

Issues of Repatriation / Homes and Shelters for Rescued Sex-Workers

(21 August 2002)

Paper

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Context

In recent years the issue of human trafficking has increased enormously in magnitude. Third largest in the transnational trades after arms and drugs it is currently a six billion dollar illegal industry.

Human trafficking is the worst violation of every single right that the human being has in a civilized world. It is one of the major forms of sexual exploitation not only in south Asia but the entire world over

It is however a grim reality that trafficked women and children are victimized even through the very system, which has been put in place to rescue, rehabilitate, repatriate and protect them. Even the Immoral Traffick (Prevention) Act which aims at curbing the unlawful sale, purchase and exploitation of women and children both Indian and foreign, has several loopholes which once again victimize the victims.

What is needed and emerging is the need for a shift from a welfare approach to a rights based approach. It is being increasingly felt that trafficking is a human rights issue and needs a well-defined rights based multi-sectoral approach to combat it. This includes preventive as well as curative measures, like rescue, repatriation, rehabilitation and reintegration.

However, it is an irrefutable fact that despite all endeavors by government, organizations and individuals to combat it, the phenomenon is taking on more conniving, vicious and substantial patterns and proportions.

Recognizing the critical role that NGOs can play in the crusade against trafficking Prayas has taken an initiative to combat the issue. Established in 1988, Prayas has been working for thousands of hapless street and destitute children everyday. These children live and grow on the street-unprotected and unsheltered. Working tirelessly for the past fourteen years Prayas also has intervened with several trafficked children working as beggars, domestic labour and even involved in commercial sexual work on the streets both within the shelter homes run by it as well as a part of other intervention strategies. Recognizing the need for anti-trafficking initiatives to combat the crisis, Prayas has constituted a unit fully dedicated to the cause of trafficking and commercial sexual exploitation of children and women.

This paper focuses specifically on critical elements of Repatriation and shelter homes for the rescued women and children as identified by Prayas during its intervention.

Repatriation

Repatriation can be defined as the sending back or return of rescued victims to country or place of origin and / or residence. It is a consistent mainstreaming efforts on part of the concerned law enforcement agencies, state and civil society including the voluntary organizations.

The usual procedure of repatriation or returning of trafficked women and children has been through the joint efforts by the Governments, Judiciary and concerned NGOs. There is need for a strong collaboration and networking between them to facilitate the successful repatriation of the trafficked women and children.

Unfortunately there are several human rights violations, which can occur during the entire process. For example:

- Just an unfeeling and inconsiderate push back system without proper counseling and rehabilitation options.
- Returning children directly to families where they are the perpetrators or abusers.
- Forcibly returning them against their free will.
- Returning them to families and societies not willing to accept them back and where they are likely to suffer further stigma and abuse.

In India these are compounded by the absence of a comprehensive and action oriented framework for repatriation as well as bilateral agreements between countries with regards to foreign repatriation. In fact even the ITPA does not have clear and well-defined guidelines for repatriation.

Recommendations for Facilitating Repatriation

- Repatriation to be based on Human rights principles of freedom of movement, decisions, safe and unthreatening environment.
- Survivors Decision of whether they want to be repatriated or not to be of primary importance.
- Providing counseling to the survivor pre and post repatriation.
- Joint effort between Police and NGOs to locate the addresses and repatriation of the victims.
- Proper home study to be conducted before repatriation to ensure that the family is willing to accept the survivor back.
- Counseling to be provided for families as well

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- Ensuring that the survivor is not repatriated to families that were the perpetrators or the abusers.
 - Parallel awareness generation and sensitization initiatives to take place in the communities to facilitate easy acceptance of the repatriated survivors.
 - Developing and establishing a comprehensive guideline for repatriation.
 - Signing Bilateral agreements between countries to facilitate cross border repatriation
 - Legal mechanisms to be clear and uncomplicated to ensure speedy repatriation of survivors willing to be repatriated.
 - Participation in the Government infrastructure for attitude, capacity building and sensitization of government service functionaries and develop a monitoring system as a follow up to repatriation.
 - Above all ensuring safe repatriation. For example by providing police escorts to survivor on their way back home.

Homes and Shelters For Rescued Sex Workers

Provision for Homes under the Immoral Trafficking (Prevention) Act

Section 19: Enables a woman or a girl who is carrying or is being made to carry on prostitution to make an application to the magistrate having jurisdiction for an order that she may be kept in a protective home or provided care, protection by court.

Section 21: Confers powers on the State Government to establish protective homes and provides that no person or authority other than the State Government shall establish or maintain any protective home except under license issued by the State Government.

Section 21 A: Directs the person / authority concerned for maintaining a protective home or corrective institution shall whenever required by a court, produce the records and other documents maintained by such home or institution before such court.

Limitations of the ITPA

- There is no provision in the ITPA for the regularization, control and supervision of the activities of the corrective institutions and protective homes. Though the 1996 amendment provides for records and documents to be kept on every inmate, the Act does not specify any regular supervisory body to keep a check

on the running of such institutions. Most of these institutions lack bare human necessities and also operate as dens of vice themselves.

- The Act does not have provisions of shelter for those women and girls who are in vulnerable situations. Infact runaway cases or cases without any proper references are refused admission in the homes on the grounds of rules and regulations.
- All categories of offenders, under-trials, convicts, first timers, habitual brothel-keepers, flesh traders are clubbed together in the 'homes' under the Act without any segregation or differentiation. Separate provisions should be made for different categories and specifically for minors who should be covered by provisions under the Juvenile Justice (Care and Protection of Children) Act, 2000 (mentioned below).

Provisions Under the Juvenile Justice (Care and Protection of Children) Act, 2000

As per the Act, *Section-2(d)* definition of 'child in need of care and protection' includes in addition to others categories, a child:

- Who has parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child.
- Who is being or is likely to be grossly abused, tortured or exploited for the purposes of sexual abuse or illegal acts.
- Who is found vulnerable and is likely to be inducted into drug abuse or trafficking.
- Who is being or is likely to be abused for unconscionable gains.

Under the Act, the State Governments have been empowered to constitute for every district or group of districts one or more Child Welfare Committees (*section 29*) for exercising the powers and discharge of duties in relation to a 'child in need of care and protection'.

Section 31 (1): Any child in need of care and protection may be produced before the committee by one of the following persons:

- i. Any police officer or special juvenile police officer or a designated police officer.
- ii. Any public servant
- iii. CHILDLINE, a registered voluntary organization or by such other voluntary organizations or by such other voluntary organizations or an agency as may be recognized by the State Government.

[Note: Only relevant portion of Section-31 (1) mentioned]

Under this Act, Section 34 on Children's Homes and Section 37 on Shelter Homes states that provisions of shelter and institutional care be made for children in need of care and protection.

It is evident from one of the definition that a 'child in need of care and protection' includes minor rescued from brothels or living with prostitutes or found to be associated with any place for the purpose of prostitution. Hence the minor sex worker is brought under the purview of the JJ Act and sent to Children Homes or Shelter Homes set up under the Act.

Other issues

- There is no transparency and accountability in the running of the homes.
- Except for some select organizations, NGOs wanting to enter the homes to assist in the process of rehabilitation are often refused entry and discouraged from further attempts to assist.
- It has often been found that the staff running the homes themselves are not sensitive to the plight of the survivors and treat them with a callous attitude.

Recommendations for Proper Running of Homes

- There is a dire need to strengthen institutional infrastructure for the survivors. This could be in the form of guideline, programmes, framework for minimum standards etc.
- There should be separate institutions for minors i.e. less than 18 years and adults i.e. 18 and above.
- All minor survivors should be sent to juvenile justice institutions such as Children's Home, Special Homes, etc.
- For adults the institutions should be Protective Homes and Corrective ones as per the ITPA.
- Institutions run by voluntary organizations should be utilized by way of certification as per the act. For this purpose government must identify and support such NGOs who can supplement institutional care.
- The institutions created or certified for this purpose may be reorganized to cater adequately to the special needs of women rescued from trafficking.
- Apart from provision of basic needs there is a real need for providing mental health services to undo the trauma / maladjusting experiences that the women had undergone.

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- The Shelter Homes should be either governmental or privately run.
 - Such institutions should be made available for every district.
 - The institutional services must have friendly and non-judgmental environment for the disabled survivors.

(i) Admission

- On admission every survivor must undergo medical check up (within 24 hours of admission), social investigation and mental health input.
- Minimum standards of institutional care in terms of accommodation, basic needs, medical care and institutional programmes must be clearly spelt out.
- Institutional treatment must be based on a scientific classification of survivors in terms of age and their welfare needs.
- Services of the experts from the community must be drawn.
- Assignment to accommodation will depend on the health status of survivors, their urban-rural status, level of education.

(ii) Staff

- The provision of institutional staff must be based on the emotional and therapeutic needs of the survivors. The specific psychosocial and rehabilitative needs of the survivors have also to be considered.
- The staff selected for the institution should be of mainly two categories (a) professional staff including medical, counsellors, social workers, educators, vocational training instructors, case workers, etc. (b) maintenance staff such as cooks, care takers, store keepers, etc.
- The staff must be sensitized, non-judgmental and un- prejudiced
- Professional staff must be drawn from amongst those with requisite aptitude; qualification and training on the basis of well-defined service conditions (example appropriate salary, working hours, residential facilities etc.).
- All staff members must be made accountable to the tasks assigned to them to perform.
- The survivors should also be purposefully involved in the institutional programmes. There should be proper utilization of their skills.
- Regular arrangement for education, skill development, vocational training and recreational services for all the institutions in order to develop the integral part of socialization process.

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- The training should be provided to a survivor irrespective for the period of stay.
 - For the purpose of resocialization life skill programmes such as the art of living programmes may be incorporated.

(iii) Networking

- Networking in medical, education, skill development and vocational training programmes are immensely required.
- Both public and private health services must be utilized in strengthening the medical care services for institutional programmes.
- Networking with corporate sector in the form of financial support, technical inputs, etc. for both institutional and non-institutional services is required.

CONCLUSION

It is an unfortunate fact that in developing countries like India, Nepal, Bangladesh etc. factors of illiteracy, poverty and unemployment combined with modern materialistic social structures and media dominated society have contributed largely in making human trafficking a lucrative business for the traffickers.

A humbling realization is that no single organization can successfully combat the organized nexus of traffickers, procurers and pimps. What is need is an organized network of organizations and institutions working on the issue of anti-trafficking. These organizations need to pool in initiatives manpower and funds to eradicate the malaise systematically.

However, Prayas felt that absence of standard definitions, language and a comprehensive guidelines and policy for rescue, repatriation and reintegration to adequately direct them and provide opportunities to work with a multi-sectoral approach compounded with the struggle for power, position recognition and funds between different organizations and networks hinder the war against trafficking.

It is, therefore, critical that such forums emerge with concrete guideline at all levels and especially with regards to institutional care and repatriation, which can be translated into a proper Plan of Action specifically targeted at the policy level. We need to enhance an entire movement in the crusade against trafficking.