

Minutes of the meeting on initiating collective thinking on changing prostitution laws in India

Date: *2nd March 2004*

Venue: *Rabindra Kanan, Company Baghan, Kolkata* (site of the Sonagachir-Ek Yug Mela)

Quorum: *Sex workers from different parts of India, member organizations of the National Network of Sex Workers, Dr. Smarjit Jana, members from the Lawyers Collective HIV/AIDS Unit and representatives from FIRM, WINS, SAMRAKSHA, PLUS and BANDHAN*

Introduction and objectives of the meeting

Dr. Smarjit Jana introduced the meeting and explained its objective i.e to share experiences on the Immoral Traffic (Prevention) Act, 1956 (ITPA) and the manner in which it affects the lives of sex workers. He hoped that the meeting would be an interface between Lawyers Collective HIV/AIDS Unit (LCHAU), a legal organization working on rights, laws and HIV/AIDS and sex worker organisations from across the country to exchange ideas and collectively explore options for law reform.

Tripti, LCHAU, summarized the impact of ITPA on sex workers, in that it leads to:

1. Obstruction of sex work because of the criminalisation of activities like solicitation and sites where sex workers operate including brothels, hotels, and streets, thereby making it difficult for sex workers to work and earn
2. Harassment of sex workers by the police, who are granted wide powers under the Act
3. Inability to access judicial remedies when sex workers rights are infringed by the police or other authorities. This is evident from the recent experience in Surat, where sex workers petitioned the Gujarat High Court for restoration of their homes in Chakla Bazar, which also functioned as brothels, and the Court was reluctant to grant relief because the law does not allow brothel keeping and prostitution in the vicinity of public places. A similar situation is looming large in Goa in the Baina red light area, which has been sealed off by the law enforcement agencies to curb sex work. This has resulted in the isolation of sex workers and has threatened their survival.
4. Obstruction of HIV prevention and control interventions that the government itself supports. Peer educators and NGO staff promoting HIV prevention measures condoms are exposed to harassment, abuse and even arrest under the Act. The existing legal regime around sex work does not create an environment conducive for adoption of safer sexual practices; instead it creates hurdles for HIV intervention projects.

She shared LCHAU's perspective that unless the law is changed substantially to recognize the rights of sex workers, they will continue to face persecution. In this context, LCHAU has contemplated a process to work towards law reform and has felt it necessary to hear sex workers' experiences of the law and the nature of problems that it poses for them in their work. LCHAU saw the Sonagachi Mela as an apt forum to seek views of sex workers as the event sees the presence and participation of sex worker organizations from across the country.

Sex workers' perspectives and experiences

Putul, DMSC, began by pointing out that solicitation is an intrinsic part of sex work and that sex workers have to attract clients on the street but the law does not allow that. It punishes sex workers for doing what is indispensable in order to make a living. The law also makes brothel work punishable. Brothels are not only used for business but are also the only shelter that sex workers have access to. Putul referred to the situation in Surat where the police evicted sex workers from their homes in Chakla Bazar on the grounds that brothels cannot operate near temples and schools, but the brothels have existed for over 200 years and the schools and temples were constructed much later. She criticized the law for displacing sex workers and not allowing them to work safely. Putul went on to blame the police in Surat, who ordered the women to shift to another area. She said that wherever they go, schools and temples are bound to come up and so effectively, sex workers will not have any location to work from.

Another sex worker from DMSC argued that there should be no separate law for sex workers and that red light areas like Sonagachi should be allowed and granted recognition.

Swapna, DMSC, said that there is some talk of enacting new laws that regulate sexuality, similar to the ITPA. ITPA forbids minors or persons below 18 from practicing sex work and terms this as "trafficking". But all over the country, so many young girls are married off by their parents and are forced to have sex with their husbands. Why does the law condone such practices? Why should forceful and early marriage not be curbed in the same way that trafficking is opposed? Swapna went on to question why sex work is condemned and why sex workers are ridiculed in society? She said that like everyone else, sex workers too work hard to earn a living and support their families and so why should they be stripped of respect and dignity?

Sreeram, WINS, said that in Tirupati and in other parts of Andhra, sex work is mostly practiced on streets and around other public sites, as there is no designated brothel or red light area. Mostly, sex workers are arrested under section 294 of the Indian Penal Code (Obscene acts in public). Very few arrests are made under the ITPA. On arrest, majority of sex workers plead guilty before the Magistrate, pay the fine and then return to the streets to continue their work. They do not challenge their conviction, as it is expensive and time consuming. Another sex worker from WINS added that the police extract money from them on a regular basis and make arrests if they refuse to pay. She said that even when the law is not actually invoked, it is a tool of oppression in the hands of law enforcement officials.

Pushpa, SAMRAKSHA, shared that in Bangalore, the ITPA is invoked to arrest sex workers. Arrests are usually made on Friday evenings so that sex workers can be detained in lock up over the weekend. Earlier, sex workers refrained from contesting the charges and used to plead guilty in Court. In recent times, however, sex workers have challenged the charges filed against them in Court with legal assistance from the Alternative Law Forum. Out of the 26 cases filed, sex workers were acquitted in 5 while the other 21 are still going on. Pushpa declared that sex workers will not accept defeat and will fight out their cases in Court, as they have done no wrong.

Jayshree, FIRM, explained that there are no brothels in Kerala and sex workers operate on streets. Like in Andhra, sex workers are arrested under Section 294 of the

IPC and not under the ITPA. Solicitation in public is prohibited and this pushes sex workers into unsafe locations. In the last few years, the extent of police torture has reduced but the stigma attached to sex work persists. According to her, it is the stigmatization of prostitution that is the biggest hurdle for sex workers in accessing rights and justice and the law is a manifestation of the same.

Sadhna, DMSC said that laws are enacted in the interest of and for the well being of human beings. ITPA, on the other hand, has made life difficult for sex workers. She narrated how brothel owners use sections that criminalise brothel keeping (Section 3) and earnings from prostitution (Section 4) for arm-twisting and to charge exorbitant rates to rent out premises to sex workers. While the owners manage to circumvent the law, sex workers are evicted from premises that they have validly occupied by paying rent. In her opinion, brothel work should be permitted under law. Sadhna added that male and Hijra sex workers are also harassed under other laws in addition to ITPA. They should also be actively involved in the campaign against ITPA.

Agniva, PLUS, described some of the problems encountered by male sex workers. He said that when a raid is carried out in massage parlours, which is where a large number of male sex workers operate, they are not arrested for selling sex but are considered to be pimps under ITPA. The harassment intensifies if a male sex worker is caught carrying condoms.

Process envisaged by LCHAU

Anand, LCHAU, felt that while sex workers have been allowed to operate in Sonagachi in Kolkata, the situation in other parts is very different. He went on to explain that even in places where the police do not use the ITPA but invoke other local laws or provisions to routinely harass sex workers, ITPA remains a powerful legal instrument in their hands to evict sex workers and deprive them of their earnings. ITPA strikes at the heart of sex workers' livelihood because it criminalizes the entire gamut of activities that are *necessary* to carry out sex work. In Surat, the law enforcement agencies employed the Gujarat Prevention of Anti-Social Activities Act (PASA), in addition to ITPA, to remove sex workers from their homes and repress their movement for rights and justice. Anand emphasized that the law has to change; and that the question before the community is whether it should seek reformation of ITPA by recommending changes in existing law or ask for its repeal altogether. He acknowledged that this issue will require detailed deliberations, careful scrutiny and wider consultations and offered to undertake this process forward on behalf of LCHAU. He proposed that in the next six months, LCHAU could meet with groups and individuals active on the issue and have focused discussions on ITPA. By the end of the year, a larger consultative meeting could be organized inviting all stakeholders to come out with collective recommendations, which could then be submitted to NACO and the Government of India. .

Tripti read out a letter written by Meena Seshu and others from SANGRAM in response to the mail sent by LCHAU about the present meeting. The letter expressed SANGRAM's concerns about ITPA and reform endeavors. SANGRAM felt that ITPA must be repealed in its entirety and not merely amended. Meena also felt that the process should not be hurried and that LCHAU should first consult stakeholders and then draft the law. Tripti affirmed this and said that that is what LCHAU proposes to do. In the next few months, the organisation would prepare a detailed critique of

ITPA, as it exists, highlighting the legal infirmities as well as the problems that each section poses for sex workers. This document, analysing the Act and its implementation would be circulated among other concerned groups for their feedback and comments. This then, could become the basis for larger consultative meetings, as suggested by Anand.

Conclusion

Tripti felt that before embarking on the process of seeking reformation of prostitution laws, the community should be conscious of some of the impediments that it is likely to face. Across the world and in India, attempts by sex worker rights groups to seek decriminalization of prostitution have met with strong opposition from several quarters and have been resisted or dismissed by state authorities. Some of the obstacles faced by sex workers' groups include influential anti-trafficking lobby, funding policies that restrict support for projects advocating for sex worker rights, unfavorable political environment, a conservative and non-empathetic judiciary and the exclusion of sex worker organizations from decision-making fora. The community may also have to make difficult choices, as legislators may not decriminalize every aspect of sex work. For instance, in some countries where the law has recognized brothel work, restrictions have been imposed on street sex work.

Dr. Jana was of the opinion that the existing law is based on the notion that sex work is immoral. This assumption, he felt must be challenged and rejected. He said that the recognition of sex work as work has been a long-standing demand of DMSC, which it has been articulating at almost every political forum. He informed the groups that Durbar had recently done a signature campaign on this issue and had received support from political leaders. He expressed confidence in the sex workers' ability to meet the challenges arising in securing social and legal recognition of sex work.

Tripti summarised the meeting and informed the participants that in the coming months, LCHAU would contact concerned organizations, circulate a document critiquing ITPA and seek inputs from the community to take the process forward.

Minutes recorded by the Lawyers Collective HIV/AIDS Unit.