

Go back to the drawing board



The Hindu
Sex workers seen during a interaction at G.B. Road area, in New Delhi. File photo

The Draft bill on trafficking appears to be carelessly drafted and could do more harm than good.

In Kolhapur, a couple of years ago, nine sex workers in their 40s were remanded to a rescue home and told to produce parents or family members to whom they could be 'handed over'. Some of these women did not have living parents, some had left home decades ago, and some had families who did not know they were engaged in sex work. The women were shunted from home to home and finally released after one year.

The episode reveals in a nutshell all the shortcomings in the Immoral Traffic (Prevention) Act (ITPA). One, that it includes the word 'immoral', inserting an element of morality when the discussion should be purely legal. Two, that all sex work is assumed to be a result of trafficking with workers needing rescue. Three, that adult sex workers should be put into homes without their consent. Four, that adult women should need to produce families to be released, thus denying them any agency in their lives. And finally, that what is fondly paraded as an act of 'rescue and rehabilitation' should actually be incarceration and trauma.

Clearly, there is every reason to desire a better law that can correct the anomalies in the existing one. But the recently minted Draft Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016 does not do this. On the contrary, it opens up brand new grounds for anxiety.

Going against the grain

To begin with, it was fashioned in great secrecy without the kind of wide consultative process one might expect before such important legislation. This is troubling. There is no reason for a Ministry to keep major stakeholders out of the discussion if it is confident of the legitimacy of its suggested provisions.

Next, the Draft Bill tackles trafficking solely through the lens of sex work. The tens of thousands of men, women and children who are routinely trafficked for marriage, domestic labour or bonded labour in fields, mines, and textile and *beedi* factories are ignored. And even in this limited exercise, the Ministry displays how little it understands the real issues at stake, how paternalistic its attitudes are, how much the state continues to infantilise adult women, and how big a role 'morality' plays in the government's approach to problems.

Take, for instance, the provision in the Draft Bill that allows, among others, *any social worker or public-spirited citizen* to 'rescue' and 'produce' a 'victim' before the District Anti-Trafficking Committees it proposes to set up. This is unprecedented, opening the door to exactly the kind of moral policing that one begins to suspect the Bill of wanting to encourage. It could lead to harassment of not just sex workers but other ordinary people by overzealous, vigilante citizens.

Or take how, by continuing to conflate "prostitution" with "commercial sexual exploitation", the Draft Bill goes completely against the grain of what activists are fighting for, namely protecting the rights of adults who stay in prostitution voluntarily. In 2013, the Verma Committee had specifically clarified that "the recast Section 370 ought not to be interpreted to permit law enforcement agencies to harass sex workers who undertake activities of their own free will, and their clients". In 2015, a Supreme Court panel had recommended that the law relating to trafficking be read down for consenting adults in sex work and their clients.

The conventional and simplistic approach has been to define 'prostitution as exploitation' whereas most reformers today look at the

'exploitation of prostitution' as the primary evil that must be addressed. It is important, thus, to treat trafficking in children, adult trafficked labour, and forced sex work as separate categories, but the Draft Bill mixes up everything in its portmanteau approach.

Enormous power, little accountability

Further, the Draft Bill threatens basic constitutional freedoms of the persons it seeks to rescue. For instance, Article 22 gives a detained individual the right to consult a lawyer and be produced before a magistrate within 24 hours, but the Draft Bill allows persons to be directly produced before the member-secretaries of its District Anti-Trafficking Committees. Second, the Committees can independently recommend that a victim be repatriated to her home State (or another State) for increased protection. This contravenes Article 19, which grants citizens the right to move freely across, and reside anywhere in, the country. Thousands of men and women voluntarily leave hometowns and villages to escape poverty. And what about the women who, even when victims of trafficking, are reluctant to return to homes where they might face further harassment? Adult trafficked persons must be consulted and made aware of their rights so that they can take informed and independent decisions on whether they want to be repatriated.

The enormous power and little accountability that is vested in the proposed District Committees is troubling. They raid and rescue, rescued persons are produced before them, and they are also responsible for post-rescue care. In effect, it would appear that they are policeman, judge and rehabilitator rolled in one. At present, despite its lacunae, the ITPA still has some processes in place. For instance, nobody can enter a brothel without a warrant, and only some categories of police officers have the power to raid a brothel. Now, these guidelines stand to be transgressed.

Overall, this appears to be a carelessly drafted and muddled Bill that does more harm than good. It duplicates several existing (and unimaginative) provisions: Anti Human Trafficking Units already work in districts and States, the ITPA's present raid-rescue-rehabilitation approach is a dismal failure, and rescue homes today are often the site of fresh exploitation. Thousands of placement agencies continue to be the chief source of human trafficking despite laws. The Draft Bill repeats the need for their registration without explaining how it will ensure it. These are but a few of the many shortcomings the Draft Bill needs to fix. If the Women and Child Development Ministry is serious about wanting to streamline existing anti-trafficking laws, plug the loopholes, and take the discourse ahead, it has to go back to the drawing board. This time, with experts.

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Printable version | Aug 5, 2016 10:56:42 AM | <http://www.thehindu.com/opinion/columns/vaishna-roy-on-immoral-traffic-prevention-act-go-back-to-the-drawing-board/article8835865.ece>

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