



## REPORT FROM THE REGIONAL CONSULTATIONS ON PROVISIONS OF TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2016 (4<sup>TH</sup> DRAFT)

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All India Network of Sex Workers (AINSW), CREA, Lawyer's Collective and Centre for Advocacy and Research (CFAR) held three regional consultation which had representatives from 43 Sex Workers led Community Based Organizations. These consultations were held in the eastern, western and southern regions of India with participants from West Bengal, Bihar, Jharkhand, Orissa, Gujarat, Maharashtra, Madhya Pradesh, Andhra Pradesh, Tamil Nadu, Kerala, Karnataka and Telangana. The feedback which follows is a consolidation of the points that were raised in these consultations.

**No space for Consent or voluntary sex work:** As will be evident from the points detailed below, the Bill under its present form does not have any space for consent or voluntary sex work. The acts which have been made offences in the name of trafficking under this Draft Bill, stand testimony to the understanding that participation in sex work can only be on account of trafficking and never voluntarily. As long as a bill on trafficking does not involve sex worker collectives in the consultation process, this beginning point cannot be undone.

The government must recognize that sex workers are also against human trafficking and have decades of experience in implementing their own effective anti-trafficking strategies like the Self Regulatory Board, which has successfully checked the entry of minors and non consensual persons into sex work. Instead of adopting a top down approach to trafficking, the government must inculcate these successful models and strategies into any anti-trafficking efforts.

### **Areas focusing sex workers as human traffickers:**

As per Section 6 of the Bill, anyone who is intoxicating the person who is being trafficked will also be subjected to imprisonment up to 10 years. There is a popular culture among sex workers of drinking together socially, and this section could be misused to penalize sex workers with up to ten years in prison. Similarly, the nature of the other actions which are penalized as offences under this Bill, like contracting HIV/AIDS or becoming pregnant, are common occurrences in the lives of sex workers. The offences which could result from trafficking for other purposes have not been included at all. Therefore, it is evident that although sex work per se has not been

mentioned, the nature of the offences penalized in this bill reveal a clear trajectory of targeting women involved in sex work.

Many children are being trafficked, their body parts are mutilated and they are made to beg, there is no discussion on such issues with organisations working for disability while drafting this bill.

### **Place of sex work:**

Under this bill, the focus is on the source, transit as well as the destination of the person being trafficked. This casts a wide net on the different people who can be charged with the offence of trafficking. For example, since “place of exploitation” includes the source of trafficking, the parents of the person who is trafficked may inadvertently be brought within the purview of this Bill, for no fault of their own. Similarly, a bus driver/ cab driver whose vehicle is being used for trafficking without his knowledge can also be booked for aiding the process.

This becomes even more worrisome in light of the fact that the Bill dispenses with the “knowledge” threshold for presuming aiding in trafficking and therefore, anyone who is inadvertently/unknowingly assisting in this process, can be booked under this Bill.

This will also give an opportunity to book a case under human trafficking among young adults who elope from their homes.

### **Raid, Rescue and Investigation:**

Under ITPA only a Special Officer can carry out a raid but this Bill gives any law enforcement official to carry out a search without any warrant being issued. It is well documented that armed with laws such as ITPA, police officials often misuse it as means of harassing and exploiting sex workers and therefore the inclusion of a provision allowing a search without warrant under this Bill will further allow police officials to barge into any house of a sex workers and also lead to exploitation of the sex worker. Secondly, the understanding of allowing only a SPO to conduct a raid under ITPA was that an inspector with certain level of understanding and sensitivity would do the raid, given that they will be going to the households of sex workers and therefore a sensitive approach is needed. Instead, this Bill allows any police officer to conduct the raid.

This Bill also provides for medical examination of the “rescued” person, without imposing a requirement for obtaining consent of the person. Medical examination is often intrusive, and all such procedures have been allowed under this Bill without mandating prior consent.

None of the CBOs run by women in sex work, who would be in the best position to talk to/counsel the rescued person with the various options available to them, have been involved in the process of rescue and rehabilitation.

### **Rehabilitation:**

This Bill provides for repatriation within 3 months in case of inter-state repatriation and within 6 months in case of inter-country repatriation. Under Article 19 of the Indian Constitution, every citizen can live and work anywhere in this country, and this process of repatriation provided for in this Bill fails to take into account this fundamental right of work and mobility.

The Anti-Trafficking Committee has been set up as an intermediary between courts and police that will once again decide on the fate of the victim without actually giving space for the person rescued to make a decision

One of the biggest issues with the rehabilitation process is that the wishes of and choices of the “rescued” person are not required to be taken on board to decide whether or not ‘they wish to be rehabilitated. Further, the Bill gives the power to the Magistrate to reject an affidavit filed by an adult person seeking their release, on an arbitrary ground of not believing it to be voluntary! Instead rehabilitation is based on understanding of the “best interest” of the rescued person. Sex workers denounce such paternalistic approach to rehabilitation and assert their rights as adults to determine what is good for them. Respect for dignity of each individual dictates that rehabilitation should be for those who want it, and those who do not should be allowed to pursue any occupation of their choice.

### **Representation in Committees**

None of the Committees created under this Bill, include representation of sex workers. While the Bill does provide that members of civil society who have previously worked on trafficking will be a part of the committee, it is evident that it is only members of NGOs who have historically conflated trafficking with sex work will be made part of the committee and never sex workers, as was done in the process of drafting this Bill itself.

### **Allowing property to be seized**

The Bill allows for eviction from and seizure of property, believed to be used for trafficking. This takes a serious toll on the sex workers not just owing to the capacity of these provisions to put them out of work, but also because the authorities and the government is arbitrarily allowed to seize property that sex workers have spend years of hard work in building.

## RESPONSES FROM PARTICIPANTS:

### Kolkata Consultation

- *We are organizing various consultations to get the recommendations to share it with WCD, NCW to address these issues.*
- *In many cases, after an arrest Sex workers are not allowed to interact with either the NGOs or CBOs who are working with the community, the idea of a team visiting the homes of a victim after a rescue would only increase the stigma and discrimination among sex workers.*
- *There are many transgender who are also involved in sex work. The recent bill for TG brought out by the Ministry of Social Justice and Empowerment is also very bad. Police get the money from us but the media also highlights incidents like TGs are attacking young men whose vehicle got broke down in the middle of the road etc.*
- *The trafficking bill and the TG bill are both against the community, can we look at bringing together more groups beyond just sex workers and transgender such as labour unions, organisations working to end bonded labour, child labour etc and raise our voice in form of a protest. The problem is that rehabilitation is being discussed like development by the Government without knowing even the basics.*
- *There are many children who are being trafficked for begging but this bill does not focus on such issues. How are the planning to rehabilitate them? No discussion with disability groups so far. This is not only be fought by sex workers, there needs to be wider consultation involving other groups too.*
- *As a sex worker, If I build a house for my children, will the government be able to take the property?*
- *When they vacate us from a brothel after madam's arrest? Where do we go for living?*
- *Earlier we directly go to Court now we have a district committee under AHTU that has NGOs are anti-trafficking NGOs where is the right of the sex worker- Why not work on including sex workers.*

### Ahmedabad Consultation

*Ms. Kashibai Jadhav from Pune said, "Rehabilitation is defined as something that involves providing some money to those who have been rehabilitated and forcing them to quit sex work. It is important for the Government and other agencies to understand that it is not enough to just provide rehabilitation for older sex workers. It must also prevent young girls from getting into sex work due to poverty".*

Another participant spoke about the experience faced by one of their peer educator “We are a CBO working for HIV prevention among sex workers and we had decided to reach out to sex workers in lodges. When our sex worker had gone to a lodge, a raid took place and when she was asked if she was a sex worker she had said yes though she had gone to the lodge as a peer educator. The police immediately took her into custody and put her in a shelter home for 20 days. Though we shared the minutes of the meeting in which we had decided that peer educators would reach out to lodges for carrying out HIV awareness we were not able to get her out. We had to pay Rs.10, 000 to bail her out.”



Ms. Yasmin, a participant from Gujarat said, “Police often carry out raids to account for the number of arrests they are required to make per month. They create a fake customer, catch hold of one of our women and ask her to point out places where sex work is carried out. The customer is then sent to negotiate and once they get the money they arrest her. We don’t get bail in such cases and we don’t even get to see what is in the report made by the police officer. There are also incidents where fake press reporters barge into our houses and threaten to publish our photos and reveal our identity. Many women have given whatever they have with them out of fear. Who will be dealing with such problems?”

Ms. Shameem Patel from Baroda said, “Government always talks about rehabilitation and preventing children of sex workers from entering the profession. But we don’t get the support that will enable them to complete even their basic education; like help in getting the documents required for admission.”

Another participant opined, “It’s not that all sex workers need rehabilitation and this cannot be determined by one’s age. This stereotyping against the community should come to an end. The Government should consider our role in HIV prevention and treat us with dignity instead of criminalizing us. I was able to educate my child and now he is working as a professor in a college. Will the rehabilitation package that they offer guarantee this?”



A transgender participant from Gujarat said, “We are often the targets of ridicule and we have no safety. Now this law is targeting everyone in sex work and it will also be used to arrest people like us who are mostly involved in sex work for a living. Unless you provide other services and the guarantee that we will not be discriminate against why would people coming out openly? This law is only going to make people involved in sex work to go underground.”

Another participant said, “Many of us are involved in sex work without the knowledge of our family members. A home visit carried out as part of the rehabilitation procedure will only increase discrimination or suicidal deaths by the women who are rehabilitated.”

*“Why is this section saying rehabilitation is your right and no one can deny it? What about people who have left their homes and gone to another state to do sex work? Is this not against the basic Constitution of our country which gives its citizens the right to work in any part of the country?”*

*“Now that any police officer is entitled to carry out a raid based on suspicion can they also target older sex workers and seize the property that they have managed to earn by booking them as a person involved in trafficking and letting out their premise for sexual exploitation?”*

*Ms. Ranjan Behen from Ahmedabad said, “Under this bill, all women need to say they are trafficked in order to escape any form of punishment but once we call ourselves victims we can’t refuse the right to be rehabilitated”*



*Ms. Tolly from Madhya Pradesh said, “We are concerned about our clients and their families so we promote condom use. It is unfortunate that the Government doesn’t have the level of concern that we have for our customers. The Government only wants to abolish sex work and is not willing to understand the factors forcing people into sex work.*

*“As sex workers we are treated as criminals involved in trafficking. So it is important for us to work together and join hands with others and oppose this entire bill with a unified voice. We must also share the recommendations at the district and state level.*

*“It is important that we also get support from the National AIDS Control Organization and the Ministry of Health and Family Welfare as they will understand our issues and speak to others on our behalf”.*