

Apne Aap's Recommendations for the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2017 Pending in Parliament:

The proposed anti-trafficking bill that is going to be presented before the Parliament is a welcome move as this Bill, for the first time in India, has made buying of human beings illegal, a change in legal perspective that Apne Aap is advocating for the last twelve years. However, we request our parliamentarians to consider that the purpose of buying, including sexual exploitation, should be added to the bill.

We are thankful for incorporating some of our suggestions made to the drafting committee as well as to the Ministry at various stages of drafting.

Besides our suggestion to make purchase illegal, the other suggestion that this Bill has incorporated is to re-write the section on 'prevention'. We are very grateful that Apne Aap's suggestions for vulnerability-mapping for both prevention and rehabilitation are included. However, we feel that Panchayati Raj Institutions should be given more responsibility in combatting trafficking, which has not been addressed by this draft.

We would like to invite parliamentarians to consider the following precise and crucial amendments.

Amendment 1- Preamble.

Objective: making reference to our **constitutional principles** in the Preamble.

SEE our proposal and explanation below.

Amendment 2 – chapter 1, definitions.

Objective: improving our **criminal definition of trafficking of persons** and putting it in conformity with Indian international obligations by:

- Introducing the notion of “abuse of positions of vulnerability” in art 370 of IPC
- Precising that the definition of “sexual exploitation” includes the notion of “exploitation of the prostitution of others.

SEE our proposal and explanation below.

Amendment 3 - chapter XII, article 40.

Objective: extend the prohibition of “buying or selling of any person” to the prohibition of the “purchase of sex and servitude”, and thus finally tackling the demand which creates and fuels trafficking of persons.

SEE our proposal and explanation below.

Amendment 4: Chapter XII, article 32

Objective: Extending the definition of AGGRAVATED FORMS OF HUMAN TRAFFICKING by including:

- Sexual exploitation as the purpose of trafficking
- Use of weapons to threaten or coerce as well as use of physical beatings and torture

- Abuse of positions of vulnerability of certain socio-economically backward groups, especially among DNTs

Amendment 5: Chapter VII, article 27 (4)

Objective: Reviewing the time-frame given towards repatriation to accommodate the best interest of the victims.

Amendment 6: Sec 8, Immoral Traffic (Prevention) Act, 1956

Objective: Deleting Section 8 of Immoral Traffic (Prevention) Act, 1956 to de-criminalize the victims.

Amendment 1: Making reference to our constitutional principles in the preamble
<p>We invite you to add as a preamble to the Bill, a short “statement of objects and reasons” making reference to the following constitutional principles of the Constitution of India:</p> <p>Article 14... Equality before the law</p> <p>Article 21: ...Protection of life and personal liberty</p> <p>Article 23:...Prohibition of traffic in human beings and Forced labour</p>

Amendment 2: Improving section 370 IPC definition of trafficking of person	
<p>THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2017</p> <p>Chapter 1 Definitions (x) “trafficking of person” shall have the meaning assigned to it in subsection (1) of section 370 of the Indian Penal Code, 1860;</p>	<p>REPLACE BY</p> <p>Chapter 1 Definitions (x) “trafficking of person” means :</p> <p>1. Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—</p> <ol style="list-style-type: none"> 1. using threats, or 2. using force, or any other form of coercion, or 3. by abduction, or 4. by practising fraud, or deception, or 5. by abuse of power, or 6. <i>by abuse of a position of vulnerability</i> 7. by inducement, including the

	<p>giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.</p> <p>Explanations</p> <p>1. The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, <i>including the exploitation of the prostitution of others</i>, slavery or practices similar to slavery, servitude, or the forced removal of organs.</p> <p>2. The consent of the victim is immaterial in determination of the offence of trafficking.</p> <p>Blue = existing definition under section 370 IPC</p> <p>Red = proposal by Apne Aap in order to meet UN definition and agreed language</p>
--	---

Apne Aap’s explanatory statement

The definition of trafficking should be based on the UN Protocol, to which India is a signatory. The UN Protocol defines trafficking in persons as follows: *‘Trafficking in persons shall mean 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 services, slavery or practices similar to slavery, servitude or the removal of organs... The consent of a victim of trafficking in persons to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used.’*

The Bill MUST address **vulnerability**, which is a major component of the UN Protocol. Vulnerability, particularly, is an important factor in India and other South Asian countries where certain caste communities have struggled with socio-economic backwardness throughout history, and are trapped in inter-generational prostitution or are at risk of being trafficked for prostitution, child labour, organ trading, etc. because of their poverty and lack of choice to lead dignified lives. For example, the case of the freed/denotified tribes (DNTs) in India, which were the erstwhile ‘criminal tribes’ as labelled by the British administration. Even after independence, most of these communities have not been enumerated by the Census, continue to live in poverty, practice ‘occupation’ like begging, rag picking, prostitution, etc. Hence prevention and preventive measures to curb trafficking by addressing vulnerabilities of at-risk population should have been a

major concern of the bill.

Amendment 3: Prohibiting the purchase of sex and servitude

THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2017

Chapter XII – Offences and penalties

Article 40 (1)

Buying or selling of any person.

40. (1) Whoever buys or sells any person for a consideration, shall be punished with rigorous imprisonment for a term which shall not be less than seven years but may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees.

ADD AFTER 40. (1)

40. (2)

Whoever purchases, or attempts to purchase, a sex act from another person, or hires the servitude/services of a victim of trafficking, on making or agreeing to make monetary payment or payment in kind, shall be punishable with rigorous imprisonment which shall not be less than six months and may extend upto two years and also with fine which may extend upto twenty thousand rupees, and upon second or subsequent conviction shall be punishable with rigorous imprisonment which shall not be less than two years and may extend upto five years and also with fine which may extend upto fifty thousand rupees.

Apne Aap's explanatory statement:

Prostitution is a demand-driven industry. As long as there are 'buyers/ customers', the vulnerable girls and young women will continue falling prey to the traffickers. Punishing the 'buyers' will deter the trafficking in human beings.

Amendment 4: Including use of severe forms of coercion and caste vulnerability for sexual exploitation in the AGGRAVATED FORMS OF TRAFFICKING

THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2017

32. Notwithstanding anything contained in any other law for the time being in force, whoever

ADD AFTER 32 (i):

for the purpose of forced labour or bonded labour or sexual exploitation by using violence, intimidation, inducement, promise of payment of money, deception or coercion or by subtle means including, allegations of accumulated debt by the person, retention of

commits an offence of trafficking of a person

(i) for the purpose of forced labour or bonded labour by using violence, intimidation, inducement, promise of payment of money, deception or coercion or by subtle means including, allegations of accumulated debt by the person, retention of any identity paper, threats of denunciation to authorities; or

(ii) for the purpose of bearing child, either naturally or through assisted reproductive techniques; or

(iii) by administering any narcotic drug or psychotropic substance or alcohol on a person for the purpose of trafficking or forcing him to remain in exploitative condition; or

(iv) by administering any chemical substance or hormones on

a person for the purpose of early sexual maturity; or

(v) for the purpose of marriage or under the pretext of

marriage or trafficks a woman or child after marriage; or

(vi) by causing serious injury resulting in grievous hurt or

death of any person, including death as a result of suicide as a consequence of trafficking of person; or

(vii) who is a pregnant woman or the offence results in

pregnancy of the person; or

(viii) by causing or exposing the person to a life-threatening

illness including acquired immuno deficiency syndrome or human immunodeficiency virus or;

(ix) for the purpose of begging; or

(x) who is a mentally ill person as defined

any identity paper, threats of denunciation to authorities; o

<p>in clause (l) of section 2 of the Mental Health Act, 1987 or a person with disability as defined in clause (s) of section 2 of the Rights of Persons with Disabilities Act, 2016, or as a consequence of trafficking, the person becomes mentally ill or disabled, is said to have committed an offence of aggravated form of trafficking of the person.</p>	
	<p>Add 32(Xi) for the purpose of sexual exploitation by the use of weapons to threaten or coerce, or physical beatings, violence, and torture</p>
	<p>Add 32 (xii) For the purpose of sexual exploitation based on caste-based exploitation or in the name of 'tradition'.</p>
<p>Apne Aap Explanatory statement:</p> <p>Sexual exploitation is one of the major purposes of trafficking and very often victims of all forms of trafficking are sexually exploited. Therefore, it is important to add sexual exploitation into the list of AGGRAVATED FORMS OF TRAFFICKING.</p> <p>It is often found that severe forms of coercion often attend prostitution, for example the use of weapons to threaten or coerce, severe physical beatings and torture, as well as absence of police protection. Those could be defined as producing aggravated form of trafficking in persons.</p> <p>And there are cases where vulnerabilities among certain caste communities like the freed communities or denotified tribes (DNTs) like Perna, Nat and Kanjar are translated into the practice of inter-generational prostitution through hidden coercion in the name of tradition.</p>	

<p>Amendment 5: Repatriation will recognize the best interest of the victims</p>	
<p>THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2017</p> <p>27 (4) The repatriation of the victims shall be completed within three months for inter-State repatriation, and within six months in case of</p>	<p>Replace 27 (4) with:</p> <p>repatriation of the victims should be done looking at the best interests of the victims, taking care of her social, economic and psychological needs. The windows for repatriation should be flexible within which</p>

<p>cross border repatriation from the date of rescue by the District AntiTrafficking Committee, or the Child Welfare Committee, or State Police Nodal Officer, as the case may be:</p>	<p>the victims should be provided assistance to all her urgent and long-term needs including housing, food and nutrition assistance, cash assistance, medical assistance including physical and psychological counselling, legal support, support for securing jobs. They should also be provided support for seeking remedies for rights violations.</p>
--	---

Apne Aap Explnatory statement:

The girls, women and men, trafficked within the country or across the borders often suffer from severe social, economic, political and other forms of inequalities within their states/ countries of origin. Unless, they are provided with adequate social, economic, psychological and political support, they may get trafficked again. Any process of repatriation must look into the best interest and complete psycho-social and economic rehabilitation of the victim, not at the time-frame.

Amendment 6: Deleting sec. 8 in the Immoral Traffic (Prevention) Act, 1956	
<p>Sec. 8 in the Immoral Traffic (Prevention) Act, 1956 says:</p> <p>8. Seducing or soliciting for purpose of prostitution.—Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not—</p> <p>(a) by words, gestures, wilful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or</p> <p>(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which</p>	<p>Delete the section.</p>

may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees:³⁶ [Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.]

Apne Aap's explanatory statement:

The section 8 of Immoral Traffic Prevention Act, 1956 criminalizes the women who are made to stand on the street or sit by the window by the traffickers. Apne Aap requests you to consider total de-criminalization of the women.