

FEATURES

WHY WILL THE PROPOSED ANTI- TRAFFICKING BILL BE INEFFECTIVE

By Raksha Kumar December 22, 2017 No Comments



Chanda Wazne, sex worker, Sangli. Photo: Raksha Kumar

Chanda Wazne is the grandmother of eight. At 12, she was married to a man about a dozen

workers (NSW). But it is a common law under which sex workers are arrested, she added. NNSW has more than 50,000 female, transgender and male sex workers from across the country as members.

Other laws under the Indian Penal Code also look at trafficking only from the perspective of sex work. Many cases against clients of sex workers are also booked under Sections 370, 370A of the IPC, which criminalises “buying or disposing of any person as a slave”. These were added as recently as 2013.

This conflation has ensured that trafficking which includes people being tricked into or forced into moving for labour related activities in construction, factories etc are left out of the equation.

According to the US Department of State, 2016 Trafficking in Persons Report, “forced labor constitutes India’s largest trafficking problem; men, women, and children in debt bondage—sometimes inherited from previous generations—are forced to work in brick kilns, rice mills, agriculture, and embroidery factories.”

So, Indian trafficking laws misses the woods for the trees. The proposed new anti-trafficking Bill makes small amends. But, leaves a lot more to be desired.

The New Anti Trafficking Bill

Cabinet,” said Aarthi Pai, lawyer-activist who was present at the consultations on the September 26 in New Delhi.

Sex workers have constantly expressed their opposition to the Bill, claiming that it presupposes that sex work always entails trafficking and can never be voluntary. It would only exacerbate their frustration with the system if the draft Bill they were analysing is not the draft that the Cabinet will place before the parliament.

The secrecy is not the only reason why the Bill might prove to be inefficient in tackling trafficking.

Keeping with the previous anti-trafficking legislation in the country, this Bill too is disproportionately focused on sex trafficking. Not only because tackling labour trafficking has major economic implications and requires an overhaul of the existing trade practices, but also because sex work profoundly disturbs some people moralistically.

Only if the new law can revise the problems with ITPA, will it prove to be effective. Here are a few problems with ITPA.

Spaces of sex work

Five small streets in one corner of Sangli are called “that place” or “*wo jagah*” by auto

NNSW.

According to ITPA, brothels are illegal and could be punishable with rigorous imprisonment for not less than 2 years. However, what the law defines as brothels are homes of some of the sex workers. When a brothel is dismantled, two things happen: sex workers are rendered homeless and they are forced to work without the protection of a collective.



How is this related to tackling trafficking? Sex workers collectives **are vigilant about** who come into their spaces. “We know if an under-aged girl is walking into our spaces, we know if someone unwilling is coming into our spaces,” said Maoji. But, if you render our spaces illegal, then vigilance becomes difficult, she explained. How do you keep track of who is forced into sex trade in some street corner or a farm house? she asked.

But neither the ITPA nor the proposed law take this into account.

Families of sex workers

Section 4 of the ITPA criminalises any adult who “lives on the earnings of prostitution”. This clause is curious as its relation to trafficking is not clear.

For sex workers, the traditional notion of a family breaks down. There are many sexual partners, while some can be long-term partners, they will never be conventional marriages. “When I began working with sex workers a couple of decades ago, I came across a pregnant sex worker,” said Meena Seshu, founder of a sex workers’ collectives, Sangram-VAMP. “I asked her whose child it was and she looked offended. It is *my* baby she answered with pride,” recalled Seshu.

Whose fault is it that we cannot have traditional family structures, asked a sex worker from Goa. who did not want to be named as her parents did not know what she does for a living “We

It has become a running joke among sex workers that they are forcefully ‘rehabilitated’ by the government by handing them buffaloes. “Now we have to do sex work to feed those blasted animals,” said Kasturi Kamble, a former sex worker.

They demand that the law make room for proportional compensation. If someone was earning Rs 10 per day, what good will it do to rehabilitate them for Rs 2 a day, they asked.

‘Rescuing’ a sex worker comes from an abolitionist perspective, where sex workers are considered hapless and need an external hand to pull them out of their predicament.

Section 10 of the ITPA deals with “detention in a corrective institution”. These institutions are rehabilitation centres where even adult women are held forcefully.

In one such rehabilitation home in the centre of Bangalore, there are police guards stationed in the front of the main gate. There were three women in the Centre in September. “I hate being caged like this,” said one of them. Of the three of them, two were a victims of trafficking. The other refused to speak. “She is being forcefully held here,” said the younger one, pointing at the third woman.



Kasturi Kamli, 60, former sex worker. Photo: Raksha Kumar

“Which law sanctions holding an adult woman captive?” questions Pai. “ITPA does. Against

an NGO wanting to rehabilitate bonded labourer overflowing with money?” asked Kambli. “If you say you want to spend money rehabilitating sex workers, there is a ton of money out there,” she said.

Repeated attempts to reach out to representatives of the Home Ministry and the Ministry of Women and Child Welfare failed. “We cannot talk about a Bill once the Cabinet is considering it,” said a high ranking official from Home Ministry who asked not to be named.

If trafficking is the menace the government wants to tackle, then trafficking people for exploitative labour is a **larger contributor** to the menace. “The government must revisit the predicament of lakhs of Indian migrant labourers who have for decades faced precarious working conditions in the Gulf. It must consider the plight of lakhs of workers toiling within the global supply chains of Western corporations that manufacture in India through elaborate sub-contracting arrangements,” **writes** Kotiswaran.

“Above all, the government needs to pause and dig deep into its own long and complex legal history, as well as its unique vision of dealing with extreme exploitation that is understood today under the conceptual umbrella of ‘trafficking’. It then needs to work out the precise relationship between the varied streams of anti-trafficking law and consolidate these, conceptually (in terms of the relationship between forced labour, bonded labour, the legal status of the debt, trafficking and procurement), definitionally and in regulatory terms, while

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