



Strategy Workshop on Trafficking and Labour Migration

31st January 2019, Kochi

Background and Opening



RAFEEL RAVUTHER, (CIMS); TIM RYAN (SOLIDARITY CENTRE); THAMPAN THOMAS (HMS)

In 2011, India ratified the United Nations Convention against Transnational Organised Crimes, 2000, including its Protocol to Prevent, Suppress and Punish Trafficking in person. Presently, there are several laws which deal with specific forms of trafficking. For instance, the Immoral Traffic (Prevention) Act (1986) covers trafficking for commercial sexual exploitation while the Bonded Labour System (Abolition) Act, (1976) deals with punishment for employment of bonded labour.

The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 was introduced in Lok Sabha (Lower House of the Parliament) and passed in July 2018. The Bill provides for the prevention, rescue, and rehabilitation of trafficked persons. The Bill was designed to serve as a comprehensive law to deal with all cases of trafficking. While it is appreciated as a stepping stone, there were gaps and missed opportunities observed by Indian civil society in addressing the rights of Indian migrants who are trafficked outside the country. In view of this, CIMS separately held a consultation with local partners on the advocacy and strategic engagement with the Bill and provisions to stop forced labour mentioned in the New Emigration Bill 2019 on 30th January.

On 31st January, in association with American Solidarity Centre, CIMS held the Strategy Workshop on Trafficking and Labour Migration with the attendance of civil society members in Kerala including trade unionists, lawyers, academics and students. The workshop was designed with the idea of initiating steps towards cross-collaboration as well as awareness of issues pertaining to the Bill. It included panel discussions on trafficking and forced labour; the anti-trafficking bill and Indian migration policy and finally a group discussion session on a plan of action for advocacy efforts.

Rafeek Ravuther, *Director – CIMS* and Tim Ryan, *Solidarity Center*, introduced participants to the theme of the workshop. It was mentioned that the workshop has been arranged at an opportune moment to address the trafficking law. The Bill was introduced when the prevailing laws were felt as insufficient and necessitated a response. With the Bill turning into a law, it creates a necessary environment for the engagement with trafficking to be sufficient. Activists and CSO's help enforce this situation and the upcoming elections in India has become an opportunity to do so. In a global context and Indian context, the Trafficking Bill and the CSO involvement with the Bill is expected to have long-term implications for India's policy position on the issue. Ex – Member of Parliament and current member of the Hindu Mazdoor Sabha, Thampam Thomas officially opened the workshop mentioning

relevant and contemporary cases of trafficking seen in Indian and Keralite society. He mentioned that even in instances of probably smuggling and trafficking, the cycle of poverty that forces victims to look for opportunities regardless of status of trafficking and thereby lead them to a situation of vulnerability.

Session 1: Introduction to Trafficking and Forced Labour



SPEAKERS: REJIMON KUTTAPPAN, EQUIDEM; DR. CRYSTAL ENNIS, LEIDEN UNIVERSITY; VISHNU NARENDHAN, CMID.

Mr. Kuttappan provided the audience with a short introduction on external migration with India as a source country. He briefly mentioned the gaps and opportunities in migration governance in India and the capacity of



embassies in destination countries. With his varied experience as a journalist in the Middle East, Mr. Kuttappan mentioned the causes and consequences of the incapacity of embassies to protect and exploitative labour laws in host country. He further mentioned that despite the Ministry of External Affairs bringing in new initiatives since 2014 like MADAD and E-migrate to ensure safe migration, the positives were offset by the inaccuracy in recording data, inefficient systems of response and the lack of civil society involvement in the design and implementation of these initiatives.

Mr. Narendran elaborated on the emerging trends and challenges in inter-state migration in India with a focus on Kerala. There are over 200,000 refugees/asylum seekers in India and 454 million internal migrants as of 2011. Labour migrants from rural areas constitute a large proportion of slum dwellers in urban areas. He highlighted traditional inter-state corridors and focus on the emerging trend of southern states as a major destination for internal migrants due to market and societal factors of higher wages and standard of living. In a study by Department of Labour and Skills with GIFT, 25 lakhs on migrant labourers was estimated in 2013 with annual additions of 182,000. However the study's only focused upon long distance migrant that travelled by train. There are also a significant number of minorities and disadvantaged communities that have migrated to avoid endemic discrimination and community-based violence and neglect.

However migrant labour in Kerala, specifically, face several problems. There are very few that possess memberships in trade unions and are predominantly engaged as informal labour without contracts. They have limited access to legal aid and are absent from empowerment programmes. Moreover, their long working hours prevent access to certified health providers leading them to approach available providers (chemists) or do an OTC purchase of medicine without diagnosis. They are further exploited from the start of their journey including where they are charged exorbitantly for their train tickets by middlemen. Government responses include introducing a labour hotline, ad hoc campaigns, the Inter-state Migrant Welfare Scheme of 2010. The government further conducted study of labour migration in 2013 and the 13th Plan of the Working Group constituted migrant issues. The Awaz Project is aimed at providing insurance, Apna Ghar aims to provide shelter and the government even conducted a Pilot Literacy programme. Workers have also been provided with facilitation centres. At the policy level, a roundtable was called to discuss labour migration into the state as well as the constitution of a Reforms Commission Report.

Essentially, realising the inevitable role of migrants and consequently institutionalising the response becomes important to address a burgeoning issue. The ensuing process requires better and inclusive planning with the intention of ensuring universal access to services at its core. Action-based initiatives with collaborative efforts of private sector, civil society and government become important as well as engagement with sensitising the host community.

Dr. Ennis spoke on the phenomenon of global migration. As a global trend, migration density shows South-South flows are larger than South-North. Moreover, remittances are 3 times greater than global aid. In the recent past, global migration research has been focused on western countries and other notable corridors of remittances. The law and policy framework have been characterised by competing forces of liberalisation and regulation of labour laws, thereby influencing and changing it.

Dr. Ennis further introduced her concept of 'unfree' labour - based upon a sliding scale of forced migration, it



includes forms of irregularity as well as bonded labour. Flexible deregulated markets and supportive laws create clashes with the environment that created rights to protect workers. The trio of competing tensions of protection versus facilitation or deregulations for development versus re-regulating due to migration also affect migration governance as a whole.

She juxtaposed conditions of vulnerability and conditions of profitability in its direct and indirect modalities. Conditions of vulnerability and profitability lead an interdependent relationship. For example, in a direct sense, failure to regulate labour recruitment industry or enforce regulation against abusive labour recruitment practices (as a condition of vulnerability) leads to facilitation of industries and middlemen that inherently practice systematic abuse (as a condition of profitability). In an indirect sense, restrictive policies governing mobility and migration are linked to corporate self-regulation and private governance in labour standards, social and welfare policy.

Questions were raised by the floor to Mr. Narendran regarding the citizenship registry in India and insensitivities to migrants; and to Mr. Kuttappan on issues with reintegration of former migrants.

PARTICIPANTS AT THE WORKSHOP



Session 2: Panel Discussion on National Anti-Trafficking Law and Migration Policy



SPEAKERS: VARUN AGGARWAL (IMN), SR. LISSY (NDWWT), DR. BIJULAL (M.G UNIVERSITY), PARVATHY DEVI (M.G UNIVERSITY)

Sr. Lissy, NDWWT, the moderator introduced the context of the bill to participants. She mentioned that the first part of the bill is mainly based on 'policing' or the enforcement of state authority. She further discussed how it translates into ground reality through anecdotes of everyday trafficking faced by marginalised and vulnerable populations in India. She urged CSO's to understand these cases in the context of the law, and be proactive in advocacy efforts to work on societal realities in their efforts and engagement with trafficking form a rights-based approach.

Dr. Bijulal, MG University, spoke from an academic perspective on the value of CSO's and the concept of slavery in the framework of a capitalist system. CSO is not an alien part of society in political scenarios around the world. He opined that there exists a labour aristocracy or play of power involved in labour organising and trade unionism. The power of the capital is a far larger problem than legal authority of the host country. He further urged civil society to look at contemporary contexts of slavery. Slavery as social debt is a global phenomenon in recent times. Looking at the very minimum things where their own private times are measured (where they are themselves and the time they have to themselves), the rest of the time is spent in competing against other labourers.

The fundamental argument is about enabling ICPR and Article 8 about slavery and Article 10 about residency rights. Citizenship assurances etc. are related to this. As per the Palermo Protocol, specificities of organs, slavery etc. are not addressed in Chapter 12 of the bill. There are problems with the words like prostitution in a contemporary document such as this which is not gender-sensitive. Furthermore, there is a deliberate absence of sexual minorities, etc.

Mr. Varun Aggarwal, IMN, spoke of unsafe, disorderly and irregular migration in India that has failed to be addressed in the Bill. There are gaps in data and research. Collaboration between CSO's in India, at a national level, are lacking even during the discussions around the Bill. This event was appreciated as a starting point for CSO's in India around labour migration. He described the difference between human smuggling and trafficking as the former being voluntary and violating national sovereignty and the latter being involuntary, non- consensual and exploitative. Categories and sub-groups of migrants from India include labour migrants, asylum seekers and refugees, irregular migrants within India (over stayers, withdrawn VISA), students, and dependents seeking family reunification. Out of 11 major treaties from international public law that convey rights to migrants, India has only ratified 6, failing to ratify and acknowledge conventions relating to refugees and stateless persons and 1979 International Convention on Maritime Search and Rescue. In this respect, linking the Bill and migration policy to UN SDG 8.7 on eradicating forced labour, modern slavery and human trafficking becomes imperative. CSO need to study on how cross-border trafficking is addressed.

The Bill gives a detailed definition and authorizes the creation of a NAT Bureau. The Home Ministry has also been identified also part of this. There are other positive developments on paper such as repatriation being addressed as well as defining and including smuggling and trafficking. However, they have defined it on Indian penal code and not the trafficking bill. Furthermore, they have given powers to nodal agencies. The Emigration Bill does not capture or clarify the rights of the Bill. He further mentioned the ex-ante approach vs. reactive approach to policymaking that becomes an important precursor to understanding gaps of the Bill.

Ms. Parvathy Devi, discussed the Kerala government initiatives in addressing international migration. The government has established various initiatives like NORKA, NORKA ROOTS and the Pravasi Welfare Act for the mitigation of migrant issues. However we can see that the state lacks a well formulated migration policy. Long



term policy measures are to be taken in order to address and withstand the challenges arising out of migration. Majority of the studies are based on the impact of remittance for example, the emancipation of women, and influence on religious groups and studies on migrant networks. Lately more studies on women and elderly who are left behind, the psychological impacts of migration etc. have been looked at.

She explained that the push and pull theoretical framework is used in most of the studies, which is incapable of explaining Kerala migration scenario. This has created a general perception that Kerala has a remittance led growth until studies started pointing out the mismatch between low economic growth and high human development records. As of now, NORKA addresses and coordinates various welfare initiatives and grievances of Non-Resident

Keralites (NRK's) with the help of state and non-state actors. Legal aid for non-state actors who are involved in rescuing trafficked persons. There is a Kerala Police NRI cell and legal assistance for migrants stranded abroad.

The state government mostly seek investments for public infrastructure development. Insurance is provided only on return, despite the fact that no medical care for poor immigrants. Currently, very less protection is offered at this stage even though others are developing. This ambiguous nature of migration is an obstacle for origin governments to counter illegal migration and trafficking. This further gives rise to fundamental policy dilemmas which are identified in terms of substitution effects. Studies have proven that substitution effects limit the effectiveness of migration policy. It leads to redirecting migration through other geographical routes and destinations as well as diverting it through other legal and unauthorized channels (categorical substitution). The social belief of "now or never" migration surges in anticipation of losing opportunities to migrate (intertemporal substitution), again leading to pursuing of other methods for acquiring visa, boat migration. It further discourages return and interrupts circulation (reverse flow substitution).

Rejimon Kuttappan clarified the distinction on smuggling and trafficking to Mr. Aggarwal, discussing that definitions overlap and are not purely exclusionary. Questions were directed towards Dr. Bijulal on how to effectively negotiate with governments to minimise the effects of exploitation as in seen as CSO ground work. Discussions further included Ms. Devi's presentation and how the call for strong laws have hindered the migration process in the past, especially in the case of destination countries.

Session 3: Group and Floor Discussion on Strategy Plan for Advocacy of Anti-TIP Law



CIMS TEAM PRESENTING CASE STUDIES OF TRAFFICKING FROM 'PRAVASALOKAM'- TV SHOW

The session was begun with a presentation by the Aswathy Krishna and Eswari Krishnadas from CIMS on identification of cases of trafficking. The two case studies were taken from the TV programme Pravasalokam and participants were briefed on the nature of the case, the specific human rights violations faced by the victims, and their eventual process of rescue and return to Kerala arranged by CIMS. Ms. Krishna presented the story of Susheela, a domestic worker trafficked to Saudi Arabia. She was cheated by her agent and was not paid money for more than 7 months. She was rescued by the Pravasalokam team and is now in Kerala. Videos were shown of the broadcast of her case on the show and then the segment that showed her return and living in Kerala, which was also broadcast on the show. Ms. Krishnadas presented the case of Sebin Paul who was trapped in Oman and abused by his employers. He was also put in detention until the Pravasalokam team rescued him and provided a job till the embassy processed his return. Both cases were prolific in Pravasalokam's history as a TV show.

After the presentation, the session was continued as a group discussion with a final floor discussion to present group ideas. Participants were split into 4 groups of around 10 people and groups were asked to create strategy plans with a timeline, resources, planned initiatives and possible challenges they may face in advocacy efforts during the adoption and implementation of the Anti-Trafficking Law. The presenters for the session were Adv. Sandhya (CCRA), Sr. Valarmathi (NDWM), Sr. Lissy (NDWWT), Mr. Akhil Changayil (CIMS) and Ms. Sahala (CIMS).



GROUP DISCUSSIONS UNDERWAY AND FINAL PRESENTATION (BELOW)



Groups were able to commonly identify shortcomings of the Bill and provide elaborate suggestions. Since the identified portions were common, they have been condensed as below.

Shortcomings

- Certain forms of trafficking specified in the Bill (like forced labour and sexual exploitation) are also covered by existing laws. Some provisions of the Bill are different from provisions for similar circumstances in such laws. As these laws are not being repealed, there may be uncertainty in the implementation of the Bill.
- The Bill punishes an owner or lessor of a premise if he knowingly allows trafficking to be carried out on the premise. Under the Bill, the owner or lessor is presumed to have knowledge of the offence, unless they can prove otherwise. This provision may violate Article 21 of the Constitution.
- The Bill provides immunity to a victim only if he commits an offence punishable with imprisonment of more than ten years and not for lesser offences. The high threshold may defeat the purpose for providing immunity.
- The Bill provides for punishment of persons who distribute or publish material which may lead to trafficking. It is unclear as to how it will be determined if the act is likely to result in trafficking.
- The Bill classifies certain forms of trafficking as 'aggravated', which attract a higher punishment than other forms. Therefore, the punishment for some of the aggravated offences such as begging is higher than the punishment for some other offences such as slavery.

Suggestions

- ✓ Definitions of trafficking should be clearer and include the rights-based perspective as well.
- ✓ Quarterly/ monthly reviews of awareness programs and preventive measures should be conducted at district level for more outreach.
- ✓ Sensitisation programs for police and media on how to deal with survivors.
- ✓ The law should be seen from the perspective of the survivor rather than from the perspective of criminal law.
- ✓ Proper representation in the committees at various levels of implementation.
- ✓ Rehabilitation should take place in the native place of the survivor and it should start from the local level.

Future actions

- Identify CSOs and other activists, collaborating and compiling a common document.
- The compiled documents should be circulated among Rajya Sabha MPs and concerned leaders of various political parties
- Approach media including human rights publications and online platforms.
- Social media campaigning in support of the bill with hashtags and identify an ambassador for the cause.
- Campaigns to sensitise the society by conducting drama, orientation programs and so on. We will approach international donor to fund the campaigning.
- The draft document should be made available in vernacular languages.
- Community level participation by identifying effective agencies(ex: Jagratha Samithi)
- Public and political awareness through student political bodies as well.

Sr. Lissy moderated the session and compiled the group discussions. One group felt there should be campaigns and laws should be passed. Two groups spoke about the processes and gaps felt. Between the groups, since there was incomplete information about the bill to the level of CSO's, groups worked with the information and discussions conducted throughout the day.

Sr. Lissy further summarized the position of CSO's for the benefit of the participants. The civil society position was that in the present form the bill is insufficient. A Bill is necessary but not to be passed in its current form. It becomes necessary to identify the gaps and campaign regarding those gaps so it can prevent trafficking, protect VoT's and ensure their long-term safety as well. Currently the Bill is based on enforcing state authority measures rather than rights-based engagement with the issue. All the groups have felt the need for awareness of the law. It has not been translated into different languages. It is important for them discuss public opinion. This can be done with CSO's at the helm of discussions. There is no clear cut mechanism to determine when the previous laws (like Section 370 – regarding human trafficking) become redundant.

With the inputs of this meeting, CSO's in India would be able to formulate an agenda for advocacy. There is a need to look beyond institutionalisation and post- institutionalisation mechanisms that are proposed in the Bill. The role of trade unions in special economic zones where labour rights are overlooked in India and beyond as well as migrant workers within India not being able to join unions and labour inspectors insufficiently performing duties in the workplace and accommodations are other suggestions where unions can play a major role. Good practices enforced by State governments to tackle trafficking may be expanded and adopted elsewhere.