

## Inter Movement Open Forum on the Trafficking Bill 2018

India International Centre, 18<sup>th</sup> May 2018

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Introduction and welcome by Kiran Deshmukh, NNSW coordinator, on the consultations and Open Forums on the Draft Trafficking Bill 2018 by NNSW members and allies in Hyderabad, Pune, Bangalore and Mumbai. Thanked Naz Foundation, TARSHI, VAMP and SANGRAM for organising the Forum in Delhi.

**Anjali Gopalan, Naz Foundation.** We are concerned with what is happening and we feel that it is time that we need to input into this process. In September 2016, TARSHI, SANGRAM, SAHELI and NAZ, went to WCD and the draft trafficking bill was shown to us. WCD refused to allow us to take the bill out of the premises. We took notes and then shared our concerns with numerous people and stakeholders. We also shared the critique with Vidhi which was mandated to hold consultations with various stakeholders, in October 2017. Today we have managed to see a copy of the Bill that was Okayed by the Cabinet and is to be presented in parliament by Minister WCD. This Bill has been drafted without consulting sex worker rights groups. The Bill was taken by NNSW for discussion with sex worker groups and allies in Hyderabad, Pune, Bangalore and Mumbai. Today we are in Delhi. Every meeting was followed by an Open Forum with activists who work on issues related to forced labour, internet freedom, surrogacy, transgender including labour unions. We have collated comments and critique from all these groups and this is presented by Aarathi Pai of SANGRAM.

**Kiran Deshmukh (Hindi).** NNSW had organised consultations with its members after the 2016 draft and given feedback on all the various clauses. Now after the new draft bill has come NNSW has had further discussions and has given various inputs. We have had meetings in Hyderabad, Pune, Bangalore and Mumbai. We will also do follow ups in Jharkhand and Gujarat. We are concerned since the Bill affects all of us especially those of us who are in sex work of our own volition, we are adults and capable of deciding on our work and demand that we should be kept out of the ambit of the current bill. We have also bought together recommendations from the various groups affected by this Bill and we will be incorporating their suggestions.

**Aarathi Pai, SANGRAM** – many of us saw the first draft of the trafficking bill in May 2016 when we saw it posted on the website of WCD. Many activists and NGOs from a plethora of organisations and movements – child rights, labor, sex worker groups etc came together. After that there have been no public drafts which have been made available, as a process of transparent and accountable decision making. During the consultation with Vidhi in October 2017 we were shown a much older bill than what we had seen when we visited the WCD offices in September 2016, a year before. Thanks to people like Anjali Gopalan who made it possible for us to visit and interact with officials in the Ministry who were part of the drafting to make our concerns known. While we were all aware that it was the 9<sup>th</sup> draft with the Cabinet, Vidhi led us to believe that they were working on the 4<sup>th</sup> draft, not realising that we had seen the last draft which had gone to the Cabinet. So it was a difficult process where many of us protested and refused to engage with a draft that was outdated saying that it was a 2016 version.

The current status is that it was meant to be introduced into the Lok Sabha. Arvind could share the current status with us.

**Arvind** – it was listed on a day to day for the second half of the budget session. We have not yet seen the list of bills that the Government plans to take as priority for the monsoon session. But considering the fact that the Government had listed this as a day to day introduction, we have strong reasons to believe that the bill will come up as soon as the Parliament convenes in mid July, the dates are yet to be confirmed.

**Urvashi, Breakthrough** – we were called for a consultation in one of the media hubs of the government. They told us how they had drafted the Bill and how it was different from the original Bill. I did get to hear mentions of Prajwala, who were part of the original consultations. Sunita Krishnan, organisation from UP - Gudiya, certain other organisations – PM Nair, Justice and Care, Bachpan Bachao. There was also Shakti Vahini, Sanjog from West Bengal. These were the first set of people who were perhaps part of bringing the bill to a stage where the Ministry commented on it or presented it for inputs. We did not hear anything else of any drafts being proposed before this. It was a presentation on the Bill that we participated in.

**Aarthi continues.** Some of us managed to get access to the Bill which is listed to be introduced in the Lok Sabha and is not in the public domain. This has been a hurried process that we have engaged in for the last month or so and sometimes things have fallen through the gaps. But the reason we have engaged in the process with such a wide set of stakeholders is that there isn't enough conversations happening with and within other groups on this vital piece of intended legislation so that they can take a call on whether or not it impacts their group. After the Bangalore Consultation, we had formed the Coalition for an inclusive process on the Trafficking Bill and that is the coalition that has put together the critique which has been shared with you. It is a combination of lawyers, activists who have gone through the bill and given their inputs. In Mumbai following the Consultation a couple of days back, there was an input that they wanted to draft a statement on a couple of sections. So it is open to any group or individuals who would like to be part of the coalition or if they want to draft a separate statement using this critique. Hopefully this can move into a process before mid -July, where we look at sustained advocacy with MPs, media, so that there is some semblance of informed public opinion around this proposed Bill.

We would like to start with what Kiran mentioned in her presentation on the notion of what constitutes sex work. We define sex work as adult and consenting provision of sexual services. The defining words being adult, consenting, work. The reason that we are placing this up front is because in these discussions, sex workers are often asked about forced entry and work, and we respond that lets talk of force in every form of work, in terms of exploitation, deceit or force; in entry or in conditions of work itself. Sex workers believe that it is work, that decriminalisation of sex work is essential to route out force, exploitation and exploitative conditions of work. Self determination and organising is perhaps the only way to stop force and trafficking for sexual exploitation also.

**Sex Work?**

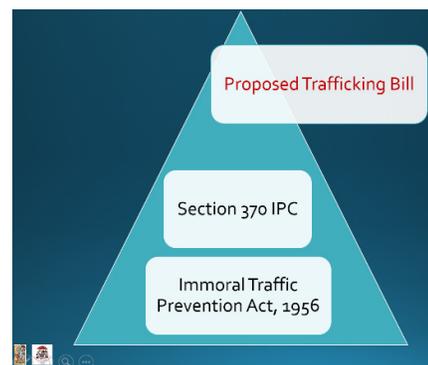
- Adult Consensual exchange of services for money or goods (Rights Movement)
- Sex workers are women, men and transgendered people who receive money or goods in exchange for sexual services, and who consciously define those activities as income generating (WHO)

Rights Movement and Sex Workers believe and state

- Sex Work is Work
- De-criminalisation of Sex Work
- Self-determination and Self-organisation of People in Sex Work

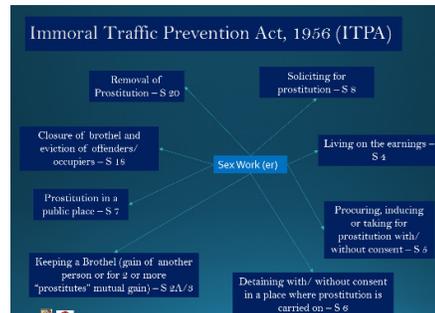
#### Existing Anti Trafficking legislation

Current legislations include the Immoral Traffic Prevention Act, which has seen numerous amendments. In 2014, following the Justice Verma Commission recommendations, Section 370 of the Penal Code was amended. After the amendments, for the first time in statute books in India, there

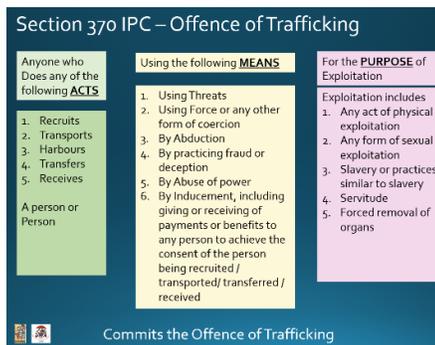


was an encompassing definition of what constitutes trafficking. From 1956 to 2014, there was no definition of trafficking. Hence the approach to stop trafficking was to catch the sex worker on the ground.

The process of implementing ITPA was to catch the sex worker through offences related to soliciting, public space provisions, family members under offences of living off earnings, catch people whom we call third parties for procuring or inducing into prostitution with or without consent, for detaining in brothel space with or without consent, prostitution in public spaces. The impact of these provisions was the closure of brothel spaces which are often where families of women reside. One of the most pernicious pieces of legislation relate to the power of the magistrate to send women in sex work to correctional homes for detention for long periods of time and to evict a sex worker from within his jurisdictional limits. One wonders what this has to do with trafficking and these provisions are something that the sex worker rights movement has been fighting against for ages.



In 2013, the Verma Commission bought in the definition of Trafficking and this was sought to be in line with the UN Trafficking Protocol of 2000. It looked at three primary elements – the Act, Means and Purpose which need to come together to constitute the offence of trafficking. The Act could include recruit, transporting, transferring using threats, force etc. The purpose is important to mention, exploitation includes physical, sexual, slavery like practices. To understand the ambit of the provision, I would like to briefly mention that in the original formulation.



Detailed Presentation Follows by Aarthi Pai on the trafficking bill

**DISCUSSION AFTER OPENING PRESENTATION**

**EnakshiGanguly** - the new institutions created is like the creation of parking lot for people who are retired that the state wants to give some important position.

Parking Lots for new appointments

In doing so, what you have is so many more structures at the district level. How are they going to function with each other? The CWC, AHTU and now the DATC? How do they connect – actually they don't. Even if you were to look at it purely from the point of view of child safety. POCSO will apply, if it is for child marriage, then the Child Marriage Act will apply, then the trafficking sections will apply. After that it will go to CWC and then one has to run to POCSO courts since the case will also come under POCSO and there is a separate court. The child courts will come into play. How many windows are we opening even for this child? I am not even going into the issues related to agency etc.

*How will the district level institutions connect with each other – CWC, AHTU, DATC and the various parallel courts?*

There are a couple of things that we are noticing with regards to the new legislations that are coming up now. One is mandatory reporting – you are presuming that people will not report and hence there is an effort to make mandatory reporting. Look at the provisions of the POCSO Act. Mandatory reporting provisions are just stopping basic services reaching children. No doctor, psychiatrist, counsellor wants to touch a child. So when you have mandatory reporting, you are taking away basic services which would have otherwise been made available.

*Mandatory reporting clauses - leading to denial of services for children*

The second one is to connect this effort to the sex offenders registry. It is coming from the same people who have written this bill. Same Sunita Krishnan, PM Nair, Roop Sen. Therefore we cannot look at this Bill away from the new kind of legal framework that is happening across the country. Connect this also to the Ordinance that is happening. You cannot take it away, because trafficking, sexual exploitation, sexual abuse of victims below 12 leading to the death penalty or 20 years. If it is not so the NCPCR is talking of increasing it to 16. As it is we don't even have an age of consent, which is at 18. If we don't look at the web of the laws that are coming into play, and look at one law separately, we risk a lot. The way that this is playing out. I am so concerned about this intersectionality or the lack of it. We discuss this thing in groups.

*Inter sectionality of proposed laws and their approaches – sex offenders database, age of consent, death penalty for sexual abuse of children below 12*

The anti -trafficking groups discuss it, pro choice people discuss it, the children's group discuss something separately, anti -death penalty people also discuss it separately. Each one of us is discussing these things in silos. We need to bring it back around the thinking of how legal reform is happening.

*Is there any data, evidence to support the formulation of this new Bill?*

**Vivek Divan** – My question is to Aarathi – obviously there is an ideological position which supports a bill of this nature. But is there any data that supports the need for this kind of super structure now? Given that we have ITPA, IPC and other things already in place. Is there some analysis of this – there has always been a very highly criminalised approach to trafficking anyways all these years. To deal with trafficking – has that worked? Is there data on its

implementation to support this new law?

**Aarthi Pai** – I think honestly more people in delhi have access to that kind of information. However, when we have managed to be part of consultations, the only argument that is presented is that we are attempting to bring everything under one legislation – that is the first time we have heard from them on the intention of the proposed legislation. We haven't had access to this Bill before, so we did not know of the extent of criminalisation that was happening and when you join the dots as Enakshi puts it – it is very problematic. The only reference to the reasons is that trafficking has become a “scourge of mankind” language and the lack of livelihood options? There is no evidence which has been presented to my knowledge.

**Urvashi** – we had said exactly the same thing. They said we need to converge bits and pieces lying everywhere. And the same stuff around trafficking being for different purposes. It needs to be upgraded from when the Act was in 1956 to the means that are in the country right now. There was no data presented at that point. It also seemed like a very hurried job. It was surprising after that it was presented and we also gave our inputs, they never came back to us. Which happens with a lot of policies and laws that the current government has drafted. There is no update till date. Also what I saw at that meeting and what I am hearing now is very different.

**EnakshiGanguly** – Who is this body going to come under? MHA or DWCD? Since MHA is the one that deals with trafficking?

**Aarthi Pai** – It is supposed to be under the Ministry of Women and Child.

**EnakshiGanguly**– But the AHTU is under the MHA.

**Aarthi Pai** – hence the constitution of the National Anti - Trafficking Bureau which represents all the Ministries at the National Level and is going to be the powerhouse or decision maker which is currently led by the Ministry of WCD

**Meena Seshu** – In the Mumbai Consultation, there was a reference to the fact that it might come under the NIA. Which is what I was asking Arvind also. We have just heard it.

**Arvind Abraham** – We had just heard that there is a possibility that instead of creating a separate body, they may just designate a branch of the NIA. It's a possibility that we have heard. Speculation

**Kajal Bharadwaj** – There has been a strong earlier narrative of health and HIV and the disruption of services previous version of the Bill. I don't see that here. Is the Ministry of Health going to be involved? Because that is so well documented. That also over ran discussions of sex work and trafficking – whats happening with raid and rescue and what's happening with HIV services, access to ART. I am wondering whether it has been kept out of this strategically and others are handling it. What is the role of Ministry of Health in this mega body?

**Archana Dwivedi (Nirantar)**–A lot of times these trafficking cases are used in elopement cases. Offenders are young boys who are below the age of 18 years. So what kind of repercussions will be there for such people? Secondly trafficking offence also involves parents since marriage or for the purpose of marriage is here under aggravated offenses. We know a lot of times, early marriages happen under the guise of trafficking or both ways. Are we saying that those parents are going to be criminalised under the aggravated offenses and what implications will it have for those parents and those communities?

**Madhu Bhushan** - One is that this is an umbrella legislation. You spoke of the JJ Act and Bonded Labour Act, which will hopefully not be overridden by this proposed Act. What is the status of those

processes. It says here – it starts with the wording “ for women and children” but obviously children don’t come within the ambit of this act. So it is vague and contradictory. As an umbrella Act, why have those definitions and provisions not been brought under this? The positive aspects of those Acts which you mentioned seem to have been obliterated. What is this Act actually addressing?

**Shakun** – When you say spaces for exploitation, do you mean streets and under that street -based sex workers can get picked up. In Bangalore they are already trying to evict people from designated areas – transgender and women sex workers. They are giving them designated spaces. The local police offered that use this space and we will not bother you. Somewhere when you use the term spaces for exploitation, it could include streets. The second thing is when you speak of brothels, street -based sex workers use lodges for a few minutes or hours, the lodges are also spaces where you would have other customers who will be using the lodge. They are picking up every man who goes into the lodge.

**Aarthi**– Just to answer the technical issue which Madhu raised, Section 59 of the proposed legislation is very clear in that in the event there is any inconsistency between an existing legislation and the proposed Bill, the proposed Bill will override to the extent of the inconsistency. So for instance, the inconsistency between the proposed Bill and the IT Act, the clauses of the proposed Bill will override to the extent of an inconsistency.

**Madhu** – you gave the example of the Bonded labour Act and the approach to rehabilitation there. So this means that the current Bill will override this Act.

**Aarthi** – to the extent of inconsistency. In one of the previous versions of the Bill, it was very clearly mentioned for example that people who had been rescued as bonded labourers, they would be produced before the labour commissioner at the district level. There were problems in that formulation, because who would be considered as a bonded labourer. In the current trafficking bill, there is mention of bonded labourers being repatriated to their State of origin as a function of the district anti trafficking committee. So how will this interact with bonded labour act to the extent of inconsistency?

**Vivek** – So the HIV Act which actually decriminalises distribution of condoms by sex worker interventions, S 377 cannot be applied in the context of gay men in NGOs, for instance VAMP and SANGRAM would not be within the ambit. But now with the proposed bill will override the HIV.

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*Criminalisation of  
transmission, Mandatory  
Reporting*

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**Kajal** – In so far as the life -threatening illness clause is concerned, the HIV Act speaks of duty to prevent transmission. There is no criminal liability. It takes into account risk of violence, for instance not informing a partner, using condoms and things like that but this Bill is going in completely the opposite direction. The clash of laws is going to be spectacular and we know that what is going to come out on top is the modus of criminalisation and marginalisation.

**Enakshi** – Either that or that people are going to fall between the cracks

**Aarthi** – Maybe its not a bad idea for some of us to do a listing on the clashes / conflicts that are happening on the laws between the trafficking bill and other existing laws. Can people think of that?

**Vivek** – on the point of intersectionality, Kajal and me have been involved recently analysing the legal framework related to tuberculosis in India. In March the government put across a notification, that pharmacists who come across a case of TB and does not report it, because it is now a notifiable disease will be liable under spreading life threatening disease under IPC. The pharmacist would now

be liable for a jail sentence. So to your larger point on mandatory reporting and just the general tenor of how law is being seen as a tool to control. There is a real need for that conversation to happen.

**Enakshi** – and always mandatory reporting related to penal provision and often enough there is some clause of false reporting.

**Anjali** – Also HIV in this becomes mandatory. So what does that mean?

## SESSION 2. FRAMING CONSENT

**Madhu** – the debate has been opened up in the morning. The whole point is to tease out some of the specific points on the bill and consent is really at the core of the concerns. Who better to tease out the issue of how and when consent is negated, when you look at the whole structure of the Bill is a swing from infantilization to incarceration. So where does consent get figured in this? Another thing that Aarthi mentioned was that one approach would be to integrate into the existing critique and another is like the approach emerging from the FAOW meeting – have a statement on consent. So if that is something that this group would like to do that is also fine.

**Vrinda**– I want to comment on **Section 438, on the clause that no anticipatory bail** would be available. It would be interesting to discuss the issue of bail in the ongoing discussion on the prevention of atrocities act, which is now popularly known as the SC /ST judgment which is *Dr. Subhash Kashinath Mahajan vs the state of MH and anr*. It is under challenge with respect to many aspects. One aspect, is that the provisions do not allow for anticipatory bail if a person is charged with an offence under the prevention of atrocities act.

This particular judgment looks at Constitutional provisions and other provisions and highlights and underlines the necessity of liberty and how, unless there is a prima facie case made out, nobody can be denied anticipatory bail. It would be important for us to lean in on this and say in terms of this judgment which is currently standing, we cannot have this provision in this Bill. This bill was drafted obviously drafted prior to this judgment. We need to look at the principles that this outlines and it is not as if people were not getting anticipatory bail under the prevention of atrocities act. In law it would be couched as “no coercive action be taken” which amounts to being granted bail. So people were working their way around the law even earlier. It would be useful to draw upon this to the extent that Section 438 cannot be ruled out even for purposes of this law.

**Rakesh** – I would like to add that in UP anticipatory bail is not permitted. But they have found a way around it and it has been upheld by the Supreme Court.

**Vrinda** – Yes, but it has always been given. Because it was related to dacoity and it was denied because of that. But if you go with an application that I don’t want any coercive action to be taken, bail was granted. The net effect is exactly the same. Why have a provision at this stage of law making at all.

In so far as the issue of consent is concerned, I am just wondering whether we want to actually start using the word autonomy more than consent over here. Perhaps autonomy will give us a more broader conceptual framework to work with even legally, given the Puttuswamy judgment. I will refer to relevant paras, why it is setting out what is privacy and how should the fundamental right to privacy be understood. Which we of course know now that there is a nine judge bench judgment which makes privacy a fundamental right and I think there is a lot which can be used to challenge the underlying rationale of this Bill. Autonomy and privacy can be used together to challenge many provisions of this

Bill. Because apart from also looking at intimate privacy they also look at decisional autonomy, which would come into play when you are speaking of life choices she is making – where is she going to go, is she going to live in the home, is she not going to live in the home. If she makes an application, how does the Magistrate receive it? I'll just read out a couple of paras to give a sense of how they are thinking of it. There are nine judges and each one has put out their opinion of privacy as a constitutional right and the reasons they think it ought to be a fundamental right.

Justice Chelmaeshwar gives a three pronged definition of privacy. He talks of repose, sanctuary and intimate decision. He says

“the choice of people regarding the kind of literature, music or art which an individual would prefer to enjoy.” In another para he talks of an individual's right to refuse to life prolonging medical treatment or prolong his life, which has been taken care of in another judgement already. Then he talks of a woman's freedom of choice to bear a child or abort her pregnancy. The freedom to choose either to work or not and the freedom to choose the nature of the work, which becomes very important and crucial in this context. And the freedom not to be told by the state what one should eat or how one should dress or whom one should be associated with, either in their personal, social or political lives. So there is an associational privacy that is being given as to who will I work, live with, socially or otherwise interact with.

Justice Bobade also makes choice one of the central themes as does Justice Nariman. J Nariman talks of privacy of choice protects an individuals autonomy over fundamental personal choices. He links it to various things that are part of a democracy to be able to develop fully. He says “ the dignity of the individual encompasses the right of the individual to develop to fullest extent of his potential and this development can only be if an individual has autonomy over fundamental personal choices.” It would be useful to try and argue it through some of these things which have now been laid down and would have to be seen as how any law would have to stand the scrutiny and the test that has been laid down here.

J Chadrachud speaks of decisional autonomy, comprehends intimate personal choices such as those governing reproduction as well as choices expressed public such as faith or modes of dress. And then he speaks of compulsory sterilisation program for women, sexual orientation, various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self determination require a choice to be made within the privacy of the mind. Then he says “privacy is an intrinsic recognition of heterogeneity, of the rights of the individual to be different and to stand against the tide of conformity. And a very important judgment on which the current petition on S 377 is going to very heavily lean on “the purpose of elevating certain rights to the stature of guaranteed fundamental rights is to insulate their exercise from the disdain of majorities whether legislative or popular. So if popular majorities finds sex work as something which is an affront to their moralities, the popular morality therefore cannot be used to take away or deny me my right to decisional autonomy and privacy. Some of this would be useful in incorporating into the critique that we are speaking.

The overarching thing that you presented to us Aarthi was actually referred to by Enakshi and others, for instance from the TB illustration made by Vivek. I think the overarching theme of most government legislation, executive action today is to view the population as criminals, as persons who are suspect and therefore the state is coming back in a very peculiar way. At this juncture when you thought that with a neo liberal economy you would have a state which is trying to recede from its core functions is actually coming back very strongly as a police state, which is looking upon all persons with suspicion. While saying that it is exercising this in the larger good and therefore trying to

determine how any section of population would live their life, whether it is what kind of home you should be sent to, whether you should be sent back to your place of origin etc. is actually a combination of first criminalising the population and then to take over an important kind of function which the state is not meant to be exercising at all vis a vis its people, with fundamental rights etc so well-articulated now. The issue of consent comes up in different provisions, apart from Section 17 proviso, which you have highlighted, its also on the medical examination which is done. Here it would be useful to go back to the articulation that was done post the criminal law amendment act 2013, which articulates consent being necessary for all medical examination as well as the protocol for medical examination that was put out by the Min of health in which many of us were part of the committee process by which the protocol was bought out and still stands as the main protocol of the government of India which actually makes threefold consent necessary – one for examination, two for treatment and three if for any police investigation purpose any kind of sample or specimen needs to be taken. The protocol requires a mandatory signed signature of consent to each and every stage. From this to have a provision where medical examination requires no consent is totally contrary to all laws, as they stand even presently.

**The third provision** that I recall correctly was sending people back to some mythical place of origin that they have come from, where people have moved on in their lives as have people who are ruling this country moved and come here. Everyone should be repatriated. We need to look at every kind of international law provisions. If a person is going from one place to another and you are doing it for purposes of work and you can actually do it for any reason in India. Are there ways of looking at it apart from the fundamental right to mobility under Article 19. Should you be seen as people migrating for work? People who migrate for work can never be repatriated. There was a recent study which said that by 2030 2/3<sup>rd</sup> of the global population is going to be living in cities. So there is a shift that is going to take place because of economic reasons. To say that you are going to repatriate people to wherever they have come from whether we look at them migrants or whether we look at them as freedom of movement. There are many legal and international grounds that can be built in there, for giving people a right to not be repatriated. Its not even an issue of consent. Why is there at all? If I wish to go back I would go back on my own. It's a very interesting example of bonded labour that you gave, where the bonded labor is not being sent back, because the person is being sent back to a position of destitution and distress. And it is understood that distress and destitution that has bought you away. Now for sex workers the presumption is that it is either inducement, you are either seduced or forced which has caused the migration from one place to another. And its not an act which you have done voluntarily and it is that presumption that needs to be challenged. Because some of what may happen when you get into the nitty gritty of the provision is that we may start buying into the rationale and that would be a very big mistake for us to make. Of course, the provisions would have to be dealt with in their finer points but I think as was suggested earlier, perhaps the overarching critique needs to be very strong. I think there is already a very robust critique but I think it needs to factor in some of the suggestions made earlier vis a vis what happens to the other legislations, which are supposed to be the enabling legislations for those vulnerable constituencies whether it is juvenile or bonded labour or the HIV policies and laws in place. If we can factor in some of the more conceptual aspects in the overriding critique and then break down the provisions. Otherwise I feel there is a tendency to undercut it just in itself.

What this reminded me of was the abducted women of the partition time. It is the same rationale that the nation state is following. When during partition, the whole notion behind rescue, recover and restitution of the abducted woman which was done between India and Pakistan. Is there a resonance that you can find for sex workers in particular in this bill. You recall some of the same ways that the State looked at women and how the nation state come in. That was at the time of the formation of the

nation state and now the nation state taking control of everybody's morality. Some of those larger themes if they are setting out becomes easier to undercut provisions that are being put out and the policing that is being done. The complete erosion of personal autonomy exercise.

Something that I cannot understand and you will have to help all of us understand. This is the larger trafficking bill. Sex workers would be one constituent of it – this would impact on a larger group of people - beggars etc.

For instance, there are people who are working with the beggar community who would have something to say about this. Strategically there are many ways of moving forward. Sex workers should not find any place in this bill and they should be kept out of the ambit and purview. The main definition of trafficking cannot include a sex worker. That is one argument. Another argument could be done is taking each provision and critiquing. The third one is that, is it the position of people working on this critique that there should be no human trafficking law or is it that the present provisions are sufficient for now.

**Aarthi** – some of the people engaged in drafting the critique feel that a review of existing provisions have not been undertaken, there are ample provisions to deal with trafficking offences and the offences related to exploitation and exploitative practices. They are not being used to the fullest extent possible. There is a lacunae in implementation of existing laws which is not being addressed. The second problem is that good legislations are being supplanted by this criminalised approach. There is a question which some of us are asking on the approach – is our main demand that this bill should be scrapped in toto?

I also would agree with Enakshi's inputs that we need to review this from all human rights perspectives. The minute you are removing children from the purview and we are all acknowledging that children are being covered under existing provisions, then we are looking at bonded labor, forced labor etc. we are saying that there are provisions dealing with the trafficking and the exploitative conditions, situations of exploitation that they find themselves in. So the approach that we need to take towards this bill is also an arena for discussion – reject in toto or demand for review of provisions and its approach towards trafficking.

**Vrinda** – yes it was a little confusing when I was reading the critique you have shared. You have critiqued provisions and you need to challenge some of it and some of it should stay. I was also puzzled by the approach. So I understand when you say that we are thinking this aspect through and there is discussion on how to approach the overall Bill. If we are speaking of rejecting it wholesale then an added piece that needs to come in the body of the critique is firstly, what are the existing laws, because there is social and judicial anxiety on trafficking. There is a lot of that in the Justice Verma report. Nobody knew how it came to occupy such a large place. It was because one of the members started meeting people and got more and more intrigued by what was happening and then told us that the police was involved. It is therefore important to say that human trafficking for labor etc is a problem. These are the laws, policies and mechanisms which are in place. None of it is working, it is not being funded and then reject, because acknowledging the problem is very important if we need to push our arguments forward.

**Vivek** – just to emphasise the last point made by Vrinda. Human Trafficking has taken over the public imagination, the media – whatever the conception accurate or not – is there. It seems like without giving alternatives, like you are not working on strengthening existing systems. Often when you are

doing this kind of work, you are also called a pro trafficker. Strategically also we need to be a little smart about how we present this.

**Urvashi** – when the bill got presented, the logic given was the same as an umbrella. How do we counter such a scenario?

**Vrinda** - But its not like the other laws are going to go out of the window. JJ act etc are going to stay. The proposed legislation will overrule to the extent of inconsistencies. But this is happening with all legislations today. Things don't work because no one works them, no finances are set aside. So when they don't work, you create something new and distract, keep repeating them. Ideally putting a flow chart of what exists, how well it works, what is happening with is very useful. HAQ has a good child rights alliance, we should ask them to put out something, AALI was part of something to do an audit of homes for women. A lot of it is already done, which needs to be collated.

**Vivek** – are there people from the bonded labour and domestic labour coming together to have conversations on this? Are there discussions such as this happening, because this is super important. Because the analysis of trafficking for sexual exploitation, however you may define that phrase is a miniscule part of the reasons why people are forced to move. So people working in those areas, do they perceive this proposed legislation as a problem which then becomes an alliance.

**Rakesh** – there was a meeting in Bangalore of various labour groups especially those with bonded labor. They are articulating, what are you speaking about, don't compare bonded labour with sex work and talk of consent. So I am not sure how far they can be a part. I am just saying that the stigma associated is so high. They were severely critical of placing sex work and bonded labour on the same level.

**Aarthi** – one of the groups working on bonded labour has said that this bill is going to literally whatever gains have been made under the bonded labour act. They have given comments, specifically Jeevika. There were some people, Garment workers Union etc who are coming together. Though there is no coordinated response though we have attempted. Trafficking for sexual exploitation is just a small part of this bill and many more groups with vulnerable groups are going to come under the ambit of the proposed legislation. We have been arguing this from the beginning.

**Meena** – even among the domestic workers, we have people who have opposing views on sex workers. For example, the Pune union is supportive the issue of sex workers, Mukta's group, same is the situation with bonded labor. Mumbai groups are at least willing to work with this issue, but the problem is that among them there is no consensus on this. The unions for instance did not come to the Bombay meeting, because they said that we don't have a position on sex work and till we get a position on sex work, we don't want to comment on it. Trafficking is perhaps the wrong word, because the minute that they see the word trafficking, they think that the whole law is about sex work only. Because of the conflation that exists between trafficking and sex work. Pulling out sections and sending it to them has been our best bet for so many months. Even with the internet freedom, and media issues, for the past two years, we have been reaching out to the groups asking them to comment on it. But no one was willing to engage on this issue. So we literally had to pull out sections and send it to them for them to read through and acknowledge that there may be something in what we are arguing. The minute they see trafficking they feel its about sexual exploitation and nothing to do with us.

**Vrinda** – In order to be strategic, getting the bill out of way is the main goal. So a group which for example working with bonded labour groups has a critique. Is it important for them to have an

opinion on sex work? Can SANGRAM and VAMP be the nodal force behind this? If one is able to make a broader platform for this.

**Meena** – hence in Bangalore we floated the Coalition for an Inclusive Process on the Trafficking Bill, because we wanted to get away from the idea that this was about sex workers alone. Its actually much larger and everyone needs to read about.

**Madhu** – yes that is the germ of the idea that was formed when we were sitting together in ALF. Though even now, the entry point is sex worker rights and everyone gets bogged down by it. You need to have a position on sex work before you can engage with this issue. That is the whole problem. I think that is why the whole form idea came out. That is what we need to do and that is what Aarhi has done, pulled out numerous sections and there is concentrated focus on sections. What are the principles on which we are opposing the bill, privacy, consent, autonomy, overlapping with existing legislation. That's the kind of way that we have to break it up, conceptually what are the core ideas that we are critiquing.

**Shakun** – in Bangalore with the garment workers, there are times that they worked with sex workers only on the idea that there are traffickers within the garment industry who bring garment workers to sex work. Not only through money, but coercion and other means, also sometimes there are garment workers who do garment work and then do sex work. It is possible if you tell of methods by which they can relate to the whole thing. That is important. Even with domestic workers, there are cases where people are bought from other states to Karnataka and Tamil Nadu – people from North East are working there. They may not calling it trafficking but they feel like trafficking victims. I was sharing with Aarhi that they are creating hostels for people bought from outside states. Hostels with bars, taken in bus to work and bought back, they are given a day to go home and come back. So they are already feeling that. They call it exploitation.

**Rakesh** – when we are speaking of inter movements. I have been associated with the Democrat organisation for many years. We have also done a fact finding with Saheli on sex workers in Delhi. Despite that there is no single position on this. We cannot assume that they are all fellow travellers. How will you form a position on sex work unless you meet sex workers? So the term itself is unacceptable. It is inconceivable that a Democrat organisation forming an opinion on any other workers without interacting with them. But when it comes to sex workers, how are they to form an opinion about sex workers without meeting them?

**Manoj Mitta** – the bill seems to be based on the presumption that the sex worker is necessarily a trafficked victim. Is that presumption open to challenge?

**Vrinda** – that is something that Aarhi can answer. That is their publication. All their publications and all that I have learnt, from them is what Rakesh said, is by actually listening to persons who are engaged in sex work and that is their lives, that that is the presumption which is wrong. It is a presumption not based on facts of life, not based on ways in which that person is viewing his or her life any longer. It's a presumption based on what is right and wrong in society. Unlike labour in general, other forms of labour, law and society does not attach stigma and morality. In fact getting rid of manual scavenging is an ongoing struggle, but in terms of sex work there is an inherent presumption in law and in public morality. That is what their work over the years has put forth and that is an ongoing task. I don't think that can ever end.

**Manoj** – but what about the entry?

**Vani** – but that is what the person at the Women and Child Department told us, do you know how many stories we have heard and they say where were you? Then the fact that some people choose to do sex work seems almost flaky in comparison. As opposed to real pain and it gets posited like that. Lets not discount the fact that there are people who are strongly anti sex work, with the kind of morality in place. So it is not just the public morality out there. In that sense breaking this up to look at the principles that this bill is based on that are problematic for people not just covered under the bill, but outside the ambit of this bill. It might also help us to understand the real implications of this and build networks of people who are not going to be impacted. Because its true it will be only about sex workers and at that point she will get sent back to her family and that is the language of the bill. So that might be something that we need to look at. You all have done a lot of work on this bill since it started, but in terms of moving the alliance beyond has not happened. People are worried about not getting drawn into the sex workers bill.

**Meena** – or they don't have a position on it. Many groups work on positions. So if we put out the principles, then they may find it easier.

**Vani** – maybe we don't analyse it for them. We say that these are the problems and let them respond from their own space. Because in coming to analyse, they may want to have comfort with some groups working the issue of sex work. So we have to be ready to have some sort of dispersed arguments and that is what we need. If you force an alliance it still may not work.

**Aarthi** – Manoj you referred to entry by force. We have been having this debate for many many years now. Entry into any form of work can be through trafficking. The question that we ask is that does that mean that the individual remains perineally trafficked for life and without agency to decide her options? Therefore, you get to choose at what point the woman decides to exit, do you get to decide that rather than the person who has been trafficked. The second is that there are many sex workers who also say that yes we were trafficked into sex work, but today we don't consider ourselves as trafficked. We are adult and consenting in this form of work, so how do you deal with that and engage with that adult articulation? So this understanding of consent, shifting consent, its complex and people have autonomy- they retain the agency to decide. Trafficking itself is a complex crime. For instance the example that Shakun refers to – the women who are being kept behind bars and forced to work. Was the move out of her consent, there was an aspiration to migrate for better opportunities and then she fell into very exploitative conditions. Is that trafficking? The main issue is that if she wants to exit then we need to ensure that she is allowed to exit with dignity. Even the demand of the sex worker rights movement is that if a woman wishes to leave sex work, whether trafficked or not she should be supported to do so with dignity, which means sit with her. So sex worker groups are in fact saying that they are equipped to understand and help root out trafficking for sexual exploitation.

Secondly, this is not about just sex workers alone. Many more people are going to come within the ambit of this proposed legislation, women using ART, begging or mangthi, transgender people who have gurus, sex reassignment surgery using hormones in a collective setting. Who are going to be most affected, the lowest common denominator, the most vulnerable on the street, they are the ones who will be repatriated.

**Rupsa** – Trafficking has become a catch all phrase. There is an economic imperative forcing people to move from the most vulnerable. How do we bring back the narrative of exploitative conditions, right to decent work. Aarthi will remember that this was bought up in the Bangalore meeting. That there is a concerted effort to dilute labor laws. To do everything to damage any initiatives to do anything for weaker people, marginalised people and the right to decent work. So it is exacerbating

conditions under which trafficking is taking place. So some of this critique is very important to put out there. In the spirit of alliance building we need to reach out to those groups.

**Madhu** – this goes back to the trafficking court, the impact of the US trafficking protocol is also impacting on the trafficking laws in the country. We need to see that dimension. What is the international atmosphere in which there has been a clamp down on movement and migration and who is it impacting finally – the poor and the vulnerable, transgender Dalits. You are infantilising the poor and the marginalised. They need to be either rescued and rehabilitated or sent back to where they came from.

**Meena** – there is no mention of safe mobility for women within this bill or for people who want to migrate. So instead of having a rescue, raid and rehabilitation section, I would have been happy had they had a safe mobility section where you have measures not merely after they have moved and come to a place and then you rescue and incarcerate them. But the point is to be able to offer safe mobility if they want to move. We need to challenge this at two levels, one is consent and the second is repatriation. It makes no sense to have a Constitution which gives you the right to free movement for work and you have these large groups of women from Mumbai, Pune and Delhi being sent back to State of origin from Goa. The women are sent back to NGOs in the state of origin and this is the way that you treat victims whom you are supposed to be helping. This bill is going to be read with ITPA, so its going to be misery for sex workers.

**Nayantara** – I think there is a strong reason for the digital rights movement to engage with this bill. Because apart from the freedom of expression, this is a trend to use women's rights benevolently as a convenient vehicle for justifying surveillance measures at different levels. Even here I can see two parts, one is the technical infrastructure that is being built, the need for a sex offenders registry, state resident data hubs potentially linked to state and district level databases. But there is also a social surveillance system where you are coopting everyone from the pharmacist to be agents of the state. There is not only a technical infrastructure that is being built but a lot of social actors to the state's agenda whether or not you like it. So when we talk of policing we need to talk of how that is happening. There is also a surveillance piece whether it is medical examination without consent whether there is illness or not. Strategically a lot of this would be important from the perspective of digital rights.

**Arvind** – I understand a major objection is regarding repatriation and that too many times it may happen without consent. There is a Delhi High Court judgment where they stopped Andhra sex workers from being repatriated from Delhi. With respect to this bill, that Aarthi had stated in the beginning. The bill does state that the State Nodal Officer shall obtain informed written consent for the purpose of repatriation. So they are incorporating a written consent requirement. I understand when you are saying that a person wants to leave their particular work which they may have got into through trafficking. It is upto them and not upto the State. But when I think of a situation where a person is trafficked from say Bihar to a place such as Tamil Nadu and they want to leave. Shouldn't there be an obligation within the Bill where if they are willing to be taken back to their homes, that the State should have a duty to do that?

**Vrinda** – you are referring to the chapter on repatriation where the State Nodal officer *shall obtain written informed consent* .... What happens if I say No. The law doesn't say what will happen

**Aarthi** – I think we need to remember operationally that following the raid and rescue, under Section 17, the individual will be produced before a Magistrate who will then send him/ her to a Rehabilitation Home. So the option before the rescued individual is staying in the Rehabilitation

Home versus being repatriated. So where is the choice. The Magistrate has sent you to a rescue home. So the minute you are saying that the Officer shall obtain informed consent or then what is the option. Its not like the officer has the power to release you. So you are either repatriation or rehabilitation home.

**Vrinda** – that is exactly the reason why many women say that they are going back to their parent's house even though they had eloped with someone else. Because no one wants to remain in a Sudha grug like situation.

**Arvind** – so shouldn't the bill clarify what should be the default situation if a person does not want to be rehabilitated or repatriated? I do believe that there should be a provision where the person is consenting to be repatriated. The State should be having the duty to repatriate. It is a very expensive proposition if a person is in Tamil nadu and wishes to go back to Bihar, they may not be willing to do it due to the expenses involved. They may then be willing to remain in the state of trafficking. I think that the provision should be there but it should be qualified. If I say that if there is no consent what should happen to me?

**Aarthi** – I would say look at it this way, that if you place the individual at the centre of all decisions and say that the individual will be consulted, at every step of the way, from the making of the individual plan. The whole argument that is made keeping the child at the centre. If you say that every service will be provided keeping the individual at the centre of the decision making, it becomes a little easier. In this case I would also like to add that you are also calling for the repatriation of bonded labour to the state of origin by the DATC. So it would be interesting to see how this lays out in the context of the Bonded Labor Act. This is again reemphasising that this is not about sex workers alone.

**Vani** – On repatriation in the para below it says that repatriation shall be completed in three months. So again this is a time bound requirement and its not like it cannot be done at all and choose not to give consent. Looking at the point you (Arvind) make, if you look at it from a rights point of view, you may say that among the services that the individual gets may include return to place of origin. (not repatriation). In this case it sound like a *fait accompli*. Tell us about the High Court judgment. The case we know of the women were sent back.

Arvind – it was a case study of Andhra Pradesh and sex workers from Andhra. The Delhi High Court said that they cannot be sent back

**Pauline**– On the shelter home point that you were mentioning, there are very strict guidelines on going out and coming in, CCTV cameras installed. I was going to suggest would it be of any help to actually suggest what shelter homes should be like? There cannot be CCTV cameras, women's mobility cannot be restricted. That even if they want to go out and meet their boyfriends or have a job, that should be allowed. Just so that the discussion does not get polarised.

**Vrinda** – I agree what you say on the conditions of the shelter. These are things that we have said consistently, but we also have to see what the state does and why it does this constantly. Setting up homes for a vulnerable population is not something new. The way the homes are run, invariably there will be a sting operation, then the matter will reach the high court and then a furore and then things go back to where they were. We know that there are horrific spaces, like the juvenile home where the people try to escape it with very good reason. We need to ask with what faith should we accept this. We are a republic of 70 years, these things have been tried and tested, they have been reviewed. There are reports with the government on the homes, which says that it does not work. You then give us a worse form of greater coercion and less control over my own life and we are supposed to say that this looks like a great structure. Its very important that we change the ways that laws are supposed to be

conceived. The law is to give me greater control of my own life, not to give the state any control over my life except where I want the state to be available. There is a conceptual shift that we have to push for. This is a losing battle when we keep doing this. Their whole approach is to acquire control over our lives. I don't think that is acceptable in a democracy. We will keep peddling with better ways of running a sudhargruh, widow homes etc. its not going to work.

**Female** – about talking to the government, what should be our strategy

**Vrinda** – we should be talking at the government. This government is not talking with us. We need to accept us.

**Kajal**– one of the options for sex workers is to continue doing sex work. What are the conditions that the State will do for the woman to be able to continue or for the man and transgender?

**Meena** – what they do at the local level in the courts is tell the woman that you want to go back then “go back to the gutter”. Officially this is the language being used, when one VAMP woman was arguing to go back to sex work. She was asked to give this in an affidavit.

**Aarthi** – when the Supreme Court was hearing the BudhadevKarmaskar case and the three point reference was made to a panel on preparing recommendations to prevent trafficking, ensure safe exit for those trafficked and those sex workers wanting to exit and finally supporting sex workers to live a life of dignity. J Gyan Sudha Misra had objected that the third point should be read as if the Court was asking the government to make provisions to support sex workers to do their work.

**Madhu** – on this note we would like to end this session. Thank you Vrinda and all those who have given inputs

### **SESSION 3 – FREEDOM OF EXPRESSION**

**Laxmi** – Thanks everyone. So we will have the next lightning session on freedom of expression. Gurshabad will be giving a brief presentation. The sections in this Bill are representative of increasing control and criminalisation of anything out of what is prescribed to be and these are the sort of trigger words that allow for any sort of control to be less scrutinised. So things like crime on children, pornography, nationalism, patriotism, national security – these are issues which are being seen as important enough for us to give up certain rights like freedom of expression. It is indicative of a certain trend. The increasing use of laws to criminalise the online content. There isn't even the need to use laws. A couple of days ago there was fake news on how a youth had been charged for criticising the chief minister. An FIR was registered. It later turned out that the guy had not been charged. He had not said anything. So its like now you don't need to use the law, just float news that there is this kind of clamp down.

This being a very emotive issue looking at how it impacts freedom of expression is very important because we need to be in a space where fundamental rights are being expanded and not crowded.

**Gurshabad** – I am going to restrict myself to a couple of provisions in the bill.

We will start with S 36. The underlying part is “any act ....which promotes trafficking of a person or exploitation of a person in any manner”. The bill does not define what “promote trafficking” means. This is one of those catch all sections in the bill where the onus of proving what promotes trafficking or whether the Act actually contributes to the trafficking of a person, is not on the State to prove. Contextual history of such clauses is that they are overused to ban anything and everything which the

State finds to be violating their standards of morality. The global trend has been that pornography is banned, erotica is banned online. The main problem is the catch all phrase and we also don't know the intent because the process of arriving at it has been opaque that whether they really want to ban pornography for example, we don't know that. In 2011, the government had banned 270 escort websites. They had to take that back because there was no law to do that. In 2017, 417 websites were banned under the same excuse, but they had to take that back since there was no law in existence. If they get this section in, there is nothing holding even the courts letting them get away with the ban because there is such a weak causality link embedded in this section itself. This also comes to the Puttswamy Judgment from which this section could be attacked. The section quoted by J Chelameshwar that "*anyone has the freedom to consume any art, music, literature etc... as long as it does not cause actual harm*".

Section 39 could be best defined as acrobatics at its best. It says "whoever.... which **may** lead to the trafficking of a person **shall** be punished..."

The golden standard of criminal law would be *mens rea* plus *actus rea*, but this section throws that out of the window. Another catch all phrase. The onus is not on the government to prove actual causality. This may have caused trafficking. This is probably the section that will get thrown out in the courts. The problem with Section 36 is that it did not define what promotes trafficking. The problem with Section 39 is that it doesn't even need to promote trafficking anymore. It "may lead" trafficking. This is the overarching theme that is there in the freedom of expression issues. The government will use these sections to ban pornography, erotica and put people who engage in such stuff in jail. The line which says "*taking or distributing obscene photographs or videos or providing materials ....*". It is clear from a reading where this section is likely to go.

Section 41 – "whoever distributes, or sells, or stores, in any electronic or printed form.... incidence of sexual exploitation, assault or rape for the purpose of exploitation or for the coercion .... Shall be punished". The provision ignores all the precedents that have been set for the IT Act by saying that whoever distributes, sells or stores. This section is also holding third party intermediaries liable for the content that they host. For example if I send you something that is deemed violative of this law, the platform that I send it to you on. Lets say I send you a message on facebook, will also be held liable and this goes contrary to the principles that have been set in the IT Act. So the information technology intermediary rules, 2011 thwarts this kinds of work and what it says is they don't have criminal liability in the first place. The modus operandi is that they receive a notice and they have to take action in 36 hours. However this directly implicates the intermediary itself.

The current regime is post facto. That they get a notice at takedown and they have to in 36 hours remove the objectionable content. We at CIS found out that even this has a chilling effect. In 2014 we conducted a study. We sent seven frivolous notices to seven websites. Six out of seven complied, those were frivolous notices that we did and obviously we are not the government or court. Everyone is over complying with these laws, because let us step into their shoes. Either under comply, which means spend legal resources to assess and fight whether the content was objectionable or whether the notice is legally valid. The second option for them is to comply. No one is running behind them to remove objectionable content or censorship. This is the kind of regime which actually doesn't put a liability on intermediaries. It only puts post facto liability that if they don't take down the content then they will be held liable. Under this proposed provision the liability is on them to ensure that nothing objectionable comes on their website. You might expect this of big services such as google and facebook who might have even the technical competence or hiring people manually to verify the algorithms that they might work in this way. But smaller companies will not be able to do this.

A development in the USA is called the SESTA and FOSTA, which are again anti trafficking laws. Like we have the IntermediaryRules under IT Act, they have something called CDA230 (Communication Decency Act 230) which absolves third party intermediaries like India. They also have post facto liability. SESTA has made intermediaries liable, which seems like the intent of this section. The words that they have used is “*in furtherance of sex trafficking*”. We don’t know what is the impact of SESTA because it was just passed in March 2018. The Department of Justice opposed the bill but it was passed anyway. A couple of things that we have seen happening already Microsoft started surveilling skype very closely so that they are not held liable. Google started a sweep of Google Drive for content that might be seen as objectionable under the new law because they know that they will be held liable. So overall it has chilling effect. SESTA and FOSTA are focused on sex trafficking while this one doesn’t mention it is.

Another effect it is likely to have is on sex work online. In the US at least sex workers have been using websites to screen their clients before they engage in their activity. I am not aware whether this is popular in India but in Nevada where sex work is legal, we have these websites shutting down, because they don’t want to be held liable for sex trafficking or in furtherance of sex trafficking. This is another way that it might affect sex work especially for workers using online platforms.

When Microsoft and google sweep their platforms, we are not sure what will get included, because they are also over complying, removing videos of consensual sex acts and such stuff etc. The theme in all these sections is to impose a liability on everyone involved. There may be causality or no causality, everyone is guilty by association. So these provisions are very problematic especially because of their effect on freedom of expression.

In Section 59, has the non-obstante law referred to earlier. It makes this the special law for trafficking and the IT Act is the special Act for all things IT. Again there is a conflict here and we don’t know what the government side and how the courts will decide. What will be taken as a special act for online things.

**Laxmi** – Is there anyway to get more people on board to critique. What are the ways that this sort of an Act can impact website or online platforms in general. Will people say that we have nothing to do with sex and sexuality and therefore it does not impact us, or is there a way in which interpretation is so broad, maybe if you ask for an escort service might come automatically. So where is the overlap area?

**Gurshabad** – No platform is *per se* related to sex work. Even craigslist is a general a posting service, but was used a lot for posting advertisements and it faced the brunt of legislation in the USA. Similarly any platform like Whatsapp, Facebook etc. if such legislation is imposed on them, they will tend to act proactively in removing objectionable content. Even things not violating, will be removed proactively, because they don’t want to be held liable. And it takes effort for them to sift through so much material but the incentive for them is to over comply. We haven’t named the intermediaries in our study but six over complied even though we are not the government. It was when it was post facto or after the receipt of information. So in this case it will be automated removal of content, whatever is likely seen as objectionable. It will start from pornography, erotica.

**Archana**–what is the clout that these companies have and what do they is going to happen and whether they think that is going to jeopardise their market, their operations. Can they put pressure, will they come together and negotiate and put pressure or just concede? Is there a formal or informal coalition/ consortium/ lobbies?

**Gurshabad** – Any sort of legislation increases the cost of complying. In principle they remain in opposition to laws which censor online content. But the specific position of each company is hard to guess. It depends on the relationship with the government? Google and Facebook themselves are very strong in not being part of any coalition. They are involved in lobbying to the Indian Government. But the current regime has been in favour of them.

**Nayantara**–With facebook and twitter they are so big that they have to cater to everyone’s morality, so what they have ended up doing is freedom of expression level or obscenity register somewhat come below what is even a global ok standard. So for example facebook for the longest time did not allow breastfeeding images of women whereas if it was sexualised images of women, all kinds of things would fly, but masectomy images or if images were non sexual and consensual. There were blurry lines on what could be allowed. These platforms tend to please people a higher sense of morality, higher censorship. But there are niche platforms like Patron which is a way to crowdsource money. So if there is someone who wants to provide camera sex and people want to pay me, patron is used for all kinds of things. I can send you poems every month and you can pay me \$2. So they also recently had a no sex worker rule which they implemented. And they are supposed to be progressive. So these are activist, niche circles and often these are not platforms that support this kind of stuff and often not proprietary people because their thing is a bottom line and their bottom line comes from most number of people who are going to use the platform. So there are lobbies that work. Apart from that groups that work to push these platforms to push the standards. If sex work itself is not illegal and you are soliciting on the streets, a specific things is illegal. That does not translate online if you say everything is not allowed, so even where there is some allowance in the law for the space then isn’t such allowances in the online world? There are lobbies but it is hard.

**Laxmi** – Recently there was a move by the I & B. The Minister tried to control news websites, within a few days there was a major pushback from the major news platforms. So that’s again part of my question whether one can open this up as a general issue of control, surveillance or freedom of expression or because those are news platforms, they react more strongly to any suggestion of control of news. At the same time you can control all you want and speak of national security, terrorism but every militant group has a website. So you can speak of a website not carrying a picture of Burhan Wani. In Kashmir half the websites were shut down on the anniversary or Burhan Wani’s death on the plea of glorification of militancy. But then every other website had his photo and there was praise and glorification. So is this parallel underground existence in anyway in that everything is banned.

**Gurshabad** – Yes, I think journalists are very quick to react to such issues because they have been established as the fourth pillar of democracy. These are new and still finding their position on how to deal with the government. Sometimes they are on good terms and sometimes they are scared of legislations that can impact them such as data protection laws. Digital rights organisations and freedom of expression organisations working in that area, would want to contribute to whatever end result we produce. The Coalition on Inclusive Approach which came together gave inputs on the sections 39 and 41 and we expanded using case law etc. I will share with everyone the final report as well, which will have a more comprehensive approach to oppose these sections.

**Arvind** – when you are looking at Clause 36, which is the clause on promotion of trafficking of trafficking persons. For instance from Kerala there were online advertisements of recruiting agencies saying that we will get you a job in Kuwait and they were groups which take you and traffic you to say forced domestic labour. So obviously there is a requirement to deal with those kind of agencies online. But of course apart from the intent, the content also matches. So when you say advertises, publishes – these online forums when they engage with advertisements, they are not going to be

scrutinising every single advertisement. They have no way of understanding whether an advertisement is a bogus recruitment agency trying to traffic. Hence you are making them liable. When you make this argument to the government their rebuttal would be what would you suggest. Do you think that when this provision which says “promotes trafficking”, if the clause can be qualified to say with the intention to promote trafficking, where you are bringing the mental intent into this particular clause – do you think that it will cure the defect that is caused?

**Gurshabad** – in terms of dealing with the advertiser, perfectly and the clause that says promotes, there should be a strong causality and the state should have the onus to prove that the act of publishing the advertisement caused the trafficking. But when you come to the intermediary, under Section 39, will facebook be held liable. Are they supposed to screen every advertisement and find out whether it led to trafficking. They might have the intention to ban advertisements in the first place but that hasn't been clear because the process has been so opaque. SESTA was with the aim to bring down pornography, in this case we don't know. Most of the content is controlled by Google and MS and they would be happy to comply because they have algorithms that can sweep through terrabytes of data and remove anything that is remotely sexual. S 36 is needed, there are acts that lead to the promotion of trafficking – the only thing is that it should define what promotion of trafficking is, establish a stronger causality, onus should be on state to prove the link.

**Vivek** – this reminds me of a movie of the 1980s by ShyamBenegal which is about a brothel, life in a brothel, madam and sex workers. I think this would squarely fit. If someone should show this on Doordarshan, it should be held liable.

**Aarthi** – the word promote itself has a wide amplitude. Promoting hate speech is very different from promoting trafficking. You have to establish a direct link between the act and the result of trafficking. When you have a law that defines trafficking, it is clear that the act has to be also within that definition. So where is the question of “promoting” or “may lead to” trafficking. You cannot have these words in the framing of any law.

**Meena** – this is the way that they have dealt with trafficking. Under ITPA, invariably the raids are conducted en mass and everyone is picked up under trafficking. Its only much later in court that if they victims they are sent to Sudha guruh and if they are perpetrators they are sent to jail. People are picked up irrespective. The official in WCD said to us – so what if innocent people are picked up – this is going to happen, they can go to court and get released. So what is the problem? So that is the thinking behind these laws. If you are going to catch some trafficker, imagined or otherwise then it doesn't matter if you do a sweep. What is going to TOI and their escort services?

**Gurshabad** – the part where it says, including use of information technology, it is actually applicable to physical media as well.

**Archana**– A lot of NGOs have websites have information on sexuality and sex, information that they carry – they are going to be covered under this.

**Laxmi** – The more that you criminalise things and control, people find ways around it. Dowry taking and giving is a crime. But in matrimonial ads, people say decent marriage and that's quote for “we are willing to give dowry”. Even escort services will become more creative.

**Rakesh** – when you are speaking of advertisements, New Zealand which has one of the progressive legislations on sex work. .. about commercial sexual services may not be published in a newspaper or article except in a classified section.

**Laxmi** – we should end this by looking at strategies to broaden the alliance and looking at it as issues of civil liberties, combating surveillance and control, getting more media people on board.

**Gurshabad** – several online service might also be keen to air their opinion about such legislation which affects them deeply. Organisations and private companies which are affected.

**Archana** – groups that have commercial interest. They can also come together. They are the people getting affected. What are the different corners from where pressure can be put. They may not be part of our alliance, but they can be putting their own pressure. We can do an indirect lobby to push them to do something about it.

**Aarthi** – Again coming back to the discussion on whether we are rejecting this in toto or asking for a tweaking of the provisions. To me it seems like there is an incursion on free speech. But there needs to be greater discussion on the way forward. The bulk of the critique can come into this. There has been great reluctance of the internet and online freedom groups, free speech groups to engage with this bill because they have this pegged as trafficking. So groups working with this issue will have to now take this forward also. Take the lead on this.

**Gurshabad**–if we have to go about opposing this bill. If we say that we are opposing this bill in toto, the response will be equally proportionate from their end. The best bet is if this bill goes to a Standing Committee in the Rajya Sabha where the opposition has decent numbers. In the Lok Sabha it will be hard to send it to a committee, because if we engage with congress MP's they may not have the numbers to push it to a Standing Committee. Once the report is ready, push it to MPs who can send it to the Standing Committee in the RS, sign that motion to send it to a Standing Committee. I have some names, whom we could go and meet in person and tell them this is the report, so many things wrong with it. You should take it to a Standing Committee. If we want the bill to go to a Standing Committee then taking the position of opposition in toto is a bit tricky. Then you are opposing the introduction of the bill itself and not consideration

**Meena** – this is going to be tabled. Our best bet is Standing Committee and then GOM. With that we should also have enough clout to say that we should be given a voice in the Standing Committee. Consultations will be done only with anti -trafficking groups. Hence it is important that surrogacy, forced labor, internet freedom etc everyone comes in and say that we have not been asked. And this bill affects us.

#### **SESSION 4. CRIMINALISATION OF VULNERABLE POPULATIONS**

**Shakun**–when we consider people in the marginalised sector, street vendors, garment workers, SEZ. Many of the same issues with the existing legal framework. the very fact that they are marginalised they also becomes criminals in law. Already the police at every level, if you are poor – you don't count. If you a woman of the street a vendor or sex worker, you are a criminal. If a sex worker goes to a lodge, and at that time the raid happens, she is a victim and taken to a rehabilitation homes. They put S 4 or 5 of the ITPA. This bill will only legalise. Today at least when we go we can contest. But this law fully legitimises the criminalisation

**Rakesh** – when we speak of consent, the first time I did legal aid there was the beggary act. Students used to go to the beggars home, Kingsway camp. If you agree then you are let off and if you contest the case, then you remain inside. Social welfare legislation needs to be seen based on the consent of the individual. In this case if you agree you are let off but if you decide to contest then you undergo a trial and you remain in custody. All our social welfare legislations meant to be for the benefit of the

victim or the survivor actually work towards the curtailment of right to life and liberty. We used to see the criminalisation of tribes which are denotified but the stigma remains. It resembles the stigma relating to sex work. In criminal law, the problem is created the minute the definition of the offence is made, for example murder, it is very clear. This is a problem when you leave a definition vague like in anti terror legislations.

Like for instance a place of exploitation – when we were in NALSA, Aarthi said that when I used to work in a law firm there was exploitation there, so what will you do, close up all the law firms. What is a place of exploitation. When you bring it into criminal law, then there is a problem, this very woolly kind of definition of a place of exploitation. It gives a lot of room for prejudice and biases from judges also. Even if you are in jail as a criminal, all your fundamental rights don't go away. When we look at these laws then we see for example the right to reside anywhere or the right to move around freely, but when it comes to sex workers, there are examples when they have been asked to leave spaces and the courts have upheld these decisions. The right to equality is a fundamental right even to prisoners but when you come to sex workers, the right to equality is extinguished. You don't have the right to reside freely or move around freely. Under the ITPA the magistrate has the power to remove you and to seal their residence.

Another thing that is different from ITPA, enquiry as to the age, the time is not specified. Even where the time is being prescribed it is unheard of that the timelines are adhered to. When the time is not specified in the present bill, it leaves a gap. There is a judgement where the individual was awarded compensation by the court because the enquiry was not completed in time. Under the enquiry if the person is found to be a child, but if the person is not a child then there is again the use of vague terms “such reasonable period” to send a person to a rehab home. It is hazardous to have a vague phrase like this in law without specifying the upper limit.

The magistrate can reject an application made by an individual for release. I speak of my biases against sex workers which went away only after I started interacting with them. I have now done workshops with judges where I have shown pictures of a very sexy woman and the images that it conjures, eroticism, lust etc. it is the most shameful thing considered in our society. We tend to transfer this shame on another person – so when the magistrate or judge is faced with such vague phrases such as “reasonable period”, they will use this to also try and reform her. They are trying to better her prospects by reforming her.

If you look at section 19 (abetment of a child or woman of suffering from physical or mental disability). The woman once again is placed at par with a child or a person with physical or mental disability - linking with the inability in law to give consent, or not knowing her mind. Then it is presumed unless the contrary is proved. The fundamental principle of criminal law is that the prosecution bears the burden of proof and has to prove guilt. I have on many occasions taken up cases of custodial torture and in cases of custodial death we have discussed whether the burden of proof should be shifted, but its an extremely hazardous thing to ask. Once you bring in such a provision “it shall be presumed”, then it is extremely hazardous and it will creep into anything. Whether it be anti terrorist legislation or any other law. So one many think initially that it is a good idea to have it in custodial death or abuse. Its much more difficult to prove that you did not do something before you will be granted even bail. Anticipatory bail – it is the presumption of innocence. If we are to abolish bail whether under the atrocities act or under this act then how do we proceed with the presumption of innocence. All these laws which says that you will not be granted bail till it is shown that prima facie you did not commit the offence. NDPS is the other law, because of the stigma associated many of us in civil liberties have not taken up the NDPS. All these laws are bought in under the garb of speedy

justice, but one is not given bail and incarcerated for years on end. Whether under anti-terrorist legislation, the process itself is punishment and to take this approach that “it is fine when you are picked up and accused – the court will acquit you”, they will acquit you after 10 years. So that is suffering in itself. So any provision which punishes you and the presumption of innocence goes out of the window is problematic.

Consent and repatriation depends on the facts and circumstances. Informed consent when undergoing medical procedures. I have gone with a medical doctor for an operation and they asked me to sign the consent form. We have to see consent in the context of stigma, social status, sex workers. And even if there is a clause on consent being taken we need to ask how is this going to operate.

AIIMS and ICMR did a trial of pre cancerous lesions and without informed consent of the women. They left the lesions to grow because of the study. So when we speak of consent to be repatriated we need to keep a lot of these perspectives.

It is not like anyone wants trafficking. A good thing is that after years of struggle, lot more than just targeting sex workers has been brought into the definition of trafficking. All of us are aware of the fact that people are taken by deceit to gulf countries and their passports are seized, we have heard and seen this. That needs to be addressed.

On forfeiture and attachment of property. As far as tribal areas are concerned, we have experienced that this clause works very badly. Within a day or two of the complaint the police will come. They will start seizing things illegally. They will remove movable and immovable properties, digging through floors, not only of the person who is accused but also of their relatives. So this works in a terribly punitive fashion. Even in the power of arrest – they will pick up parents of the suspected and make them sit in the police station, detain them and harass relatives. Even without provisions they are doing this, so when laws are there, the veneer of legality is granted.

Time of consent which Manoj raised. From the beginning of Statement of Objects and Reasons to each and every provision, specifically as far as sex workers are concerned, it needs to be mentioned that adult sex workers must be excluded. Unless that is done even if there is a vague word, then it will impact them. Since there was a lot of discussion on conceptual framework I was looking through the New Zealand law, about putting the individual at the centre in the statement of objects and reasons. We need to give some alternative. It has a provision which states that a contract for commercial sexual services will not be void. It penalises if a person supports someone under 18 years to have commercial sex. So an alternate draft which addresses all this would be useful.

We cannot pretend that there is commercial sex under 18 years, so the person assisting that or clients. Because there is such a discussion on criminalising clients. NZ penalises clients under 18. It also uses the term operator and then places an accountability on people running the establishment to ensure health and safety or to have board laying down guidelines. So if we have an alternative, with solutions to indicate that we are as serious, putting the person who is in the centre who has to be helped.

From the beginning we have been arguing that as an accused the individual has the right to life and liberty which is not taken away unless through due process of law, but if you are rescued then there is no right to liberty. You can actually be put away for longer and now they have removed the time period.

The other trend is that of prosecuting clients under Section 370A. The sex worker’s position is not to prosecute clients. The Telengana HC gave a judgment, since under ITPA clients are not prosecuted. The HC said prosecute them under 370. So what does the judge do – in this case in Gujarat, the

defense also produced a letter by the Justice Verma Commission to Meena Seshu stating that the law does not apply to adult consenting sex workers. But how are we to find this out – so there will be a police investigation to find out if the person was in sex work, through fraud, deceit, coercion. It operates in reality like this.

**Meena** – if the woman says on affidavit that I am here voluntarily or even in the repatriation clause. Even if she says she is willing to state, it is read that she has lost consent. She did not consent on the offence of trafficking, but the way that it is read is that she has lost consent about everything. She cannot consent to be in sex work, she cannot consent not to be sent back. That is the biggest problem, in all these formulations.

**Rakesh** – Aarthi has addressed this provision on bonded labour and people working on bonded labour have experienced. But it has some provisions – they cannot be evicted. So we need to ask for these provisions – the person who is exploiting needs to be punished. Even the statistics of the study that SANGRAM has done, 193 were incarcerated, around 80% of the women. Who were the traffickers who were punished. On migration, there were women who were coming who were thoroughly questioned.

Consent issue in medical examination – even a person who is a rape survivor. The minute they say we don't consent to a medical examination it is as if the woman is guilty of something. An adverse inference is held against the woman. The other point which is well made is singling out HIV/AIDS.

**Shakun** – when we look at the law, as we have been saying, its not only sex workers but a whole range of workers who work at the very bottom of the social ladder. The ones most visible are the ones on the street. Many are working in risky and exploitative conditions. When we speak of trafficking, we look at these airport projects and the number of people who are forced to migrate to places that they did not choose, where they did not have the capacity to live a life of decency. If they land up as domestic maids, street vendors, sex workers they are at risk and who put them at that risk in this case – it is the state. The State becomes the largest exploiter and trafficker then if you apply this. You look at every city – all the surrounding districts are at risk of promoting trafficking. We need to form a coalition to do away with this law, rather than challenging every section of it in court. Every section has to be argued. The whole conceptual framework. The Act is not necessary and it just will not work. It is not possible to implement this. There will not be a financial outlay for this huge Act. Secondly the existing provisions of IPC, social legislations are not being implemented. The social legislations itself work against victims not against the perpetrators. Unless those things are corrected we cannot have this kind of cloud.

**Meena** – this is going to be tabled. Moving it towards the Standard Committee. But like the speakers before have been saying, the word Trafficking is such a red herring that everyone is happy to have something on trafficking. To be asked for it to be done away, I am not sure how strategic that will be?

## **SESSION 5 – STRATEGIES MOVING AHEAD**

**Meena** – this session will look at next steps and what should be the strategies. This bill will be tabled since it is being pushed by a large lobby. We will add in some things like the framework etc. But lets also look at various strategies. What is going to be the main ask with the MP's that we are planning to lobby.

**Arvind** – Based on my limited experience, I work as the legislative advisor to Dr.Tharoor. They are not going to do a very in depth study. Some MPs have assistance to help them with laws, but the majority of them don't have anything. First after you collate everything from all your sources, you

should first know what is your ask before going to the MPs. It would also be useful to make a primer for the members of parliament on what are the specific issues. Limited intervention possible by LS MP's which is where the Bill is likely to get passed. There must be an effort to reach out to members within the ruling party to get these views across. This could include Varun Gandhi, he has been marginalised considerably. Engage with government itself. One bill we drafted, we met the home minister. The Minister was quite open and willing to consider. Its dependent on the Minister, Maneka Gandhi with her reputation on the JJ Act. It also has a lot to do with the underlying political theme – the pressure from the US. To put across that they have done something and not necessarily one which can be implemented. Given that there are many recommendations given by the Supreme Court to amending the ITPA. Which is not being done. I can try and see with certain representatives of groups, if Dr. Tharoor can arrange a meeting with the Minister. It's a long shot and she may not necessarily agree.

The other option is targeting multiple members of parliament and not just one and then approach the government. It shows a bi partisan nature of approach. MPs from RS. From Trinamool, DMK. D raja was very supportive on the TG bill. There are many regional parties – Kanimozhi from DMK.

The main demand bill should be that the bill be sent to a Standing Committee or to a Select Committee. But we need to be prepared for the worst. They may just ignore and go ahead to pass the bill in LS.

#### Certain procedures in Parliament

Introduction – the Minister gets up and introduces the bill. MPs can get up and say that we oppose the bill. You have to give a notice at ten in the morning itself. So you have to know when the bill is coming.

There can be two types of notices –one if it is a notice opposing the bill. The MP will get up and give a couple of lines why he is opposing the bill. Then there is a vote whether the bill should be introduced. There is a second type of notice. If you mention the constitutional problems with the bill, the Minister will be required to respond. We should be ready with that kind of notice, listing out the constitutional defects in the bill. The moment you are saying that it is a violation of the Constitution of India, the Speaker may allow a discussion at that stage itself. Then there is a vote.

Then there is the stage of consideration. When there is actually a debate on the bill and then they may pass it. It would be good when you are approaching the Government to ask for a reference to a Standing Committee and a Select Committee. It would be good practice, to provide an alternative to specific sections. There are multiple groups – internet, sex workers, bonded labours. If they could come together to draft alternative provisions.

If none of this works then the MP can also moot alternative amendments. The Minister may or may not respond, why she is or not accepting those changes. It is very remote in the LS. It is only in the RS that we have more work. I am willing to use my offices and coordinate with members of RS for help the movement in that sense.

The media also has a role – if there are people who have contacts in media houses. To try and get editorial, debate out, particularly after mid June or so. Because the Parliament is likely to meet in mid July. On social media – a majority of the Ministers are on twitter and are sensitive to these things. If you can get hold of change. Org then that also will be useful. Once a larger discussion is done, we can look at Stage 1.

**Aarthi** – Legislative Assistants

**Arvind** – All don't have – 50 or so have. Most of them may not be willing to take up these things. We should not look through that route. There may be MPs who are sensitive. We should be targeting MP who may be sensitive. We should list treasury benches. It is not so political as a triple talaq debate. So there may be members of the ruling party who may be amenable there also. And willing to think from a liberal sense.

**Laxmi** – could this also be a strategy to say that there are existing laws to deal with the issue. Then we have a one or two pager on the problems with this bill. Key issues are identified. Yes trafficking is a problem. And since 1956 there has been a law and there are problems with the existing law. Whether that could be a strategy. Is there a consensus on whether the existing law remain with a tweaks.

**Arvind** – it is for discussion whether the ask is for tweaks in the existing laws or a comprehensive trafficking bill. But I agree a two pager would be good to give MPs. If there are MPs who are willing to read more, you could give them a larger collated document. So the collated and executive summary. But the best way is to reach out through the media even as you are speaking with them. Editorial or media debates, televised debates.

**YP** – the present government is trying to say that they are doing a makeover of everything. So if we take an approach of pointing out they may take the stand that it didn't work and hence we are now coming out with this comprehensive thing. What would be our line or argument? How are we going to position this? Should we say changes in the current bill versus changes in existing laws. It is a critical question that we need to answer and the line of argument.

**Prabha** – in terms of media analysis, could we start by asking people like Vrinda who has already made such a good analysis on autonomy and privacy. If she has already thought it through write something as an opinion piece. Then we can think of other ways. To get her to NDTV talk shows.

**Arvind** – MPs need to have content – they would like to have matter and when it is considered a hot topic. We will have to pool in our resources.

**Gurshabad** – I agree that MPs are very sensitive with the media. What happened with the triple talaq bill was that even though the Congress wanted it to go to a Select or a Standing Committee, the media played it like the Congress is trying to stop the rights of Muslim women. So even the Congress MPs backed down. In the RS they best bet is that it goes to a select or a standing committee from the RS. Its imp to target MPs who are strategically important – Rajiv Gowda who is the policy head, Jairam Ramesh Anand Sharma who contribute in the proceedings in the RS. Naresh Gujral is in the ShirominiAkali Dal. They are part of NDA but have aired their opposition previously against certain legislation introduced by the government. D Raja, Derek O'Brien, Kanimozhi. These people will have the ability to refer it to a Standing Committee and the media is not opposed to it. On approaching BJP I am not sure it is worth the effort. Another point should be on focusing on efforts that will work.

**Madhu** – Suppose it gets referred to a Standing Committee, should we make a point to point rebuttal or say the reasons why the bill will not work and maybe give an alternative approach even if we don't give an alternative bill. These are things that are working, positive things that could be strengthened. So do we say that this bill needs to be kept aside and these things needs to be addressed.

**Meena** – sending it back to the Standing Committee is to say that more consultations are needed.

**Gurshabad** – very rarely will the Standing Committee reject the bill in toto. So different sectors working on the bill need to come up very quickly with an alternative/ language. To submit to the Standing Committee.

**Arvind** – if you take the transgender bill, once it went to the Standing Committee, a number of groups who were fighting for transgender rights they went and provided alternative provisions. So if you read the Standing Committees report, it is a section by section critique that they suggest, what should be do. Again it's a discretion of the government to accept or reject. Initially the Minister said that they will oppose the recommendation of the Standing Committee. Finally they accepted. So it depends on the Minister.

**Rituparnah** – in the case of the transgender rights movement, it was the entire movement that came together. In the sex worker rights movement we have a division of groups, some of them use very horrible words.

**Madhu** – which is why we are saying that don't oppose it on the grounds that it is a sex workers issue. There are other grounds. I think the first part which is Constitutional part the foreground, you need to mention what it violates.

**Gurshabad** – at the stage of introduction it will only get rejected if there is legislative incompetence shown. That is if it is a police related and it is not on the Union List. Legal issues which might need a judgment to actually clarify the speaker will not allow.

**Arvind** – on legislative competence – there was a BJP MP who argued that it was just not about whether there was a principle of whether it comes in Union, Concurrent List etc. But even if there is a Part III or fundamental rights violation, then that also the Parliament is not competent to do that because of Article 13. He used that argument and the speaker allowed an argument. It's the discretion of the Speaker. What I am scared is the previous session, when there was a disruption and the speaker took advantage of the disruption and she pushed through the bills through a voice vote. Sometimes they can stage a disruption. We need to be aware of that.

**Meena** – we can do some things – so let us list. Contact the MP's, summary, media houses – who will be supportive. Will we be able to influence the media houses is also a difficult. We get this critique together, executive summary. Overarching conceptual framework, section wise – and alternatives to the sections. Contributions from various rights movement and activists.

- HIV/AIDS – can kajol / vivekdo?
- Labour
- Child Rights –Haq?
- Media – Laxmi?
- Internet / digital world – CIS / Internet Democracy?
- Surrogacy
- Domestic Workers

**Meena** – on labour people have taken responsibility in Mumbai also to write. FAOW said that they will write up on consent. One is what we need to do, the second level is the MPs – we need to make a list. The write ups will need to be translated. Once this is written up we need to figure out whom to contact, some kind of networked strategy will need to be put into place, lawyers and political feminists to put the language, you people (Arvind etc) to help with specific MPs. Media strategy – we will need a media manager. Who will go and talk to the media and pull that together – op eds etc who can put that in the national media. We can do the alternative media but I don't know about the mainstream media. At this point we are not asking for the rejection of the Bill but sending it to the Standing Committee. Broader based arguments will help more at this time.

**Aarthi** – list serve around the trafficking bill on the email. Then there are people who said that they will do something small in Delhi (Rituparnah); Shakun (with labor groups).

**Meena** – we should also look at protests in July. If the bonded labor groups, unions etc. say that we have not been consulted, then it is a very legitimate demand.

**Arvind** – one tactic of the government. The day before it is to be listed, they send us a bulletin – which is also published on the website. Normally the MP offices are not going to be open or check the LS website after evening. With the fugitive economic offenders bill, we had prepared our arguments and I was checking the LS website hour after hour. Just after 11 in the night they changed it. So they were trying to bring in the bill. MPs were not aware. Luckily it didn't happen because of the disruptions. But they were trying to do that so that the next day morning the MPs are not ready and they are able to push it. So MPs need to be ready with content.

**Rakesh** – one thing is it is very difficult to trash the entire bill. So we need to look at specific sections and say if it is too vague, etc. give some concrete examples.

**Meena** – that is the point of the two pager. Why are we asking for the Standing Committee.

**Arvind** – its also a good practice to send the material to the Minister. I can get Dr.Tharoor to send a forwarding letter so that they actually read it. Whatever MPs when they send a letter, they are forced to read it.

**Laxmi** – in some earlier instances, we have had international experts etc to endorse a critique. Or would it tickle some national pride issue.

**Arvind** – once you make that a political argument they will not listen. On aadhar, international jurists etc have written on it. So there is an attitude within the government that this is an international conspiracy to stop aadhar. So ideally not best to bring in the foreign element.

**Laxmi** – suppose we take the central argument that this law is not going to stop trafficking for the following reasons. This is the mission of the bill and it is not going to be served. So say we quote an international jurist who said .... Would that backfire?

**Arvind** – don't make the foreign expert the face of it.

**Archana** – can we think of one whole document critiquing the bill. At the same time small pieces critiquing from labour, unions, young people. I was thinking that I will try to look at it from the angle of young people and implications, especially since marriage is an important part of this. Freedom of expression – web content, people working on sexuality issues. Targeting from different sides.

**Aarthi** – the collation has inputs from various people. So we are adopting two strategies on the critique. Having it at one place. But at the same time, groups like CIS are taking it forward and doing their own thing. But we are tremendously enriched by that input. Going into the next phase of advocacy, we will have access to what all of us are saying. So if you are faced with the entire argument that it is only about sexual exploitation, you may not be able to respond if you don't know what is our critique of it. So this is also a bit of synergy building. We really haven't thought through the segment on adolescents at all. So we will really learn from your inputs.

**Archana** – we had done a study on adolescents. Trafficking was an issue. Love marriages, elopement.

**Madhu** – I think you all have been trying very hard to get this together. We also can prepare statements on each of these and if people are not preparing it, we prepare it. For people to think and write. Draft a one pager that will help us to lobby.

**Meena** – that is what the Mumbai groups mooted on Unions. They said they would take the responsibility for writing a statement for Unions.

**Rakesh** – that is what I was thinking – there might not be anything on sex worker, but on principles of innocence, incarceration, bail etc. these points people will be agreeable.

**Meena** – we must have a huge protest and fight against this in whatever way we can. Thank you very much to all of you for coming, engaging and making your inputs.

## Participants

1	Anjali Anand	Pravah
2	Urvashi Gandhi	Breakthrough
3	Rimjhim Jain	CHST
4	Arvind	Office of Dr Shashi Tharur
5	Nayantara R	Internet Democracy Project
6	Paulini G	Breakthrough
7	Archana Dwivedi	Nirantar Trust
8	Aarthi Pai	SANGRAM
9	Prabha N	TARSHI
10	Anjali Gopalan	NAZ
11	Kajal Bhardwaj	Independent Lawyer
12	Sruthi Devan	Breakthrough
13	Ayushmita Hajarika	The YP Foundation
14	Pramada Menon	Consultant
15	Madhu Bhushan	SIEM
16	Laxmi Murthy	Journalist
17	Shakun Doundiyakhed	SIEDS
18	Enakshi Ganguly	HAQ
19	Gurshbad Grover	CIS
20	Ramneek	Pravah
21	Kiran Deshmukh	SANGRAM/VAMP/NNSW
22	Meena Seshu	SANGRAM/VAMP/NNSW
23	David Bodapati	SSY
24	Shobhangi	AALI
25	Dipika Srivastava	TARSHI
26	Vani Vishvanathan	TARSHI
27	Medha kalsi	TARSHI
28	Ramya Annad	TARSHI
29	Rupsa Malik	CREA
30	Krati Sharma	UN women
31	Salina Wilson	UN women
32	Ishani Loreiro	CREA
33	Vivek Divan	Independent Lawyer
34	Manoj Mitta	Independent Journalist
35	Rituparna	Nazaraiya
36	Vrinda Grover	Lawyer
37	Pallavi Agrawal	The YP Foundation
38	Shruti Arora	The YP Foundation
39	Anisha Chugh	Women's Fund Asia
40	Asmita Ghosh	Feminism in India
41	Vani Subramaniam	Saheli
42	Rakesh Shukla	Advocate
43	Seema Misra	Advocate, AALI
44	Priti Mehra	Hindu

45	Shantilal Kale	SANGRAM/VAMP/NNSW
46	Aarhi Pai	SANGRAM