

**Comments on the Amendments proposed by the Department of Women and Child  
to the Immoral Traffic (Prevention) Act, (ITPA) 1956**

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{These comments are being made on the basis of the note outlining the proposed amendments handed over to us by the DWCD on 6.12.05 without the advantage of having the text of the law.}

- **Amendment of Section 2 (aa) to raise the age of child from sixteen to eighteen years** -----We welcome the insertion of a consistent definition of child to mean a person below 18 years and the omission of the terms minor and major.
- **Enhancement of penalty for keeping/managing brothels under Section 3** -----  
It is well understood in the criminal justice system that the higher the punishment for an offence, the lesser is the rate of conviction of accused persons. This is because in trials involving offences carrying stringent penalties, judges need to be convinced that the accused was guilty beyond reasonable doubt, which is often difficult for the prosecution to prove. Therefore, increasing penalties for brothel keeping will not necessarily result in higher conviction of brothel managers and owners. On the contrary, it will adversely affect brothel based sex workers, for whom brothels are the only shelter available. This is evidenced from the experience of sex workers in Chakla Bazar, Surat, who were forcibly evicted from their homes by the police, in the guise of committing offences relating to brothel keeping under section 3 of the ITPA.
- **Insertion of a definition of trafficking on the lines of the UN Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children, supplementing the UN Convention against transnational organized crime 2000 (new section 5A) and punishment for trafficking (new section 5B)**  
----- The proposed definition continues to conflate trafficking with sex work, which is one of the many outcomes of trafficking but not the core cause of it and certainly *not* trafficking itself. Not only does the proposed definition fail to segregate trafficking from sex work, it leaves scope for reading all sex work, including consensual commercial sex work by adults within the meaning of trafficking thereby criminalizing sex work *per se*. It may be noted that sex work *per se* is not illegal under the existing Act. Terms like “*exploitation of prostitution of others*”, when read conjointly with the existing definition of prostitution under section 2 (f) “*prostitution means the sexual exploitation or abuse of persons for commercial purposes*” can be construed to mean that *all* adult consensual sex work amounts to trafficking. Such a construction of the law, we apprehend, will further subvert rights of sex workers, whose practice may be prohibited in the name of intercepting trafficking.

- **Insertion of Section 5 C to punish persons visiting or found in brothels** -----  
By introducing penalties against clients, the amendments threaten the very survival of sex workers, by stifling their only source of livelihood. It may be pointed out that the underlying policy on prostitution in India has been not to punish either sex workers or clients for commercial sex work.

The proposed provision resembles the prostitution policy of Sweden, where the law was amended in 1999 to punish clients buying sexual services while exempting sex workers from penal liability for selling sex. Analysts contend that the criminalisation of clients has only worsened the plight of sex workers in Sweden, who are driven into hidden, unsafe settings by clients wanting to avoid the police. As a result, sex workers have experienced loss of control over their working conditions including use of condoms as protection against STDs and HIV/AIDS. Sex workers' dependence on pimps and middle agents has also intensified. Ironically, incidents of violence against sex workers have also increased, as sex workers are unable to secure timely assistance in isolated areas. Despite decriminalizing sex workers, the Swedish prostitution policy is known to be antithetical to sex workers, who have been bearing the brunt of penalizing clients in multiple ways.

Already, Section 7 (1) of the ITPA lays down punishment for clients found engaging in prostitution in public places or areas notified by the police. Existing law penalizes clients of sex workers only in certain situations.

As such, the legislative intent behind enacting the ITPA, was to penalise acts of third parties such as brokers, pimps, agents, who exploit persons in sex work. Neither the ITPA nor its predecessor - the Suppression of Immoral Traffic in Women and Girls Act (SITA), 1956 were meant to punish clients of adult, consenting sex workers. By criminalizing clients under the proposed Section 5C, the DWCD is subtly altering the legislative policy underlying the ITPA, which does not aim at criminalizing sex work, *per se*.

***We strongly oppose the introduction of this provision and demand that it be dropped from the final amendments***

- **Enhancing punishment under section 6 for detaining a person for prostitution** ----- This provision aims to strengthen penalties against those forcing /compelling unwilling persons to engage in sex work, which we fully support. However, it may be noted that enhancing punishment will not necessarily result in increased convictions.
- **Deletion of Section 8 to decriminalize soliciting for sex work** ----- The proposal to repeal Section 8 is a welcome step. Seeking clients by soliciting is, in many ways, indispensable to earning a livelihood out of sex work. The criminalisation of soliciting by imposing fines and/or imprisonment is one of the most obvious legal afflictions for sex workers, who are faced with arrests, court hearings and

convictions on a routine basis. Besides actual application of the provision to apprehend sex workers, the section lends clout to local police, who are known to harass sex workers by threatening to invoke this section. The deletion of Section 8 will bring some respite, though sex workers may continue to be harassed and arrested under public nuisance laws like Section 110 of the Bombay Police Act and Section 294 of the Indian Penal Code.

- **Extending stay in corrective institution under Section 10 from 5 to 7 years** ---  
---- We believe that institutionalization is not an answer to the problems faced by sex workers. However, in the event of remanding a sex worker to an institution, there is a need to obtain informed consent from the sex worker, after providing legal representation and counseling. This is not reflected in the proposed amendments. Magisterial orders for placement in a home must only be made with the sex worker's consent.
- **Lowering rank of police officers authorized to conduct anti-trafficking operations from Inspector to Sub Inspector under Section 13 (2)** ----- The suggestion to lower the rank of police officers, authorized to enforce the ITPA from Inspector to Sub-Inspector may result in increased police excesses against sex workers. Anecdotally, it is well known that powers conferred on law enforcement officials; both under the ITPA as well as local police enactments such as Bombay Police Act are grossly misused to threaten and extract favours out of sex workers. Reduction in the rank of the Special Police officer will aid police personnel in lower ranks to abuse statutory powers, flout legal norms to violate fundamental rights and civil liberties. Further, it will make it more difficult than before to scrutinize the exercise of such powers. In fact, the ITPA should be amended not only to ensure that police personnel follow existing procedures provisions for search, rescue and raid (under Sections 15 and 16 of the ITPA) and that safeguards like recording of reasons, witness to search provided in the law are adhered to. Further, there is a need to institute provisions that check misuse of powers by the police.
- **Setting up of a Nodal Authority at the Central and State level under new Sections 13A and 13 B to combat trafficking** ----- The mandate of the authority being proposed is limited to countering trafficking. Rehabilitation of survivors of trafficking also needs to be addressed by such committees. The Amendments should spell out the composition of the Committees and include representatives from sex workers organizations, who have been assisting in anti- trafficking efforts through self-regulation in places like Sonagachi, Kolkata.
- **Deletion of Section 20 that authorizes Magistrates to remove a sex worker** ----  
This is a welcome measure. Though Magistrates rarely ever invoke this provision, the threat of expulsion under Section 20 continues to haunt sex workers. At the same time, sex workers are mostly evicted from their homes under Sections 15 and 16, which also need to be reviewed.

- **Provision of in camera proceedings to protect identity of victims under Section 22** ----- This is a welcome provision. However, similar provisions are mostly breached without a remedy.