



# “Sex Workers Meet Law Makers”

1<sup>st</sup> March 2011, Constitution Club, New Delhi



## **Background**

India is home to an estimated 12.63 lakh female sex workers. In addition, there are considerable numbers of male and transgender persons engaging in sex work. The last two decades has seen the emergence of sex workers' collectives, mobilizing around health, education, livelihood and social security, and protection from violence.

To illustrate, sex workers' in *Kolkata* have developed the renowned peer education model of prevention of HIV, built schools for their children's education and opened banks and credit facilities to reduce indebtedness. In *Mysore*, sex workers run a popular restaurant, dispelling the social stigma attached to sex work. In *Bengaluru*, sex workers have formed a trade union and are demanding labour standards. Sex workers in *Sangli* use film and theatre medium of '*Sangli Talkies*' to articulate their experiences to the world at large. Across the country, sex workers' are asserting themselves in public spaces and claiming equal opportunity before law.

While the above examples mark a welcome break from disempowerment, sex workers' efforts to improve their lives are obscured by criminalization. Prostitution *per se* is not illegal but sex workers' are restrained under the *Immoral Traffic (Prevention) Act, 1956* (ITPA) with dangerous consequences for the health, safety, livelihood and protection of sex workers.

Between 2005-2009, sex workers engaged with Members of Parliament (MPs), including the then Minister of Women and Child Development, senior officials from the National AIDS Control Organisation and the Ministry of Health, the Parliamentary Standing Committee on Women and Child Development and the Forum of Parliamentarians on HIV and AIDS to share their concerns on the proposed amendments to ITPA. As a result, the Amendment bill was rolled back. During these interactions, the need for greater interface between sex workers and law makers was felt. This was reconfirmed by the Chairperson of the Lok Sabha Committee on Women's Empowerment, who, at a recent meeting with sex worker representatives, expressed the need for dialogue with legislators.

It is in this context that the Lawyers Collective and the National Network of Sex Workers organized a dialogue titled "**Sex Workers meet Law Makers**" on 1<sup>st</sup> March 2011 at the Constitution Club, New Delhi. The interface intended to enable sex workers to apprise the MPs of the problems associated with criminalization of sex work and to understand parliamentary processes including opportunities for raising debate on policies that affect them.

This is a report of the proceedings.

## **The Immoral Traffic (Prevention) Act, 1956: An Overview**

In India, the legal regime on sex work is laid down under the **Immoral Traffic (Prevention) Act, 1956** (“ITPA”). ITPA does not proscribe sex work *per se* but penalises specific activities related to commercial sex. It also provides for rescue & rehabilitation of persons in sex work. The Act is implemented through Police & the Magistracy. Acts punishable under ITPA include:

- **Brothel keeping** (Section 3)
- **Living on earnings of sex work** (Section 4)
- **Procuring, inducing or detaining for prostitution** (Section 5 & 6) Penalties are higher where offences involve children (<16 yrs) & minors (< 18 yrs)
- **Prostitution** in areas notified by Police & near **public places** (Section 7)
- **Soliciting** (Section 8)

**All offences are cognizable** i.e Police do not require a warrant to arrest or search. (Section 14)

Police personnel entrusted with the implementation of the Act locally (**Special Police Officers**) as well as at the national level (**Trafficking Police Officers**) are accorded **special powers** (Section 13) to **raid, rescue & search** premises suspected of serving as brothels (Section 15). Magistrates are authorized to **order arrests & removal, direct custody of rescued persons, close down brothels & evict sex workers** (Sections 16, 17, 18 & 20). The Act provides **institutional rehabilitation** for ‘rescued’ sex workers. (Sections 19, 21, 23 & ITPA State Rules)

### **Implications**

- Sex work *per se* is not illegal under the Act, but, its *de facto* criminalization through prohibition of soliciting, brothel & street work, has effectively undermined sex workers’ ability to claim protection of law
- Absence of safeguards has intensified violence & exploitation by brokers, agents & the mafia.
- Punitive provisions are inimical to public health interventions to reduce HIV.
- Fear of arrest, infringement by Police makes negotiation of safer sex difficult
- Peer educators carrying condoms are apprehended for ‘promoting sex work’
- Attempts to promote condom use in brothels have been aborted.
- Disempowerment of sex workers increases harms of HIV & Trafficking

### **Specific Problems**

**I. Prohibition of Brothels:** Section 2(a) defines ‘brothel’ as “any house, room, conveyance or place or any portion of any house, room, conveyance or place which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes’.” Section 3 provides punishment for keeping, running & managing a brothel. The term “mutual gain of two or more sex workers”, renders premises shared by sex workers illegal, including their residence. There have been several instances where sex workers have lost their homes & earnings under the guise of ‘closing down brothels’. As long as brothels remain illegal, universal condom use cannot be achieved.

**II. Criminalisation of Earnings of Sex Work:** Section 4 punishes adult persons being economically supported by sex workers including those living with sex workers. Therefore, aged parents, siblings, partner(s), children over 18 years, who are dependent on sex workers are treated as criminals. In reality, a significant majority of persons, particularly women, turn to sex work to support their families including children & parents. Ironically, these very persons are punishable by law.

**III. Penalties for Soliciting:** Section 8 punishes a sex worker drawing attention of potential customers from a visible, conspicuous site, whether in a street or private dwelling. The criminalisation of soliciting is one of the most obvious legal problems for sex workers, who are faced with arrests, court hearings & convictions on a routine basis. Sex workers are arrested even when they're not soliciting. Most plead guilty finding themselves in a vicious cycle of criminalization. Though this provision does nothing to prevent or abate trafficking, it is "most-used", with maximum arrests & convictions being reported under Section 8, ITPA.

**IV. Statutory Powers & Procedures:** ITPA confers wide powers on Police to conduct & Magistrates to order:

- **Raid**  
Police can enter and search any premises on suspicion. Raids are often carried out in breach of statutory procedure for public witness, female Police etc. Violence, abuse & humiliation of sex workers are common. Raids impair sex workers' ability & result in increased harm.
- **Medical examination**  
Section 15 (5A) mandates medical examination of persons removed from brothels for, *inter alia* detection of sexually transmitted diseases. Sex workers are reportedly forcibly tested for HIV & their results disclosed in open Court. This is contrary to national policy, which requires consent, confidentiality & counseling for HIV Testing.
- **Rescue & Rehabilitation**  
Police can remove any person found in premises where sex work is carried out regardless of age & consent. Rehabilitation is synonymous with detention in State run homes for indefinite periods. Viable economic alternatives are either non-existent or unavailable to sex workers on account of stigma.
- **Expulsion of sex workers**  
Sections 18 & 20 authorize Magistrates to close down brothels & expel persons from premises where sex work is being carried out, including their residence. Threatened with eviction, sex workers are forced to relocate with no access to health & HIV services.

Over the last 50 years, ITPA has failed to prevent & intercept trafficking. On the contrary, it has become a source of repression for sex workers, who face routine harassment & repeated arrests. **The Act is an abject failure & requires a complete overhaul.**



## Proceedings



The meeting commenced with a welcome and introduction by the moderator – **Mona Mishra**, a long standing development activist. While outlining the objectives of the meeting, Mona assured the participants that the evening was set to witness an exciting discussion on the legal framework on sex work and spark ideas for reform.

### 1. Bhagyalakshmi, National Network of Sex Workers and Ashodaya Samiti

Bhagyalakshmi introduced herself as a street based sex worker from Mysore, Karnataka. She stated that society considers sex work an immoral act, akin to committing a sin, but the law goes one step further and criminalizes it.

Talking about the nature of her work, Bhagyalakshmi said that women like her engage in sex work to earn for their family. But this is something people forget to take into account. As a result of the current laws in force, sex workers are arrested under false pretexts, and harassed by the police. The community extends all possible help to the Government by participating in HIV awareness programmes and involving themselves in anti trafficking activities including sending home girls found wandering about. But the government does not extend any help to sex workers or care for their needs. *“Do just that much, do not go beyond, they tell us,”* exclaimed Bhagyalakshmi. She requested the dignitaries present to deliberate on these issues and think about ways to make their lives better.



### 2. Shri Basudeb Acharia, Member of Parliament

Shri Acharia stated that the day’s discussion must focus on lawmaking and strategise to find a solution to the complex but urgent concern of sex work legislation. Commenting on the existing legal regime, Shri Acharia said – *“Today, the law is surrounded by an atmosphere of fear. What we must think about is*

*what would be the effect of things without the law. Would that be more beneficial? We must look more closely at the motive and purpose of the current law (ITPA)”.*



Discussing the circumstances around which one opts for sex work, Shri Acharya said that the issue is intrinsically linked to the high rates of unemployment in the country. Economic conditions play a major part and this must be duly addressed. He also criticized legislative policies that do not distinguish between illegal trafficking and sex work. The need of the hour, he said, was to make *“the law friendlier towards those it affects.”*

Shri Acharya underscored the importance of separating law and morality. *“What is legal should not be confused with what is moral”*, he stated. Further, he talked about correct drafting and interpretation of the law. Referring to some provisions of the ITPA, he said – *“This demonstrates how the law works and how it can sometimes lead to dangerous consequences.”*

In concluding his speech, Shri Acharya appealed to the gathering to do all that one can to help this situation, and to ensure that sex workers are seen in a different light. He hoped that programmes like this meeting would take the agenda forward and wished the organizers success in their endeavour.

### **3. Shri Oscar Fernandes, Member of Parliament and President, Forum of Parliamentarians on HIV and AIDS**

In his opening remarks, Shri Fernandes spoke about the profession of sex work being as old as man himself, existing for thousands of years. He said that the status of ‘such women’ has found mention in literature, from the time of the great playwright *Kalidasa* to biblical writings. To illustrate his point, Shri Fernandes went on to narrate the following story:



*“As the story goes, it is said that once, a woman was brought to Christ for doing this work, and the immorality of her actions. They stated that according to the law, she must be stoned to death. Christ seemed to agree and said, she must be stoned to death, as that was the punishment prescribed by the law. But only those who hadn’t participated in such activities may*

*fling stones at her. When the men present there picked up stones to hurl in her direction, the stones crumbled to the ground, indicating that they were all 'sinners'.*"

There is no room for being judgmental; instead the issue must be viewed practically. Drawing attention to health consequences, Shri Fernandes said that sex workers' health closely affects the health of the nation. He stated that a decision must be taken to ensure that everyone is protected and assured safety.

Shri Fernandes recounted touring Delhi's red light area as part of a health awareness drive. In one building, he asked the women present if safer sex practices were followed. Everyone enthusiastically nodded in agreement, but then the building was teeming with children. So if there was condom usage, how they had so many children remains unexplained, he remarked, in jest. He also said that sex workers' desire to have children cannot be overlooked, as, like everyone else, they too worry about their future.

In sum, he assured the audience that HIV and related issues, including that of sex workers' rights, are being debated in a number of foreign countries, and before the UN. He was hopeful that the policy debate in India will also settle, to favour sex workers and the rest of the community.

#### **4. Prof. Sk. Saidul Haque, Member of Parliament**



Speaking briefly but powerfully, Prof. Haque raised two important issues:

The first was that sex work must be considered work and be included in labour legislation. This would help sex workers organize themselves better within workers' unions and gain greater bargaining power.

The second related to children of sex workers, whose welfare was of paramount importance. Prof. Haque criticized legal provisions that prevent sex workers' from supporting their children's higher education and called for their immediate repeal.

## **5. Shri Dinesh Trivedi, Honb'le Minister of State for Health and Family Welfare, Government of India**

Shri Trivedi opened his speech with a verse from a popular Hindi song conveying the spirit of humanism.

He went on to talk about his involvement with sex workers' collectives, referring to his dialogue with their organization in Kolkata as "*very enlightening*". He said that he had written to the Ministry of Women and Child Development, asking them to pay attention to sex workers' health, livelihood and security concerns.

The Minister reiterated that fundamental rights have been enumerated in the Constitution. However, he lamented that - "*many laws, instead of helping, get in the way of progress and welfare, and such laws must change.*"

Referring to Shri Fernandes' mention of the international import of HIV, he said that as long as sex workers are not treated with dignity, there will be no progress in preventing HIV.



Honb'le Minister of State, Health and Family Welfare, Shri Dinesh Trivedi (centre) interacting with participants

Recollecting memories of his first time as Member of Parliament in the Rajya Sabha in 1990, Shri Trivedi said his maiden speech in Parliament was about sex workers. It was prompted by a newspaper article that he had read which described the unjust treatment of sex workers in Delhi. He said that his association with the subject and the community had only grown with time.

Describing the historical practice of sex work, which had always been an integral part of society, he cited the tradition of making the idol of Goddess *Durga*, where



the first sample of soil is brought from the home of a sex worker. *'Thus, on one hand we worship her like a goddess, while on the other we refuse to treat her as human!'*, he stated.

Shri Trivedi advised the audience to engage regularly with law makers, as they are key to reform. Stressing the role of health and education in steering the country's progress, the Minister said that sex workers had shown leadership in advancing both. For instance, members of *Durbar Mahila Samanwaya Committee* have not only contributed to awareness building on HIV, but also are educating their children and contributing to India's development.

While articulating support for ending arrests of sex workers, the Minister also highlighted the need to address underage and forced sex work. Shri Trivedi concluded his address with a strong show of solidarity with sex workers and assured them of his continued involvement in the campaign for rights.

#### **6. Sapna Gayen, Durbar Mahila Samanwaya Committee (DMSC)**

In Sapna's opinion, the gravest problem faced by sex workers was the 'violence of the law'. Of immediate concern, is the violence meted out by the Police. And this, she clarified, is not restricted to when sex workers are caught for 'illegitimate' acts but persists even when they do 'legitimate' activities work like buying vegetables or walking home. Sex workers are viewed as 'criminals' in every day life.

Further, she spoke of how those engaged in sex work, have no welfare support from the government. They have no employer, no pension and no banking facility. Because of this, they are often cheated out of their savings. They also have to deal with the day to day responsibility of running a family and raising children like other women. But when authorities in school find out about the profession of the child's mother, the child faces enormous discrimination.

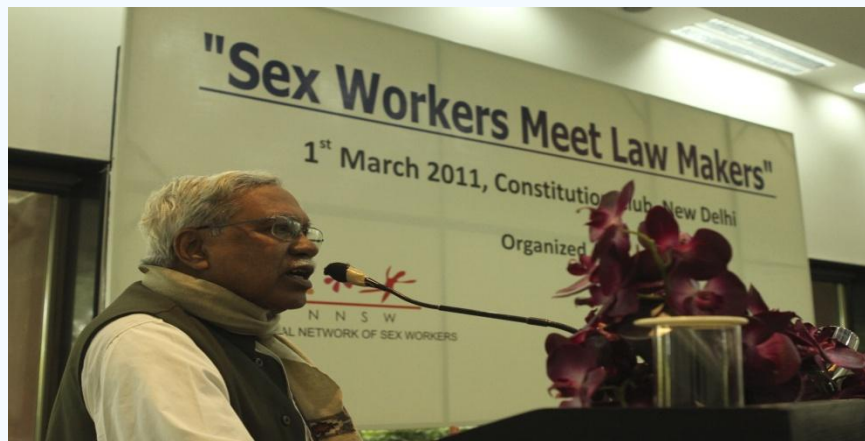
Besides, no landlord is willing to rent homes to sex workers, as the landlord can be penalized under ITPA. But possibly the harshest consequence of this law is that if a sex worker's child, aged above 18 years, lives off the earnings of his/her mother, s/he is penalized too! *"This law is taking away all our rights as citizens of this country, The ITPA must go"*, Sapna exclaimed.



## **7. Shri Hannan Mollah, Former Member of Parliament**

Shri Mollah expressed his pleasure at being a part of the historic gathering of sex workers and law makers. He said that he had heard the community raise demands in their home state of West Bengal but their advent to New Delhi shows that the movement for sex workers' rights has come of age.

Speaking of sex work, he said that it is probably the oldest occupation in human civilization. "*They say we must do away with sex work, but how can you?*" – Shri Mollah asked candidly. Millions of women are engaged in sex work in India today, and the idea is an impractical one, he remarked.



*"The ITPA is a strange law, where prostitution per se is allowed, but a person found engaging in it can be arrested."* Such an idea, he said, is 'away from human intelligence'. He went on to say that we must either eliminate the ITPA or resettle millions of women engaged in sex work in the country. Sex workers will always exist in society, and so, they must have dignity, he added.

Commenting on the Amendment to ITPA proposed in 2006, Shri Mollah said that it contained some dangerous provisions.

He then made the following proposals for reforming the law:

- (i) Accept sex work as a trade
- (ii) Remove penalties for renting a home. If they don't have premises to work in, sex workers will do street work and be exposed to more danger
- (iii) Do away with the blanket prohibition on soliciting. Sex workers have to seek clients, so, some regulations can be brought in to disallow soliciting in residential areas, or near schools.
- (iv) Clients must not be subjected to arrest or prosecution
- (v) Halt discrimination against children of sex workers in schools
- (vi) Ensure protection from *goondas* in red light areas who threaten clients and abuse sex workers.

Shri Mollah pressed sex workers' organizations to ensure that clients use condoms. He also encouraged them to advocate the repeal of an absurd law like ITPA. He noted that the movement for sex workers' rights had emerged in West Bengal and needed to be nurtured in other states, too. Shri Mollah chided the National Network of Sex Workers to make its case before Parliament to - "*get the rights that you deserve*".

## **8. Veena, Karnataka Sex Workers Union**

Veena introduced herself as a male to female transgender sex worker, who belongs to a *dalit* family in Karnataka. She is currently a member of the Karnataka Sex Workers Union, a state level network of male, female and transgendered sex workers.



Veena described her past of being rejected by her family for not conforming to gender norms and subsequently, being thrown out of home. At the age of 15, she joined the *hijra* community and the only options before her were to beg or sell sex. Of the two, she chose the latter.

Veena then spoke of the problems that sex workers encounter in their daily lives:

- i. Police harassment: Due to the illicit nature of their work, the police regularly extort money or demand sexual favours. They file false cases against them for possession of ganja and opium since they know that there is no one to protect or stand by the sex workers. She spoke of the violence that she had personally experienced in Police lock up, where she was beaten and made to clean toilets. "*Police who are supposed to be our protectors are the biggest perpetrators of violence against us*" – said Veena.
- ii. Harassment from goondas: *Goondas* harass them for money, and threaten to throw acid in their face or cause knife injuries.

Veena also described the Police-*goonda* nexus. She cited an incident that took place recently in *Channapatna*, a small town near the Bangalore – Mysore highway, where the police entered the house of a sex worker, forcibly removed her, and later had her pictures telecast on TV and in print. When the sex workers union went to inquire into the incident, the police got *goondas* and had them beaten. She narrated another incident in *Anantpur* district in Andhra Pradesh, where the Police, with the help of anti- trafficking groups, raided brothels and rounded up around 300 sex workers. The women were brought out onto the street, in full public view, and were dealt with inhumanely.

Veena complained that in the name of rehabilitation, the State is committing further atrocities against sex workers. In one case, some women who were 'rescued' by the police were locked up in one room without any food or water. They were so frustrated that they broke open the windows and escaped. In *Warangal*, Andhra Pradesh, the place where the women were carrying on sex work had high real estate value. The police evicted them, ostensibly under the law, but the real intention was to help builders acquire the land.

Veena concluded with the sentiment, echoed by all, that "*the ITPA must, without question, go. It is the responsibility of the government to take care of our needs and rights, as we are its citizens too!*"

### **9. Anand Grover, Lawyers Collective**

Anand reminded the audience of the barriers that sex workers' had traversed to gain dignity, respect and health in the aftermath of the HIV epidemic. Debunking the notion that sex workers were powerless vis-à-vis clients, the women in *Sonagachi*, Kolkata demonstrated that where empowered, sex workers can ensure condom use with paid partners. As a result of such community led interventions, HIV transmission has been contained in several states in India – a finding acknowledged by the highly acclaimed medical journal – *The Lancet*.



Explaining the scheme of the Act, Anand said that under the ITPA, any activity around sex work is criminalized. Police have enormous power to enter and forcibly remove sex workers from brothels. The foot soldiers in the battle against AIDS are treated as criminals, he remarked.

He went on to share an important lesson that he had learnt while working with sex workers. When the proposal to punish clients was mooted in the *ITPA Amendment Bill, 2006* he himself did not find fault with the idea. But when he discussed the same with sex workers, they were squarely opposed to it as penalization of clients would hurt their livelihood. Thus, he realised that no matter how sound, one's own judgment can never substitute the affected persons' views. "*It is very important to understand that you can't make a law on sex work without consulting sex workers*", stated Anand.

He further said that internationally, experience has shown that where sex work is illegal, there is considerable human trafficking. Instead, where sex work is decriminalized, such as in New Zealand, there has been no increase in trafficking or the number of persons entering sex work. He also clarified that underage sex work



continues to be criminalized in jurisdictions where sex work *per se* is legal. Nonetheless, according to Anand, concerns around forcible entry of adults and children in sex work need to be handled carefully in law reform debates.

### **10. Shri. Mani Shankar Aiyar, Member of Parliament**

Warmly greeting the audience, Shri Aiyar admitted at the outset that he was not very familiar with the issue and so, had come to listen and learn.

He remarked that there are some people in Government who want to eradicate sex work. Such officials, he felt, must be made aware that persons involved in commercial sex have the right to be treated with dignity. Shri Aiyar expressed support for according equal opportunities for children of sex workers and for prevention of exploitation by the Police.



Shri Mani Shankar Aiyar (right) accepting a memento from the organizers

He offered guidance on ways to raise debate on sex work law reform in Parliament. One method was to introduce a Private Member's Bill, by which MPs can bring up an issue of import in the House, usually on Friday afternoons. Another mechanism is to make a Special Mention, which obligates the concerned Minister to respond to the issue raised. This is a good way to generate an informed discussion, said Shri Aiyar.

One participant asked how violence against sex workers could end as long as they are punished for attracting clients under Section 8. Another sex worker questioned the rationale behind Section 4, which criminalises children older than 18 years for depending on their mothers' earnings. Shri Aiyar replied that he was not familiar with the specifics of the law, but understood the harms it was causing. He assured the

participants that he would engage with legal minds like Anand Grover on the subject and spur the debate ahead.

### **11. Akram, Ashodaya Samiti**

Akram introduced himself as a male sex worker, hailing from Mysore, who had entered sex work of his own accord. In jest, he suggested that if the government does not repeal the ITPA, then the community will threaten to have sex without a condom on the 15<sup>th</sup> of August and 26<sup>th</sup> of January, in display of their 'independence'.



### **12. Shri. J.D. Seelam, Member of Parliament and Secretary General, Forum of Parliamentarians on HIV and AIDS**



Shri Seelam echoed the suggestions of Shri Mani Shankar Aiyar, of utilizing Parliamentary mechanisms of discussion and debate. In addition, he stressed on the importance of interacting with law makers through meetings such as the present one. Shri Seelam also lent support to the idea that sex workers' must live with dignity, health and security, free of stigma, disease and violence.

### **13. Hajrab Bi and Meena Menon, Sahyog Mahila Mandal**

Hailing from the *Chakla Bazar* in Surat, Hajrab Bi said that when the AIDS prevention project began in Gujarat in the late 1990s, sex workers were asked to become part of it. Government doctors gave them counseling, treatment and condoms to prevent sexually transmitted diseases. But in 2003, the Bazaar, which was more than 400 years old, was closed down overnight. Meena Menon, who also lived in the *Chakla* and is part of the Sahyog Mahila Mandal – the local sex workers' group, shared that the women were not allowed to take their clothes or belongings. The sex workers were mercilessly thrown onto the streets. Although the Gujarat High Court ordered rehabilitation in 2004, the women are still to find alternate homes and jobs.



Meena Menon (left) and Hajrab Bi (right) speaking out....

Hajrab Bi noted that because sex workers were displaced, their ability to negotiate safer sex also diminished. Sex workers have to escort clients to unknown places, where not “*only their health but also lives are at risk*” she said. Hajrab Bi narrated an incident involving the brutal murder

of her peer, who went out with a client. Her mutilated body was discovered in a *naala*, several days after she went missing. Members of Sahyog Mahila Mandal arranged her funeral but the Police refused to investigate as the deceased victim was a sex worker.

She asked why they should support the government in its programmes, if they, in turn, are indifferent to their (sex workers') needs.

#### **14. Jayamma, Chaitanya Mahila Mandali**

Jayamma, a sex worker from Hyderabad, narrated how in 2004, she had been forcibly tested for HIV in the police station after being arrested. Subsequently, her organization – the Chaitanya Mahila Mandali filed a Writ Petition through the Lawyers Collective, which led the practice to stop. She was very happy to see that today many Parliamentarians had come to listen to sex workers, and this was a positive development.

In Andhra Pradesh, there are about 1.25 lakh sex workers, currently engaged full time in the profession. But very few are part of the national network. She appealed to community organizations from other states to assist them in building capacity of sex workers in Andhra Pradesh.



#### **15. Kokila, Vadamalan**

Kokila introduced herself as a sex worker from Thiruvanamalai in Tamil Nadu belonging to the organization, 'Vadamalan', which means a flower that never wilts, symbolizing their unbroken spirit. Her organization is also part of the South India AIDS Action programme. Kokila expressed joy at seeing so many sex workers, all of



whom have travelled from different parts of the country, to come together for the meeting. This showed progress, she said, but there was much to do. Talking about herself, she said even though she was old, she was still engaged in sex work, and had no qualms about admitting the same.

She proceeded to describe the atrocities that women like her have to go through in the small town of Thiruvanamalai. Sex workers are regularly taken to the police station for engaging in prostitution, but are booked under *ganja* cases. They are then charged with astronomical fines. Kokila stressed that sex workers should not succumb to injustice. Instead, they should fight the law, and file cases against

those who are filing cases against them. She further said that their main concern was about the quality of their lives, and that of their children. Many years ago, they had attempted to put forth their issues before the Police Commissioner. But nothing much came out of it. Many of the women in her organization are HIV positive, and need special support, she added.

Voicing her concluding thoughts, Kokila said that nobody has the right to take away their dignity from them. So, everyone must unite and work towards the realization of sex workers' rights.

## **16. Shri D. Raja, Member of Parliament**

Shri Raja said that this was the first time that he was addressing a gathering of sex workers. Based on his reading on the subject, he had identified four major issues that affect sex workers in India:

- (i) Exploitation
- (ii) Criminalization, especially as the law treats victims as offenders
- (iii) Health hazards, such as HIV and AIDS
- (iv) Social stigma and the manner in which sex workers are treated in society

The main question to ask, he said, was how to find a solution to such a complex problem. Even as an MP, and a social activist, he believed he was still 'groping in the dark'. Shri Raja pressed that as a representative of the Communist Party of India (CPI), he firmly believed that sex workers are also human beings and have the right to live a decent, dignified life.

The Government must strive towards finding an appropriate and a suitable alternative. Referring to a recent Supreme Court order,<sup>1</sup> Shri Raja said that rehabilitation of sex workers was necessary. In sum, he said, *'I share your pain, and extend my sympathy and support, to find a solution to your problems.'*

At this point, there were several interventions from the floor.



Responding to the speaker's plea of rehabilitation, Sapna Gayen said that sex workers do not want charity. They are citizens, entitled to earn their livelihood. She firmly stated that she and many others like her do not want to give up their work, but

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<sup>1</sup> *Budhadev Karmaskar v. State of West Bengal*, Supreme Court order dated 14/02/2011 in Criminal Appeal No. 135 of 2010



to do it with dignity and respect. Therefore, the fundamental issue should be what the sex workers want to do, she said.



**Dr Smarajit Jana responding to the Speaker's comments**

Dr. Smarajit Jana, Chief Advisor, DMSC said that in 1997, the late Shri Indrajit Gupta, then Home Minister in Prime Minister I.K Gujral's cabinet and a senior leader of the CPI, had supported sex workers and called for according them the workers' rights. He asked why the Party's (CPI) position with respect to sex workers' rights had undergone a shift.

Manohar Elavarthi, Advisor to the Karnataka Sex Workers Union spoke of the last World Social Forum held in Brazil where workers from across the world, agreed to the demand that sex workers must receive equal status and entitlement as

'workers'. He also drew attention to the fact that Communist Parties in Latin America, New Zealand and South Africa, support workers' rights for sex workers. So why was Shri

Raja's party opposed to the idea, he asked?

Shri Raja replied that they have a 'choice', but sex work cannot be their choice of profession. They also have a right to live with dignity but there is no dignity in sex work.

Anand Grover intervened to say that the MP was trying to bring in society's perspective on sex work, which cannot be ignored.

Making another interjection, Mrinal Kanti Dutta said that as a child of a sex worker, he had no shame; rather, he was grateful for the upbringing that his mother provided him. But society discriminates against children of sex workers, denying them equal opportunities. It is such social attitudes that are contemptible and not their mother's occupation, he asserted. He appealed to Mr. Raja and other politicians to correct the bias prevalent in society.

Bharti Dey, Secretary, DMSC, reminded the speaker of other persistent problems for sex workers, such as police violence, bribery and extortion, even the threat of deportation from one's own country. She spoke of instances in Kolkata where local girls are labeled 'illegal Bangladeshi immigrants', and ill- treated at Police stations.

Responding to the observation on indignity of being a sex worker, Veena said that they too were deeply concerned by the stigma surrounding sex work. However, the solution, she said, was not the abolition of sex work but abolition of stigma around sex and sexuality.

Shri Raja responded to the comments by reiterating that this was his first meeting of this nature. In the past, he had met with a small delegation from DMSC, but has had

no further interaction with sex workers. It was on the basis of his reading and understanding that he had identified exploitation, criminalization, health and stigma as the main issues plaguing sex workers. He felt that there was no disagreement with participants on this.

He believed that it was important for sex workers to have – 1) the right to live with dignity, without fear or harassment and, 2) social security and protection. He had heard that even doctors refuse to treat sex workers and urged people holding such attitudes to change. Shri Raja further clarified that alternatives to sex work must be encouraged but not forced upon. Sex workers' children must also have options, other than sex work to pursue.

In the end, Shri Raja told the participants – *“I don't want you to live a life with stigma. Society should change its attitude. You (sex workers) should also change your mindset.”*

### **17. Madhubala Nath, UN Women**

Madhubala acknowledged her long standing association with sex workers, especially the women from *Sonagachi*, Kolkata from whom she had learnt a lot about rights, violence and feminist activism. She qualified her comments as coming from someone who considers herself to be a part of the women's movement as well as the sex workers' rights movement.

Madhubala denounced criminalization of sex workers under ITPA but also alluded to the varied perspectives on legalization of sex work. According to the logic of demand and supply, if the demand for paid sex spikes, more women will sell sex. This is not desirable from the perspective of the women's movement. She remarked that at the end of the day, both the groups were fighting to end violence against women in all its forms, be it at the hands of the client or the husband.

Commenting on the proposal to criminalise men visiting brothels in the *ITPA Amendment Bill 2006*, Madhubala said that that only 10% sex workers work in brothels. So officials in the concerned Ministry realize that there is little gain in criminalizing brothel visitors. On the contrary, the harms inflicted on sex workers as a result of this policy will be far serious.

Madhubala suggested that women's' and sex workers' movements should emphasize their commonalities, rather than harp on the differences. Violence against women is inexcusable, whether committed at home or in a *bazaar*. She



recounted what a sex worker once told her, that, ‘*Your husbands are only your passports, and nothing more.*’ Her final thoughts were that if women are empowered, then they can fight for their rightful position in society.

### **18. Shri R.C. Singh, Member of Parliament**

Shri R.C Singh reflected on the nature of sex work and concerns that arise for sex workers.



Every person can work for a certain period of time in her life. This is true for sex work as well. As they age, sex workers have no means of sustenance. So there is a need to ensure that while they work, sex workers have better status in society and when they grow old, they have social security.

Shri Singh hoped to continue engaging with this intricate issue, which, he said, requires delicate balance between sex workers’ demands and social constraints.

### **19. Dr. Pulin Bihari Baske, Member of Parliament**

Dr. Baske expressed strong support for sex workers’ demand for labour protection and rights. Sex work must be removed from the ambit of criminal law and brought within the purview of labour legislation. The demand of being accorded the same rights as other workers is correct and justified, he felt.

Dr. Baske appreciated the exemplary community building work done by the DMSC in West Bengal. He reassured participants of his continued commitment and support and offered to raise parliamentary and political debate on sex workers’ rights.



## **20. Alka Narang, United Nations Development Programme**

Alka highlighted key issues in the sex work law reform debate.

She stated that sex work was work, and sex workers must be treated at par with other workers. The focus must be on ensuring that they stay healthy and safe.

Sex work and trafficking are often spoken in the same breath. This, according to Alka, is wrong. *'All the good that has come our way in terms of community empowerment and health will be reversed if we don't rethink our strategy of criminalisation'*, she said.



## **22. Asa Anderson, Joint United Nations Programme on HIV/AIDS (UNAIDS)**

Describing the mandate of the UNAIDS, Asa said that her office was pursuing universal access to HIV prevention, treatment and care, which is of serious concern to sex workers, too.

The key players in the debate for law reform were sex workers and law makers, and she was glad to see that the Lawyers Collective had brought them together for this dialogue. From what she had observed this evening, Parliamentarians were supportive of sex workers' demands. She said it was heartening to know that they would go back to Parliament, and deliberate on sex work policies.



UNAIDS is working towards the goal of zero new HIV infections, zero discrimination and zero HIV related deaths. Asa clarified that the UN cannot change laws and that their role is to support Member States. The UN's contribution also lay in bringing in international experiences, and information about practices observed in other parts of the world. Sex workers' demands for social support, right to livelihood and recognition as workers must be addressed, she said.



### **23. Ms. Priya Dutt, Member of Parliament** (Statement in Absentia)

Ms. Dutt, was unable to attend the meeting in person, but sent a written statement to the participants, as an expression of her solidarity. Excerpts from her message (reproduced below) were read out (underlined) at the meeting:

“I wish to express my regrets for not being present and therefore unable to participate in this seminar which deals with an extremely pressing issue, pertaining to a section of women in our society.

To me, a sex worker is a woman with an unconventional job, and I would like to refer to her as such.

My first meeting with this group of women was back in 1986 when I was doing research on child prostitution and related issues in the city of Mumbai. That research took me to ‘Kamathipura’ where I met with the gharwalis and the women workers. This was a life changing experience for me, one that took me from the high-rises and bright lights of Mumbai to the heart of the forbidden underbelly of the red light area.

The first thing that struck me was that this was such a woman-dominated world where the women were both the victims and the oppressors. Here, everyone had a story to tell about the often twisted circumstance that got them there.

A young inexperienced journalist who accompanied me, sought an answer to the eternal question everyone wonders about - how can you sell your body every night? The answer she got was simple and straight, and I quote - “people have all kinds of profession, some are doctors, some actresses, some journalists like you; does anyone question you as to why you do what you do? We all do what we do to feed our families and ourselves.” This statement of hers made me realize that no one has the right to stand in moral judgment of anyone. This woman changed my perception of the life and struggle of thousands in our city. These are women, who are the poorest of the poor and ironically the most exploited in every level, something that continues till today.

So I would like to see them just as women like you and me and we have to collectively work towards empowering them and giving them the rights they are entitled to and deserve.

The present laws have done nothing to curb the ills of this profession, children and young girls are still being trafficked and sold, raids in brothels have revealed inhuman conditions where these young’s girls are hidden under floor boards and holes in the

walls. There have been majority of cases of rescued girls who have run away from detention centers and have gone back to the brothels. We don't have any rehabilitation policy in place, mere rescue of these women is not enough, what after that? The current law makes the victims, the accused. This needs to change. We need to look at other models around the world like New Zealand and work on reforms in the current law that would provide for the rights to security, health and livelihood for these women and their dependants

The good news is that awareness and empathy towards this has greatly changed. Women are more aware, and are willing to stand up and fight the fight that not many may dare to take up. I guess that is the reason so many of you are present here today.

Recently I read about the redevelopment of Kamathipura, and the displacement of the girls, if that happens without rehabilitating them, it will create havoc in the city. We have to look at models adopted by countries like Netherlands and Germany, where there are red light districts marked out in an appropriate area, where women are registered and health checkups happen regularly. Here, women have rights. This kind of approach will curb child prostitution and trafficking of girls for prostitution. There will be a better check on sexually transmitted diseases. This subject will and should attract a debate from many sections of society and I feel, with the support of all like-minded members of society and lawyers and responsible media personnel, we should be able to build positive public opinion in support of all our sisters. I would also like to take this up in the Lok Sabha Committee on Empowerment of Women with the permission of the Chairperson and hope that I get the support from other members.

I would like to extend my complete support to all the women present here and to let you know that you are not alone in your fight for your rights. There are a lot of us who are willing to stand shoulder to shoulder with you in your struggle for justice and respectability. My sincere gratitude goes out to the Lawyers Collective group, along with National Network of Sex Workers (NNSW), who have taken up this issue and working towards bringing legal recognition to the cause. My plea to everyone else is to look at this issue with an open humane mind and remember the words of the great Mahatma - humanity first. Jai Hind."

Priya Dutt  
1<sup>st</sup> March, 2011

## **Conclusion ...**

The meeting concluded with a vote of thanks by Tripti Tandon, Lawyers Collective and a strong determination to reform the legal environment on sex work. *“The winds of change have started to blow, and for the first time the wind is behind, and not against us.”* This was the sense among the 200 odd participants as they left the room.

## **About the Organizers**



National Network of Sex Workers is a national representative body of female, male and transgender sex workers, with membership from 10 states.



The Lawyers Collective is an NGO that seeks to create a just, rational and non-discriminatory response to HIV through litigation, policy advocacy and research.

[www.lawyerscollective.org](http://www.lawyerscollective.org)