How Laws Punish Victims of Human Trafficking

By Sharon Ceres

Do laws that are meant to help female victims of human trafficking have the unintended purpose of punishing female victims? Does the definition of a victim as defined or not defined by laws put women at risk? These are questions we have to ask ourselves. The Trafficking Victims Protection Act (TVPA) and the Trafficking Victims Protection Reauthorization ACT (TVPRA) are laws enacted to protect victims of human trafficking. While the TVPA defines victims of trafficking as individuals exploited for commercial gain by means of force or coercion, the TVPRA fails to define victims of trafficking, often equating sex trafficking with prostitution.

Women who fail to qualify as victims as defined by the TVPA often run the risk of being prosecuted as criminals. They also risk being deported, which could endanger women by sending them back to an environment that puts them at risk for trafficking to begin with. Women who are deported also run the risk of facing retaliation against them or their families by their traffickers when deported. In the US women who are designated as victims of trafficking as defined by the TVPA may be eligible for benefits if they are willing to aid law enforcement with the prosecution of their traffickers. Why are victim benefits dependent on helping law enforcement? No other crimes equate victim services with the willingness to aid law enforcement. So why should women who are victims of human trafficking have contingencies placed upon victim services? There are risks to aiding law enforcement. Women who aid law enforcement also run the risk of traffickers retaliating against them or their families.

The TVPRA fails to distinguish victims of trafficking from sex workers who choose to participate in the sex industry. By assuming all women are victims the TVPRA denies a women’s choice in participation in the sex industry. If you consider that the TVPA defines a victim of sex trafficking as an individual that was forced or coerced into acts of sex for commercial gain, you can see how the TVPRA’s failure to distinguish between sex trafficking victims and women who choose the profession of prostitution can be a problem. For one, it assumes all women in the sex trade have been sex trafficked. It also allows law enforcement agencies to raid brothels to ‘rescue’ sex trafficked victims. In reality many of the women ‘rescued’ are actively choosing to participate in prostitution. This is not only a waste of resources that could be better devoted to help legitimate victims of sex trafficking, it also denies the women’s right to choice and the victim’s absence of choice.

Women who are ‘rescued’ during such raids run the risk of being arrested or deported. Again, since victims are not distinguished from prostitutes this criminalizes victims. In many countries where such raids are conducted prostitution is legal. So raiding brothels only to arrest or deport females serves no one, not the victim and not the prostitute who is choosing to participate in a legal profession. It would seem that such raids have no legal standing. However they are often promoted by organizations that are funded in part from TVPA and TVPRA legislation, since both acts rely on outside non-government organizations to provide benefits, services and ‘rescue’ victims of human trafficking. In fact, many organizations that do not adhere to the TVPA and TVPRA are not eligible for Western funding.

So why do laws that seem to fundamentally fail victims of human trafficking exist and what can we do to change them? Such laws exist because individual citizens to do not challenge them. We as citizens must challenge such laws and how they are enforced. Victims of human trafficking are certainly not given a voice to challenge such legislation. Instead they are deported or prosecuted as criminals. Their circumstances as victims are conditional and are only acknowledged when they help law enforcement, which can further put them and their families at risk.