

Consultative Workshop on “Reimagining anti-trafficking legislation” in light of the 2018 Trafficking Bill

June 22, 2018

The Work in Freedom programme of the ILO DWT for South Asia and Country Office for India, together with Dr. Prabha Kotiswaran (King's College London) convened a consultative workshop on “re-imagining anti-trafficking legislation” in light of the 2018 Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 (the ‘Bill’) on June 22, 2018. The workshop was attended by approximately 55 participants including academics, representatives of international organisations, women leaders from trade unions, women's movement, labour lawyers, the women's movement, the sex workers' movement, transgender rights movement and bonded labour rights movement.

Participants unanimously agreed that there was an urgent need for trade unions, civil society actors and social movements to mobilise articulate and express the challenges with the current version of the Bill, before the introduction of the Bill in the monsoon session of Parliament. They viewed the Bill as a highly problematic legislation, which has a potential to violate the rights of various vulnerable and marginalised workers.

Some of the key observations made by the group are presented below.

- ❖ The Bill demonstrates indifference to the growing agrarian crisis, the high levels of distress migration and increasingly precarious forms of labour across the country, the loss of jobs due to demonetisation and tax reforms, faulty developmental projects, local conflict or crises, local migration due to caste bias, poverty and poor work conditions or wages, which renders individuals and communities vulnerable to trafficking. The government is increasingly relying on criminal law as a method of addressing deep socio-economic inequalities, which cannot be addressed through ‘economic reforms’.
- ❖ Legal experts are of the opinion that the Bill seeks to abrogate a history of labour law jurisprudence developed under the Indian Constitution.
- ❖ The Bill is not necessary given the existing laws on trafficking, bonded labour, contract labour and inter-state migrant work.
- ❖ In the process of addressing Article 23 of the Constitution (which prohibits forced labour, including trafficking of human beings and *begar*), the government through the proposed Bill is violating Article 21 of the Constitution (right to life) as well as several constitutionally guaranteed freedoms including freedom of occupation, speech and expression and movement.
- ❖ The Bill has been framed at a time when criminal law is increasingly used to address complex social problems including child rape, child marriage, stalking, triple talaq and crimes committed by juvenile sexual offenders.
- ❖ The Bill is a new low for a criminal law, one that effectively violates the rights of defendants to a fair trial, with overbroad definitions of offences, lack of right to anticipatory bail, presumptions of burdens of proof, stringent

minimum sentences, cognisable and non-bailable offences, inconsistent gradation in offences and the creation of absolute liability offences. In this respect, it is on par with anti-terror laws.

- ❖ It also enters into the domain of labour law, challenging the very principles of the law which focus on welfare and progressive incremental compliance. This has the potential to kill jobs, render people jobless and gives no opportunity for the employer to correct, which is the basis for labour law.
- ❖ Participants expressed concern about the lack of commitment of resources to the Nirbhaya fund and delays in setting up fast track courts. The current Bill could similarly be starved of resources.
- ❖ The Bill suffers from lack of consultation with key stakeholders including trade unions, employers' organizations, women's groups, sex workers, workers' groups, migrant rights' groups and even government ministries such as the Ministry of Labour and Employment, Ministry of Skills Development, Ministry of Micro and Small Enterprises, Ministry of Social Justice and the Ministry of Law among others.
- ❖ The Bill reflects inconsistent familiarity with both principles of law as well as the existing legal corpus. It is not likely to pass constitutional muster.
- ❖ The Bill does not comply with the direction of the Supreme Court in the Prajwala case (2004) to draft a comprehensive anti-trafficking law.
- ❖ The statement in the Bill's Preamble that it is the first law on the subject is inaccurate. It undermines the existing better legislation and seeks to supersede better legislation.
- ❖ The Statement of Objects and Reasons of the Bill makes incorrect statements as to the state of the existing law on trafficking.

❖ **Ramifications for General Public:**

The Bill is a tool for surveillance with limited data protection and which compromises the right to privacy of citizens.

The strategy of raids, rescue and rehabilitation ignores the consent of adult persons thereby violating their human rights.

The strategy of repatriation with consent is meaningless where the only alternative is rehabilitation in government homes. Victims do not want rehabilitation in shelter homes, but payment of back wages and better employment.

Institutions set up under the Bill particularly the District Anti-Trafficking Committee have broad powers with little accountability and no right of appeal. The Bill affects the interests of employers, property owners and internet service providers through sweeping criminal law provisions; its enforcement could freeze entire sectors of the economy.

The bill has offences unrelated to trafficking and could effectively ban websites with pornography as well as dating sites.

❖ **From Trade Unions:**

The Bill does not have a definition of forced labour or migrant work.

The Bill goes against the spirit of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen Act, 1979. While both these laws require the registration of workers from which they derive workers' rights, entitlements, and benefits, the Bill focuses exclusively on rehabilitation.

The Bill does not address the question of what happens to the wages of a worker when they are found to be in forced labour.

There is no corporate responsibility for trafficking and forced labour, only liability of individuals; there is no provision for corporate criminal liability.

Issues relating to employment have been taken out of the purview of labour law and placed under criminal law, which is not adequately equipped to deal with issues of economic denial, discrimination in employment and protection of workers' rights

The Bill does not address the problem of workers trafficked to the Middle East where according to the research of international organisations like Reprieve, Indian workers are disproportionately awarded the death penalty.

❖ **From Bonded Labourers' Groups**

The Statement of Objects and Reasons does not mention bonded labour and seeks only to encounter the economic causes for trafficking, rather than social causes such as the caste system, which is responsible for the bonded labour system.

The Bill goes against the spirit of the Bonded Labour System (Abolition) Act, 1976 (BLSAA) in more ways than one; it focuses on raid, rescue and rehabilitation rather than economic rehabilitation; its model of rehabilitation is state-centric rather than community-based (as envisaged in the BLSAA).

The relation of the Bill to existing laws on bonded labour, contract labour and inter-state migrant work is unclear.

This leads to the conclusion that the Bill pays lip-service to bonded labour and mentions bonded labour only to legitimise its approach to trafficking.

The bill also does not provide for opportunities enabling businesses and employers to address decent work deficits and forced labour. If implemented, the bill could lead to the closure of businesses and loss of employment.

❖ **From Migrants' Rights' Groups:**

The Bill does not heed the lessons of 18 years of international advocacy for a rights-based critique of the anti-trafficking movement and its collateral damage for migrants and sex workers.

India as the largest receiver of remittances needs to adopt a more worker-friendly approach in negotiations on the Global Compact on Migration.

With a single clause in the Trafficking Bill the government is seeking to bring migrant domestic work and migrant construction work within the purview of the criminal law.

The wording of this Bill would impact several waves of workers migrating from the different parts of India for work, by putting them under the criminal justice system, including migration of skilled workers.

The Bill makes no mention of safe migration or the rights of migrants.

Internationally, too, there is a general laxity in dealing with the labour aspects of trafficking. This is evidenced in how the 104th, 105th, and the 106th International Labour Conferences of the ILO, dealt with trafficking and forced labour in supply chains of big manufacturers of goods. The attitude of the international community leaves a lot to be desired.

❖ From Sex Workers' Groups

Although the Minister for Women and Child Development claims that the Bill will not affect the rights of sex workers engaging in voluntary sex work, in fact several provisions of the Bill target sex workers (e.g. offence of aggravated trafficking resulting in transmission of HIV and pregnancy which is more likely to affect sex workers than other workers; Section 39(2)—soliciting—which may lead to trafficking)

The Bill unthinkingly extends strategies in the Immoral Traffic Prevention Act, 1986 applicable to sex workers to other sectors of work (e.g. punishing landlords, lessors of properties where trafficking takes place)

There is no accountability for private-run rehabilitation homes under the Bill.

❖ From Transgender Rights Groups

The Bill does not conform to the spirit of the decision of the Supreme Court in the 2014 NALSA judgement on the rights of transgender persons.

The offence criminalising the administration of chemical substance will criminalise transgender persons undergoing medical treatment for gender reassignment and runs afoul of the Yogyakarta principles on human rights obligations relating to sexual orientation and gender identity.

While the Bill criminalises trafficking for begging, what is essential is decriminalising begging itself. In not doing so, it criminalises one of the main sources of income for transgender persons, namely, begging.

The Bill will undermine alternate family arrangements and support systems of transgender persons by criminalising *gurus* as traffickers who facilitate begging by their *chelas*.

The Bill's provisions for seizure of assets will result in the impoverishment of transgender and hijra families.

The Way Forward

Civil society organisations are keen to dispel the myth that trafficking exclusively deals with sex work.

There is an urgent need to oppose the Bill from an employment and labour perspective.

For the effective prevention of forced labour and trafficking, what is needed are land reforms, compensation for those suffering from displacement, robust enforcement of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, and the realisation of the right to education and the fundamental right to work with dignity.

Long-lasting responses to preventing forced labour and trafficking have to be rooted in labour laws relating to fair and ethical recruitment (such as Bonded Labour Act, Inter-State Migrant Workmen Act, Contract Labour Act etc.), by ensuring the increased coverage of labour laws relating to minimum wages and working conditions and the increased commitment of resources to labour governance and enforcement, enabling access to entitlements through the labour boards etc.

Existing laws on bonded labour, contract labour and inter-state migrant work as well as rehabilitation schemes for bonded labourers extended in 2016 to forced sex workers and forced child labourers must be enforced robustly.

Creative solutions such as the extension of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 to

various sectors at a national level is necessary in order to prevent the precarious living and working conditions of Indian workers, a large percentage of whom are in the informal sector.

There is also a need for a central law to regulate working conditions and wages for domestic workers including registration of recruitment and placement agencies (private employment agencies).

Core ILO conventions must be put together as one law and the license of a business ought to be cancelled if any one law is violated.

India needs robust laws to hold corporations liable for forced labour in global supply chains.

The government must enact a law to register and regulate the private employment (placement and recruitment) agencies under the labour law framework, recognizing the rights of the workers, their employers as well as the role played by such employment agencies and recruitment intermediaries as legitimate labour market players, rather than criminalizing them