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India

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2. State Party to which information relates: India

Status of sex workers in India¹

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“Review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers.” *Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, 1 April 2014*

1. Background

There are over 800,000 sex workers in India.⁷ However unofficial figures place these numbers far higher. Organisations of sex workers, United Nations (UN) agencies and Commissions have understood and articulated sex work as a contractual arrangement where sexual services are negotiated between consenting adults.⁸ Implicit in this consent is the act of agency; wherein sex work can be a realistic choice to sell sex.⁹ Decriminalisation of sex work is a pre-requisite to ensure the physical and emotional inviolability of sex workers, their right to life, right to freedom of labour, health and reproductive and sexual rights.¹⁰ Recent research with 3000 sex workers in 14 Indian states¹¹ also finds a substantial segment of women had prior experience of alternative work and opted for sex work, for better income and livelihood opportunities.^{12 13} The uncertain legal status attached to their work and identity further "invisibilises" them as citizens with associate rights and entitlements.

2. Shift in global understanding of rights of sex workers

There has been a shift in the understanding of sex worker rights precipitated in part by the global HIV epidemic.

- A. The Special Rapporteur on Violence Against Women (SR – VAW) has observed that "measures to address trafficking in persons should not overshadow the need for effective measures to protect the human rights of sex workers". The SR-VAW has also called for a review of the Immoral Traffic Prevention Act, 1956 in India that criminalizes sex work¹⁴.
- B. UN Resolutions, International agencies and Commissions have stressed on a rights based response to sex work and the need to protect rights not just by *decriminalising sex work, but by eliminating the unjust application of non - criminal laws and regulations* against sex workers.

¹ Detailed chapter submitted as part of National Alliance of Women' Organisation (NAWO) India. Annexure 1 containing the case studies can be provided on request. Authors can be contacted via email – aarathi.pai@gmail.com

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⁶National Network of Sex Workers, India (NNSW) participated and provided case studies to be submitted to the CEDAW Committee. Members include Ananya, VAMP Collectives, Me and My world, Karnataka Sex Workers Union, Muskan, Vadamlar Federation, Aneka, SIAAP, Samraksha, Sangama, Sangram and WINS

⁷ National AIDS Control Organisation, Phase 3 Program estimated between 831677 – 1242819 people in sex work in India

⁸UNAIDS (2002) Technical Update Sex Work and HIV/AIDS, p3. UNAIDS (2009) Guidance note on HIV and sex work, p 15.

⁹UNDP (2012). *Risks, Rights and Health, Global Commission on HIV and the Law*. New York, UNDP. p 39.

¹⁰See Shadow Report to the Third Periodic Report of Kyrgyzstan to the CEDAW Committee, NGO 'Tais Plus', Kyrgyz Republic 2008, and the *Concluding Comments of the CEDAW Committee addressed to the Government of the Kyrgyz Republic*.

¹¹Rohini, Sahni and V Kalyan, Shankar, Sex work and its linkages with informal labor markets in India: Finding from the first Pan - India Survey of Female Sex Workers, *Institute of Development Studies Working Paper*, vol. 2013 no. 416, February 2013. <http://www.ids.ac.uk/publication/sex-work-and-its-linkages-with-informal-labour-markets-in-india>. Viewed on December 2013

¹² 46.5% women had prior experience of labour markets. 77% women discontinued other forms of labour since entering sex work

¹³ 2/3rd of the mobile sex workers reported economic reasons for entering sex work. Saggurti N¹, Verma RK, Halli SS, Swain SN, Singh R. Motivation for entry into sex work and HIV risk among mobile sex workers in India. *J Biosoc Sci*. 2011 Sep;43(5):535-54. <http://www.ncbi.nlm.nih.gov/pubmed/21729360>. Viewed on December 2013.

¹⁴ UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p 19. A/HRC/26/Add.1

- i. The UN Economic and Social Commission for Asia Pacific resolution calls on members to address legal barriers¹⁵ to HIV responses including reviews¹⁶ of national laws, policies with a view to eliminating discrimination against vulnerable populations.
 - ii. The Independent Commission on AIDS in Asia,¹⁷ UN Special Rapporteur on Right to Health,¹⁸ Global Commission on HIV and the Law¹⁹ and UNDP Asia Pacific²⁰ have recommended the decriminalisation of sex work involving consenting adults.
 - iii. National Human Rights Institutions have been called on to hold governments accountable for the protection of sex workers from discrimination, harassment, abuse and violence perpetrated by police or other government officers.²¹
- C. UN organisations, International agencies and Commissions call for **recognition of Trafficking in persons for sexual exploitation and Sex Work as two different concepts** to be understood and legislated accordingly.^{22,23,24} Sex Work organisations have also called for a review of laws that criminalise third parties who support sex workers to work within a safe environment.²⁵
 - D. The International Labour Organisation (ILO) and UNDP have emphasised on the need to provide sex workers with legally enforceable rights to **occupational health and safety and right to participate in the process of developing workplace health and safety standards**.^{26 27}
 - E. Sex workers have been recognised as an invaluable resource in the law and policy reform process with a view to developing non-judgmental and rights based laws, policies and programmes.²⁸
 - F. Elaborating the scope of Article 6 of CEDAW; General Recommendation 19 calls on States to recognise that their (sex worker's) unlawful status makes sex workers vulnerable to violence and hence need equal protection of laws against rape and other forms of violence.²⁹ States were asked to report on the measures to protect women in sex work and the effectiveness of these measures.³⁰ The CEDAW Committee has recommended the need for measures to prevent "discrimination against sex workers and ensure that legislation on their right to safe working conditions is guaranteed".³¹
 - G. The Supreme Court of India has observed that sex workers are entitled to a right to life and must be accorded the protection guaranteed to every citizen. It instructed the State to provide recommendations on the

¹⁵UN Economic and Social Commission for Asia Pacific (ESCAP) Resolution 66-10, *Regional call for action to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific*, 2010

(29 September 2011), available from http://www.unescapsdd.org/files/documents/HIV_IGM1_INF4.pdf

¹⁶UN ESCAP Resolution 67-9, Asia Pacific regional review of progress in achieving declaration of commitment on HIV and political declaration on HIV/AIDS, 2011

¹⁷Commission on AIDS in Asia (2008), *Redefining AIDS in Asia, Crafting an effective response*, New Delhi: Oxford University Press.

¹⁸Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, A/HRC/14/20, 27 April 2010

¹⁹Global Commission on HIV and law (2012), op. cit., p 43

²⁰UNDP (2012), *Sex Work and the Law in Asia and the Pacific, HIV and human rights in the context of sex work*. p 34- 39

²¹ibid. p 39

²²Global Commission on HIV and the law (2012), op. cit., p 43

²³UNDP (2012), op cit., p 24

²⁴Human Rights Council (2010), op. cit., p 15

²⁵ Global network of sex work projects (2013), *Third parties briefing paper*. http://www.nswp.org/sites/nswp.org/files/thirdparties3_0_0.pdf. Viewed on December 2013

²⁶ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No 200), Geneva: ILO

²⁷UNDP (2012), op cit., p 35

²⁸WHO, UNFPA, UNAIDS, Global Network of sex Work Projects, The World Bank. *Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions*. Geneva, World Health Organisation, 2013. P XX

²⁹UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations Nos. 19, Article 6. Adopted at the Eleventh Session, 1992*, available at: <http://www.refworld.org/docid/453882a422.html> [accessed 14 December 2013]

³⁰ibid. Specific recommendations 24 (h)

³¹UN Committee on the Elimination of Discrimination against Women, *Concluding Observations on the combined seventh and eighth periodic reports: Hungary*, 26 March 2013, CEDAW/C/HUN/CO/7-8

rehabilitation of sex workers who wish to leave sex work of their own volition and to provide conducive conditions for sex workers who wish to continue working as sex workers in accordance with Article 21 of the Constitution.³² A Supreme Court panel recommended that Central government and Election Commission issue voter ID cards, relaxing verification requirements, and state governments and local institutions issue ration cards to sex workers.³³

The emerging rights discourse at the global and national level argues that efforts to respect, protect, fulfil and promote the human rights of sex workers needs to be premised on ensuring their rights as citizens under the Constitution. Laws, policies and programmes devised in partnerships with sex workers are most likely to be effective. Despite clear recommendations by international human rights instruments India has failed to recognise the marginalisation,³⁴ vulnerabilities and human rights of sex workers. Despite specific requests made by the CEDAW Committee in its list of issues to the Government of India in 2013³⁵, the report submitted by India has not highlighted the status of sex workers, or specific measures taken to respect, protect, fulfil and promote their human rights.

3. Lack of access to justice for sex workers

'A sex worker with speech and hearing impairment was detained in an observation home after a brothel raid and produced in court after four months. We were present at the court when she told the judge that she wished to return home and did not want to be kept in the observation home. To our shock the judge declared in an open court, "She has come from the gutter and wants to return to the gutter. She will not listen." What justice can we expect from courts which treat us in such a demeaning manner?'
VAMP Collective, Sangli, Maharashtra

Access to justice for women is constrained by social barriers ranging from lack of knowledge of their rights, dependence for assistance and resources and the threat of sanction; and lack of capacities in the justice systems to respond to the particular needs of women.³⁶ In the case of sex workers in India, stigma and moral lens attached to sex work further accentuates barriers to accessing justice.

Their uncertain status in law result in judgments that often mark sex-workers as criminals and repeat offenders.

Despite Free Legal Aid being enshrined in the Indian Constitution and the Committee's recommendations³⁷ that the State Party ensure free legal services to poor and marginalised women, and monitor the quality and impact of such services, access to legal services for sex workers remains a pipe dream. The Supreme Court has also observed that the State and District Legal Services needs to play a role in publicising entitlement schemes available with the government.³⁸ The failure to receive legal assistance to pursue her is in essence, denial of the right to fair trial for women³⁹.

³²Budhadev Karmaskar v. State of West Bengal (2011) 11 SCC 538

³³ Interim Orders, Sex Workers Rehabilitation Case, Supreme Court of India, 16 September 2011, Law Resource India.

<http://indialawyers.wordpress.com/2011/09/16/sex-workers-rehabilitation-case>. [Accessed on 17 December 2013]

³⁴Marginalisation is the process by which people are pushed to the edge of society, resulting in their physical exclusion as well as neglect of their needs and rights.

³⁵ The Committee seeks specific information on "whether prostitution is criminalized and on measures taken to guarantee the rights of women engaged in prostitution", Para 11, list of issues and questions in relation to the combined fourth and fifth reports of India, CEDAW/C/INC/Q/4-5

³⁶UN Women (2011), In pursuit of Justice, Progress of the World's women, 2011-2012.

³⁷The Committee urges the State party to provide free legal services to poor and marginalized women in rural and tribal areas in addition to urban areas and to monitor the quality and impact of such services in regard to ensuring women's access to justice. It requests the State party to provide information about access of women, including scheduled caste, scheduled tribe, backward class and minority women, to free legal services and the scope and effectiveness of such services in its next periodic report. UN Committee on the Elimination of Discrimination against Women, *Concluding Observations: India*, 2 February 2007, CEDAW/C/IND/CO/3

³⁸ Legal services "should publicise reliefs available under the provision (Victim Compensation provision of the Criminal Procedure Code), so that victims of any kind of crime or discrimination, may apply to the Legal Services Authority directly for immediate relief." Budhadev Karmaskar v. State of West Bengal (2011). Interim order dated December 6, 2012.

³⁹UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p1 6. Para 65 A/HRC/26/Addl.

It has been observed that women and trans-women in sex work are unable to access appeals. A preliminary analysis⁴⁰ of cases in the twenty two high courts between 2010 and 2013 pertaining to sex work/prostitution and loitering or creating public nuisance under the penal code or police acts indicated only eight such cases. This abysmally low figure indicates almost negligible access of sex workers to the higher judiciary and courts of appeal. It indicates denial of opportunity to sex workers for correction of errors made by lower courts, emerging from lack of understanding the specific circumstances of sex workers, having to barter sexual favours to lawyers, as well as bias and prejudice due to her identity.⁴¹

Denial of Access to Justice
Sex workers approached the District Legal Services Authority to provide free legal aid during raided and 'rescue' operations. Legal aid officials told them that "sex work is illegal". When sex workers asked for assistance in setting up a legal aid cell to provide aid and advice for sex workers, officials refused, saying that permission was needed from the national and state legal services authority. They refused to help sex workers to put in a proposal to the national and state Legal aid services. Disappointed, the women gave up contacting the legal aid services authority.'
VAMP, Satara, Maharashtra

In instances where sex workers approach district courts, they report having to deal with bias from lawyers and court officials. They are advised to give up "illegal activities" (sex work) or, if they are appearing on a soliciting charge, they are advised to pay a fine and "not drag the case".

4. Status of sex workers in India

i) Violence

Sex workers are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need equal protection of laws against rape and other forms of violence.
General Recommendation 19, CEDAW

Violence against sex-workers in India is linked to the perception of sex workers are criminals and not citizens. This has led to systemic, systematic and large scale violation of human and fundamental rights such as the right to life, dignity, equality, equal protection and due processes under the law. Several factors put sex workers at risk of violence. Stigma attached to sex work exposes them to violence in personal spaces from family members as well as from intimate partners. Violence is used as a mechanism of asserting sexual control; it is normalised as punishment for having sex with other men.^{42 43}

Since there is little appreciation amongst police of the contexts and factors affecting sex workers lives,⁴⁴ they ignore complaints related to family and partner violence; instead offering advice to women about stopping sex work and settling domestic matters 'amicably'.^{45 46} On their part, sex workers are unaware of provisions of the domestic violence act which provide redress against partner violence. Police apathy to the plight of sex workers results in denial of access to provisions under the Protection of Women from Domestic Violence Act (PWDVA 2005)⁴⁷.

EXPERIENCE OF PHYSICAL VIOLENCE Pan India Survey of 3000 sex workers	
Physical Violence Experienced	Sex workers responding affirmative
Domestic Violence	31.9 %
From Clients	55.9%
Violence from Employers	8.5%
Third Party (Agents)	14.1%
Brothel Owners	5.9%
Shopkeepers, Auto drivers, goons	24.7%
Neighbours	16.2%
Lovers and Partners	40.2%
Husband	36.3%

⁴⁰Analysis of High court cases in the context of sex work, Rakesh Shukla, Centre for Advocacy on Stigma and Marginalisation, 2014

⁴¹Case studies of Rekha Bidkar, 2012, No. AF#2; Shanta Jadhav, 2010, No.AF#3; Sunitha, 2010, No.AF#4 in Annexure 1

⁴²Case study of Prema, Kanyakumari, Tamil Nadu, 2012, No. VRC#1 in Annexure 1

⁴³Case study of Sunitha, Uttara Kannada, Karnataka, VRC#4 in Annexure 1

⁴⁴Case Study of Rathna, Mysore, Karnataka, 2012 VRC#2 in Annexure 1

⁴⁵Case study of Suchitra, Gadag, Karnataka, 2013 VRC#6 in Annexure 1

⁴⁶Case study of Anjuman (name changed), Gadag, Karnataka, 2012 PHF#1 in Annexure

⁴⁷The committee calls upon the state party to develop in consultation with women's groups, a coordinated and comprehensive plan to combat all forms of violence against women taking a life cycle approach. It urges the State party to take steps to implement and enforce the Domestic Violence Act and to ensure that all women ... are able to benefit from the legislative framework and support systems in place and that

Sexual assault of sex workers is also high with little social or legal recognition. Myths surrounding the violence of rape against sex workers ensure that they are constantly on the fringes of access and redress to justice. These myths include “A sex worker cannot be raped” (i.e, if she has consented to multiple partners or commercial sex, she has given up the right to refuse other partners or other acts).⁴⁸

ii) Criminalisation, stigma, social exclusion⁴⁹ and climate of impunity

For sex workers, the State is an instrument of violence; feared, rather than seen as protectors of rights. People in positions of authority routinely demand sexual favours⁵⁰ from sex workers for speedy redress of grievance or accessing entitlements.⁵¹ They regularly verbally abuse sex workers using specific sexual innuendo and language. The law enforcement is regarded by sex workers as the most repressive state agency. Police abuse sex workers, illegally detain,⁵² sexually assault and torture them in custody.^{53 54}

Sex workers report being arrested under public nuisance or obscene conduct provisions of the penal code. They are produced in court and released on the payment of fines. Most sex workers choose not to contest their arrest under these provisions since they find it easier to pay fines and be released.⁵⁵

Stigmatisation, which has its roots in standards set by patriarchal morality, is a major factor preventing women from accessing their rights. This structural violence⁵⁶ further aggravates discrimination in the lives of women in sex work. It creates a fertile ground for social exclusion and denial of rights as was witnessed in the exhibition of impunity in *Nippani violence*, Maharashtra in 2002.⁵⁷

As a result of law and social practice, sex workers face difficulties accessing health care, housing, and supplementary employment opportunities. They risk verbal, physical, and sexual abuse, arbitrary arrests, and harassment. Stigma decreases their ability to seek protection from the courts or the police when they suffer from violence and discrimination.

EXPERIENCE OF POLICE VIOLENCE		
Pan India Survey of 3000 sex workers		
Abusive Language	1431	50%
Beaten, Hair pulled, Beaten with belts	1011	35%
Threatened	1052	37%
Forced to bribe	569	20%

iii) Conflation of trafficking and migration, leading to denial of labour rights

There is an urgent need to distinguish between “trafficking”, “sex work” and “migration”. The SR- VAW observed there was a tendency to conflate sex work with trafficking in persons. She observed that when sex workers are identified as victims of trafficking the assistance that is provided to them is not targeted to their specific needs⁵⁸.

Though many sex workers have been deceived or lured by payments into sex work and might be said to be “trafficked”, there is a large number, who have not entered sex work due to any basis involving coercion or deceit.

perpetrators are effectively prosecuted under the Penal Code. It recommends that public officials especially law enforcement officials, judiciary, health care providers and social workers are fully sensitized to all forms of violence against women. Para 21, Concluding Comments, India, CEDAW Committee. 2 February 2007 [CEDAW/C/IND/CO/3]

⁴⁸Kinnel, Hillary (2008): Violence and sex work in Britain. Devon: Willan Publishing.

⁴⁹ Social exclusion can be considered as the failure of society of provide certain individuals or groups with the rights and benefits that would be available to its members. People can be excluded from economic benefits, essential services such as health and education, from social, cultural or civil rights, from political participation, or from ownership of resources. Such exclusion is seen in the lived realities of sex workers.

⁵⁰Case study of Kalpana, Tirupathi, Andhra Pradesh, 2013.No. PHF#2 in Annexure 1

⁵¹Pan India Survey of Sex Workers, 2011, Sahani, R, Kalyan Shankar, Available at http://www.sangram.org/resources/Pan_India_Survey_of_Sex_workers.pdf. retrieved on 1 March 2014

⁵²Case study of Sumathi (name changed), Uttara Kannada, Karnataka, 2013, No. PHF#3 in Annexure 1

⁵³Case study of Anu Mokal (2010), op.cit.

⁵⁴ Case studies of Uma, Leela, Jareen, Lakshmi, Shimoga, Karnataka, 2012. PV#3 in Annexure 1

⁵⁵Case studies of Manisha Salunkhe, 2011; Rekha Bidkar 2012; Shanta Jadhav, 2010; Sunitha 2010 op.cit.

⁵⁶Structural violence refers to the physical and psychological harm or disadvantage precipitated by systems of oppression and exploitation [See Galtung Johan. (1969). 'Violence, Peace, and Peace Research'.Journal of Peace Research, Vol 6, No. 3.pp 167-91]. This invisible violence embedded in structures of class, caste, heteronormative patriarchy, sexual mores and other structures of hegemony justifies overt violence in the lives of women in sex work on a daily basis.

⁵⁷Case study of State violence against sex workers in Nippani, Maharashtra, 2002. No RRC#4 in Annexure 1

⁵⁸UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p 6. A/HRC/26/Add.1

They have moved in search of a better life and livelihood. Though poverty and inequality are reasons for people to enter sex work and indicate inadequate “free choice”, it cannot be said that all people suffering from such conditions have been trafficked. They, should benefit from human rights support, including social and economic choices.⁵⁹

When trafficking is confused with women’s voluntary migration (for the purpose of employment, residence, or escape from persecution by State or non-State actors) protectionist measures steeped in patriarchal control over women’s mobility result in curbing female migration within and outside the borders of the country.⁶⁰ This limits women’s access and opportunity to travel away from the family, kinship in search for a better life. Even though the lines between deceitful transport of a person and her will to travel may be blurred (with women facing either situation at different points in their lives), curbing women’s mobility is not the answer.

The problems are multiplied for women in sex work. Lack of support from family and unsafe, inadequate workplaces (as well as from family members who would like the income to reach back home, but without the ‘sullied’ woman returning home) renders an older sex worker destitute and disenfranchised, even if she may have earned a considerable income during her working years.

Conflation with trafficking and resulting rights violations

While sex work is not an offense in India; the Immoral Traffic (Prevention) Act 1956 (ITPA) consists of a range of provisions that criminalise almost every aspect relating to sex work. Provisions of ITPA have been used to arrest and harass sex workers, regardless of whether they are in sex work voluntarily or have been coerced. A report commissioned by the National Human Rights Commission found that the soliciting statute was the primary law used in ITPA and observed, "It is disturbing to note that out of almost 14,000 persons arrested every year under ITPA, approximately 90% are women."⁶¹ A study in red light areas found that 66% cases registered in Mumbai and 56% in Delhi were under the soliciting statute.⁶²

Raids - A human rights violation of sex workers.

Raids are executed by the police for many reasons, including complaints lodged by NGOs who intend to rehabilitate sex workers and repatriate them, in an effort to abolish this work. The complaint is lodged under the ITPA to rescue minors and adult women believed to have been trafficked into sex work. The raid could also be undertaken to evict sex workers from a "red light area"⁶³ under ITPA and other public nuisance laws. Raids are often used to ‘sweep the streets’ of sex workers, and clients vagrancy laws, and soliciting under ITPA. Police conduct the raid and indulge in physical violence and extreme verbal abuse which is often sexual in nature, to intimidate sex workers.

Rescue and rehabilitation

Perhaps the most widespread human rights abuse emerges from the rescue and rehabilitation provisions of ITPA. These interventions involve brothel raids by special police officers and NGO workers, where women are "rescued" and placed in rehabilitation facilities. Police raids, frequent in red light areas and under the pretext of rescuing minors, do not distinguish between minors and consenting adults. In 2012, in perhaps one of the largest raids in recent times, an operation was carried out over 3-4 days in a red light area called ***Simplex building*** in Mumbai and over 200 women were “rescued and sent to correction homes”.⁶⁴ Narratives of raid and rescue operations indicate the highly abusive and violent nature of these operations.

⁵⁹Case Study, Jharkhand Migrants, 2012. No. MP#1 in Annexure 1

⁶⁰Trafficking: WOREC, Nepal. <http://www.worecnepal.org/programs/trafficking> (downloaded on 14.04.2014)

⁶¹Nair P. (2004), A report on trafficking in women and children in India 2002 - 2003, New Delhi, NHRC, UNIFEM ISS, p. 363

⁶²Grover A., Kukke A., Bhardwaj K. eds (2003), Legislating an epidemic, Delhi Lawyers Collective, p 125

⁶³Case Study of Domburwada raid, Kolhapur, Maharashtra, 2013- 2014. No. RRC#1 in Annexure 1

⁶⁴Case study, Simplex building raid, Mumbai, Maharashtra 2012. No. RRC#5 in Annexure 1

Consent of the adult women in sex work who are "rescued" is immaterial, and they are remanded to correction homes despite testifying that they were in sex work willingly.⁶⁵ These adult women are released into the care of parents or family members on the condition that they will give up sex work. Often the judgments handing over "custody" of the adult sex worker to the parent or family member are based on moral judgments.

"Out of 38 women arrested during the raid, 16 women released by court, and 12 women were sent home after they agreed that they would not remain in Kolhapur and would leave sex work. Rejecting the application for custody of one sex worker filed by the family, the order said that if "the family member had really taken care of the victim, she would not have suffered from HIV disease". Collated from the Narratives of Sayara Jamadar (42), Bilkis Inamdar (45) and others. Raid on Dombarwada community of sex workers, Kolhapur, 2014

The final step in the rescue intervention is the (often) involuntary rehabilitation of women in sex work. Rehabilitation programmes are run either by non-governmental organisations or are part of government programmes. Sex workers are taken to rehabilitation programmes where they are kept in jail-like conditions; experience repeated sexual abuse;⁶⁶ and eventually released. Sex worker organisations have drawn attention to the health and safety concerns of women involuntarily removed from brothels. Rehabilitation programmes often undermine the very purpose of their existence, given the high rates of violence experienced by women in rehabilitation homes; the return of women to sex work; and, disrupting their everyday existence because of being detained for extended periods of time.⁶⁷

The SR-VAW has reported that rehabilitation of sex workers in India is an issue for concern⁶⁸. The Supreme Court of India has observed that rehabilitation training assistance for sex workers should not be made contingent on forcible stay in corrective homes, nor can sex workers be involuntarily incarcerated in corrective homes "which they consider a virtual prison".⁶⁹ Despite these observations, forced rehabilitation continues to be the norm across the country.

Eviction, repatriation

Sex workers are often evicted from the premises and are unable to return to their residences.⁷⁰ In the case of the ***Dombarwada raid*** in Kolhapur Maharashtra in 2013, over 200-250 women were residing in the 30-40 houses, and many had been resident for the past 30 years. Ever since the raid, the place has been locked and the sex workers are being prevented from entering their houses. The women have requested the district authorities to provide them with alternative residences, but the authorities have ignored them.

In 2013, the Justice Verma Commission recommendations to the Criminal Law Amendments, inserted the Amended Section 370 to define the offence of Trafficking. In a clarification issued by the Verma Commission it stated that the Amended Section 370 was to protect women and children from being trafficked. The section did not include within its ambit, sex workers who practice of their own volition. It further clarified that the amended section should not be interpreted to permit law-enforcement agencies to harass sex workers who undertake activities of their own free will and their clients.⁷¹

Despite irrefutable evidence emerging from government, non-government research and voices of numerous affected sex workers, the State has failed in its obligations to respect, protect and promote the rights of sex workers who are arbitrarily arrested and evicted. State inaction to assess and amend punitive laws that impact sex workers and their

⁶⁵Case Study of Dombarwada raid, Kolhapur, Maharashtra, 2013- 2014. No. RRC#1 in Annexure 1

⁶⁶Mankhurd State Shelter: Forced Detention of women sex workers, 2012, No. RRC#3 in Annexure 1

⁶⁷Extract from Ahmed, Aziza, Seshu, Meena, "We have the right not to be rescued...": When anti - trafficking programmes undermine the health and well -being of sex workers. *Anti - Trafficking Review*, June 2012, p 155

⁶⁸UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p 7 para 24. A/HRC/26/Addl.

⁶⁹Budhadev Karmaskar v. State of West Bengal (2011). Interim order dated August 24, 2011

⁷⁰Dombarwada raid, August 2013, op. cit.

⁷¹ Clarification from Justice Verma Committee on Section 370, IPC, February 2013, India <http://sangram.org/resources/Amending-section-370-IPC-verma-commission-clarifies-intention-behind-legislation.pdf>. Accessed on 10 January 2013

families has led to sex workers living in a criminal and stigmatised environment. By giving rehabilitation schemes as the only option to sex workers, the State has failed in its duty to protect the rights of sex workers.

iv. Stigma in health care

Sex workers experience debilitating stigma and discrimination that erodes their ability to protect their health and well-being. The government services are typically routed through primary and tertiary health care set up comprising the district hospitals, primary health care centres, sub-centres and community health centres. Due to the Government of India's emphasis on HIV prevention, the National AIDS Control Organisation and its partners set up STI and HIV prevention initiatives across the country for vulnerable communities including sex workers. These centres provided stigma-free STI and HIV related services to sex workers.

The National Commission for Women observed that accessing health care is a major concern for women in sex work.⁷² While the 'immoral whore' image makes it difficult to get good medical treatment, illiteracy, ignorance and fear of the medical establishment renders them open to exploitation and extortion of money and resources.

v. Social security and support⁷³

The demand for social security nets for the unorganised sector has emerged as a right to ensure social protection for marginalised and invisible sectors of the workforce in India. Social security of sex workers also needs to be placed within the concerns of unorganised workers. In December 2008, the Social Security for the Unorganised Sector 2008, legislation was enacted by the Indian Parliament. Sex workers have voiced the need for inclusion into these social protection schemes and to participate in broader campaigns and forums demanding rights for the unorganised work force. However, income generation schemes at the district level are made conditional to sex workers giving up sex work, a clause that many sex workers reject.⁷⁴

Another factor that impedes participation in income generation schemes is that sex workers are required to be part of self -help groups within their village or areas. Many sex workers participating in such self -help groups have reported being discriminated and marginalised by other SHG members. Hence the demand for identity based self -help groups needs to be considered by the government as a specific relaxation for marginal communities. The *Pension Parishad*, a national movement to demand Universal Old Age Pension has included the concerns of old sex workers including relaxing the eligibility age to 45 years for highly vulnerable groups such as tribal groups, transgender and women in sex work.⁷⁵

The challenge of documentation

Stigma related to their work and identity and the migratory nature of work prevents sex workers from accessing identification documents, essential to accessing entitlements. For instance in 2009 it was estimated that only 20 percent of over 5000 sex workers in Delhi had a voter's ID card.⁷⁶ Sex workers from the National Network of Sex Workers also shared that residence proof, father's name and caste, and the ration card were some documents required for getting their children registered in schools.⁷⁷ Sex workers applying for housing schemes narrated that they were asked for proof of residence and ration cards. The Public Distribution System (PDS), meant for people below the poverty line to access food items cheaply, needs supporting proof of sex workers being below poverty line.

⁷²National Commission for Women, "Societal violence against women and children in Prostitution," NCW, New Delhi, 1997

⁷³The committee recommends the speedy enactment of the Unorganized Sector Workers Social Security Bill. ...The Committee urges the State party to pay specific attention and adopt a comprehensive approach, to address the problems of poor women in the urban areas. Para 45, Concluding Comments, India, CEDAW Committee. 2 February 2007 [CEDAW/C/IND/CO/3]

⁷⁴VAMP, the collective of sex workers approached the district officials in Maharashtra in 2012 to access income generation schemes advertised by the Department of Rural Development and Ministry of Women and Child. At the time of signing forms for registering, they noticed a clause on the forms requiring them to give up sex work. While the District officials in Sangli agreed to drop the condition, the officials in the other districts did not respond. Narrative of VAMP sex workers

⁷⁵Charter of Demands, Pension Parishad, 2012.

⁷⁶ UNDP 2012, Sex work and the law in Asia and the Pacific, p 56

⁷⁷ Report of Meeting on CEDAW status and sex workers, National Network of Sex Workers, Bangalore, 2013

The SR -VAW has observed that lack of identification cards or status of unregistered citizens contributes to the normalization of violence against women⁷⁸.

While the Supreme Court's recommendation to the central and state government to relax verification criteria for obtaining identity cards and ration cards for sex workers needs to be implemented by the State, it is critical to engage with the barriers posed by the stigmatised identity of sex workers. Sex workers recount that they are asked to provide sexual favours in return for obtaining these documents,⁷⁹ humiliated⁸⁰ and commissions and sexual favours are sought to relax the verification criteria.⁸¹ Landlords refuse to issue rent receipts or rental agreements.⁸² The State needs to ensure that these documents are provided to the applicants in a time bound manner and the reasons for refusing the documents be clearly provided in written to the applicants.

vi. Denial of safe environment and labour protection

Sex work happens in informal settings and is an occasional form of income or a long term occupation. Despite this, a safe working environment through standard labour protection measures continue to be denied to sex workers⁸³. This includes access to benefits, legal redress for workplace grievances, adequate health and safety regulations. Detention of sex workers in rehabilitation centres without access to legal counsel or right to appeal are human rights infringements that need protection under adequate labour clauses.

5. State response and concerns

There has been a duality in the State Response in meeting its obligations towards sex workers. The Ministry of Health, through its HIV/AIDS programme emphasised on community owned and community led HIV prevention services.⁸⁴ By 2009, this ambitious transition of HIV programmes to the community based organisations (CBO) of sex workers had already begun happening across the country. Emphasis was placed on training sex workers from the collectives to manage and run programmes, including the design, monitoring and evaluation, and financial and administrative management of small grants which were provided by the Department of Health of the State and Central Governments. Key to this intervention strategy was the affirmation of the principle of "voluntary entry and exit from sex work"⁸⁵ and the need to strengthen community ownership through collectivisation and strengthening the enabling environment.⁸⁶ Guidelines were evolved for a systemic approach to implementing a crisis response by engaging in police advocacy. By its own admission this strategy has enabled it to reach out to over 0.68 million sex workers across the country, covering an estimated 53% of the sex work population.⁸⁷

The Ministry of Women and Child has focused on a more protectionist approach of seeking to rehabilitate people in sex work. Its central focus has been the rescue, rehabilitation of "victims" through safe shelter, medical care and legal aid, vocational training and their eventual re-integration in society.

The Police approach to complaints of violence has consisted of ensuring police reforms for a more sensitive approach towards policing and in dealing with vulnerable populations. In 2005, the Inspector General of Police in Karnataka state, in response to complaints of widespread police abuse against sex workers, issued instructions that

⁷⁸UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p 17. Para 70 A/HRC/26/Addl.

⁷⁹Case study of Jyothi, Ongole, Andhra Pradesh, 2013, No. SE#5 in Annexure 1

⁸⁰Case studies of Mohana, Bangalore rural, Karnataka, 2010, No. SE#2. Sumalath, Kalahasti, Andhra Pradesh, 2013. No. SE#4 in Annex. 1

⁸¹Case study of Radhika, Bangalore, Karnataka, 2013. No. SE#3 in Annexure 1

⁸²Case study of Maliga, Tiruvanamalai, Tamil Nadu, 2013. No. SE#1 in Annexure 1

⁸³UNAIDS (2009) Guidance note on HIV and sex work. ILO Recommendation 200 on HIV and the world of work, ECOSOC, overview of good practices for multi sectoral cooperation, 2011

⁸⁴Strategy and Implementation Plan, National AIDS Control Program Phase III (2006-2011), November 2006, p 24

⁸⁵ Targeted interventions under NACP III, Operational Guidelines, Volume 1, Core High Risk Groups, p 17

⁸⁶Targeted Intervention, National AIDS Control Programme, Phase -III, India; Ministry of Health and Family Welfare. P 24

⁸⁷Ibid. p 28

strict disciplinary action would be initiated against police officials' ill - treating, abusing and extorting money from sex workers.⁸⁸ Similar guidelines were also issued in Andhra Pradesh and Tamil Nadu.

A cohesive approach that recognises the agency of consenting sex workers and people trafficked alike, and upholds a right based approach has to be the cornerstone of the State policy towards trafficking and sex work. The Indian State needs to meet its obligation to respect, protect, fulfil and promote the rights of women in sex work. The Annexure with case studies attached, is testimony to the fact that State actors as well as non-State actors continue to violate the rights of sex workers with impunity and there is lack of due diligence to address violence against sex workers. Were these acts of violence, humiliation and discrimination preventable? Were they adequately investigated? Were perpetrators prosecuted? Were victims/ survivors duly compensated? If the answer to these questions is 'no', then evidently the State has failed in its duty to protect and enhance the human rights of people within its jurisdiction. It is imperative that the State be reminded of the core Articles of CEDAW, namely 1-4 which define discrimination and emphasise State Obligation in the removal of all forms of historical and current discriminations through active measures, including putting in place processes of substantive equality for sex workers and their children.

6. Recommendations

The over-arching recommendation to the Indian State is to address concerns of women (and trans-women) in sex work by not relegating their issues to Article 6 of CEDAW. Women in sex-work are entitled to rights in the economic, political, social, civil and cultural spheres of their lives. The rights to education; political participation (including representation at the national and international levels); citizenship; livelihood; health; equality before the law; freedom from gender stereotyped notions about women's chastity and roles and responsibilities within a hetero- normative and patriarchal family, can only be fully achieved if discrimination is eliminated from all spheres of sex workers' lives. We therefore urge India to adopt a comprehensive approach in realising the human rights of sex workers and recommend that interventions affecting sex workers be undertaken through consultation, participation and leadership of sex workers.

To ensure accountability of the State in terms of respecting, protecting and fulfilling the rights of women in sex work, it is imperative to ask⁸⁹: How will the person, department or mechanism responsible be held accountable? What will be the relief/remedies for the woman/women who has/have been affected by lack of implementation? What would be the sanction for non- adherence to laws and policies and non- implementation? Addressing the accountability of the state for acts or omissions of state and non-state actors, instituting an independent monitoring system to hold the judiciary accountable in maintaining the checks and balance between state organs; is also crucial.⁹⁰

1. Avoid conflation of sex work with trafficking

- a. Trafficking is a criminal offense and should not be conflated with sex work. Trafficking of Adult Persons and Trafficking of Children should be dealt with under two separate laws to ensure that consenting adults are not infantilised and children are given justice.
- b. Shut down compulsory detention or rehabilitation centres for people involved in sex work. Instead, provide sex workers with evidence-based, voluntary, community empowerment services.
- c. Ensure witness protection for sex workers testifying against traffickers and violators

2. Decriminalise sex work and all related activities

⁸⁸Karnataka Inspector General of Police, Circular on Action under Immoral traffic (prevention) Act, 1956, 22 November 2005, available at <http://www.altlawforum.org/gender-and-sexuality/rights-of-sex-workers>

⁸⁹ Written submission on Women' s Access to Justice; Drafted by International Women's Rights Action Watch – Asia Pacific (IWRAP-AP), Kuala Lumpur, January 2013

⁹⁰ Ibid

- a. Repeal laws that prohibit consenting adults to buy or sell sex, and laws that prohibit commercial sex, such as laws against "immoral" earnings, "living off the earnings" of prostitution and brothel-keeping.
 - b. Ensure that existing civil and administrative offences such as "loitering without purpose", "public nuisance", and "public morality" are not used to penalise sex workers and administrative laws such as "move on" powers are not used to harass sex workers.
- 3. Ensure participation of sex workers in policy making**
- a. Ensure participation of sex work organisations in drafting/ amending laws, policies and programs relevant to them and in its eventual implementation process.
 - b. Sensitivity to issues faced by sex workers should be made a part of training for police personnel, public prosecutors and the judiciary in partnership with community organisations of sex workers.
- 4. Develop mechanisms to recognise and act against violence faced by women in sex work**
- a. Guard against arbitrary arrest and detention of sex workers, and investigate harassment, extortion and abuse by law enforcement staff
 - c. Prohibit the mandatory HIV and STI testing of sex workers following arrest.
 - d. Maintain confidentiality and respect the privacy of sex workers approaching law enforcement and judiciary for redress in cases of sexual assault, exploitation and violence. Ensure skills and sensitivity in dealing with women, persons who identify as women and transgender women in sex work.
- 5. Strengthen sex workers' access to justice**
- a. Strengthen National Human Rights Instruments (NHRI's) and increase their accountability to respond to complaints or initiate *suo moto* action reports of violence and rights violations by state and non – state actors against sex workers.
 - b. Ensure Free Legal Services are available in rural areas for sex workers and offered by lawyers who have been trained in issues faced by sex workers.
 - e. Ensure delivery of legal services and/or referrals to existing legal services to ensure that sex workers have support to seek redress including appeal to higher courts.
- 6. Implement Supreme Court recommendations on social entitlements, identification documents**
- a. Ensure implementation of the Supreme Court recommendations to issue identity documents and ration cards to sex workers at the national, state, district and sub-district levels.
 - b. Ensure the empowerment, active participation and leadership of sex work networks, federations and collectives in designing policies and processes for accessing social entitlements.

Specific questions to the Indian government for the consideration of the CEDAW Committee include:

1. What measures has India taken to prevent violation, humiliation, dispossession and disenfranchisement of sex workers during raids and rescue missions? What measures have been taken to ensure that sex workers are not alienated from their children, homes, assets, livelihood options and health care services?
2. Why do raids lead to forcible detention of adult sex workers who do not wish to leave sex work?
3. What measures has India taken to ensure women sex workers' access to justice?
4. What measures has India taken to ensure due diligence in prevention and investigation of discrimination, prosecution of perpetrators and compensation of victims / survivors?
5. What measures has India taken to address the impunity of State and non-State actors in instances of violence and discrimination against sex workers?

6. What measures is India taking to remove historical discriminations and to achieve substantive equality?