually made to decisions of the Supreme Court of India, or to one of the High Courts. However, the bulk of cases on trafficking are dealt with by lower courts.<sup>22</sup> These cases are not reported unlike those of the High Courts and the Supreme Court. However, studies have shown that convictions have been abysmally low and that very often victims have been re-victimized in the process.<sup>23</sup>

There have been some principles laid down by the High Courts and the Supreme Court which have had a positive impact on the approach of the judiciary to cases of trafficking. Broadly speaking, these decisions deal with three main concerns - victim's rights, giving appropriate directions to government, and special protection to the child.

- (a) **Victim's Rights:** Many judicial decisions in India have been focussed on the protection of 120 victims of trafficking. In *Prajwala v Union of India*,<sup>24</sup> the implementation of a victim protocol was demanded. There have been cases where compensation has been ordered to be paid by a perpetrator of crimes to victims of the crime as in *Bodhisattwa Gautam v Subhra Chakraborty*,<sup>25</sup> where a person had promised marriage to a woman and even went through with a wedding ceremony which turned out to be false. This has been applied to foreign nationals as well.<sup>26</sup> In cases of trafficking too, this principle has been used, as seen in *PUCL v Union of India*,<sup>27</sup> where compensation was ordered to be paid where children were trafficked/bonded for labour.
- (b) **Directions to State functionaries to tackle the problem of trafficking:** *Vishal Jeet v Union of India and Others*<sup>28</sup> was a landmark decision where the Supreme Court took it upon itself to give directions for the protection and rehabilitation of those who had been dedicated as devdasis by their families or communities for cultural reasons and were currently in prostitution. While devadasis and jogins are from different states in India, this also could apply

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<sup>21</sup> Section 2(z) Goa Children's Act, 2003, goagovt.nic.in/documents/goachildact2003.pdf

<sup>22</sup> Judicial Magistrate First Class in many cases and also by Sessions Courts when there are cases of rape.

<sup>23</sup> Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation, UNICEF (2004) available at <http://wcd.nic.in/Judicial%20Manual.pdf> as on 10 April 2010.

<sup>24</sup> 2006 (9) SCALE 531.

<sup>25</sup> (1996) 1 SCC 490.

<sup>26</sup> The Chairman, Railway Board v Chandrima Das AIR 2000 SC 988.

<sup>27</sup> 1998(8) SCC 485.

<sup>28</sup> (1990) 3 SCC 318.

to Nepali women who are also dedicated, albeit in Nepal, and find themselves in brothels in India. In *Gaurav Jain v Union of India*<sup>29</sup> the court affirmed that the State had a duty to rescue, rehabilitate and enable women to lead a life of dignity.

The Court has also at times taken serious note of what it referred to as the indifferent and callous attitude of the State Administration in identifying, releasing and rehabilitating bonded labourers in the country. It observed that whenever it is shown that a labourer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance received by him and is, therefore, a bonded labourer. The burden of rebutting this presumption is upon the employer. The Court made this 126 observation in *Neerja Chaudhary v State of Madhya Pradesh*.<sup>30</sup>

- (c) **Special protection to children:** There have been two categories of children that courts have looked at - children who have been trafficked themselves and children who are in need of care and protection (those vulnerable to being trafficked). *Prerana v State of Maharashtra*<sup>31</sup> clearly held that children who have been trafficked themselves should also be considered as children in need of care and protection,<sup>32</sup> and not as children in conflict with the law. *Gaurav Jain*<sup>33</sup> among other things also dealt with children of sex workers who were vulnerable. The Court held that they should not be allowed to live in their homes as their surroundings were undesirable. Yet another case was *Lakshmikant Pandey v Union of India*<sup>34</sup> which examined the vulnerability of children being trafficked in adoption rackets due to the lack of an effective protection mechanism. The court went on to create an appropriate mechanism to fill the gap, especially in the context of inter country adoptions.

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<sup>29</sup> AIR 1997 SC 3021.

<sup>30</sup> AIR 1984 SC 1099.

<sup>31</sup> (2003) MLJ 105.

<sup>32</sup> Juvenile Justice (Care and Protection) Act, 2000, Section 2(d) 'child in need of care and protection' means a child: (vi) who is being or is likely to be grossly abused, tortured, or exploited for the purpose of sexual abuse or illegal acts; (vii) who is found vulnerable and is likely to be inducted into drug abuse or (viii) who is being or is likely to be abused for unconscionable gains.

<sup>33</sup> AIR 1997 SC 3021.

<sup>34</sup> AIR 1984 SC 469.

### 1.3 THE 2016 ANTI-TRAFFICKING BILL

*“Slavery was abolished 150 years ago & yet there are more people in slavery today than at any other time in history”*

The 2016 Anti-Trafficking Bill<sup>35</sup> is only the latest (proposed) addition to the existing patchwork of Indian laws against trafficking. The bill in its current form will not achieve its objectives of preventing trafficking and providing protection and rehabilitation to trafficked victims. This is because there are at least three sets of laws applicable to the various manifestations of domestic trafficking: the generally enforceable IPC; the specialist criminal law, that is, the ITPA, which is applicable to the sex sector, and several specialist labour legislations covering bonded labour, contract labour and interstate migrant work. They all arise from different legal sources and harbour varied ideas about what constitutes ‘trafficking’ or extreme exploitation, emerging in turn from divergent political understandings of coercion and exploitation. Finally they envisage radically different regulatory mechanisms to counter exploitation.

The differences in these approaches are visible in many respects. While the IPC and ITPA are carceral, laws on bonded, contract and migrant labour envisage elaborate local-level administrative and labour law mechanisms. While criminal laws target ‘bad men’ traffickers, labour laws presume that exploitation is endemic and use both penal and labour law doctrines to impose obligations for better working conditions on all intermediaries. While the older IPC provisions are rarely used, and it is too soon to assess Sections 370 and 370A, the huge enforcement gap of labour laws, despite activist judges, the NHRC and several dedicated IAS officers, is a painful reminder of the callous indifference on the part of sections of the executive and Indian society towards labour exploitation.

The anti-trafficking Bill seeks to build an infrastructure around the hastily-passed Section 370. However, India needs a comprehensive and effective anti-trafficking law that consolidates not only these varied streams of anti-trafficking laws, but also the very different political visions of extreme exploitation and the best regulatory means to address them. Unfortunately, the trafficking Bill is not that piece of legislation that consolidates.

#### **THE KEY FEATURES OF THE BILL**

The anti-trafficking Bill envisages creating district and state-level anti-trafficking committees with government officers and NGO representatives to mobilise efforts to prevent, rescue, protect and

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<sup>35</sup> <http://wcd.nic.in/sites/default/files/Draft%20Trafficking%20of%20persons%20Bill%202016.pdf> accessed on 25<sup>th</sup> Jan 2017.

rehabilitate victims of trafficking, in addition to providing medical care, psychological assistance and skills development.

Under its current layout, a rescued victim is to be initially brought to the district committee or a police station, by the investigating officer, public servant, social worker or the victim herself. The bill envisages creating protection homes to provide shelter, food, clothing, counselling and medical care to rescued victims, and special homes to provide long-term institutional support.

The government is to formulate programmes for rehabilitation, support, after-care and reintegration services. The state governments are to form specialised schemes for women in prostitution or who have been the victims of other forms of commercial sexual exploitation.

There is, additionally, an underdeveloped provision on the registration of placement agencies – the violation of which attracts a fine, but there are no protective measures for victims duped by such agencies.

A Central Anti-Trafficking Advisory Board will advise the government on the Bill's implementation.

The bill creates new offences. It criminalises using a narcotic substance, alcohol or psychotropic substance for trafficking (Section 16), administering any chemical substance or hormone to a trafficked woman or child to enable early sexual maturity (Section 17) and revealing the identity of a victim or witness to a crime of trafficking. If such information is published in the media, the offending individual and owner of the media venture are both liable to be punished. The bill also penalises the contravention of the registration requirements for protection homes, special homes and placement agencies.

Offences relating to the administration of chemicals and hormones are cognisable and non-bailable. Other provisions enable the confiscation, forfeiture and attachment of property when offences are committed under Section 16 and 17 or under Sections 370-373 of the IPC. The latter deals with trafficking, engaging a trafficked minor or person for sexual exploitation, habitual dealing in slaves and selling, disposing of or hiring a minor for prostitution. The burden of proof for these offences is also reversed: the commission of the crime is presumed unless otherwise proven.

Special courts are to be instituted for prosecuting offences under Sections 370-373 of the IPC and offences under the Bill; experienced prosecutors are to be appointed as special public prosecutors. The Bill also provides for the payment of back wages – a welcome move. An 'anti-trafficking fund' is to be set up to fund implementation, but with no financial commitment from the government (unlike say the Nirbhaya fund); the fund is supposed to attract voluntary donations – which is, perhaps, an invitation to philanthro-capitalists to bankroll the government's anti-trafficking initiatives.

**GOOD, BUT INEFFECTIVE, INTENTIONS**

In effect, the anti-trafficking Bill proposes a separate criminal law infrastructure on trafficking. The district trafficking committee is the first port of call where a range of social actors, governmental and otherwise, must report a victim. It is unclear which agency undertakes the raid and rescue, but the victim is housed at the protection home, the police investigates the crime and the special public prosecutor initiates prosecution in a special court.

This classic raid-rescue-rehabilitation model is grounded in a robust criminal law system with stringent penalties, reversals of burden of proof, and provisions for defanging traffickers by stripping them of assets and a parallel adjudication machinery consisting of special courts and special public prosecutors.

The Anti-Trafficking Bill thus proposes to make the prosecution of trafficking under Section 370 meaningful. However, the Indian legal system has historically been unable to meaningfully translate the law into action. The raid-rescue-rehabilitation model built into the ITPA has similarly been a failure; protective homes under the ITPA have perversely resulted in state officials sexually abusing women and colluding with brothel-keepers and pimps.

Compounding the replication of the failed model of rescue and rehabilitation is the complete lack of clarity regarding how the proposed infrastructure is to interact with existing vigilance committees under the bonded labour laws and protective homes under the ITPA. Without any financial commitments from the government, the anti-trafficking bill is an empty gesture, meant to appease modern-day abolitionists and secure a better ranking in the Global Slavery Index, moving it away from its current 'hotspot' status.

Worse still, India has a strong history of sex work exceptionalism; policy makers have often viewed trafficking purely through the lens of sex trafficking and sex work – whether it was the changes to the ITPA proposed in the wake of US TIP reports, or the bias in Section 370A towards users of sex trafficked victims. Several provisions of the trafficking bill highlight this continued emphasis on sex work, including the creation of offences under Sections 16 and 17 and rehabilitative measures to facilitate women's exit from sex work.

Recollect that Indian anti-trafficking NGOs are predominantly anti-sex work abolitionist groups, whereas organisations working against bonded labour find little resonance with the trafficking label. The bill thus seems directed primarily at victims of commercial sexual exploitation, a convenient distraction for the government from the millions of men and children severely exploited in brick kilns, stone quarries, construction sites, rice mills, carpet workshops and agri-business. The Bill could have consolidated existing statutes and enforcement machinery and lent conceptual coherence to the term 'trafficking'. What we have instead seems to be token legislation.

## CONCLUSION

What could India do instead? The government must revisit the predicament of lakhs of Indian migrant labourers who have for decades faced precarious working conditions in the Gulf. It must consider the plight of lakhs of workers toiling within the global supply chains of Western corporations that manufacture in India through elaborate sub-contracting arrangements. Above all, the government needs to pause and dig deep into its own long and complex legal history, as well as its unique vision of dealing with extreme exploitation that is understood today under the conceptual umbrella of 'trafficking'. It then needs to work out the precise relationship between the varied streams of anti-trafficking law and consolidate these, conceptually (in terms of the relationship between forced labour, bonded labour, the legal status of the debt, trafficking and procurement), definitional and in regulatory terms, while prioritising improved labour conditions and the redistribution of wealth and resources.

Indian lawyers, bureaucrats, judges and activists are long familiar with the futility of demarcating the worst forms of labour exploitation from endemically exploitative practices, the division of labour between private and public law responses to intractable and socially embedded labour practices and the failure of rescue and rehabilitation in the face of executive inaction. Armed with this realisation, the government must earnestly undertake a fundamental redistribution of wealth and resources.