

# Women with Multiple Sex Partners in Commercial Context

*The proposed amendments to the “immoral traffic” legislation are likely to drive sex work underground. The need is to separate consensual sex work by adults from the entry of minors and the inhuman practice of human trafficking.*

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The National Network of Sex Workers held a press conference<sup>1</sup> in New Delhi last winter to assert their right to livelihood<sup>2</sup> in the context of amendments proposed to the Immoral Traffic (Prevention) Act, 1956 (ITPA) by the women and child department of the government. In an apparently feminist appearing step one of the amendments proposed is the prosecution of clients who visit sex workers.<sup>3</sup> The amendment seems to be in response to the often-voiced remark as to “why should the men go scot-free”. The amendments have been endorsed by the National Commission of Women. However, this apparently pro-women proposal removing discrimination by prosecuting clients has been perceived as nothing less than an attack on their livelihood by sex workers. The amendments were, of course, formulated and proposed with no consultation of the persons involved in sex work.

The lack of consultation does not come as a surprise as even in a society with a large number of oppressed categories of people, sex workers come almost at the bottom. Almost everyone takes the holier and high moral ground when it comes to sex work and combines it with a refusal to listen to the workers themselves on desirable changes in the law and working conditions.<sup>4</sup> Things are changing and the efforts of collectives and unions of sex workers managed to get the proposed amendment bill referred to a standing committee of Parliament. However, morality has been the dominant prism through which sex work has been viewed and the impact of this is visible in the law pertaining to sex work from the inception to the present proposed amendments.

The cliché “prostitution is the oldest profession” does underscore the fact that the buying and selling of sexual services exists in almost all societies including post-revolutionary ones.<sup>5</sup> Whatever may have been the status of Kautilya’s *ganikas*<sup>6</sup> or *devdasis* or *tawaifs*, like almost all spheres of life, British colonialism and the Victorian morality influenced the law as well as the social and moral norms with regard to prostitution/sex work. Victorian notions of the respectable woman/lady having no sexual desire and the lustful male needing sex impacted the attitude toward sex work. This resulted in the enactment of the Contagious Diseases Act, 1868 which made testing for venereal diseases mandatory and required government licensing of sex workers.<sup>7</sup> This served the purpose of supplying women free of disease to British troops. However, concerns in late 19th century England about young women being led astray into immorality and state support to “moral vice” led to the repeal of the legislation.<sup>8</sup> However, the binary of “good” women and sex workers as bad women and/or helpless victims forced into sex work needing to be saved remained and continues to impact the law.

## Prostitute/Sex Worker

Sex work, the term being increasingly used by organisations of women in prostitution, itself provokes an outrage across a broad spectrum from the conservative to the progressive and feminist. Sex work or prostitution is an interesting intersect of sex, marriage, sexuality, patriarchy interplaying and impacting notions of morality, women’s autonomy and feminism. From being looked upon as an outcome of capitalism by Marxists or as an ultimate degradation of women by radical and socialist feminists to being asserted as a

right to work is a long journey. In fact, existential feminism deriving from the thought of Simone de Beauvoir<sup>9</sup> takes the view that prostitution allows women an avenue of escape from dependency on men that does not leave them victims but has empowered women.<sup>10</sup> In Carol Pateman’s words directed towards the role of woman as a sex worker. “The man may think he “has” her, but his sexual possession is an illusion; it is she who has him...she will not be “taken”, since she is being paid”.<sup>11</sup> Equality of rights and freedom between the sexes is desirable, however, if they are not forthcoming, sex work can provide the woman with the kind of liberty that is immediate, affirming and temporally rewarding seems to be the existential feminist view.<sup>12</sup> The entry of male, hijra, kothi sex workers into the already simmering cauldron has made the situation even more complex of which the law in India has taken limited cognisance.<sup>13</sup>

## Immoral Traffic (Prevention) Act

Inadvertently or perhaps intentionally, as a result of a quirky mind, the law pertaining to prostitution/sex work enacted in 1956 was ironically called the Suppression of Immoral Traffic Act (SITA). The SITA reigned for three decades till in 1986 the name itself was changed to Immoral Traffic (Prevention) Act or ITPA.<sup>14</sup> The origins as well as the title of the legislation itself reflect the conception of sex work as being synonymous with trafficking and its stigmatisation. The legislation was enacted in pursuance of the ratification by the government of India of the International Convention for the Suppression of Traffic in Persons and of the exploitation of the prostitution of others.<sup>15</sup>

Trafficking would be generally understood to mean transporting a person by the means of the use of threats, force, coercion, abduction, fraud or deception.<sup>16</sup> The legislation (ITPA) deals with acts like keeping a brothel, soliciting in a public place, living off the earnings of prostitution. It does not even have a definition of trafficking leave aside provisions to check it. Yet so deeply is the association of prostitution with trafficking, that the law with regard to sex work is called prevention of “immoral traffic”.

In a departure from criminal jurisprudence, indicative of stigmatisation of sex workers, The ITPA has paradoxical offences like detaining a person “with or

without his consent” in premises where sex work is carried on<sup>17</sup> or taking a person, “with or without his consent” for the purpose of prostitution.<sup>18</sup> Again, the provisions dealing with raid and rescue make no distinction between “adults” and “minors”.<sup>19</sup> Ordinarily, a consent or lack of consent of an adult is the crucial factor in offences like abduction or illegal confinement which determines whether an act is to be dubbed criminal. The age-old methods of “raid and rescue appear to have neither worked nor been effective, besides being violative from a rights perspective”.<sup>20</sup>

The “raid and rescue” approach has to be seen in the context of anti-trafficking measures and methods used.<sup>21</sup> The methods used have to be examined from the point of view of the human rights, dignity, privacy of identity of persons who have been trafficked.<sup>22</sup> Invariably, the girls/women “rescued” feel they have been “arrested”, and have been in fact kept in confinement and imprisoned. The issue of trafficking also needs to be seen in the context of the rights of migrant workers<sup>23</sup> and the right to work and choice of employment.<sup>24</sup>

The role of morality is not confined to the statute and the working of the law with regard to sex work (ITPA) but impacts other crucial areas including the fundamental rights to life, liberty, equality, free movement, residence and shelter of non-persons like sex workers. Regardless of ration cards, electricity bills, voters cards and years of living in a place, they are denied domicile and their houses demolished with impunity.<sup>25</sup> The criminal-justice delivery system is the other major area in which morality plays a vital role in denying access to justice for crimes committed against prostitutes/sex workers. The law with regard to assault, grievous hurt, rape and kidnapping makes no distinction and is uniformly applicable regardless of the identity or profession of the victim/survivor. However, in reality, non-persons like sex-workers seem to be routinely subjected to beatings and rape without any consequences for the perpetrator.<sup>26</sup>

Social work organisations like ‘Patita Sudhar Sangh’ which roughly translates into “Reform of the Fallen Women Organisation” with their extremely condescending and moralistic view have been working in the area of sex work for a long time. Similar is the approach of state interventions with ‘sudhar-ghars’ – reform homes – and ‘nari-niketans’.

Low-paid sewing and embroidery works which hold little attraction for sex-workers seem a speciality of the scheme of reforms and rehabilitation offered by these organisations.

The formation of associations or organisations or cooperatives of sex workers themselves marks a major break from this approach.<sup>27</sup> The journey from the beginnings in AIDS prevention work started by the NGOs,<sup>28</sup> the realisation that peer members from the sex worker community are the best activists for such work to a rising awareness and formation of their own organisations is an interesting one. The Durbar Mahila Samanvay Samiti (DMSC), which interestingly now has male sex workers as well in the organisation, has about 60,000 members in Kolkata. Similarly, the Sangli experiment, a funded condom distribution programme leading to the formation of sex worker cooperatives and the journey from Veshya ‘AIDS’ Mukabla Parishad (VAMP) to Veshya ‘ANYAY’ (injustice) Mukabla Parishad is engaging.

### The Future

Total legal prohibition is a demand enjoying considerable support in society. International women’s organisations/coalitions as well as a number of NGOs work in this area with the perspective of the total outlawing of sex work. Regulation refers to state control of sex workers through licensing, prevalent in Germany and Netherlands and which has been suggested in Kolkata as a possible route to take. Decriminalisation refers to repeal of laws against sexual activity in commercial context and is an alternative strongly advocated especially by some organisations and associations of sex workers.

Regardless of the view followed, there is a consensus with regard to trafficking – and on the entry of minors in the profession. The difference perhaps lies in the way to go about prevention of trafficking and entry of minors. Raid and rescue or trying to work from within the profession through gharwalis or “madams” is being tried out by organisations like DMSC and VAMP with moderate success. In the context of consent, trafficking and entry of minors, self-regulation would involve some sort of self-regulatory boards of sex workers and their associations rather than the coercive arm of the law.

The proposed amendment to punish clients has to be seen in this context. It

seems to have been formulated without taking into account the impact this step will have on the profession. The move is likely to drive the profession underground in order to reduce the chances of the client being caught by the police. The move will result in more unsafe and unhealthy conditions, hindering work on HIV/AIDS prevention as well.<sup>29</sup> Rather than disregarding the ongoing debate on efforts to decriminalise and self-regulate, the need is to actively involve sex workers in the move to change the law and separate consensual sex work by adults from the entry of minors and the abominable practice of human trafficking. **EPW**

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### Notes

- 1 ‘Sex workers protest ‘attack on livelihood’’, *Times of India*, December 8, 2005.
- 2 The constitutionality of the Suppression of Immoral Traffic (Prevention) Act, 1956 (SITA) as it was then called was challenged by one Shama Bai of Allahabad as encroachment on the right to practise any profession or carry on any occupation, trade or business of choice guaranteed under Article 19(1)(g) of the Constitution. The high court while recognising that the work of a sex worker falls within the meaning of Article 19(1)(g) held that the legislation does not totally prohibit the profession and upheld the provisions as reasonable restrictions in the interests of the general public which could be validly imposed under the law – Shama Bai versus State of UP AIR 1959 All 57.
- 3 Section 6 of the Immoral Traffic (Prevention) Bill, 2006 suggesting insertion of Section 5 (c) titled ‘Punishment for visiting brothel’ in the act.
- 4 “MPs may be caught taking bribes on camera, NGOs may be caught fudging accounts and judges nabbed taking favours – yet parliamentarians, social workers and the robed fraternity take the high moral ground when it comes to prostitution. They arrogate to themselves to pontificate on what is in the best interests of these ‘fallen women’” – “She is no outlaw” by Rakesh Shukla, *The Times of India*, December 19, 2005.
- 5 It is probable that in certain indigenous communities like the Abujh Marias of Bastar who seem to have no particular shame or stigma attached to sex, it is likely that sexual services are not bought and sold in a commercial way.
- 6 According to Kautilya’s Arthashastra providing sexual entertainment using trained ganikas was standard.
- 7 Chatterjee Ratnabali, ‘Indian Prostitute as a Colonial Subject Bengal 1864-1883’.
- 8 Kottiswaran Prabha, ‘Preparing for Civil Disobedience: Indian Sex Workers and the Law’ – [http://www.bc.edu/bc\\_org/avp/law/lwscj/journals/bctwj/21\\_2/01\\_TXT.htm](http://www.bc.edu/bc_org/avp/law/lwscj/journals/bctwj/21_2/01_TXT.htm)

- 9 Simone de Beauvoir “believed that one of the keys to a woman’s liberation is economic, a point she emphasised in her discussion of the independent woman”, Rosemarie Tong, *Feminist Thought: A Comprehensive Introduction*.
- 10 Extrapolations from “Applications of Feminist Legal Theory to Women’s Lives”, *Sex, Violence, Work, and Reproduction* edited by D Kelly Weisberg, Temple University, 1996.
- 11 Jaggar in ‘Applications of Feminist Legal Theory to Women’s Lives’ – *ibid*.
- 12 ‘Feminist Issues in Prostitution’, Bromberg, Sarah. Presented to 1997 International Conference on Prostitution at Cal University, Northridge. Republished 1998 in anthology *Prostitution: On Whores, Hustlers and Johns*.
- 13 “In view of the aforesaid suggestions, it is proposed to widen the scope of the Act to cover all persons, whether male or female who are exploited sexually for commercial purposes and to make further amendments in the Act”, Statement of Object and Reasons to the Amendment Act 44 of 1986 to the Suppression of Immoral Traffic Act – Gazette of India, August 20, 1986, Pt II, S2, Ext, p 9 (No 38).
- 14 “It is proposed to change the name of the Act to “Immoral Traffic (Prevention) Act...”, Proposed amendment (a) in Act 44 of 1986 – Gazette of India, August 20, 1986, Pt II, S2, Ext, p 9 (No 38).
- 15 “In 1950 the government of India ratified an international convention for the suppression of traffic in persons and of the exploitation of the prostitution of others”, Statement of Object and Reasons – Gazette of India, 1954, Pt II-S2, Ext, p 757.
- 16 “Trafficking in persons” is defined in Article 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, supplementing the United Nations Convention against Transnational Organised Crime.
- 17 Section 6 of [The] Immoral Traffic Prevention Act, 1956.
- 18 Section 5 of [The] Immoral Traffic Prevention Act, 1956.
- 19 Section 16 of [The] Immoral Traffic Prevention Act, 1956.
- 20 “Rights or the Wrongs – A Case Study of G B Road Rescue-Rehabilitation Operation”, Choudhary, Banamallika, National Network of Sex Workers and Centre for Feminist Legal Research, May 2002.
- 21 On the similarity of certain Traffickers and Anti-Traffickers: A Report by Education Means Protection of Women Engaged in Recreation (EMPOWER), Chiang Mai on the Human Rights Violations women are subjected to when “rescued” by anti-trafficking groups who employ methods using deception, force and coercion – *Namaskar*, Vol 6, No 2, January 2004, Durbar Prakashini.
- 22 Recommended Principles and Guidelines on Human Rights and Guidelines on Human Rights and Human Trafficking.
- 23 International Convention on the Protection of all Migrant Workers and Members of their Families.
- 24 “States will ensure the rights of women to protection and working conditions as well as the right to choose a profession”, Convention on the Elimination of all forms of Discrimination against Women.
- 25 “This year, the rains that bring joy to millions of people in India brought only grief to the residents of Baina beach in Goa. Carrying an order by the Goa bench of the Bombay High Court, for the identification and demolition of 250 huts being used by sex workers, the state government set about bulldozing hundreds of hutments right in the midst of heavy rains lashing the area. The rationale: The restoration of an “unspoilt Goa” by cleansing it of the “sin” of sex work. The huts are the homes of women who have been living here for the past 40 years. They have valid ration cards, voter identity cards, electricity bills and tax receipts as proof of their being bona fide residents of Baina; their children attend schools in the area. In fact, many children born in Baina are, today, vote-casting adults” – ‘Baina Beach Demolitions: What about the Sex Worker’s Right to Shelter’ by Rakesh Shukla, *InfoChange News & Features*, August 2004.
- 26 “Recently, Kokila, a ‘hijra’ (transsexual woman) sex worker was raped, beaten and brutalised by a group of men in Bangalore. Instead of lodging a first information report (FIR), the police chained her naked in lock-up, tortured, humiliated and sexually abused her” – *ibid*.
- 27 Margo St James and other prostitutes started the union Cut Out Your Tired Old Ethics (COYOTE) in 1972 in the US.
- 28 The STD/HIV intervention programme was

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started in Sonagachi, the red-light area of Kolkata in 1992 by the All-India Institute of Hygiene and Public Health in collaboration with National AIDS Control Organisation (NACO), World Health Organisation (WHO), Network Organisation for Research and Development (NORAD) and Department of International Development (DFID).

- 29 “The inclusion of the proposed section 5C seems to be not in tune with the object sought to be achieved by the law. Punishing persons visiting or found in brothels can only lead to more unsafe and unhealthy working conditions

for the women in prostitution. The law needs to move in the direction of improving the conditions of work and less exploitation rather than amendment see which are likely to lead to increase their exploitation and place them in a situation of even greater vulnerability” – Letter to Chairperson, Janardhan Dwivedi, Standing Committee on human resource development (HRD) with regard to proposed amendments by Meena Saraswati Seshu, Shabana Kazi, Kamalbai Pani and others on behalf of Veshya Anyay Mukabala Parishad (VAMP).