

CRITIQUE OF TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION), 2018

Date: June 13th, 2018

Venue: Hotel Green Horizon, Ranchi

Organized by: NNSW (National Network of Sex Workers), SANGRAM (Sampada Grameen Mahila Sanstha), VAMP (Veshya Anyay Mukti Parishad) and Association for Advocacy and Legal Initiatives (AALI)

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018, hereafter the TOP Bill, was approved by the Union Cabinet earlier this year, and was to be introduced in the Parliament in the second leg of the Budget session starting from March 5th. However, the introduction of this Bill has been postponed to the monsoon session of the Parliament. The Bill has received a lot of flak from human rights and women's rights groups, organizations and activists because of certain violations of human and fundamental rights which it encourages. The consultation on the TOP Bill in Jharkhand, was one in a series of many such consultations held in different states of the country for a campaign being readied by aforesaid activists, organizations and groups, to oppose the Bill at the Centre.



The session was chaired by Aarthi Pai, of SANGRAM, who has been a leading sex workers' rights activist in the country, along with Renu Mishra, Executive Director of AALI, which works with women's human rights issues and Shubhangi, who heads the Resource and Advocacy Unit of AALI. After a brief introduction of the different organizations who have been leading the campaign across the country, the session started with a discussion of the idea of rehabilitation in different professions. Why do we speak of rehabilitation only for certain professions? Should rehabilitation be profession-based or individual-needs based? Sex work as a profession has its own rules, like any other profession, some principles the individuals involved in the profession live by: no minors, no coercion, and no exploitation. Only when these three rules are broken for an individual or a group of individuals, should rehabilitation be considered. One shouldn't consider rehabilitation only because the profession in question is sex work. There is a prevalent notion that trafficking is equal to sex work. This is in relation to the taboos around the profession, which do not allow for it to exist without continuous scrutiny. The state needs to give adequate recognition to this profession, to recognize it for what it is, and not through the means of the good woman-bad woman discourse or the medical discourse. It needs to take responsibility for the inequalities of society, and of the human trafficking realities, unlearn the popular perceptions of this profession, not attach virtuous definitions to it, and rewrite the laws involving this profession, in order to be able to help the very large, yet hidden population of sex workers in India. Trafficking is not equal to sex work and any misconception around this will affect anti-trafficking laws and initiatives.

LAUNCH OF *RAIDED*

The book '*RAIDED*' was launched during this workshop. It articulates the question: how anti-trafficking strategies increase the brunt of exploitative customs on sex workers. The question was understood through a study conducted on raids held in brothels and other spaces which are suspected to be used for trafficking rackets (again, equated here to sex work) by the police in an effort to "save" and "rehabilitate" the sex workers. The researchers involved in the project conducted interviews and meetings with the sex workers affected by these raids in the state of Maharashtra. This research is the basis of the critique of the bill that has been formulated. The book was an initiative by SANGRAM, NNSW and VAMP, and contains the description – objectives, methodology, research design, findings and analysis – of the entire research process.

The major question this research tries to answer is: what effect does law have on sex workers? Laws, policies and initiatives should be contextually designed: For instance, the understanding that there exists oppression of sex workers within brothels by brothel heads (*gharwalis*), too. However, this must be understood contextually. Oppression of sex workers by brothel heads is a reality, but that doesn't mean that the heads themselves might not have been sex workers previously. The book tried to bring to light the issues with children of sex workers, who live with the sex workers in the brothels, but during these raids the children are given the same treatment as it meted out to the sex workers, without any concern for their age, needs, understanding etc.



Another issue RAIDED speaks about is forced rehabilitation for several women within the profession during raids. Sometimes women are entrapped within the rehabilitation homes for years against their will, because the self proclaimed protectors of women decide that the

profession is harmful to their well-being. This leads to the a gross infantilization of women in the profession: oftentimes, when they are produced in court, they are asked to bring along or name a ‘guardian’, despite a substantial number of them being well above eighteen.

Herein also figures the politics of language, as Pai explained. Language is used as a means to oppress, and hence it is always important to use correct terminology. For instance, Pai spoke about terms used for different aspects of the sex work profession: the word *dhandha* is used to define their daily business by sex workers, but the term *veishya* isn’t, even though the term for sex worker in Hindi is *veishya*. Forced rehabilitation for several women within the profession during raids. There is also the Immoral Traffic Prevention Act (ITPA), 1956, which condemns sex work in public. But usually this is a means to arrest people instead of actually making sure that sex work isn’t carried out in public places. How can control over one’s body be moral or immoral? How can control over one’s body be moral or immoral? Idea of morality related to being a sex worker versus the “good” woman. Why do our lawmakers feel the need to attach values to laws and policies?



It would be more appropriate to be arrested rather than taken to rehabilitation homes after the raids, because arrests allow for bail. If rehabilitators feel that any woman in this profession needs

compulsory rehabilitation, then how do they justify the 77% incidence of women moving back into sex work after the period in rehabilitation?

There is also the question of vocational training in rehabilitation centres: tailoring, sewing, papad making, pickle making. The redundancy and economical unviability of these trainings is something lawmakers do not consider. How many people in India even have papad and pickle with their meals every day?

Micro credit and loans for sex workers is also difficult to obtain: such is the stigma around this profession that no bank is willing to do it. This leads to unsafe sex work, because money is always a factor in deciding the safety in this profession. Additionally, identity proofs of sex workers are also rarely available – this makes them more vulnerable to exploitation.

Sex workers want decriminalization, not legalization, because probably no state in India is ready for legalization of sex work. Criminalizing something will not necessarily alleviate the situation. Criminalization should be done within context. Rather than asking why someone entered sex work, it is more important to understand the circumstances and situations of sex workers. This will provide another perspective into the lived realities of the profession and help policy makers understand the circumstances of sex workers to be able to better formulate the policies.

What we really need to ask then is: how can sex workers live a life of dignity commensurate with Article 21 of the Constitution of India?

There needs to be a human rights scrutiny of the TOP Bill. The main weakness of the upcoming TOP Bill is including anything and everything within the provisions of this bill. There is a dilution of trafficking provisions and we aren't, therefore, able to give justice to people actually trafficked. Eg. There was a case a few months ago where 500 people were stopped at a station and the leader of the group was charged with section 371, IPC and Section 8(B) of the Inter-State Migration Act. None of the people of the group gave any statement about being taken forcefully or even for the purpose of labour, yet they were being charged. This is the result of poorly drafted laws, policies and procedures. Why weren't opinions of sex workers considered during the drafting of the bill? Through such laws, the whole concept of human rights is being turned on its head. The problem with the TOP Bill also is that the innocent have to prove that they are not guilty. There is a gap between the purpose with which the law is being made and the actual

implementation of the law at the ground level. In addition, trafficking laws are usually put on people from a certain socio-economic and cultural background. Right to choice cases can also get booked under this law.

LOOPHOLES IN THE PROPOSED BILL

- Section 370 – anti trafficking legislation; Section 370(A)(2) – anti abolition legislation, and this new bill has the potential to become an anti sex-work legislation
- Section 19(1)(A) prohibits “repatriation”. How can this law allow it then? Where is the space to appeal against or to say no to any order of repatriation under this law?
- The other loophole in the law is that when someone does not want to be rescued, then after they express dissent in the matter, no further steps are mentioned in the law as to what the State can do for these individuals.
- The powers given to State Anti-Trafficking Committee (SATC) and the District Anti-Trafficking Committee (DATC) are seen to be “absolute”.
- There is no mention of the rights of the people who do not want to avail the provisions mentioned under this law. The state cannot take decisions for individuals.
- There needs to be an understanding that there is no right or wrong in migration.
- When the law talks about “place of exploitation”, it seems vague, because exploitation happens in other places too.
- Another problem in this proposed bill is that the burden of proof lies at the bail stage (bail judge and trial judge might not even be the same).
- We should not be aiming to prohibit the practice of this profession, but instead aim to create a safe space for this profession to be practiced safely.

The suggestion given once the proposed Bill had been discussed elaborately: recommendations drafted by human rights’ organizations should be sent to committees for reviewing the bill. At the end of the workshop, there was a suggestion to share signatures of those who supported the cause which is to be sent to the Centre. The response was very supportive and several signatures were collected in support of this. The signees were as follows:

1. Renu Mishra, on behalf of Association for Advocacy and Legal Initiatives (AALI)
2. Anunay Kumar, XIDAS, Jabalpur

3. Binod Kumar Singh (Adv)
4. Amita Ravi Munda (Adv)
5. Ranju Verma
6. Awdhesh, Sahbhagi Vikas, Simdega, Jharkhand
7. Sapna Rani Kerketta
8. Anjani Singh, Prerna Bharti
9. Sachi Kumari
10. D. Kumar, Godda
11. Ramrup Kumar Singh
12. Laxmi Khalkho
13. Deepa Kumari
14. Kiran Kumari
15. Devyani Verma
16. Mausmi Baxla
17. Baleshwar
18. Indramani Sahu, Koderma
19. Azfar Hussain Biswas
20. A. Roy (Adv)
21. Sosan Sunita Bara
22. Meera Singh
23. Lily Lakra
24. Priti Murmu
25. Bofrang Das