

## CHALLENGING THE NARRATIVE: ASSESSING THE RAMIFICATIONS OF THE TRAFFICKING IN PERSONS (PREVENTION, CARE AND REHABILITATION) BILL, 2021 ON THE RIGHTS OF CONSENSUAL SEX WORKERS

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### ABSTRACT

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*Sex workers comprise a particularly vulnerable group in Indian society, which does not have the necessary social security nets for their well-being. This flawed paradigm, which portrays a notable disregard for the consent of sex workers, leads to viewing all sex workers as either criminals or helpless victims in dire need of rescue and institutional rehabilitation. The punitive and restrictive approach embedded in the anti-trafficking discourse in India has augmented the vulnerability of consensual sex workers by driving the trade underground, reinforcing stigma, and impeding access to justice for the blatant violation of their human rights. This article delves into the implications of the recently proposed Draft Bill, namely the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill of 2021 on the liberties and entitlements of consensual sex workers. The compelling requirement to establish legal frameworks with a rights-based approach to protect sex workers from discrimination, exploitation, and violence, and to ensure them an opportunity to negotiate for better and safe working conditions in order to reclaim their agency and space in the community of choice as citizens of this country is suggested in this paper.*

**Keywords:** *Consensual Sex work, Anti-Trafficking Bill, Human Rights, Rehabilitation, Access to justice*

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### ***Introduction***

Recently, in the case of *Budhadev Karmaskar v. State of West Bengal and Ors.*,<sup>1</sup> the Supreme Court, in the exercise of its constitutional power of ensuring complete justice,<sup>2</sup> chartered a progressive roadmap through the issuance of several directives to the State for upholding the rights of individuals engaged in sex work. Taking note of the historic injustice and deprivation suffered by sex workers owing to the stigma attached to their profession, the Court reaffirmed that the dignity of sex workers must not be undermined, as all individuals in the country have an inherent right to live a dignified life.<sup>3</sup> In accordance with the recommendations put forth by the previously constituted panel<sup>4</sup> in the above-mentioned case<sup>5</sup> for working out a comprehensive code of conducive conditions for sex workers to lead lives of dignity, the Apex Court, amidst other directions to safeguard their right to health, safety, and privacy, has categorically directed the police and law enforcement agencies to refrain from re-victimization of sex workers by ensuring that they are not subjected to discrimination, abuse, and violence.

These directives instil a fresh ray of hope in the lives of sex workers who have always received the shorter end of the stick, surviving in abominable living conditions where access to quality healthcare, legal support, or social security nets have been almost non-existent. Their crusade for the legal recognition of this trade like any other profession has been long, so

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<sup>1</sup> 2022 SCC OnLine SC 704.

<sup>2</sup> Constitution of India, Art. 142, Cl.1. 1.

<sup>3</sup> Constitution of India, Art.21.

<sup>4</sup> In compliance with the court order dated July 19, 2011, a panel was constituted consisting of Mr. Pradip Ghosh, serving as the Chairman, Mr. Jayant Bhushan, a Senior Counsel, Usha Multipurpose Co-operative Society represented by its President/Secretary, Durbar Mahila Samanwaya Committee represented by its President/Secretary, and Roshni represented by Ms. Saima Hasan. The panel was given specific terms of reference to make recommendations which included:

(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. The third term of reference was later modified by an order dated 26.07.2012, to “conditions conducive to sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution of India.”

<sup>5</sup> *Buddhadev Karmaskar v. State of West Bengal*, 10 SCALE 558 (Supreme Court 2011).

they may live a life of dignity without the fear of social ostracization or getting apprehended by the law and exploited by morally non-compunctious law keepers. However, taking note of the existing anti-trafficking legal regime in India, it appears that safeguarding the rights of sex workers still seems to be a far cry. Since its inception, the Immoral Traffic Prevention Act, 1956, (*hereinafter* referred to as ITPA), which is the primary piece of legislation at the domestic level to combat human trafficking, has been problematic owing to its definitional inconsistencies and conceptual loopholes. An apparent glimpse of ITPA depicts that it does not create a more general offence of trafficking outside the context of prostitution. The law also seems to somehow conflate all forms of sex work with prostitution and prostitution with the offence of human trafficking. The law perceives prostitution as the commercial exploitation or abuse of persons for sexual purposes<sup>6</sup> and conveniently chooses to ignore prostitution ‘by choice’, owing to the moralistic assumptions around sex work. Equating voluntary sex work with sexual exploitation is a misconstrued notion for it is ‘trafficking for commercial sexual exploitation’ which is (ought to be) criminalised under the law, and not consensual sex work by adult sex workers, given the fact that sex work per se is not punishable by ITPA unless carried in or in close proximity to a public place.<sup>7</sup>

Several provisions of the ITPA have been detrimental to the interests of sex workers. The act of seducing or soliciting for the purpose of prostitution in a public place is criminalised under the Act<sup>8</sup>, which accounts for maximum prosecutions. The apathy of the law towards sex workers is visibly clear from this provision, as it fails to realise that this may be the sole option for earning better and butter for a sex worker who is now voluntarily into the trade, finding no other means of employment in our typically patriarchal, gender-biased Indian society, which is disdainful of sex workers. This criminalized, carceral approach, which smacks of a notable disregard for the consent of sex workers, makes them susceptible to discrimination, abuse, and violence. The ITPA criminalizes living with a prostitute, and on the earnings of a prostitute<sup>9</sup>, without specific provisions for children of sex workers who are often booked for the offence. The fact that children of sex workers who even after attaining majority live in the brothels depending on their mother’s income for survival, owing to their poor socio-economic background and lack of education, has not been taken into consideration. This provision is in clear derogation of the recommendation of the Supreme

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<sup>6</sup> The Immoral Traffic Prevention Act, 1956, Sec. 2(f).

<sup>7</sup> The Immoral Traffic Prevention Act, 1956, Sec. 7.

<sup>8</sup> The Immoral Traffic Prevention Act, 1956, Sec 8.

<sup>9</sup> The Immoral Traffic Prevention Act, 1956, Sec. 4.

Court-appointed panel in Karmaskar's case<sup>10</sup>, which emphasised in its Sixth Interim Report, dated 22.03.2012 that separation of children of sex workers from their mothers should be avoided. Further, pieces of evidence show that the unbridled powers of the police to conduct raid and rescue operations based on allegations of sexual exploitation,<sup>11</sup> the forcible evictions of sex workers from their premises,<sup>12</sup> disregarding their volition, and consequent detention in institutional rehabilitation<sup>13</sup> in the garb of protection has done more harm than benefit to whom they sought to protect. The prevailing narratives surrounding anti-trafficking efforts in India which has a punitive and restrictive approach to eliminate sex work rather than safeguarding the interests of sex workers, have further heightened their vulnerability by pushing the trade underground where they have no access to justice, no agency, and no recourse.

The debate and discussion on the necessity of amending the ITPA have been ongoing for a long time and the Union Government had clarified way back in 2016 that a proposed legislation, encompassing certain recommendations put forth by the committee appointed by the Supreme Court is in the pipeline. However, the Union Government expressed certain reservations regarding specific recommendations of the Panel, on which it has not yet filed a formal response. Those recommendations are as follows:

- (i) *“The recommendation emphasising that the police should abstain from initiating any criminal action when the sex worker is an adult and voluntarily participating in the activity.*
- (ii) *The recommendation stipulating that the unfettered powers of police to raid (any) premises and arbitrarily arrest and detain sex workers be curbed.*
- (iii) *The recommendation that the Government must duly consider the involvement and feedback of sex workers in the decision-making process pertaining to the formulation of laws and policies that directly affect them.*

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<sup>10</sup> *Supra* note 5.

<sup>11</sup> The Immoral Traffic Prevention Act, 1956, Sec 15.

<sup>12</sup> The Immoral Traffic Prevention Act, 1956, Sec 18.

<sup>13</sup> The Immoral Traffic Prevention Act, 1956, Sec 10A.

- (iv) *That no child should be separated from the sex worker solely based on her engagement in the sex trade.*<sup>14</sup>

The Union Government contended that the complete prohibition of police intervention with sex workers is not logically feasible. It further argued that it is extremely challenging to distinguish between those who are engaged consensually in the trade from the ones who are coerced into it, owing to the susceptibility of sex workers to manipulation. The necessity of placing the rescued women in protective shelter homes for their own safety and well-being was strongly emphasized.

By relegating itself from the responsibility of ascertaining the veracity of claims made by sex workers engaged in consensual adult transactions, the government has conveniently distanced itself from confronting the intricate complexities of the issue and its obligation to safeguard the rights and dignity of sex workers. Needless to say, the blatant refusal to adopt these progressive recommendations has far-reaching implications for the rights of adult, consenting sex workers. Continued criminalization and the unfettered powers of police to detain sex workers upon arrest without justified cause would not only perpetuate their vulnerability but would also make sex work highly stigmatized. As a result, sex workers would be less inclined to seek protection or report crimes due to the fear of police action (against them) and so would have less access to support and services, thus making it easier for organized criminal networks to exploit them into non-consensual exploitative activities. The forcible separation of the mother from the child not only can cause extreme emotional distress affecting the health and well-being of the mother but also is a direct infringement on her right to have a family. If limited agency is granted to sex workers to engage and participate in the decision-making process, this would adversely impact the development of effective and inclusive policies addressing their needs, rights, and concerns.

In light of these observations, it is to be noted that the Union Government has come up with several drafts of the Anti-Trafficking Bill earlier in the year 2016<sup>15</sup> and 2018<sup>16</sup>, which could not see the light of the day, for lacking a cohesive, effective, developmental, and rights-based

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<sup>14</sup> This recommendation was suggested by the Supreme Court-appointed panel in the 6<sup>th</sup> Interim Report dated March 22, 2012. Furthermore, it was suggested that if a minor is found residing in a brothel, it should not be automatically presumed that the concerned child is trafficked. If a sex worker asserts that the minor is her child, appropriate tests should be conducted to ascertain the veracity of the claim, and if the claim is substantiated, the minor (child) should not be forcibly separated from her mother.

<sup>15</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016.

<sup>16</sup> The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018.

approach to combat trafficking. Recently, the Government has come up with the latest Draft Bill, viz., *The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021* (hereinafter referred to as the Draft Bill of 2021), which is perhaps the most comprehensive and detailed version to date, and claimed as an improvised version based on the feedback on The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 (hereinafter referred to as the Draft Bill of 2018). The Draft Bill of 2018, which was passed only in the Lower House, received criticism from various factions. The Bill was deficient in providing a lucid definition of trafficking, which is an imperative element for an effective response and international cooperation. The Bill failed to align with the established norms of international standards of human rights and disproportionately relied on the criminal justice system. It carried the potential of adversely affecting certain marginalized groups, namely consenting adult sex workers, migrant labourers, and transgender individuals. This Bill faltered in differentiating between voluntary sex work and trafficking; its narrow scope and approach towards consensual sex work had the capacity to result in excessive regulation. The proposed raid-to-rescue model in operations could engender human rights violations and inflict further harm to victims. The provisions aimed at criminalizing irregular migration could inadvertently penalize trafficking victims who are forced into the hands of smugglers due to the absence of safe migration channels. Furthermore, the Bill's ambiguous clauses criminalizing activities such as electronic communication, even without valid evidence of trafficking, posed a threat to civil liberties and freedom of expression. Overall, the Draft Bill of 2018 failed to have a comprehensive approach rooted in human rights and victim-centricity and failed to adequately address the protection and assistance of victims.

Currently, the Draft Bill of 2021 is due to be tabled soon in the Parliament after revisions (as stated by the Union Government through an affidavit filed before the Apex Court dated 01.12.2022). I attempt to discuss the Draft Bill of 2021, particularly in the context of deciphering its social and legal implications on the rights of adult, consenting individuals engaged in sex trade, in the next segment.

### ***The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021: Mapping The Concerns***

The intended purpose of the Draft Bill of 2021, as discerned from its stated objective, is to effectively combat the endemic issue of human trafficking through a robust framework and to

meticulously ensure the care and support to trafficking victims, particularly women and children, helping them to rebuild their lives<sup>17</sup> Adopting a holistic approach, the Bill recognises the need to create a supportive environment with the availability of appropriate legal, economic, and social measures that empower victims and assists them in reintegrating into society. However, the thorough scrutiny of various provisions that do not align with the intended objective of the Bill generates doubt on the efficacy of the Bill to achieve its intended purpose.

The Draft Bill of 2021 leaves various definitions vaguely defined which is problematic and is going to have a serious impact. The definition of 'trafficking' outlined in the Bill<sup>18</sup> is inconsistent; while the provision initially acknowledges the element of transportation, it later deviates from this aspect.

Explanation 4 to Section 23 of the Bill states,

*“A victim need not physically move or be transported from one location to another for determination of the offence of trafficking in persons.”*

By discarding the element of transportation as a prerequisite for the offence of trafficking, the Draft Bill takes the nature of the offence into another realm and establishes it within a wide, imprecise, and overly inclusive framework of 'exploitation.' The proposed definition of 'exploitation'<sup>19</sup> lacks clarity as it encompasses the act of causing harm to or deriving of benefit or gain from a victim without appropriate consideration for one's advantage or the benefit of another. Owing to the sweeping definition, a multitude of activities, even legitimate, could potentially be categorized as trafficking. For example, if an individual abuses his position of authority and exploits a worker in a financially vulnerable position withholding the latter's legitimate due, the individual could be deemed a trafficker, as per the provisions of the Bill, which fails to clarify where and how the distinction is to be drawn.

Another overarching concern with the Draft Bill of 2021 is the introduction of the already overburdened National Investigation Agency (NIA) as the primary agency for investigation and prosecution<sup>20</sup>. How the NIA would coordinate with the Anti-Human Trafficking

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<sup>17</sup> The Draft Bill of 2021 includes transgender persons, besides women and children, within the purview of victims.

<sup>18</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 23.

<sup>19</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 2(7).

<sup>20</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 3(3).

Committee (AHTU) established at the district level<sup>21</sup> by state governments is however left vague in the Bill, which could help traffickers enjoy impunity. By bringing NIA to the table and empowering it to dilute and whittle down state powers, there is ample scope for jeopardizing the federal structure as well. Besides, failing to address the root causes of trafficking, an overly carceral approach permeates through the Draft Bill of 2021 with the imposition of high minimum mandatory punishments, invoking of strict liability offences, stringent bail provisions<sup>22</sup>, the introduction of the death penalty<sup>23</sup> which carries the potential of arbitrarily hitting hard vulnerable communities from socio-economically backward classes and religious minorities and the overturning of the burden of proof<sup>24</sup>, undermining the fundamental principles of criminal law jurisprudence that hinges upon the bedrock principle of the presumption of innocence. All these provisions carry the potential to engender ceaseless incarceration and can critically impact the individual's fundamental right to life and liberty.

### ***Analysing The Draft Bill's Myopic Viewpoint: Implications for The Rights of Consensual Sex Workers***

On an examination of the impact of the Draft Bill of 2021 on sex workers, it is noted that the Bill in its entirety is premised on the notion that sex work is exclusively a result of coercion or victimization and the strategy therefore should be of rescue and rehabilitation. Looking at the Draft Bill from the lens of an adult consenting sex worker, we find a deeply flawed paradigm that does not align with the principles of rights and collective bargaining but believes in relegating all sex workers to the status of helpless victims.

#### **A. The Conundrum of Consensual Sex Work as an Offense: The Continued Legacy of the State's Paternalistic, Moralistic Approach**

The Draft Bill of 2021 voices a clear legislative intent that every sex worker is a trafficked victim, and therefore condemning all forms of sex work as an 'exploitative' practice, the law purports to criminalize prostitution.

Section 30 (1) of the Draft Bill underlines,

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<sup>21</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 2(6).

<sup>22</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 49(3).

<sup>23</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 26(4).

<sup>24</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 46.



*“Whoever, knowingly or having reason to believe that a person is a victim, exploits such person, or takes benefit out of the exploitation of such person, shall be punished with rigorous imprisonment for five years, and shall also be liable to a fine up to twenty-five lakh rupees”.*

Furthermore, Explanation I to Section 30 clarifies,

*“For the purposes of determination of an offence under this section, whether any consideration in terms of money or any other form of benefit or remuneration has been given to a victim who has been exploited, or to any other person on his behalf, shall be immaterial”.*

The impact of this flawed interpretation of sexual exploitation being synonymous with sex work is crucial, for it blatantly disregards the volition of consensual adult sex workers who have voluntarily chosen to enter and remain in the profession. Not all sex workers are trafficked or necessarily ‘victims’, longing to be rescued and restored, but desirous of being accommodated in the labour framework that would ensure them better, safe, and healthy working conditions and protection from discrimination, exploitation and abuse. The Draft Bill of 2021 however fails to see voluntary prostitution as a possibility. By portraying all sex workers as powerless victims in a state of helplessness, the Draft Bill strips them of their personal autonomy and deprives them of the ability to make informed choices and exercise agency over their own bodies and lives. Rather than recognizing and respecting the diverse motivations and experiences of sex workers, the Bill imposes a one-size-fits-all approach that reinforces powerlessness and perpetuates a cycle of disempowerment.

### **B. Deprivation of Right to Livelihood**

The involvement of any third party in assisting a woman in carrying out sex work is deemed an offense, for which the Draft Bill of 2021 proposes stringent penal measures.

Explanation II to Section 30 clarifies,

*“Every customer, employer, pimp, broker by whatever name called, who causes engaging of services of a victim as a result of which he is exploited, shall, be liable to be punished on conviction under this section.”*

The Bill also includes criminal liability of landlords and lessors of premises where prostitution has been carried out or is likely to be carried out<sup>25</sup>, and directs eviction of offenders from the premises and closure of business.<sup>26</sup>

The Draft Bill, unfortunately, fails to acknowledge that sex workers often face financial hardships and may rely on the support of a privileged person, typically a man, to help them find clients or provide a safe hide-out to offer their services. By criminalizing everyone who would support a sex worker to carry out her work, the Bill hits at the latter's very livelihood as it prevents sex workers in desperate need of financial support from seeking help from anyone who could potentially offer them a means of survival.

Another significant inclusion in the Draft Bill of 2021 is the introduction of pornography within the definition of 'sexual exploitation' which has been expanded to include acts of pornography or the production of any explicit pornographic content.<sup>27</sup> In this context, it is pertinent to note that digital technology came as a saviour to many sex workers whose plight knew no bounds during the pandemic where they somehow managed to keep a living by communicating with customers through digital devices and apps. Even in the post-pandemic times when more people have crashed into extreme poverty, looking through the lens of sex workers, digital devices like mobile phones and apps that are being used are not inherently sexually exploitative spaces but are like digital workspaces and the photos, live videos, recordings exchanged through the digital platforms are their essential working tools. Therefore, when the Draft Bill of 2021 defines all these not as sexual acts but as harmful pornographic acts and automatically equates pornographic acts or production of any material with sexual exploitation, thereby criminalizing it, it naturally robs voluntary sex workers of their employment opportunities. Besides, the constraints of this nature coupled with the denial of the status of a worker come with the potential to drive the industry underground. It also makes the already deprived community more vulnerable to human rights violations, by taking away all rights from them to bargain and negotiate for better and safer working conditions.

### **C. The Misconstrued Approach to Rehabilitation: Detention in the Garb of Compulsory Institutionalisation?**

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<sup>25</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 41.

<sup>26</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 42.

<sup>27</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 2(25).

The Draft Bill proposes a one-size-fits-all service providing rehabilitation model that endorses compulsory institutionalisation of victims in rehabilitation homes. Although the Draft Bill gives a wider definition of rehabilitation<sup>28</sup> which encompasses the restoration of a survivor's physical, mental, and social well-being, the idea of restoration that this Draft Bill proposes is unclear and questionable. The proposed idea of restoration is also a very linear one where sex workers are anticipated to be 'rescued' and put into an institutional shelter for rehabilitation with the ultimate plan of their eventual reunification in their home community/ family, eventually followed up by an individual case management approach.

This model poses several questions. First, the available pieces of evidence clearly show that despite numerous instances of police raids spanning several years, the issue of trafficking remains unabated, thereby exposing the ineffectiveness of this particular strategy. Raids are often characterized by oppressive tactics and violence, blatantly disregarding the dignity of the individuals it purports to rescue. The raid and rescue strategy employed to combat sex trafficking inadvertently leads to pervasive human rights violations. It amplifies their vulnerability, pushing them deeper into precarious situations such as debt bondage and other forms of exploitative practices.

Secondly, being rescued or being pushed into a shelter home might not be a choice for adult consenting sex workers. When the very construct of consent or choice is taken away and sex workers are housed without their consent in a shelter, it becomes virtually a prison where without having committed a crime, someone is being imprisoned. Current research shows that the process of rehabilitation cannot be limited to a shelter home-based model as shelter homes are great only for offering short-term protection and support services. For long-term rehabilitation, shelter homes neither have the kind of services that survivors often require especially for recovery from trauma, both physical and mental, nor can they provide an individualized support system that a survivor may require. Mere skill development facilities provided in shelter homes are ineffective in contemporary times as they are not economically viable. It is seen how often sex workers are burdened with substantial debts suffering from their loss of means of livelihood during their incarceration period and fall into debt bondage or get trapped into other forms of exploitative practices upon their release from incarceration.

There is no maximum period stipulated for being kept in a shelter home. While there is an option to leave a rehabilitation home, the process of release is exasperating as it requires the

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<sup>28</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 2(21).

presentation of an application supported by an affidavit. It is the discretion of the Magistrate who, being satisfied that the application is made voluntarily<sup>29</sup> and being convinced of the capacity or authenticity of the parents, guardian or spouse<sup>30</sup> to whom the so-called victim (not necessarily in all cases) is to be handed over, makes the order of release, and not otherwise. This perspective which favours infantilizing sex workers, who are deemed to be safe only under the care and control of their family members, erodes the autonomy of adult consensual sex workers and undermines their power of decision-making. Furthermore, the eventual reunification of the victims in their home community, which the Bill envisions, is another issue that requires thoughtful consideration. Taking into account the demographic profiles of trafficking survivors, we find that they are often from marginalized communities who were not in their optimal condition of well-being even before being trafficked or entering into prostitution therefore restoration and successful reintegration is complex and a questionable matter for them, especially if their families refuse to accept them back.

#### **D. Encroachment on the Fundamental Right to Privacy**

Various provisions outlined in the Draft Bill of 2021 infringe upon the cherished right to privacy, which is crucial to uphold the principles of personal autonomy, dignity, and freedom in a democratic society. The Bill establishes a worrisome precedent by heavily relying on a ‘network of informers’<sup>31</sup>, effectively encouraging citizens to monitor and report suspicions of trafficking to the police and enforcement authorities. Consequently, this approach runs the risk of undermining individual privacy. Under the pretext of prevention, the Bill grants sweeping surveillance powers to law enforcement agencies without incorporating adequate safeguards against potential abuses. The broad authority given to the police to initiate raids based on minimal evidence<sup>32</sup> further exacerbates this issue, potentially resulting in unjustifiable invasions of privacy without adequate justification. Furthermore, the Bill mandates the tracking of trafficking survivors for an extended period of two years after their release from protection and rehabilitation facilities.<sup>33</sup> While the intention may be to ensure their safety and well-being, this prolonged monitoring raises significant concerns regarding their privacy, leading to a perpetual sense of vulnerability and impeding their successful reintegration into society.

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<sup>29</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec 16(7).

<sup>30</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec 16 (11).

<sup>31</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 8(7)(d).

<sup>32</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 11.

<sup>33</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 20(h).

### **E. Undermining the Financial Agency of Sex Workers**

As the Draft Bill envisages a blanket ban on sex work through criminalization, the Bill labels all proceeds from sex work as 'criminal earnings',<sup>34</sup> encompassing not only traffickers' profits but also the earnings of sex workers, who might have been trafficked earlier but may now be engaged voluntarily. This wide-ranging definition allows for the seizure of assets/tangible or intangible properties.<sup>35</sup> Furthermore, when read with the Prevention of Money Laundering Act,<sup>36</sup> as there is a presumption that the assets are derived from criminal activity, the burden of proving the legitimacy of their assets would fall on sex workers. Unfortunately, as the Bill reinforces a paternalistic approach overlooking the intricate nature of sex work by assuming that all instances of it are forms of sexual exploitation, it fails to safeguard the assets of sex workers (however meagre they may be). This disregard for a sex worker's economic agency, failing to acknowledge the diverse circumstances in which individuals may willingly choose to engage in sex work for economic necessity, reinforces societal stigma and undermines their empowerment to rebuild their lives and achieve financial independence.

### ***Conclusion: Towards Charting a Path Forward for Sex Workers***

Delving deep into the various pitfalls and limitations of the Draft Bill of 2021, it is observed that the current Bill rather than addressing the multitude of factors that contribute to the root causes of trafficking, inadvertently establishes a system that unjustly treats sex workers as criminals. This approach can potentially exacerbate the plight of sex workers who already traverse a difficult path, where impoverishment, discrimination, social marginalization, and oppression intertwine with their journey. Criminalization fosters an environment where blatant violations of the rights of sex workers, including their labour rights, can persist unabated without any accountability of abusers. Scepticism surrounds the effectiveness of the proposed raid-rescue-rehabilitation model; historical evidence spanning several years has revealed how the police, instead of offering the desired protection, exacerbates the existing adversities of affected persons by conducting raids. Furthermore, coercively relocating sex workers to rehabilitation homes hinders their recovery process, perpetuating their dependence on external aid (which is seldom available in adequate terms) and hampers their capacity to regain financial stability. In light of these concerns, the need for revision of the Draft Bill of

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<sup>34</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 2(18).

<sup>35</sup> The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, Sec. 39.

<sup>36</sup> The Prevention of Money Laundering Act, 2002, Sec.24.

2021 cannot be overstated. It is incumbent upon the State to embrace a developmental and rights-based approach and meticulously explore alternative strategies to safeguard the rights and dignity of consensual sex workers. As human rights apply to all human beings, irrespective of any other consideration, the State has a dual obligation to address not only the prevention of human trafficking but also the preservation of fundamental rights of sex workers which is incessantly jeopardized by frequent and invasive raids, stripping them of their dignity and depriving them of their livelihood. To foster a resilient and inclusive society for all, respecting the agency, choice, and consent of adult consensual sex workers is crucial and therefore raises the pressing need to decriminalize adult consensual sex work and develop comprehensive and effective policies with a rights-based approach that aims to amplify the autonomy of sex workers and endow them with empowerment. When engaging in discussions about legislation, a profound understanding of the nuances and complexities surrounding the realm of sex work is significant, which can be understood only when the voices of sex workers are heard and their lived experiences are acknowledged. Therefore, it is crucial to engage in constructive dialogues with sex workers while collaborating with other stakeholders from diverse sectors to devise comprehensive solutions.

The formulation of a law that effectively distinguishes between consensual sex work and trafficking facilitates the identification and addressing of exploitative practices by clarifying the boundaries of exploitation, reduces stigma, violence, and harassment against sex workers, improves occupational health and safety, and which enhances access to social protection and provides them with better access to rights and protection is crucial to positively impact the lives of sex workers. Furthermore, it must be ensured that rehabilitation is community-based as the aim of rehabilitation cannot focus on restoration alone but it needs to emphasize strategies for empowering the survivors to build their resilience and reclaim their agency in their community of choice. Rehabilitation can also not be restricted by any conditions. Rehabilitation support and victim compensation should not be contingent upon rescue; it must be made available to that person irrespective of their circumstances and choices of residence in any community, whatsoever. By adopting these transformative changes, which can go a long way in protecting the rights and dignity of sex workers and preventing their re-victimization, we can strive towards a just society where no one is left behind.