

Decriminalizing sex work

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ON International Women's Day 2006, Delhi witnessed a historic rally where about 200,000 female, male and trans-gendered sex workers from across the country marched through the city. Witnessed by thousands of bystanders, this extraordinary event got little attention from the press. The rally was part of a nationwide campaign conducted by the National Network of Sex Workers (NNSW) against the proposed amendments to the Immoral Traffic (Prevention) Act (ITPA), 1956.

The NNSW represents millions of sex workers from all over India including Durbar Mahila Samanwaya Committee (DMSC) that alone has a membership of over 60,000 sex workers from West Bengal. Formed a decade ago, the DMSC in Calcutta emerged out of the famous STD/ HIV Intervention Project (SHIP) in Sonagachi that is now an internationally acclaimed model sexual health project. Today, SHIP and DMSC run HIV prevention projects in 49 districts of West Bengal and have set up Self Regulatory Boards (SRBs) to prevent the trafficking (forced entry) of adults and minors into the profession. The DMSC considers sex work to be contractual sexual service negotiated between consenting adults and demands decriminalization of adult sex work.

The debate determining the legal status of sex workers has been deeply contentious in most countries. Before discussing the specifics of the debate in India, it is important to understand that there are broadly three policy approaches to sex work. The *criminalization* approach considers sex work to be a social evil and demands its abolition. Since criminalization makes the activity illegal, the profession is driven underground thereby aggravating violence and exploitation in the lives and work of sex workers. The *decriminalization* approach believes that sex work is a personal choice made by two consenting adults and removes it from the ambit of criminal laws and places it within the scope of general laws. This approach makes a strong distinction between trafficking (coerced or forced sex work) and voluntary sex work between consenting adults.

The *legalization* approach, like decriminalization, acknowledges sex work as lawful activity but subjects it to heavy regulation and stringent state control through zoning (confining women within demarcated areas), licensing laws and mandatory health checkups. It has been found that jurisdictions that have introduced zoning and licensing laws have been subject to excessive state control, ghettoization of sex work, and stringent medical and health checkups that are mandatory, rather than

voluntary. It is common for sex workers to regard legalization as legalized abuse because the state takes on the role of the licit 'middleman'.

In a country where corruption is rampant, legalization would only give more power to law enforcers and aggravate the disadvantage that sex workers face. Instead, sex workers prefer the repeal of all legislation that are not ordinarily applicable to businesses. In India, sex workers are demanding, not legalization of sex work (as is commonly reported in the press) but decriminalization, that is, the removal of sex work and all related activities from the purview of criminal laws.

In India, sex work is regulated through the Immoral Traffic (Prevention) Act (ITPA), 1956 and certain provisions of the Indian Penal Code. The act is based on a 1949 UN Convention wherein prostitution is not illegal but certain related activities are considered to be criminal offences. The ITPA approaches sex workers as victims who are in need of rescue and rehabilitation. The NNSW has been demanding the decriminalization of all aspects of sex work involving consenting adults so that sex workers can claim basic human rights and civil liberties that the rest of us take for granted. For instance, sex workers have been demanding the right to retain and raise their children and be recognized as a legitimate family unit. Because of the moral stigma that the profession carries, sex workers are frequently denied the right to parent their children. The Juvenile Justice Act for instance defines the children of sex workers as 'neglected children'.

Presently, sex work is the major faultline along which feminists are divided. Those who oppose decriminalization (or legalization) and advocate abolition do not make the distinction between sex work and trafficking. The notion that all sex work is synonymous with trafficking stems from the conviction that women can never voluntarily choose sex work as a profession and are therefore, necessarily 'trafficked' into it. Sex workers and sex-workers rights advocates have repeatedly asked for a distinction to be made between trafficking and sex work. Sex workers have tirelessly reiterated that trafficking (that is, the induction into trade through force, coercion, fraud or deception), is a crime whereas the exchange of sexual services between two consenting adults is not.

Just as all sex work is not linked to trafficking, all trafficking is also not linked to sex work. Jyoti Sanghera, formerly Advisor on Trafficking at the Office of the High Commissioner for Human Rights in Geneva, writes that the dominant discourse on trafficking is based on a set of assumptions that flow, in large measure, from 'unexamined hypotheses, shoddy research, anecdotal information or strong moralistic positions.' While it is certainly true that many women (and children) enter sex work under violent and exploitative conditions, it is certainly not very different from that in other livelihood occupations in the unorganized

sector like agricultural work, domestic work and industrial labour. In other words, there is no reason (other than moralistic) for us to feel more outraged about trafficking in sex work instead of say, trafficking in agricultural work.

Sanghera and many others have pointed out that the dominant trafficking paradigm rests upon an absence of a critical distinction between trafficking and prostitution on the one hand and trafficking and migration on the other. Recent years, however, have witnessed a shift in thinking and trafficking is increasingly being seen as a problem of human rights violation and not a problem related to law and order or public morality.

By refusing to create a distinction between trafficking and consensual adult sex work, abolitionists argue that sex work is by its very nature violent and exploitative. This notion is frequently removed from what the sex workers consider to be violence. It is commonly assumed that the violence that sex workers suffer is at the hands of brutal clients, ruthless pimps (who I prefer to call ‘agents’) and greedy madams. But ironically, the worst and systemic violence sex workers face is at the hands of the police who routinely raid brothels, make arbitrary arrests and unleash physical violence on the women.

During brothel raids policemen, often accompanied by social workers and NGOs, barge into the rooms of the women (that are also frequently the living quarters of sex workers, trespassing on their property, violating their privacy), drag them out (sometimes clothed, other times not), beat up the men (who could be customers, husbands, fathers, uncles or sons) and throw them in the lockup till they can produce enough money for their release.

Staories of police raids in ‘red-light’ areas get reported very differently in newspapers. The reports are usually about the rescue of hapless victims, the bravery of policemen and the self-righteousness of social workers. It is common for the police to harass and blackmail sex workers using real and imagined provisions of the ITPA. Police brutality and harassment of sex workers, using real and imagined provisions of the ITPA, has remained largely unchallenged because of the stigma that surrounds sex work. As one sex worker wrote, ‘It’s the stigma that hurts, not the sex. The sex is easy. Facing the world’s hate is what breaks me down.’

By conflating trafficking and sex work and therefore attempting to eradicate both, methods like police raids have been relentlessly deployed even though it has eradicated neither trafficking nor sex work. We could legitimately ask whether the continued deployment of this

futile strategy is intended to improve the lives of sex workers or impose a certain morality around women's sexuality. For instance, those who call for the abolition of sex work do not simultaneously call for the abolition of domestic work despite the fact that conditions, wages, working hours, lack of mobility, levels of physical exhaustion of domestic worker's around the world are far worse than that of sex workers.

If the legislative objective of the ITPA was to end trafficking through criminalization (of which police raids have been a part) then it has been an abject failure as far as entry of minors and unwilling adults are concerned. On the contrary, interventions by sex workers themselves have been far more successful. In order to regulate practices within the profession and combat the entry of minor girls, the DMSC has set up 33 Self Regulatory Boards in different sex work sites in West Bengal. The SRBs, comprising sex workers, government officials and members of the civil society, interview and counsel new entrants to sex work sites. It actively helps unwilling adults and minors to opt out of the profession. So far about 524 women have been taken back to their families or helped to start a career when their families refused to accept them.

Similarly, SANGRAM which has worked with women in prostitution in Sangli, Maharashtra since 1990 has ensured a rapid decline in the number of minor prostitutes in sex work. Clearly, the remedy to curtail entry of minors and unwilling adults lie in peer intervention, education and community work. It is most important that the communities themselves be empowered to combat violence and exploitation and not be at the mercy of self-righteous interlopers who hold the very profession in contempt.

Sex workers movements demand the right to work in safe, respectful and healthy conditions as well as the right to organize and transform the trade to meet their own needs. They urge that decriminalization, along with the granting of legal rights and social recognition, will not only help eliminate violence and exploitation from their lives but also allow them to change professions if they so choose. It is often asked whether the 'choice' that sexworkers exercise is at all valid, given the exploitative situation they are in. Is it really consent in the real sense or a false notion of choice? (Implicit in this query of course is the assumption that sex work is such a terrible profession, no one could ever choose it voluntarily!) The fact is that most people in developing countries do not have innumerable choices or opportunities. So the issue of choice is problematic for women who are in domestic work, arranged marriages or hazardous industries and is not exclusive to sex work.

In other words, as one climbs the caste, class and privilege ladder, choices increase and vice versa. Poor and unskilled women often choose sex work as a livelihood option from the limited options they have available to them. Even in contexts that are exploitative and

disadvantageous, people do exercise choices despite options being limited. Therefore, there is no reason why questions of choice should become fundamental only in discussions around sex work. As sex worker rights activist Margaret Baldwin says, If 'no' means 'no', 'yes' should also mean 'yes'.

All people employed in worksites of the informal, unorganized and invisible sectors of the economy have their rights routinely violated. The more illegal or invisible the worksite, the greater its exploitative character. This is the generic condition of the informal economy and is not exclusive to sex work. But it is only in the case of sex work that demands are made for the abolition of the trade. Sex workers have repeatedly pointed out that it is not the trade but the violence in the trade that has to be abolished. The International Labour Movement urges the radical transformation of labour, not its abolition. Similarly, sex workers also demand radical transformation of their work in alliance with other political programmes like the transformation of marital laws, land and property rights so that women can exercise greater control over the terms and conditions of their life and work.

In India, the ITPA places sex work in an ambivalent zone between legality and criminality. The following activities are considered criminal offences under ITPA:

- * keeping a brothel or allowing a premise to be used as a brothel (section 3);
- * living on the earnings of prostitution (section 4);
- * procuring, inducing or taking persons for the sake of prostitution (section 5);
- * detaining a person in a premises where prostitution is carried out (section 6);
- * prostitution in, or in the vicinity of, public places (section 7);
- * seducing or soliciting for the purpose of prostitution (section 8); and
- * seducing a person in custody (section 9).

In 2006, the Ministry of Women and Child Development (MoWCD) moved the Immoral Traffic (Prevention) Amendment Bill, 2006 in the Lok Sabha. The bill was referred to a Parliamentary Standing Committee and is presently being considered by a Group of Ministers (GoM). Based on the 182nd Report of the Parliamentary Standing Committee, the MoWCD's revised amendments have stirred a fresh

controversy. In the existing ITPA the sale and purchase of sex is not criminalized even though the prohibition of soliciting, brothel keeping and street work is tantamount to *de facto* criminalization.

The revised bill decriminalizes soliciting but overturns the good work with other changes. First, prostitution is defined as ‘the sexual exploitation or abuse of persons for commercial purposes for consideration of cash or kind.’ Not only does this definition equate all prostitution with ‘sexual exploitation’, it brings within its ambit every kind of transactional sex. Here, commercial sexual exploitation has been defined to ‘include the exchange of sexual services or promise of the same with or without sexual contact or intercourse for consideration in "cash or kind" through threat, force, coercion, abduction, fraud, deception, abuse of power and position of vulnerability.’

SSecond, the inclusion of phrases like ‘abuse of power’ and ‘position of vulnerability’ leaves it open to diverse interpretations. For example, a woman who, due to poverty or destitution, decides to become a sex worker would be seen to be coming from a ‘position of vulnerability’ and, therefore, ‘trafficked’. Third and more dangerously, Section 5C of the proposed amendment punishes a person who engages in commercial sexual exploitation and ‘(a) Induces a person to engage in any activity related to commercial sexual exploitation including negotiation for consideration in cash or kind for commercial sexual exploitation; or (b) Identifies a person to engage in commercial sexual exploitation; or (c) Takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to the person carrying on or being brought to carry on commercial sexual exploitation.’

Apart from being unwieldy, tendentious and obscure, the revised amendments conclusively blur the distinction between trafficking and adult sex work. In other words, if the new amendments are passed by the legislature, the sex work, which under the new act would be synonymous with trafficking and therefore illegal, would be completely driven underground.

As an invisible and illegal trade, the sex workers would no longer have any claims on protection from the law. In such a scenario the violence and exploitation that the sex worker faces would increase manifold and push back the gains of the sex workers rights movement. Consequently, the impact on HIV AIDS prevention work would be deleterious. On 5 November 2008, in a National Consultation on Sex Work, HIV and the Law held in Delhi, a diverse group of scientists, doctors, health workers, activists and advocates expressed grave concern over the proposed changes in the ITPA stating that it would ‘undermine HIV prevention, increase transmission and endanger the health of millions in

this country.’

It is important to understand that the MoWCDs preoccupation with trafficking is not propelled, however misguided, by only a desire to combat exploitation. On 27 May 2003, George Bush signed a law that prohibits any US funds from being used overseas ‘to promote or advocate the legalization or practice of prostitution or sex trafficking.’ It has also demanded that US aided HIV programmes have policies ‘explicitly opposing prostitution and sex trafficking.’ This dangerous and harmful policy was immediately challenged. More than 200 public health, human rights and community based organizations in the US, Europe, Africa, Central Asia and Asia wrote in to demand the repeal of this law. Apart from being reactionary in politics, the act (which applies to organizations both within and outside the country) raises issues of sovereignty and freedom of speech and expression. Leaders of fourteen major American charities that received USAID funds sent a letter of protest to Bush’s global AIDS coordinator. ‘We see this as over-reaching government authority,’ wrote one of the signatories. ‘We shouldn’t have to agree with administration policy in order to do the work of saving lives.’

In May 2005 Brazil, where sex work is legal, turned down \$40 million of US funding rather than consent to such discriminatory clauses. The country’s National AIDS Commissioner said, ‘Sex workers are part of implementing our AIDS policy and deciding on how to promote it. They are our partners. How could we ask prostitutes to take a position against themselves?’ Brazil which funds 90% of its own AIDS programme was able to reject US support but smaller HIV prevention initiatives have had to comply. The Women’s Network for Unity in Cambodia, like Brazil, chose sex workers rights over US funding. Most others fell in line and made quiet changes in their policy guidelines.

The issue of sex workers rights continues to be a contentious one with feminists split over whether the trade should be decriminalized or eventually abolished. Many of us who support sex workers rights believe that the struggle to empower sex workers involves us all. All women who have fought battles for custody, rape or sexual harassment know that the ‘whore stigma’ is used to regulate and discipline all women. Victims of rape and sexual harassment continue to be told that they ‘asked for it’. The sex workers movement demands that the right to equality should have nothing to do with sexual conduct. That unquestionably, is a major feminist issue.

* Shohini Ghosh has made the film ‘Tales of the Night Fairies’ on the sex workers of Calcutta.

