

VIOLENCE AGAINST PEOPLE IN SEX WORK IN INDIA SUBMISSION
TO THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN - MS. RASHIDA MANJOO

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Introduction

The Special Rapporteur on Violence Against Women (SR – VAW) has previously observed that -

"measures to address trafficking in persons should not overshadow the need for effective measures to protect the human rights of sex workers".¹

The Supreme Court of India has observed -

"prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed..."

Broadly, there are three aspects of the matter :-

(1) Prevention of trafficking,

(2) Rehabilitation of sex workers who wish to leave sex work, and

(3) Conditions conducive for sex workers who wish to continue working as sex workers with dignity."²

Sex work has traditionally been seen as a form of violence and exploitation. The social movement sex workers' rights has consistently argued that while there is violence within the sex industry, the exchange of sexual services for money does not in and of itself constitute violence.³

The demand for decriminalisation of sex work means the removal of all laws criminalising consensual adult sex work. This includes the selling and buying or organising sexual services such as solicitation, renting premises, 'brothel keeping' and living off the proceeds of sex work. It does not mean removal of laws that criminalise exploitation, trafficking or violence against sex workers.

To introduce an understanding of legal procedure, sex workers are categorised as 'victims' under the law. When the police raid a brothel, lodge or detain individuals who solicit sex workers, the women are 'rescued' and subsequently produced before a judge, before they are placed into protective custody of reception centres and/or state homes. Here, they remain until their release is ordered or are claimed by family. The detention is indefinite, and the procedure for independent release is cumbersome.

In the context of shelters and the city of Bangalore, it has been our experience that shelter homes often double up as detention cells for women. The Immoral Traffic (Prevention) Act, 1956 institutionalizes shelters homes concerning sex workers. The legislation defines and distinguishes a 'corrective institution' from a 'protective home'. In the city of Bangalore, however, the Department of Women and Child Development runs residential facilities in the form of 'reception centres' and/or 'state homes', where, as a functionality, these facilities do not differentiate between a 'corrective institution' from a 'protective home'. Women are detained, there is no freedom to leave the facility and there is no information provided on conditions for release.

¹ 4UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p 19. A/HRC/26/Addl.1

² Budhadev Karmaskar vs State Of West Bengal, SC Criminal appeal no. 135 (2010)

³ VIOLENCE AGAINST PEOPLE IN SEX WORK IN INDIA

http://www.sangram.org/resources/violence_against_people_in_sex_work_in_india.pdf

CURRENT CONCERNS WITH SHELTERS

I. Agency

There is no recognition of adult women who choose to enter sex work of their own volition. Sex workers are constantly in the dichotomy of victimhood and a perception of immoral sexual deviance. This means that the systems that are set up to address their possible challenges inherently invalidate their dignity and their agency while taking decisions on matters concerning themselves.

Additionally, there are very narrow mechanisms for sex workers to address the disproportionate levels of violence inflicted by law enforcement such as abuse, brutality, sexual assault, rape, harassment, extortion by the police or abuse, neglect and psychological trauma faced in shelter homes.

A social welfare measure intended to treat sex workers as victims/survivors, becomes an exercise in uprooting of consenting sex workers, extreme violence and detention. It is rare to find the arrest of traffickers in such raids.⁴The process of 'rescue' of these sex workers involves beating, dragging by the hair, abuse, looting by the law enforcement personnel conducting the raid. There are then placed in the state home.

Women have been detained in the state home for as long as 7 months without being able to contact their families. If they are finally released, they return to far worse circumstances, they lose their accommodation and are pushed further into abject poverty. Many sex workers also have young children, who, when they are detained, become abandoned or are forced into the care of unknown individuals.

II. Legal representation

Women who are placed into the custody of the state home have no access to legal representation. As a perquisite women are produced before a judge, usually immediately after they are detained from raids or spending hours in police stations. Once in the shelter visitations are limited only to immediate family members. The only redressal for release is if a family files a representation in court.

The Immoral Traffic (Prevention) Act, 1956 provides for release of women and expressly states that they cannot remain in custody for a period exceeding three weeks. They are produced as witnesses in cases and have them placed in a single location makes it convenient for the police personnel. In almost all the cases the time exceeds the three week limit. That is coupled with the fact that the women detained do not have any access to lawyers to challenge the forced custody in court.

The State Home does not have procedure or facilitation for legal aid and support for women. There is also no information available on how many women are in State Home, what their duration of stay has been and what is the status of their cases. If support groups and independent civil rights lawyers wish to represent the detained women, the facility blocks of access.

⁴ VIOLENCE AGAINST PEOPLE IN SEX WORK IN INDIA

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Case Study 1

Malini (name changed) was detained in the state home for six months. She was first detained by the police in the station after a raid and subsequently in placed under protective custody. She had a minor child, aged 5 years, who had been left uncared for and her family did not know her location. The State Home refused to her lawyers either see her or allow her to sign a Vakalath (Memorandum of Appearance). Malini has no family other than her minor child. Her lawyers were forced to file a grievance with the court, argued that every individual under the Constitution is granted the right to legal counsel and that the court must direct the State Home to allow lawyers meet Malini. She was finally released and struggled for over 4 days to locate her child.

III. Welfare and Facilities

It is critical to note that the State Home shelters in Bangalore accommodate several categories of women.

The dignity of women is rarely considered and the shelter home in Bangalore City, specifically houses women who are homeless, who have faced domestic violence, are abandoned, unwed and pregnant, mentally unsound with no guardians and victims of the Immoral Traffic (Prevention) Act, 1956 ie. sex workers. These women are housed all together and often find each other's company extremely challenging. It is important to add that shelter homes are not accessible to concerned or vested organisations or individuals. The process of running, the functionality and the day to day challenges of these places are closely guarded secret, speaking to its nature as a coercive, abusive and volatile space.

It is also not uncommon for women in shelter homes to not be informed about the proceedings or the plans that have been made by the officials regarding them. Women remain clueless about what exactly is being done about their cases.⁵

a. Health

Given that there the women in the shelters come from diverse backgrounds and contexts, it is absolutely critical that some form of mental health support and professional counselling be offered. As it stands, currently there no such provision. Administrative staff and wardens are expected to fill these roles without any sensitisation or training.

Shelters have also been criticised for being extremely unhygienic with poor sanitation when it comes to lavatories, bathing rooms and waste management. Women at reproductive ages do not get sufficient sanitary napkins and are expected to pay bribes to wardens if they require toiletries, clean sheets, blankets or soap.

Food provided to the women are low in nutrition, and when there is scarcity, many of them go under nourished.

b. Infrastructure

The Bangalore State Home and shelters are located in a single large campus that is divided into several separate facilities for the mentally challenged, minor boys in need of protection, minor girls in need of protection and women. As mentioned previously in this submission, women from a diversity of contexts are forced into being housed together. The building occupied by is reinforced with bars along all windows and across the open terrace.

Visitors are seldom permitted to enter and when they are, the exchanges sometimes occur through a barrier of bars. What becomes a long term residence for many women is neither conducive to

⁵ Report on Psychosocial Care For Women In Shelter Homes by National Institute of Mental Health & Neuro Sciences & United Nations Office on Drugs and Crime

rehabilitation nor differentiated from a prison facility.

IV. Rehabilitation

The primary purpose of most rehabilitation measures is a push for sex workers to exit sex work. Whether within the legal framework or political will, there is a skewed investment in debilitating aspects of commercial sex work without really addressing the challenges women will face once they leave the profession. We have already stated that the rescue and rehabilitation of female sex workers is controversial because often women are abused during police raids and held against their will.

Rehabilitation measures also do not acknowledge the (sometimes) erratic nature of sex work or the fact that many women may not only be sex workers, but also labour in other vocations such as domestic work, etc. When rescued and forcefully placed into shelters, the economic situation of these women worsen. They cannot access their resources, are not able to pay their utilities or rent and lose whatever self-established stability they have. Shelter homes also cut off access and communication for the support systems of sex workers, be it family, community based organisations or friends which further isolates them.

Mid 2016, the Draft Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill was released for responses. Through a consultative process, responses were sent to the government heavily critiquing the bill.

The draft legislation was problematic, similar to the measures currently in place. No specific framework for comprehensive welfare and rehabilitation was presented in the draft bill. Case in point, it defines the term *“aftercare”* as - *“making provisions for support, financial or otherwise as prescribed by the appropriate Government, to a victim, who has left the Special Home and in the opinion of the District Anti- Trafficking Committee ready to reintegrate to join mainstream society”*. This definition makes access to aftercare contingent on detention in a special home. Aftercare should be available to victims, whether they choose institutionalization or not.

The Draft Bill also does not contain any stipulations for comprehensive care and quality provided by a state home. The conditions in protective institutions are often not conducive for the mental and physical well-being of residents. For example, the State Home for Women in Bangalore shelters women with mental health challenges, along with women victims of trafficking. Regulating homes of protective custody must also mandate basic standards of living conditions that such institutions should adhere to. Protective homes are often sites of extreme abuse and trauma for women. However, the Draft Bill does not create any standards that homes must adhere to. Moreover, there is no process of evaluation of the quality of living in homes, neither are there penalties for harassment and abuse in shelter homes.

Recommendations

1. Independent review of all shelter homes, state homes and accommodations run or registered by the state for women be conducted, that will assess the quality of infrastructure, rehabilitation measures taken, and health and sanitation facilities.
2. Professional mental health support and counselling without stigma must be an integral and frequent part of shelter homes.
3. Provision of Open University Affiliated education courses with degrees and credits for women.
4. Direct shelters and state homes to discontinue practices of coercion and forceful rehabilitation.
5. Legal aid and access to legal counsel be made available in all shelters, including specific investigative powers for women who have been trafficked, are survivors of domestic violence or sexual assault.
6. All vocational training and any subsequent income as a result of training, be it sale of products etc be remunerated to each woman
7. Periodic independent reports on the welfare, status and health of women who leave the state home should be produced for review.