

## Understanding the De- Criminalisation Demand

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### A FACT SHEET FOR ADVOCACY

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#### **STOP Panic around Sex Work; and the conflation with Trafficking**

Anti - trafficking groups globally and across India, have often muddied the waters on the issue of adult consenting sex work, by continuously stating that "efforts to decriminalise sex work will lead to increased demand for trafficked victims and fuel sexual exploitation".

Decriminalisation is the repeal or amendment of laws or statutes which made certain acts criminal, so that those acts are no longer crimes or offenses. Sex work is adult consensual provision of sexual services and must not be equated with sexual exploitation or sex trafficking.

As noted by the UNDP Global Commission on HIV and the Law, "*Sex work and sex trafficking are not the same. The difference is that the former is consensual whereas the latter coercive. Any point of view that casts "voluntary prostitution" as an oxymoron erases the dignity and autonomy of the sex worker in myriad ways. It turns self - directed actors into victims in need of rescue.*"<sup>1</sup>

Secondly, there is no evidence to show that ensuring rights of sex workers by de- criminalizing sex work will increase trafficking.

In New Zealand, a Committee established under the Prostitution Reform Act concluded that decriminalization "had a marked effect in safeguarding the right of sex workers to refuse particular clients and practices, chiefly by empowering sex workers through removing the illegality of their work." Studies conducted in New Zealand after decriminalization concluded that sex workers have better working conditions, receive improved access to health services, take precautions to stop the spread of STIs, and enjoy better relations with police, increased access to justice when they are victims of crime, and increased confidence and well-being.

Additionally, there was no evidence that decriminalization led to an increase in trafficking into prostitution, youth in the sex trade, or the number of sex workers.<sup>2</sup> In India, there is abundant evidence from sex worker collectives such as VAMP in Maharashtra and DMSC in West Bengal showing that when sex workers collectivise and come together without fear of persecution they are able to fight exploitation and abuse within sex work. **This itself is a strong argument in favour of de - criminalisation.**

Recently the India Report of the Special Rapporteur on Violence Against Women, has underscored the need to address the **violence faced within sex work from state and non - state actors and the lack of avenues for legal redress.** It notes that sex workers in India are "*exposed to a range of abuse including physical attacks, and harassment by clients, family members, the community and State authorities*". **It further states that "sex workers are forcibly detained and rehabilitated and**

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<sup>1</sup><http://www.hivlawcommission.org/index.php/report>

<sup>2</sup>N.Z. Ministry of justice, report of the prostitution law review committee on the operation of the prostitution reform act 2003 13 (2008), available at <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-Committee/publications/plrc-report/documents/report.pdf>.

***consistently lack legal protection"; and that they "face challenges in gaining access to essential health services, including for treatment for HIV/AIDS and sexually transmitted diseases".<sup>3</sup>***

The Report has also called for the *separation of efforts to combat trafficking from sex work* and reiterates that *conflating sex work with trafficking has led to assistance that is not targeted for their specific needs*. It has also led to coercive rehabilitation measures by the State.

Any argument that seeks to define sex work as violence and exploitation forecloses discussion over the rights of people involved in sex work to pursue it as a livelihood.

The relentless conflation of sex work and trafficking also severely undermines the human rights of sex workers while failing to secure rights of people who are trafficked; by misdirecting resources into policing sex work, rather than identifying people who are coerced and providing appropriate support.

It exacerbates the lack of legal remedies to redress violence and erodes the efforts of sex workers fighting for legal and social recognition of their rights to dignity and livelihood.

## **We Call for Decriminalisation**

### ***Removing the criminalized environment***

Though sex work is not illegal in India, there are laws such as the Immoral Traffic Prevention Act (ITPA) that continue to criminalize women in sex work and those who support her work such as third parties. For instance, "prostitution in public spaces", "soliciting" are punishable offenses and sex workers are sent to correction facilities when arrested for these offences.

Similarly, when raids are conducted on brothels or lodges, even adult consenting sex workers are picked up and sent to "corrective institutions" under the law. For example, ***the most recent incident in a long list of forced rehabilitation happened in Kolhapur in 2013, when a brothel was raided and ten adult consenting sex workers were picked up and sent to corrective institutions***. They were remanded to corrective facilities or asked to produce legal guardians or parents who would take custody of them!! The women almost all of them over the age of 40, languished in these institutions for over 2-3 months, before they agreed not to do sex work as a pre - condition for their release.

ITPA finds two consenting sex workers working together for their own mutual benefit an offence, by labelling it as a brothel deemed illegal under law. More importantly, these provisions have no reasonable link to the objective of ending trafficking for commercial sexual exploitation.

Such punitive laws that criminalise and punish act as instruments through which sex workers are harassed, their human rights violated by law enforcement agencies, health authorities and non - paying clients. Sex workers are a primary means by which the police meet arrest quotas, extort money, and extract information. ***A Pan India Study with 3000 sex workers found that over 37% reported experiencing physical police violence and over 51% reported verbal abuse<sup>4</sup>. Sex Workers across India have reported that fear of arrest, punishment, losing custody of children or being***

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<sup>3</sup>Para 20, page 6

<sup>4</sup>Of the Voices that Matter, SANGRAM website

***stigmatized or blamed for doing sex work prevents them from accessing justice for violence and denial of health and other services<sup>5</sup>.***

International agencies such as The Global Commission on HIV and the Law<sup>6</sup>, UNAIDS<sup>7</sup>, the World Health Organization<sup>8</sup>, the Global Alliance Against the Trafficking in Women (GAATW)<sup>9</sup> and Human Rights Watch<sup>10</sup> have also called for or support the de-criminalisation of sex work.

***Sex Workers call for an end to the criminalized environment created by these laws - They state that the removal / amendment / reading down of specific punitive laws and policies targeting sex workers are imperative.***

### ***☞ Unsafe Working Conditions***

It is a known fact that the current criminalized environment also results in unsafe working conditions for sex workers, including exploitative practices by third parties and lack of access to nondiscriminatory health services. Decriminalisation will help sex workers organise and address all forms of exploitation, including abusive, sub-standard or unfair working conditions instituted both within and outside the sex trade.

According to the UNAIDS Guidance Note on HIV and Sex Work, “*even where services are theoretically available, sex workers and their clients face substantial obstacles to accessing HIV prevention, treatment care and support, particularly where sex work is criminalized.*”

In countries where sex work is decriminalized, there is evidence that violence directed at sex workers is reduced, relations between sex workers and the police are improved, and access to health services has increased. The criminalisation of sex workers’ personal relationships amounts to the criminalisation of sex workers themselves, while the criminalisation of workplaces mitigates against sex workers ability to protect themselves from HIV and other STIs, and gain labour rights. In a de-criminalized set up, sex workers are able to negotiate sex with clients, reduce conflict, negotiate safer sex practices, thereby reducing risk of HIV and STI transmission.

***Sex work is work, and sex workers should not be defined as either criminals or victims, such an analysis harms not only sex workers but all women. Sex work needs to be decriminalised in order for the rights of sex workers to be protected.***

### ***☞ We oppose Regulation***

A regulated framework permits some forms of sex work, but not necessarily all forms of sex work. It requires sex ***workers to register with the government and have licenses to do sex work***, but many sex workers choose to work privately instead of registering because of the social stigma attached to sex work. This will result in a separate class of sex workers who continue to work without licenses and thus denied access to redress when faced with violence, abuse and rights violations. ***India has a vast***

<sup>5</sup>Status of Sex Workers in India, Submitted to CEDAW Committee, 2014

<sup>6</sup><http://www.hivlawcommission.org/index.php/report>

<sup>7</sup>[http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306\\_UNAIDS-guidance-note-HIV-sex-work\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf)

<sup>8</sup>[http://www.who.int/hiv/pub/guidelines/sex\\_worker/en/](http://www.who.int/hiv/pub/guidelines/sex_worker/en/)

<sup>9</sup>[http://www.gaatw.org/statements/GAATWStatement\\_05.2013.pdf](http://www.gaatw.org/statements/GAATWStatement_05.2013.pdf)

<sup>10</sup><http://www.hrw.org/world-report/2014>

***number of home-based, part time and hidden sex workers who will become criminalized in such a regulatory regime.***

Only certain forms of sex work will be permissible under the law. *For instance, street based work in New South Wales, Victoria, the Australian Capital Territory and Northern territory is prohibited. In some territories, brothels are also prohibited.*

***Law enforcement will be tasked with the process of licensing and monitoring of sex work practices.***

For instance, a study on the legalisation of prostitution in Netherlands concluded that the police play the most important role in monitoring the licensed sector and in carrying out inspections. In the context of India, such a regime can only lead to further rights violations for sex workers especially those who wish to work in private without the license.

A licensing system will also result in curbing the right of sex workers to move freely for their work within the country. Since licenses will be issued only for a specific area or zone, any sex worker working outside the **designated zones** will be liable for prosecution.

***Mandatory health checks required in a regulatory framework,*** further perpetuate stigma against sex workers, while failing to address the HIV epidemic in a meaningful manner. Singling sex workers for compulsory HIV testing or health check -ups will perpetuate the stigmatizing notion that sex workers are vectors of disease.

Mandatory health check -ups have been recognized by UNAIDS, and the Office of the High Commissioner for Human Rights as a bad public health practice and a rights violation. Such coercive practices alienates vulnerable populations and drives them away from resources they need to safeguard their health and the health of their partners.<sup>11</sup>

## ***In conclusion***

Sex workers need a supportive legal framework that removes or does not have criminal sanctions against sex workers, clients and third parties. Have appropriate anti - discrimination legislation that enables sex workers to address discrimination, especially with service providers and government agencies tasked with providing identification documents and social entitlements.

Sex workers should be supported to have a meaningful dialogue with policy makers regarding their work and livelihood, to collectivise, participate freely and represent sex workers who are unable to participate in such consultative processes.

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<sup>11</sup>Office of the High Comm'r for Human Rights and Joint U.N. Programme on HIV/AIDS (UNAIDS), *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated version*, at 86-87, HR/PUB/06/9 (2006).