

Date:

Hon'ble Member of Parliament

....Constituency

Lok Sabha

Concerns regarding Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021

Respected ...,

We write to you as representatives of[name of CBO], working in [name of district] in ...[state] on[nature of work/project.]

We wish to draw your kind attention to the **Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021**, which has been tabled in Parliament in the Monsoon Session, scheduled from 19 July to 13 August 2021, for 'introduction, consideration and passing' by the House .

The Bill is draconian and will spell a death-knell on sex workers and their families, as highlighted below.

No consultation with affected groups

The earlier Trafficking Bill (of 2018) lapsed in March 2019. The Government took more than 2 years to draft a new Bill. But the public was given less than 2 weeks to comment and share feedback, despite the Government's own pre-consultation legislative policy of 2014 requiring every draft Bill to be placed in the public domain for a minimum period of 30 days. Worse still, the Bill was added in the List of Legislative Business to be taken up by the Lok Sabha, even *before* affected groups had the opportunity to examine and make comments. Sex workers wrote 2 letters to the Ministry of Women and Child Development, Government of India requesting time to review the Bill and give feedback, but in vain. As a result, there has been no effective consultation with stakeholders on this important and far-reaching legislation. The voices of the most marginalized have been further marginalized.

Problems with the Bill

- (1) The Trafficking Bill has **mixed up the issue of trafficking and sex work** in clauses 23 and 25. 'Prostitution' has been added to the definition of 'exploitation' and 'sexual exploitation' and considered to be 'trafficking in persons'. Consent of the victim has been made irrelevant. This will mean that sex workers are either be seen as 'victims' of trafficking and put in rehabilitation homes or they will be arrested as 'traffickers', if they provide support to peers. Various international and national authorities, including the Hon'ble Courts of our country have underscored the need to distinguish between adult

consensual sex and trafficking and tailor legal responses accordingly. This has been lost sight of in completely.

- (2) The Bill is replete with **vaguely defined terms and offences**, which are **liable to abuse by the police** and prosecution. It also means that ordinary citizens remain in the dark about what conduct is lawful and what is not under the Bill. Take the example of 'exploitation', which is an offence under clause 30(1) read with Explanation 1. Exploitation is defined in clause 2(5) to include: *"taking of benefit or gain from a victim without due or appropriate consideration, compensation or return in any form or manner for the benefit or gain of another person who himself may or may not be the perpetrator of such exploitation"*. What constitutes due or appropriate consideration is unclear, especially in the unorganised sector. If a person negotiates and gets work done at a 'bargain price', does that make her/him guilty of 'exploitation'? And how will this apply in sex work, which is always carried out in the informal economy? Our worry is that the Bill will be used to harass and victimize the poor and the vulnerable including sex workers.
- (3) Clause 35 of the Bill makes it **mandatory to report** a person who has been or may have been trafficked or exploited to the police. Strangely, family members of the victim including parents and spouse are exempt from the duty to report the crime to the Police. Instead, other persons have been foisted with the responsibility to report 'forthwith' to the 'nearest police station', failing which they will be liable to punishment of upto 3 months imprisonment or a fine of Rs 25,000 or both. Since trafficking and exploitation are defined in a broad and vague manner and sex workers considered 'victims of trafficking' or 'victims of exploitation', Targeted Interventions (TIs) carrying out HIV prevention among sex workers will be bound to report to the Police. This will breach the hard-earned trust between TIs and sex workers, and destroy the National AIDS Control Programme. Besides, mandatory police reporting overrides the agency of the victim, who may not wish to file a complaint. The Police is not always responsive to the needs of the trafficked or exploited person. Sometimes, they are in league with the higher ups - who profit from trafficking. With mandatory reporting, the Bill is putting the victim's safety and the integrity of field programmes at risk.
- (4) The **scale of punishment** for trafficking has been increased manifold and is disproportionate. Some offences, which are vaguely worded, even carry a **death sentence** [clauses 26(4), 27(1), 28(2)]. This is against human rights. Death penalty is not the answer to trafficking. A majority of persons sentenced to death in our country are from economically vulnerable, lower caste and religious minority communities. Now, with very vague and overbroad offences, swathes of poor people, trying to make a living for themselves and their families, will be treated as traffickers and sentenced to death.
- (5) **Sweeping powers have been given to the police to attach and confiscate property**, of persons who are not even involved in trafficking [Clauses 2(19), 39, 40(2), 41(1)]. Since sex workers are always on the radar of anti-trafficking, we fear that our livelihood and savings may be taken away in the garb of 'anti-trafficking'. The authorities also have the power to evict people from their homes and places of work and close down 'premises' being used for an offence, even without any investigation or trial [clause 2(16) and 42(1)].

- (6) The **rescue provisions** in clauses 11 and 16 empower any police officer [sub-inspector or above rank] to enter and 'remove' a person who is 'likely to be exploited' and have them sent to a 'protection' or 'rehabilitation' home for an indefinite period of time. Due procedure of law – which requires hearing such a person, who is an adult, and taking their consent before 'removing' and 'sending' them to a protection home, has not been clearly provided in the Bill.
- (7) Although there a number of clauses appertaining to rehabilitation [clauses 12, 13, 19 and 20], **none of them guarantee jobs or livelihood security to victims of trafficking** who have been rescued [**Rehabilitation provided in the Bill is merely confinement of victims in state or NGO-run homes**, which the community has long rejected.
- (8) The **Immoral Traffic Prevention Act, 1956** ("ITPA") which criminalises sex workers, will continue to apply. So sex workers will face problems under both the Trafficking Bill and the ITPA. [clause 54(2) and 47(1)]
- (9) A large number of **anti-trafficking committees and nodal officers** at the national, state and district level have been proposed. Though they are made responsible for rehabilitation, they are dominated by officers of the Police department, who do not understand the socio-economic needs and concerns of victims [Clauses 5, 6, 7, 8,9, 10].
- (10) While the country is debating the need and legality of **draconian laws like the Unlawful Activities Prevention Act**, under which tribal rights activist Father Stan Swamy was arrested and detained without trial and denied bail, because of which he died - **similar provisions are being imported in the Trafficking Bill** [clause 49]. Persons accused of an offence are presumed to be guilty, and must prove their innocence, contrary to established criminal procedure where the prosecution is required to prove guilt [clause 46]. As citizens who bear the brunt of punitive laws day in and day out, sex workers, are deeply concerned about this carceral response to trafficking in the form of the present Bill and demand its reconsideration.

We thank you for reading our letter.

We hope that as our representative in Parliament, you will highlight these concerns and ask for the **Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 to be referred to a Standing Committee for examination.**

Thanking you,

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