

FROM STIGMA TO JUSTICE:
PUBLIC HEARING ON POLICE
VIOLENCE AGAINST WOMEN AND
TRANSGENDER SEX WORKERS

MARCH 5, 2019, BANGALORE, INDIA

*REPORT OF THE JURY HEADED BY
JUSTICE NAGMOHANDAS*



POLICE VIOLENCE AGAINST WOMEN AND TRANSGENDER SEX WORKERS:
REPORT OF JURY HEADED BY JUSTICE NAGMOHANDAS¹

TABLE OF CONTENTS

| | |
|--|-----------|
| Table of Contents | 1 |
| List of Abbreviations | 3 |
| Acknowledgments | 4 |
| Introduction | 5 |
| Background and Context | 6 |
| Testimonies of Violence | 8 |
| Sex workers and International Law | 11 |
| Sex workers in India: The contemporary context | 14 |
| Women, Migration, and New Vulnerabilities in the Age of Globalisation | 16 |
| Regulating Sex Work: A Criminal Law Response | 17 |
| Protecting the Rights of Sex Workers: A Labour Law Response | 20 |
| Taking a Step Backward: How was sex work treated in Indian history? | 23 |
| Reasons for Violence: The Impunity of the police force | 26 |
| Reasons for violence: Societal understanding of sex work | 26 |
| Supreme Court Mandates that Constitutional Morality and not Social Morality should Govern State Action. | 27 |
| Right to life (Article 21) | 28 |
| Right to Equality and Non Discrimination (Article 14 and 15) | 29 |
| Right to Freedom of Expression [Article 19(1)(a)] | 30 |
| Right to move freely throughout the territory of India [Article 19(1) (d)] | 30 |
| Violation of the Immoral Trafficking (Prevention Act), 1986 | 31 |
| Bringing administration into conformity with the Constitution | 35 |
| Recommendations | 37 |

¹ The hearing was held in St. Josephs College, Bangalore City, March 5, 2019.

| | |
|---|-----------|
| Long Term Legal Measures | 37 |
| Immediate Recommendation for Police Reforms in Karnataka | 37 |
| Annexure 1 (Transcript of testimonies) | 39 |
| Annexure II (Circular of DG and IGP, Karnataka) | 46 |
| Annexure III (Representation to DGP, Karnataka dated 4.02.19 regarding assault of sex workers) | 48 |
| Annexure IV (Representation to Commissioner, Bengaluru Police dated 9.10.18 regarding assault on sex workers) | 48 |
| Annexure V (Representation to State Human Rights Commission dated 16.01.19 regarding assault on sex workers) | 48 |
| Annexure VI (Representation to DCP, Upparpet Police dated 20.11.17 regarding harassment of members of Sadhana Mahila Sangha) | 48 |
| Annexure VII (Evidence of Assault recorded in Medico Legal Certificates) | 48 |
| Annexure VIII (Immoral Trafficking: Law and Enforcement, Jacob Punnose (Add DG of Police Kerala Retired) | 48 |

LIST OF ABBREVIATIONS

| Sr. No | Abbreviation | Meaning |
|--------|--------------|--|
| 1 | ACR | Annual Confidential Report |
| 2. | AIR | All India Reports |
| 3 | ALF | Alternative Law Forum |
| 4 | ASMH | Advisory Committee on Social and Moral Hygiene |
| 5 | CASAM | Centre for Advocacy on Stigma and Marginalisation |
| 6 | CEDAW | Convention on Elimination of All Forms of Discrimination Against Women |
| 7 | DGP | Director General of Police |
| 8 | IPC | Indian Penal Code, 1860. |
| 9 | ITPA | Immoral Traffic (Prevention) Act, 1986 |
| 10 | KSHRC | Karnataka State Human Rights Commission |
| 11 | NALSA | National Legal Services Authority |
| 12 | NCRB | National Crime Records Bureau |
| 13 | OHCHR | Office of United Nations High Commissioner for Human Rights |
| 14 | PUCL | People's Union of Civil Liberties |
| 15 | SITA | Suppression of Immoral Traffic Act, 1956 |
| 16 | UNESCO | United Nations Educational, Scientific and Cultural Organisation. |

ACKNOWLEDGMENTS

The jury would like to acknowledge the bravery of the women and transgenders who shared their testimonies of pain, in the hope that their sharing would improve their lives. The jury would also like to acknowledge the work of Madhu Bhushan who both testified as a ‘expert witness’ and assisted the Jury in finalizing this Report

Finally many thanks are due to Kaveri from Jansahayog as well as Kalpana from CIEDS for having translated the testimonies from Kannada to English for the purpose of this publication.

INTRODUCTION

This Report documents the violence faced by women in sex work in Bangalore and then raises the question as to why women in sex work face such brutal forms of violence which negates their citizenship rights under the Constitution.

The immediate context was a public hearing which was conducted by the PUCL-K based upon a request by Sadhana Mahila Sangha. A jury was constituted to understand the nature of the issues faced by women and transgender sex workers and to propose solutions.

The jury members comprised of:

Justice Nagmohandas, Judge, Karnataka High Court,

Prof Rajendra, PUCL- K,

Shakun Mohini, CIEDS Collective and

Arvind Narrain, Alternative Law Forum (ALF).

Women and transgender workers testified about police violence against them in Bangalore City in the public hearing. This presented a grim picture of the law and order system in the Majestic, KBS terminal and City Railway Station Areas that fall under the jurisdiction of DCP, West – Ravi Chennanavar.

However, though the study began with the situation of women in Bangalore city, the Jury realized that the issues raised by the women in sex work had a larger regional as well as national applicability. What the women testified to was levels of unconscionable violence and the reason why such violence was inflicted upon them was because they were viewed within a lens of morality which made their constitutional right to dignity and bodily integrity dispensable.

It has also been brought to our attention that similar narratives are being shared by sex workers and transgender people in other cities including Hyderabad, Pune etc. This seems to indicate that despite the shifts in terms of reinterpreting jurisprudence, legal practice and social perception to remove “prostitution” from the moral realm and affirm the human rights of adult consenting sex workers, morality still has a powerful hold. In particular the discourse of ‘trafficking’ holds sway and even adult women are seen to be victims of trafficking who are seen to have no rights. Thus even while acknowledging the crime of trafficking of children and

non-consenting women into sex work, the conflation of sex work with trafficking causes grave injustice.

Therefore, though this study begins with the issues faced by women and transgenders in sex work in Bangalore, the jury realized that it was not possible to understand the reasons for the violence without a wider contextualization within historical, legal and policy frameworks. Hence this Report after laying out the initial background for sex work in the contemporary context, then goes on to document the forms of violence and reasons for violence and then contextualizes the same within Indian history, international law, criminal law and labour law frameworks. Finally, the Report makes the case that the violence faced by women and transgenders in sex work violates both the Constitutional and statutory frameworks and makes recommendations to address the violence faced by such persons.

BACKGROUND AND CONTEXT

Sadhana Mahila Sangha is a Bangalore based organization of women working for the protection of the rights of street based sex workers for over two decades. As some representatives of Sadhana Mahila Sangha stated in their opening remarks at the hearing, police violence on the streets and in police stations against sex workers is not a new phenomenon. It was in fact one the primary issues that Sadhana Mahila Sangha was addressing along with its supporting groups in the beginning in the late nineties when they had begun to collectivise around issues of violence that included extortions from street gangs as also verbal and physical violence from police personnel. Sadhana Mahila Sangha contested arrests made by police by relying on Section 8(b) of ITPA², case by case and questioned the verbal, physical and sexual violence meted out to women sex workers in the police stations. They also filed complaints with the Karnataka Human Rights Commission and Karnataka Commission for Women. Due to this, assaults, beatings, arbitrary arrests and violations substantially reduced by 2017.

The following were the major factors that contributed to reduction of violations from the police against street based sex workers in the area:

- With the support from Alternative Law Forum, Sadhana Mahila Sangha had filed 575 cases in the courts contesting arrests under section 8 (b) during 2003 – 2008; out of

² Immoral Traffic (Prevention) Act, 1956.

these 374 cases were decided by the courts in favour of the women. The analysis of the acquittals reveals is that the police had booked false cases against the women. The cases fell, because there was often no independent witness to corroborate the narrative of the police. Further the police relied on stock witnesses in most of the cases. All of these factors meant that the prosecution was unable to discharge its burden of proving the case under the relevant ITPA provisions beyond reasonable doubt.

- Circular was issued by the Director General of Police, Karnataka ref no. SMS(6)/25/04-05, dated 30/9/2004, categorically barring ill treatment of sex workers by the police and of arrests under section 8 (b) to all police stations and Divisions. Specifically, it states that '*provisions of the Immoral Traffic (Prevention) Act should be used against agents and facilitators of sexual exploitation of women and children and not the sex workers themselves.*' It also directed that instances of police harassment and connivance should be investigated into and strict action should be taken against erring police officers and men by the unit officers and should be reported in their ACRs.
- Under a UNESCO India program, inclusion of laws relating to gender-based violence and trafficking in orientation training of all fresh recruits to the Police Department for two years (2008-2009), helped spread awareness within the police system.
- Complaints to the KSHRC / KSCW and representations to the DGP on every case of oral / physical and sexual violence and the advocacy with the Government and the judiciary helped in access of the women to justice systems.

However, after Mr. Ravi Chennanavar took charge of the Bangalore West Division by 2017, the situation appears to have returned to square one in the matter of police harassment of women and transgender sex workers in the area. This is the major issue that the women and transgender sex workers wanted to place before the panel in the public hearing in a desperate bid to stop the daily violations, abusive treatment and threats of false cases.

In November 2017, a delegation comprising of members of Sadhana and its support organisations under the umbrella of PUCL met with the DCP and had extensive discussions regarding the violation of human rights norms when it came to police treatment of sex workers. They brought to his attention that this violence was completely contrary to the stand taken by the Supreme Court in its direction to the States to formulate a policy for the safety and well being of sex workers. They also brought to his attention the findings of the committee appointed by the State Government in 2017 headed by the then MLA and present Minister for

Women and Child Development to study and recommend for action regarding the injustices suffered by sex workers in Karnataka. The committee had submitted its report in 2018, wherein a substantial chapter dealt with the need and ways to stop police violence against sex workers. In response to the concerns expressed by the delegation, the DCP had then agreed to the suggestions to have gender sensitization for all the police personnel and assured that no sex worker would be assaulted by his police, even as he continued to assert that the sex workers function within a restricted zone- a suggestion that violated the constitutional right to freedom of movement of sex workers.

Despite these assurances and the gender sensitization programme that followed, the police station of Upparpet and the DCP-West proceeded to intensify the aggressive action against women and transgender sex workers. All complaints to higher authorities in the Government and the Police Department drew no response, and the DCP and his staff in Upparpet station continued to use violent methods and threats with a single agenda – clearing the area of every sex worker. The only change observed is that the police, now do not beat the women or transgenders in the streets. While they continue to do so within the precincts of the police station, they leave the street abuse to the *Obavva Pade* (OP), a group within the police that claims they have been given the authority to apprehend any sex worker wherever they might be, publicly abuse and humiliate them and drag them to the police station. Complaints to the Police Commissioner who promised to hold an enquiry into the incidents and the antecedents of the *Obavva Pade* and the pleas to the SHRC on the police violence too, have yielded no results. The Police Commissioner even denied any official connection of *Obavva Pade* with the police, the DCP-West and the Upparpete Police Station continue to work through this “vigilante” group in their violent treatment of sex workers on the street.

TESTIMONIES OF VIOLENCE

The heart of the report lies in the testimonies of grave and continuing violations of basic human rights which women in sex work are subjected to. These narratives are a testimony to the violence and aggression which women and transgender persons in sex work continue to face as well as the impunity with which *Obavva Pade*, the vigilante group within the police functions. They bear painful testimony to the brutal and dehumanised behaviour of the keepers of law and order towards the most marginalised sections of our society who are the direct victims of its double standards of morality and patriarchal mindset. We have extracted below

some of the statements made by the women and transgender sex workers. (The transcript of the testimonies is available at Annexure I)

Some of the indicting statements made by the women include:

- “What am I doing wrong? Who gives police and OP the power to chase and treat us like dogs in the street publicly and then threaten us in the police station with jail? “Have I done a robbery? Am I a murderer? Do they have no other work?”
- “I have seen the SI abusing even Sadhana Mahila Sangha, calling them ‘sooleyaru’ and stopping them from recording the treatment the police were meting out to 20 women brought that day.”
- “I was caught by two women from *Obavva Pade* at the Bus Stand. I begged them to leave me as there were people around. But they made me remove my rings and chain and took it away, along with the money in my purse.”
- “I pleaded with the *Obavva Pade* women who were forcing me to come to the police station. I got into Yeshwantpur bus and they also got in and continued to harass me – I finally told them I am going to strangle myself with my sari and you will be responsible, only then did they let me go.”
- “They tell me, I should not be seen here... Why should I not be seen – where will I go?”
- “SI told me why are you doing this sex work – I will get you a job with a monthly salary of rupees 2000. I told her Madam, get me work with monthly salary of Rs,7000 and I will leave sex work.”
- “This is my body that I am using to earn a living. If the Government or anyone of all those who tell me to get out of sex work today, had reached out with a helping hand when I first arrived at Bangalore Railway station, alone and frightened, I would not be here as a sex worker today. Where were they then and what right do they have to ask me to leave now?”
- “They tell me the money I earn is dirty because it comes from sex work – Is it not dirty when they demand and take it from me as fine?”
- “We do not want their charity – we are not beggars. We are only asking that they stop treating us like criminals and humiliating us in public.”
- For the transgenders the humiliation is worse. “They want to see what we are and make us remove our clothes. I feel ashamed and angry.” “Since 2018, the OP and the Police have been chasing us also away from the area – where should we go after all these years?”

The testimonies of the women and the transgenders also speak of the painful context that drove them to the streets and the ways in which they are trying to eke out a livelihood and fulfill their responsibilities to their families while retaining their own dignity and self respect that society refuses to give them.

- The three women spoke of the conditions that led them in to sex work – poverty, desertion, early marriage, bearing children at young age, abusive marriages, desertion by their husband / families and finally taking up sex work.
- The women also spoke of trying to earn money in factory work or domestic or cleaning work and how they were cheated, exploited sexually.
- All three women have been in sex work for a long period of time.
- They would like their children to have a different start in life and feel education would help. Hence, they are trying hard to educate them, with their earnings.
- They are not criminals and sex work is what gives them the means to support themselves and their children.
- They are women who have faced the violence from the police in Upparpete and then, from the *Obavva Pade* women, who chase them in the streets and forcibly take them to the police station, where the SI Kathyayini has been mentioned by each, of having beaten them in the station, apart from orally abusing them in the worst terms.
- They have been made to sit for hours in the police station and let go after paying what the Police called ‘fine’ of 250 – 300 rupees each time. Asking for a receipt will only result in more threats and even beatings.
- Each woman has thought of death as an escape from daily police harassment.
- The transgender sex workers feel unwanted in their families and is shunned by the society that views them as ‘odd’. The only family they feel safe in is the community of transgenders. Both the testifiers spoke of having been forced to leave schooling and family due to their sexual orientation. With no support and little education, the only work options they have is sex work and begging.
- While the women are beaten and forced to pay fines, transgender sex workers are threatened that they would be placed in the State Homes or even the Beggar’s Home.

SEX WORKERS AND INTERNATIONAL LAW

Patriarchy and morality suffuse both national and international law, leading to the agency of the woman being ignored. She is often seen as a victim of trafficking by unscrupulous agents and the fact that she may decide to do sex work is never acknowledged. However, there is emerging literature at the international level which distinguishes trafficking and sex work. The Report of the Global Commission on HIV and the Law, makes a distinction between trafficking and sex work;

Sex work and sex trafficking are not the same. The difference is that the former is consensual whereas the latter coercive. Sex worker organisations understand sex work as a contractual arrangement where sexual services are negotiated between consenting adults. Sex work is not always a desperate or irrational act; it is a realistic choice to sell sex—in order to support a family, an education or maybe a drug habit. It is an act of agency.... Some governments deploy anti-human-trafficking laws so broadly that they conflate voluntary and consensual exchanges of sex for money with the exploitative, coerced, often violent trafficking of people (primarily women and girls) for the purposes of sex.³

Such conflation of voluntary adult sex work with trafficking for exploitation of prostitution stems from a patriarchal sense of morality about sex itself, and creates a harmful stereotype about sex workers. The erasure of their agency in participating in sex work in the global discourse takes the form of a gender stereotype that leads to the persecution of adults selling sexual services, through State and Non-State actors.⁴ This leads to profound and pervasive violation of human rights from the perspective of protecting the rights of women who the system falsely perceives to have been trafficked.⁵

Some laws not only criminalise sex work and the activities related to it but also deny sex workers fundamental civil entitlements. Sex workers may be unable to own or inherit property;

³Judith Levine, 'Global Commission on HIV and the Law: Risks, Rights & Health', (*HIV Law Commission*, July, 2012) 39. <<https://hivlawcommission.org/wp-content/uploads/2017/06/FinalReport-RisksRightsHealth-EN.pdf>> accessed 10 May 2019.

⁴ 'Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers' (*Amnesty International*, 26 May 2016) POL 30/4062/2016, <<https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>> accessed 10 May, 2019.

⁵ 'Gender Stereotyping as a Human Rights Violation' (*OHCHR Report*, October 2013). <<https://www.ohchr.org/Documents/Issues/Women/WRGS/2013-Gender-Stereotyping-as-HR-Violation.docx>> accessed 10 May, 2019.

register the births of their children; access education, justice, health care or banking services; or purchase housing or utilities. Deprived of the means by which others can make claims on elected officials, employers and service providers, sex workers experience social exclusion and entrenched poverty. And their disadvantaged position in negotiating access to goods and services leads to exploitation, abuse and increased vulnerability to HIV.⁶

The UNAIDS Guidance Note on HIV and Sex Workers draws clear distinction between voluntary sex work and trafficking, and reiterates the agency of people in sex work.⁷

‘All adult sex workers have the right to determine whether to remain in or leave sex work. Policies and programmes should support sex workers to acquire the life, education and vocational skills and training they need to make informed decisions and have meaningful choices about their lives.....Sex workers have been arrested and imprisoned under anti-trafficking statutes, even when they have never been trafficked and do not seek “rescue”. Raids of workplaces of sex workers in the name of anti-trafficking are harmful and wasteful, often displacing sex workers and ironically undermining the anti-trafficking work of sex worker organisations.’⁸

Recognising that anti-trafficking laws have detrimental effects on the ability of sex workers to fulfil their right to good health or seek justice for violations of their rights under criminal laws, the Guidance Note states –

There is a growing body of evidence that “raiding” sex work venues and forcibly “rescuing” or “rehabilitating” sex workers results in increased displacement of sex workers, mobility of sex work venues and migration among sex workers; it also has a direct impact on HIV risk. Forced rescue and rehabilitation practices lower sex workers’ control over where and under what conditions they sell sexual services and to whom, exposing them to greater violence and exploitation. In turn, this leads to social disintegration and a loss of solidarity and cohesion (social capital) among sex workers, including reducing their ability to access health care, legal and social services. Low social capital is known to increase vulnerability to sexually transmitted infections

⁶Risks, Rights & Health (n 27).

⁷Joint UN Programme on HIV/AIDS 2009-2012, ‘UNAIDS Guidance Note on HIV and Sex Work’, 2012. (*UN AIDS*, April 2012), 17. <http://www.unaids.org/sites/default/files/media_asset/JC2306_UNAIDS-guidance-note-HIV-sex-work_en_0.pdf> accessed 10 May, 2019.

⁸ *ibid*, The Legal and Policy Environment and the Rights of Sex Workers – Annexure 1, p. 4.

among sex workers and therefore has a detrimental impact on HIV prevention efforts. The conflation of sex work and trafficking directly limits the ability of migrant sex workers to protect themselves from HIV, since they are often assumed to be trafficked.⁹

Recommendations made by the Guidance Note in this regard include decriminalisation of prostitution including purchase and selling of sexual services and management of brothels, and the application of criminal law in ways that do not violate sex workers rights including their inherent right to dignity, as well as enforcement of work-related protections for sex workers to prevent harassment, abuse or violence, as in case of all other categories of workers.¹⁰ Criminalisation has been evidenced to have a detrimental effect on the right of sex workers to sexual and reproductive health, therefore the General Comment 22 on ICESCR recommends that legal and policy reform be carried out to ensure that sex workers can access health services without fear of reprisal¹¹.

It should be noted that in cases where the woman is trafficked, all her rights must be respected post the ‘rescue’. She is an autonomous agent, who is entitled to full human rights, especially under Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).¹² Studies have shown that an emphasis on the criminal legal framework around trafficking while necessary, can end up harming the rights of the ‘trafficked woman’ as she becomes a statistic in the fight against trafficking.¹³

It is submitted that a fidelity to the import and purpose of CEDAW must necessarily highlight that women in sex work are also women and hence entitled to all rights under CEDAW.

Article 5 of CEDAW mandates that:

States Parties shall take all appropriate measures:

⁹ Guidance Note (n 7), Differentiating Sex Work and Trafficking – Annexure 3, p. 17.

¹⁰ *ibid*, 19.

¹¹ International Covenant on Economic, Social and Cultural Rights, General Comment 22 (UN Doc. E/C.12/GC/22), 2016, [Para 32, 49(a)] <<https://www.escr-net.org/resources/general-comment-no-22-2016-right-sexual-and-reproductive-health>> accessed 14 May, 2019.

¹² ‘Raided: How Anti-Trafficking Strategies Increase Sex Workers’ Vulnerability to Exploitative Practices’, (SANGRAM, March 2018) <<http://sangram.org/resources/RAIDED-E-Book.pdf>> accessed 10 May 2019.

¹³ ‘Explanatory Note on Amnesty International’s Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers’, (*Amnesty International*, 26 May 2016) <<https://www.amnesty.org/download/Documents/POL3040632016ENGLISH.PDF>> accessed 10 May 2019.

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

Women in sex work suffer grievously from the stereotypical perception that all sex work is trafficking. Stereotypes regarding women in the sex industry render them particularly vulnerable to exploitation and violence. ‘Prostitutes’ or Sex-Workers are a marginalized group to whom significant social stigma is attached which hampers their ability to access justice for civil and criminal violations committed against them by State and Non-State Actors.¹⁴ As Justices Sachs and O’Regan of the South African Constitutional Court opined in their dissenting opinion in the *Jordan*¹⁵ case, anti-prostitution laws that characterize the ‘prostitute’ as the primary offender reinforce a pattern of sexual stereotyping that conflicts with gender equality. The ‘prostitute’, typically female, is stereotyped as a social outcast, a fallen woman ‘who bring[s] misfortune on [herself] and invite[s] disregard for her [body]’.¹⁶

While Article 5 has been highlighted as shedding light on the role that stereotypes play in divesting women in sex work of their rights as women, the other important rights under CEDAW which are violated in the case of women in sex work include the right to be free from discrimination in health care (Article 12), economic and social life (Article 13), marriage and family relations (Article 16), education (Article 10), employment (Article 11)

SEX WORKERS IN INDIA: THE CONTEMPORARY CONTEXT¹⁷

There are a wide range of estimates for the number of sex workers in India, indicating that there is a dearth of sound and sensitive methodologies to capture their complex realities. One source states that there are more than two million ‘prostitutes’ and 275,000 brothels, while another

¹⁴ Committee on the Elimination of Discrimination against Women, General Recommendation on Women’s Access to Justice C/GC/33, 2015 (*OHCHR*, 23 July 2015), paras 8, 9, 10, 49 and 51. <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf> accessed 10 May, 2019.

¹⁵ *Jordan and Others v. The State*, 2002 (6) SA 642.

¹⁶ *ibid*, [64] (Sachs, J), [87] (O’ Regan, J).

¹⁷ Madhu Bhushan, ‘Sex Workers Organising for Change - India’, (*Global Alliance Against Traffic in Women*, January 2018) <<https://www.gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf>> accessed 13th May, 2019.

estimates the number to be as many as ten million ‘commercial sex workers’.¹⁸ In 2007, the Ministry of Women and Child Development reported the presence of over three million female sex workers in India, with 35.47 percent of them entering the trade before the age of 18 years.¹⁹ An RTI reply by Ministry of Health and Family Welfare states that there are 6.8 lakh registered sex workers in India with Andhra Pradesh leading the list with 1 lakh sex workers²⁰. All India Network of Sex Workers (a national body) represents 2 lakh sex-workers who are registered with them²¹. However, in reality there is no comprehensive and credible data on the numbers, sites and forms of sex work, nor on forced prostitution and child trafficking. The most realistic estimates appear to be from the National AIDS Control Organisation, which bases them on listings made in its Targeted Intervention Programmes, that places the number of sex workers in the country at a little more than 1.2 million²². Most data available is conjecture, based on narrow models that do not encompass the large canvas of sex work and prostitution in the country.

Apart from the brothel system of prostitution in larger metropolises like Bombay, Delhi and Bangalore there are also street-based and home-based sex workers who have been either forced or drawn into this *dhandha* as a source of livelihood. The arrival of new technologies and the internet has also changed the nature of the industry making it more flexible and diffused.

It needs to be pointed out that sex work is not the sole source of livelihood for the women involved in it—a fact that is rarely recognised by mainstream studies and research. The first ever Pan-India survey of sex workers conducted by Centre for Advocacy on Stigma and Marginalisation (CASAM) over the span two years and released in 2011 found that ‘in describing their working lives, a significant number of females move quite fluidly between other occupations and sex work. For example, a street vendor may search for customers while

¹⁸ ‘Prostitution in India’, (*Facts and Details*, June 2015)

<http://factsanddetails.com/india/People_and_Life/sub7_3h/entry-4190.html> accessed on 10 May, 2019.

¹⁹ Dipankar Madaan, ‘Necessary Evil for men v. Sexual Exploitation of Women’, (2017) 2 (1), IJSARD, 56. <<http://ijsard.org/wp-content/uploads/2016/11/Dipankar-Madaan-9ijsard-volume-2-issue-2.pdf>> accessed 14 May, 2019.

²⁰ D K Dash, ‘6.8 lakh sex workers in India, Delhi red-light capital’, (*Times of India*, 21 July, 2010) <<https://timesofindia.indiatimes.com/india/6-8-lakh-sex-workers-in-India-Delhi-red-light-capital/articleshow/6193566.cms>> accessed 10 May, 2019.

²¹ Pallavi Pundir, ‘Why 2 lakh Sex Workers Across 16 States are voting NOTA this election’, (*Vice*, 29 April, 2019) <https://www.vice.com/en_in/article/8xzga4/2-lakh-sex-workers-across-16-states-are-voting-nota-this-indian-election> accessed 13th May 2019.

²² National AIDS Control Programme III, ‘Report on Mid Term Review of Sexually Transmitted Infection Services (2007-2012)’, (*National AIDS Control Organisation*, December 2009). <http://naco.gov.in/sites/default/files/STI%20RTI%20MONOGRAPH%20_NACP-III-.pdf> accessed 13th May, 2019.

selling vegetables, and a dancer at marriages may also take clients. It is not easy to demarcate women's work into neatly segregated compartments. Sex work and other work come together in ways that challenge the differentiation of sex work as an unusual and isolated activity.²³

WOMEN, MIGRATION, AND NEW VULNERABILITIES IN THE AGE OF GLOBALISATION²⁴

The issue of sex work has to be located in the larger political economy of globalization. Globalization has increased livelihood insecurity and rendered the lives of a large number of persons precarious. Thus, economic insecurities are among the major factors for the increasing migration of women that traditionally had been attributed to social factors like marriage.²⁵ Lack of livelihoods, coupled with dismantling of safety nets like the Public Distribution Systems and slashing of agricultural subsidies, has pushed more people, especially women, into poverty, even destitution forcing them to move to urban centres for survival and alternative livelihoods. The adverse impact of globalisation on women's lives and livelihood has been highlighted by numerous national and international reports, including impacts such as an increase in violence against women; deterioration of the health system; an increase in female-headed households as men lose jobs or are pushed out of their traditional income-generating roles; the shrinking of resources available to women; and an increase in women's total labour hours.²⁶

However, while on the one hand the processes of globalisation have engendered new vulnerabilities for women, on the other, they have also opened up other opportunities, increased mobility, economic independence, and technology-engendered autonomy that were not hitherto available, particularly for women from the more marginalised castes, Dalit, and minority communities. It is at this cusp of change and challenges that we need to locate the complex factors that lead to the conflation of trafficking with migration, and sex work with trafficking. For it is these same intertwining factors of vulnerability and 'choice' that lead to both trafficking of women into different forms of labour, including sex work or domestic work,

²³ R Sahni and V K Shankar, 'The First Pan-India Survey of Sex Workers: A summary of preliminary findings', (CASAM, April 2011). <https://www.sangram.org/resources/Pan_India_Survey_of_Sex_workers.pdf> accessed 10 May, 2019.

²⁴ Bhushan (n 17).

²⁵ S R Mahapatro, 'Patterns and Determinants of Female Migration in India: Insights from Census', [2010] Working Paper 246, Institute for Social and Economic Change, 1. <<http://isec.ac.in/WP%20246%20-%20Sandhya.pdf>> accessed 10 May, 2019.

²⁶ A Jaiswal, 'An Anthropological Vision on the Impact of Globalization on Indian Rural Women: A critical Reality', (2014) 5 (2), Arts Social Science Journal.

and to creating conditions of an enabling anonymity and safe mobility within which women can choose sex work as a way to survive and sustain their families.

Ground level studies have shown that female migration is oftentimes characterized as trafficking, especially when it comes to the issue of sex work.²⁷ As a SANGRAM study put it;

‘The anti-trafficking discourse also tends to invalidate the narratives of millions of women who migrate due to economic or other pressures. Safe migration for women and the right to choose a livelihood continue to be hindered by narrow conversations on morality and culture and notions of whether or not all women especially single women-who move are potentially victims of sexual exploitation.’²⁸

REGULATING SEX WORK: A CRIMINAL LAW RESPONSE

The national framework for the regulation and criminalization of prostitution emerges from the global framework provided by the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949. This Convention sought to criminalize all those who benefited from prostitution such as pimps, traffickers and brothel keepers while ensuring that the women victims were protected. The Suppression of Immoral Traffic in Women and Girls Act, 1956 (*hereinafter* referred to as SITA) was enacted to fulfil India’s obligations to implement the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949.

As amended, in 1986, the ITPA merely extends the SITA’s application to both women and men and increases the punishment for certain offenses. During the amendment process, there was no rethinking or reformulation of the SITA’s underlying policy. The aim of the legislation, as made abundantly clear from the Preamble to the 1956 version of the Act, is ‘to inhibit or abolish commercialized vice namely, the traffic in women and girls for the purpose of prostitution as an organised means of living.’

ITPA aims to criminalize the activities of all those who benefit from prostitution and to ensure that the public space is free of solicitation. However, it is important to note that the act of sexual intercourse conducted in private for a commercial purpose is by itself not a crime. In other

²⁷Explanatory Note on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, (n 13).

²⁸ Raided (n12).

words, a woman can carry out prostitution on her own within her own premises without it being considered a criminal act.

The focus is on protecting the woman and not criminalizing her existence per se. Thus, while the selling of sex per se is not a crime, doing so in public is. Besides every other act required to carry out prostitution such as running a brothel, solicitation etc. are crimes under the ITPA.

To give synoptic listing of key provisions under the Act.

- The said Act Section 2(f) define the word 'prostitution' as "Prostitution means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind and whether offered immediately or otherwise and the expression prostitute will be construed accordingly". In the year 1986, the definition was amended and the same read as, "Prostitution, means 'the sexual exploitation or abuse of persons for commercial purposes' and the expression 'prostitute' shall be construed accordingly."
- The expression 'women or girl' was substituted with the expression 'person', in the amendment, making the law gender neutral in its application to victims of immoral trafficking.

The offences under the Act are as below

- Punishment for persons living on the earnings of prostitution (Section 4)
- Punishment for keeping a brothel (Section 3)
- Punishment for Procuring, inducing or taking a person for prostitution (Section 4)
- Punishment for prostitution which took place in public places, (Section 7)
- Punishment for seducing or soliciting for the purpose of prostitution. (Section 8)

The protection provisions of the Act are as below

- Custodial measures for the detention and reformation of women victims of trafficking and prostitution in Protective Homes (Section 19 and 21)

The procedural provisions of the Act to be noted are:

- Raids and investigation regarding this act must be conducted by special police officer, that special police officer shall not be below the rank of an inspector of police. (Section 13).

- All offenses are cognizable i.e., the police officer do not require a warrant to conduct searches or make arrests (Section 14).

If we see the criminalizing provisions of the ITPA, they are focussed on targeting pimps and brothel keepers as seen in Sections 3,4 and 5. Even the provisions which target public solicitation (Section 7 and Section 8) have to be construed within the meaning of prostitution which is based on abuse and exploitation. It is an inescapable conclusion that the ITPA is not meant to target the persons in prostitution but rather to ensure that the persons are not the victims of exploitation. The ITPA defines the woman and transgender sex worker as a victim of the network of traffickers and pimps. Even the Act of soliciting under Sec 8(b) is caveated by the understanding of prostitution. One cannot say a woman/ transgender soliciting of her own volition is guilty of an offence, as the requirement under Sec 8(b) is that there must be sexual abuse or exploitation. i.e. presence of pimps exploiting the sex worker.

However, the ITPA in its working ends up targeting disproportionately the women in sex work and not the intended target, i.e. the trafficker, pimp and brothel keeper. A Pan India Survey conducted of 3000 sex workers revealed that 50% were on the receiving end of abusive language by the police, 35% were beaten with belts or harassed physically, 37% were threatened with false cases or physical harm and 20% were forced to give bribes to police²⁹. The law enforcement system is regarded by sex workers as the most repressive state agency. Police abuse sex workers, illegally detain, sexually assault and torture them in custody³⁰.

The purpose of the ITPA has not been understood by the law enforcement personnel. The key problem faced by women/transgenders in sex work is a result of the failure of the police in setting aside their moral prejudice (which might be to look at sex work as a crime) and implementing the law which only mandates that the sexual abuse and exploitation of persons is a crime. The history of brutal violence against women/transgenders in sex work really emerges out of this wilful failure to understand the import of the definition of prostitution under the ITPA.

²⁹ 'Violations faced by Sex Workers in India- Joint Stakeholders' Submission', (*Sampada Grameen Mahila Sanstha, SANGRAM Maharashtra, National Network of Sex Workers*, 20 September, 2016)
<<http://nnswindia.org/upload/resources/2016/UPR-Submission-Sex-Work-Final-Submission-22-Sep-2016.pdf>>
accessed 13 May 2019.

³⁰ *ibid*, 3.

PROTECTING THE RIGHTS OF SEX WORKERS: A LABOUR LAW RESPONSE

The predominant response of the state to sex work has been through the lens of criminalisation. The other response of the state is to view sex workers as a vulnerable population, through whom HIV spreads to the general population. This has resulted in interventions across the country in which sex workers are ‘targeted’ to use condoms so as to prevent the spread of HIV. However, this intervention, does not place the women in sex work as a right's bearing individual whose rights are important as they too are citizens of the country entitled to full constitutional rights.

The only state based intervention which sees sex workers as rights bearing individuals is the remarkable Report of the Second National Commission on Labour. This Report for the first time recognizes sex workers as a form of unorganized labour and advances an argument for protecting their rights. This is an unprecedented but welcome argument in the Indian context and hence is being cited below in full;

7.53 Sex Workers in all the sessions for evidence that we held in the many States, and in the many seminars that we held, the question of those who are now described as sex workers was raised only once, and that too furtively. We feel that we cannot close our eyes to this question. There are no grounds today, to believe that the phenomenon, or if one wants to term it a ‘profession,’ will disappear merely through exhortation. And as long as it exists, we have to recognise that it is related to exploitation, inhuman conditions and public health. The fear of sexually transmitted diseases has been with humanity for long. But in recent times, the rapid spread of AIDS is causing concern and anxiety in most countries and all continents. We do not have to go into the suffering and dangers that the disease holds. But we have to point out that these can be ignored only at the risk of enervation and decimation of our species.

7.54 We cannot therefore ignore the problems of ‘sex-workers’ to respect norms of prudery.

7.55 In the interest of public health, sex-workers need to be subjected to periodic health checks. To ensure this, they have to be registered. In terms of protection and welfare as workers, they have to be considered as self-employed workers. They should, therefore, have the facility to be registered as self-employed workers with access to

health policies, insurance etc. that all self-employed workers will be entitled to under the schemes that we have recommended. As for the need to ensure safe and humane working conditions and protection from occupational hazards, we have not gone into the related questions in detail.

7.56 We recommend that the Government undertakes consultations with social scientists, NGOs, Trade Unions, human rights organisations, and vigilance authorities, and formulate policies and measures that will ensure protection, public health and public safety, including the protection of public morality.

7.57 We do not have any reliable estimates of the number of women who fall in the category of sex workers or the number of those who work in brothels with their own special problems of unlawful confinement, exploitation, torture, buying and selling of these “workers” and so on. The number of sex workers may run into many lakhs or millions.

7.58 The experience of many countries has revealed the insidious ways in which AIDS is contracted and transmitted even to the innocent and unsuspecting. We have seen results leading to highly reduced life expectancy, infant mortality, disintegration of the power of resistance and resilience in body and mind, and the erosion of the ability to work. We, therefore, recommend that sex workers should have the right to register themselves as self-employed workers, and should be entitled to benefits of all the schemes that we are recommending for self-employed workers, including welfare, medical benefits, etc. We should make special mention of the children of these women workers. They should not be denied opportunities for education etc. open to other children. Mothers should, therefore, have access to the children’s allowances that we have recommended elsewhere.”³¹

It is unfortunate that the Report of the Second Labour Commission and its pioneering recommendations on treating sex workers as self-employed persons has been met by a stony silence by the State. The cold shouldering of the Report is only indicative the hold that public

³¹ Report of the National Commission on Labour, 2002,
<https://www.prsindia.org/sites/default/files/bill_files/NLCII-report.pdf> accessed 10 May, 2019.

morality has on law, when it comes to matters related to sex and sexuality. There is an urgent need to go beyond the framework of rigid moralism, and as the Report rightly says stop ‘ignoring the problems of ‘sex-workers’ to respect norms of prudery’ and advance the rights of women in sex work by treating them as workers entitled to dignity and respect.

It’s interesting to note that women in sex work have always seen what they do as ‘*kaam*’, ‘*dhandha*’ all of which are synonyms for trade and profession. In fact, as recent constitutional scholarship argues, women in sex work have even argued that sex work is entitled to constitutional protection. Rohit De in a recent book titled *The Peoples Constitution*, documents the case of Husna Bai, a twenty four year old Muslim woman who, way back in 1958, filed a petition arguing that SITA violated her fundamental right to practice her profession as a prostitute³². While Justice Sahai held that the petition was filed prematurely and could not be entertained, he did make non binding observations (*obiter dicta*) about prostitution.

Justice Sahai settled the debate by declaring that the state could not deny that prostitution was a trade for the purposes of Article 19(1) (g) of the Constitution, since SITA itself referred to prostitution as a trade on several occasions. Finally, he ruled that the use of the word ‘any’ in Article 19(1)(g) of the Constitution, in “any profession, or to carry on any occupation, trade, or business”, clearly indicated that normally a citizen is free to carry on any trade. He noted that even under the Indian Penal Code, prostitution itself was not a crime; the code prohibited only the sale or employment of a minor for the purpose of prostitution or illicit intercourse³³.

Rohit De argues that though Justice Sahai’s judgment was overruled in *State of Uttar Pradesh v. Kaushaliya*³⁴, what is important to note, is the demand from a grassroots constituency of women in sex work for the recognition of their *kaam* or *danda* as a ‘profession’ or ‘trade’ within the language of the Constitution.

One needs to see sex work within the frame of labour, eschew the lens of moralism and pay close attention to the voices of women in sex work which have been historically ignored. This can be illustrated through the example of Lady Ram Rau who chaired the Advisory Committee on Social and Moral Hygiene (ASMH), the findings of which, resulted in the enactment of SITA. Lady Ram Rau notes that in her conversations, three prostitutes told her that they preferred their lives in brothels to the conditions of the underdeveloped villages they came from. She described it thus;

³² Rohit De, *A People’s Constitution*, (Princeton University Press, 2018) p.193.

³³ *Smt. Shama Bai and Anr. vs State of Uttar Pradesh*, AIR 1959 All 57.

³⁴ AIR 1964 SC 416.

We asked questions and were told that these young women were very happy in town, for in the village they lived in the darkness, worked hard in the fields, ground corn on chakkis [millstones], which blistered their hands, were never able to buy new clothes, had no new entertainments such as cinema, motor drive, and parties. They were never able to earn more than a few annas a day, but since they had moved to their city their income had gone upto 1000 rupees a month between them, and they had to work only from 8 to 11pm, leaving them free to do with they liked the rest of the day. One of the girls told us that she had four young brothers in the villages whom she could now afford to send to school, and in time she would like to buy her family more land in the village.³⁵

As Rohit De documents, ‘with remarkable candour, Lady Rama Rau concluded that the [ASMH] could not find an adequate answer to their arguments.’³⁶ Looking at sex work from the labour law lens, would mean that these narratives are taken seriously and the state begins to engage seriously with improving the situation of women in sex work. Beginning a debate on the recommendations of the Second Labour Commission on sex work would be an important beginning point.

TAKING A STEP BACKWARD: HOW WAS SEX WORK TREATED IN INDIAN HISTORY?

What both the contemporary responses to sex work in term of legislation and policy indicate is that the issue of sex work is seen within a moralistic lens. However this contemporary ‘moralism’ has no deep roots in Indian history, as ancient and medieval India was generally more accepting of sex work as a form of labour. If we look at sex work from a historical perspective we realize that the current framework of dealing with sex work through the lens of criminal law, is a modern phenomenon and sex workers enjoyed a respectable status in both ancient and medieval India.

Sex work in ancient India was not subject to criminal law but rather was seen as ‘labour’ and was regulated. As Prabha Kotiswaran notes, ‘First, no one category of prostitutes existed in ancient India; prostitute women were divided into several categories according to their class and level of accomplishment. Second, they were subject to state regulation.’³⁷ The author

³⁵ De (n 32), 192.

³⁶ *ibid.*

³⁷ ‘In ancient India, prostitute women were categorized clearly into three types: the *Kumbhadasi*, the *Rupajiva*, and the *Ganika*. The *Kumbhadasi* and the *Rupajiva* carried on prostitution in a clandestine fashion; the *Ganika* did so openly. The *Ganika* had the highest status in these three categories of prostitution’.

further states, ‘Finally, it appears that *Ganikas* had the least to complain about. However, even the *Ganikas* were subject to conflicting rules that are very disturbing and detract from the glory that may have been attributed to the acceptance and celebration of prostitution in ancient India. While they were well-educated, received a steady income, received protection from the state, were taken care of in their old age, and were even free to form organizations, air their grievances, and have those complaints redressed, they were still subject to many regulations that unfairly and unequally punished them.’³⁸

The work of other historians of pre-colonial India, points out to the complexity and hierarchical divisions of sex workers. As Veena Oldenburg points out with respect to the courtesans of Lucknow, ‘The *twa'ifs* were the highest in rank, accomplished in music and dance from an early age and excelled in a politeness characteristic of Nawabi times. They were followed in rank by the women known as *thakashi* and *randi*, both of whom who lived in the same bazaar areas and catered to the labouring classes and the common citizens. Next there were the *khangis*, or women who observed purdah but for economic reasons took to this profession secretly.’³⁹

What one can conclude from historical research regarding sex workers in pre-colonial India is that sex work was a profession with many different layers. There were differing levels of acceptance for women from the different categories with some women being seen as highly skilled workers right from the *Ganika* in ancient India to the *Tawa'if* in pre-colonial India.

As one Englishman noted, ‘..[I]t is hardly an exaggeration to say that the great majority of India’s inhabitants, representing orthodox and conservative opinion, still regard the profession, and those who follow it, with tolerance, and sometimes even with respect and approval. ...[It] result[s] in social anachronisms, which strangers view with amazement and are unable to understand.’⁴⁰

Colonization played a key role in changing the dynamics of sex work. The growth of the military capacity of the colonial state meant that the ‘sexual needs’ of the soldier of the colonial

Prabha Kotiswaran, ‘Preparing for civil disobedience: Indian sex workers and the law’, (2001) 21(2) B.C Third World L.J 161.

³⁸ibid.

³⁹Kokila Dang, ‘Prostitutes, Patrons and the State: Nineteenth Century Avadh’, (1993) 21 (Nos 9/11), Social Scientist 173, 175.

⁴⁰ SM Edwardes, *Crime In India: A brief review of the more important offences included in the annual criminal returns with Chapters on Prostitution and Miscellaneous Matters* (Oxford University Press, 1924) cf. Kotiswaran (n 37).

state needed to be catered to. The colonial state functioned as a pimp procuring women to service soldiers of the Raj.

As Prabha Kotiswaran observes, ‘The degree to which prostitution was actively sponsored and encouraged by the colonial state is reflected by the institutionalization of the practice in the form of government-run brothels. Typically, in every cantonment area where troops were stationed, there used to be a few Indian women, or natives, the British called them, living in adjoining houses. These brothels came to be known as *chaklas*. Every such *chakla* had high walls and small, carefully barred windows so the women could not escape. The *mahaldarni*, or brothel-keeper, was also careful to ensure that women did not escape or associate with any of the native men. In addition to being held in captivity, the women were also physically and sexually abused by the soldiers, and fined, imprisoned and starved by the officialdom without reason. Each *chakla* also had its own prison hospital where women were later similarly confined against their will.’⁴¹

The establishment of brothels by the state generated anxieties around the spread of venereal disease. The fear of venereal disease spreading among the soldiers in particular prompted the colonial state to issue regulations in the Cantonment area as well as the Contagious Diseases Act.⁴² The purpose of the legislation was to direct compulsory registration of prostitutes as well as medical examination and licensing to protect soldiers from venereal disease. What was clear was that though the ground of regulation was ostensibly public health, the health of sex workers themselves was of little concern to the colonial state with the state only concerned about how to prevent the spread of venereal disease by the sex workers. These laws resulted in arbitrary actions against the women sex workers, harassment and violence.

However, prostitute women did not take this harassment silently. Even in these oppressive conditions, they continued to resist the law. For example, when the *Contagious Diseases Act* was introduced in the state of Madras, prostitute women filed requests with the Magistrates to suspend the application of these laws in their individual cases.⁴³

⁴¹ Kotiswaran (n 37).

⁴²The Act was repealed in 1864 throughout India after which the Police relied on local laws and the Indian Penal Code (IPC).

⁴³M. Sundera Raj, *Prostitution in Madras: A Study in Historical Perspective* (Konark Publishers, 1993) cf. Kotiswaran (n 37)

REASONS FOR VIOLENCE: THE IMPUNITY OF THE POLICE FORCE

What is a particularly troubling feature of the harassment and violation faced by sex workers is the outsourcing of 'moral policing' to a shadowy force referred to as '*Obavva Pade*' which functions as a special force within the police. The violence, harassment and torture of sex workers in Bangalore has been undertaken by the *Obavva Pade*. All inquiries have revealed that this force operates under the cover of law, working in effect as the moral policing wing of the police.

An RTI to all police stations showed that such a force was not constituted in any police station except Upparpet Police Station. *Obavva Pade* was created by DCP West, Upparpet Police Station to protect women and children with special training for women police constables. However the force instead of protecting women is harassing women especially women in sex work. What is required is an immediate disbanding of the *Obavva Pade* as an unconstitutional, vigilante force which is acting in wanton disregard of the framework of the Constitution.

REASONS FOR VIOLENCE: SOCIETAL UNDERSTANDING OF SEX WORK

Sex work, which is by and large seen as an "immoral" profession by mainstream society is in reality a livelihood choice exercised by women, largely from those classes, castes and communities that have already been marginalised by the economic, political and cultural mainstream. Legally too although sex work per se or 'prostitution' by itself is not a crime and nor are sex workers criminals, the law and dominant social morality criminalises and stigmatises the women and transgenders who exercise this livelihood choice instead of addressing the violence and discrimination in their lives. A number of initiatives have been taken by women's rights, human rights and sex worker collectives themselves to separate prostitution and sex work from trafficking and view it not so much as a law and order problem but as a problem of economic discrimination, social stigma and patriarchal prejudice. This more enlightened view of the issue is informing the approach of the courts and the state system itself to the women and the violence they are subject to.

Unfortunately, it is clear from the testimonies of the women and transgender sex workers who are already in fact the victims of this discriminatory and patriarchal social order, that the police system continues to legitimize and perpetuate the most humiliating, inhuman and illegal forms of violence against them. The violence violates the core survival and livelihood rights of the

women – including their right to be human and the right to their own dignity. As representatives of civil society working for a more just and humane society, through calling upon the provisions of the constitution and the law as also the deeper drive of a society to be human, just and civilized, it is upon us to ensure that the system responds to the needs and pain of the most marginalised and the vulnerable. It is in this context that we should condemn this violence in no uncertain terms and call upon the state to address it with all the seriousness that it deserves and take appropriate action against those erring officers who are violating the law and the basic human rights of the very people they are supposed to protect.

SUPREME COURT MANDATES THAT CONSTITUTIONAL MORALITY AND NOT SOCIAL MORALITY SHOULD GOVERN STATE ACTION.

It should be noted that sex workers are entitled to the full panoply of rights under the Indian Constitution. There is no exception to the fundamental rights chapter based on the work which one does regardless of whether the majority perceives it as immoral or indecent. However, the reality which we have documented is that very often persons in sex work are denied fundamental rights due to the perception that they are ‘immoral’ or what they do is ‘indecent’. While the law may not on the face of it discriminate against persons in sex work, in practice those who are mandated to ensure that the Constitutional protections are applied to all persons end up discriminating in practice against persons in sex work.

The concurring opinion of J. Nariman in *Navtej Singh Johar v. Union of India*⁴⁴(the abolition of adultery judgment) makes it clear that in a constitutional democracy the courts must ensure that the minority cannot be discriminated against on the basis of a majoritarian morality;

‘...it is not left to majoritarian governments to prescribe what shall be orthodox in matters concerning social morality. The fundamental rights chapter is like the north star in the universe of constitutionalism in India. Constitutional morality always trumps any imposition of a particular view of social morality by shifting and different majoritarian regimes.’⁴⁵

In *Indian Young Lawyers Association v. State of Kerala*⁴⁶, (the Sabrimala case) the concurring opinion of J. Chandrachud made a compelling case as to why morality cannot become the basis

⁴⁴ (2018) 10 SCC 1.

⁴⁵ *ibid* [81] (Nariman, J).

⁴⁶ 2018 (13) SCALE 75.

of depriving any person of fundamental rights, especially in a country like India which is governed by the Constitution;

‘Popular notions about what is moral and what is not are transient and fleeting. Popular notions about what is or is not moral may in fact be deeply offensive to individual dignity and human rights. Individual dignity cannot be allowed to be subordinate to the morality of the mob. Nor can the intolerance of society operate as a marauding morality to control individual self expression in its manifest form. The Constitution would not render the existence of rights so precarious by subjecting them to passing fancies or to the aberrations of a morality of popular opinion. The draftspersons of the Constitution would not have meant that the content of morality should vary in accordance with the popular fashions of the day.’⁴⁷

India should be governed not by shifting notions of popular or social morality but rather by what Ambedkar called constitutional morality. This has been referenced repeatedly by the Supreme Court which has referred to the prescient words of Dr. Ambedkar noted below;

Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top dressing on an Indian soil which is essentially undemocratic.⁴⁸

When we behold the constitutional nature of violation suffered by persons in sex work, we realize the truth of Ambedkar’s powerful statement on constitutional morality. It is only when the notion of decency and morality are made subject to the notion of constitutional morality that the human rights of persons in sex work will be protected. It’s vital that the police are trained in the norms of the Constitution so that they begin to apply the law equally to all persons. The rights under the Indian Constitution which are particularly applicable in the context of the violence faced by women and transgenders in sex work are;

Right to life (Article 21)

The right to life under the Indian Constitution has been interpreted to include the right to live with dignity. The right to live with dignity implies Constitutional protection for the choices which one makes with respect to work, including sex work. The forms of sexual violence,

⁴⁷ *ibid*, [8] (Chandrachud, J).

⁴⁸ Parliament of India, Constituent Assembly Debates (Proceedings) Vol.VII Part II: November 4, 1948, <<http://parliamentofindia.nic.in/ls/debates/vol7p1b.htm>> accessed 10 May, 2019.

verbal harassment and dehumanization of the persons in sex work is nothing other a violation of the right to live with dignity. All the testimonies recorded above reveal, a behaviour of the police which denies the essential humanity of the person in sex work and is consequently an assault on dignity. The duty of the state to protect this freedom is nothing less than a Constitutional mandate made even more weighty by the Preambular promise of protecting liberty of expression. This has been alluded to in the decision of the Supreme Court in *Budhadev Karmaskar v. State of West Bengal*⁴⁹ where the Court observed:

This is a case of brutal murder of a sex worker. Sex workers are also human beings and no one has a right to assault or murder them. A person becomes a prostitute not because she enjoys it but because of poverty. Society must have sympathy towards the sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21 of the Constitution⁵⁰.

Right to Equality and Non Discrimination (Article 14 and 15)

The right to equality and non discrimination, means that no one is targeted or subjected to violence based on a stereotypical perception grounded in morality. In *Indian Young Lawyers Association v. State of Kerala*⁵¹, J. Chandrachud rightly observed;

Human dignity postulates an equality between persons. The equality of all human beings entails being free from the restrictive and dehumanizing effect of stereotypes and being equally entitled to the protection of law⁵².

What the testimonies reveal is that it is the stereotype of the person in sex work as ‘dirty’, ‘immoral’, ‘violating social norms’ which empowers the police to play the role of the vigilante force and violate the basic right to equal treatment with impunity. The right to equal treatment stands violated with impunity as a stereotypical perception grounded in morality becomes the basis for targeting women and transgender sex workers persons and preventing them from accessing public facilities like buses, streets or other public facilities. The fundamental nature

⁴⁹ [2011] 10 SCR 577.

⁵⁰ *ibid*, [1] (M. Katju, J).

⁵¹ Sabrimala case (n 42).

⁵² *ibid* [55] (Chandrachud, J).

of this guarantee stands comprehensively violated when the public sphere itself becomes a space of intimidation, violence and harassment.

Right to Freedom of Expression [Article 19(1)(a)]

Freedom of speech and expression under Art 19(1)(a) includes the right to the expression of identity or personhood through speech, deportment, dress or bodily characteristics. It includes both ordinary and symbolic speech acts. The testimonies above indicate that this fundamental freedom to dress the way one chooses has been the basis of repeated harassment and violence by the police. This attack on so intrinsic a matter as what one chooses to wear is a violation of a core freedom that is guaranteed by the Constitution.

In particular transgender person are subjected to this form of intensive policing of their dress and behaviour. The Supreme Court in *NALSA v. Union of India*⁵³, has unequivocally recognized that;

‘Article 19(1) (a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one’s right to expression of his self-identified gender. Self-identified gender can be expressed through dress, words, action or behaviour or any other form. No restriction can be placed on one’s personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution.’⁵⁴

Right to move freely throughout the territory of India [Article 19(1) (d)]

All citizens have the right to move freely throughout the territory of India. This freedom of movement is hampered and impeded by the police preventing sex workers from accessing streets, roads, bus stops etc. The threat of violence and the infliction of violence by the police violates the fundamental freedom of movement. In *State of Uttar Pradesh v. Kaushaliya*⁵⁵, while upholding the constitutional validity of Section 20 of the ITPA, Justice Subba Rao speaking for five judges noted:

⁵³ (2014) 5 SCC 438.

⁵⁴ *ibid*, [62] (A.K Sikri, J).

⁵⁵ AIR 1964 SC 416

‘It is a fundamental right of personal liberty. No right can be more important to a person than the right to select his or her home and to move about in the manner he or she likes. Even depraved woman cannot be deprived of such a right except for good reasons⁵⁶.’

VIOLATION OF THE IMMORAL TRAFFICKING (PREVENTION ACT), 1986

The chief instrument of the Indian state’s regulation of prostitution is Immoral Traffic Prevention Act of 1956 (amended in 1986), whose mandate is to prevent the traffic of women and children into prostitution. According to Sec 5(f) of the original Act of 1956, the volitional act of “a female offering her body for promiscuous sexual intercourse for hire whether in money or kind” is liable for prosecution. This definition which had strong moralistic undertones was amended in 1986 and under Sec 5(f) of the amended Act of 1986, there is a shift of focus from commercial sex undertaken voluntarily to defining prostitution as “the sexual exploitation or abuse of persons.” The stated objective of the law on trafficking is not to criminalize prostitution per se but to criminalize brothel keeping, trafficking, pimping and soliciting. In actuality, the enforcement of ITPA invariably targets the visible figure of the sex worker (who is also the weakest link in the chain) and generally spares the hidden and powerful system that supports the institution of trafficking.

Thus, the operational parts of the ITPA are Sections 7 and 8 which deal respectively with prostitution in public places and soliciting. In fact, the majority of arrests of the sex worker take place under Sec 8, which defines the offence of soliciting for purpose of prostitution. This definition makes it clear that under Indian law sex workers may, so to speak, exist but not be seen: sex work is allowed to exist as “a necessary evil” because it serves a male sexual need, but its practice has to be continually hedged around with legal strictures, police harassment and intimidation. In its everyday operation, it is Section 8 which has been used extensively to target women in sex work.

The ITPA has so far been analyzed as applying to women in prostitution, proceeding on the assumption that it is women who are targeted by the ITPA. However, with the 1986 amendment, the title was modified to “Immoral Traffic Prevention Act,” and it became gender neutral. The words “female” and “girls” were substituted by the word “person” throughout the Act [Sec 2 (f), Sec 2(aa), Sec 2 (ca), Sec 2 (cb)].

⁵⁶ *ibid*, [3(ii)] (Subba Rao, J).

The ambit of the Act now applied to both transgender, female and male sex workers and possibly also to those whose gender identity was indeterminate. It is with the 1986 amendment that both transgender and *hijra* sex workers became criminal subjects of the ITPA. This provided the legal basis for arrest and intimidation of the transgender sex worker population as well.

In modern Indian society, the State and its apparatuses—the police, judges, lawmakers—as well as social reformers have attempted with single-minded zeal to put down sex trafficking and rehabilitate sex workers but in ways that violate their fundamental civil, economic, social and sexual rights, and expose them to organised violence, public stigma and discrimination.

Thus, under ITPA, all sex workers, male, transgender and female, face state violence and public stigma and discrimination. On grounds of preventing immoral trafficking and protecting public order and decency, the police exclusively target people in prostitution proceeding against the sex workers without any evidence of solicitation (as is required under Section 8 of ITPA) and merely on the suspicion that they are prostitutes. This produces an underclass of permanently targeted people who at any time are liable to be assaulted in public, merely because they happen to be there, taken away to the police station, wrongfully confined and restrained there, subjected to humiliating treatment, their earnings taken away. Sometimes, false cases are lodged against them which serves the double purpose of ‘solving’ an existing case and keeping the sex workers off the street.

Instead of targeting the sex workers who work on their own volition, the customers or brothel-keepers must be held accountable. This practice is rarely undertaken and the burden of punishment almost always rests on the sex-worker herself. However, the High Courts in India are now holding customers responsible in some cases. The Telangana High Court directed the magistrate to proceed against the customer under Section 370-A of IPC which penalises the exploitation of trafficked persons⁵⁷. Moreover, the same Court held it ‘unwise’ to consider the buyer of sex outside the purview of law⁵⁸.

The NCRB data for 2016 indicates that there were 2214 cases filed under the ITPA throughout the country.⁵⁹ The breakup of the ITPA provisions indicates that;

⁵⁷ *Naveen Kumar v. State of Telangana*, 2015 (2) ALD (Cri.) 156 A.P.

⁵⁸ *Mohammed Shaheed v. State of Telangana*, 2016 (1) ALT (Cr.) 373 (A.P).

⁵⁹ National Crime Records Bureau, ‘Crimes in India, 2016’ (NCRB, 10 October, 2017) <<http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf>> accessed 10 May, 2019.

1. 1170 cases were filed under Section 5 (procuring, inducing, taking person for sake of prostitution).
2. 134 cases under Sec 7 (prostitution in vicinity of public place)
3. 245 cases under Section 8 (soliciting for purpose of prostitution)
4. 562 cases under other provisions of the Act.

A surface reading of the 2016 figures may impel one to conclude that since 1170 cases are filed under Section 5 (meant to target pimps) and only 379 under Sections 7 and 8 combined (meant to target women who solicit or who carry out prostitution in vicinity of public place), the law is being used for the purpose for which it was enacted. However, one should not forget that 562 cases were filed under other provisions and we don't know which group is the target of these cases. The other important point to note that information as to the section under which the case is filed is not sufficient to conclude who is the target of the prosecution. This is because anecdotal evidence indicates that very often it is women victims who get picked up even under provisions meant to target pimps and traffickers. This is the conclusion arrived at in a circular issued by the DGP of Karnataka which states:

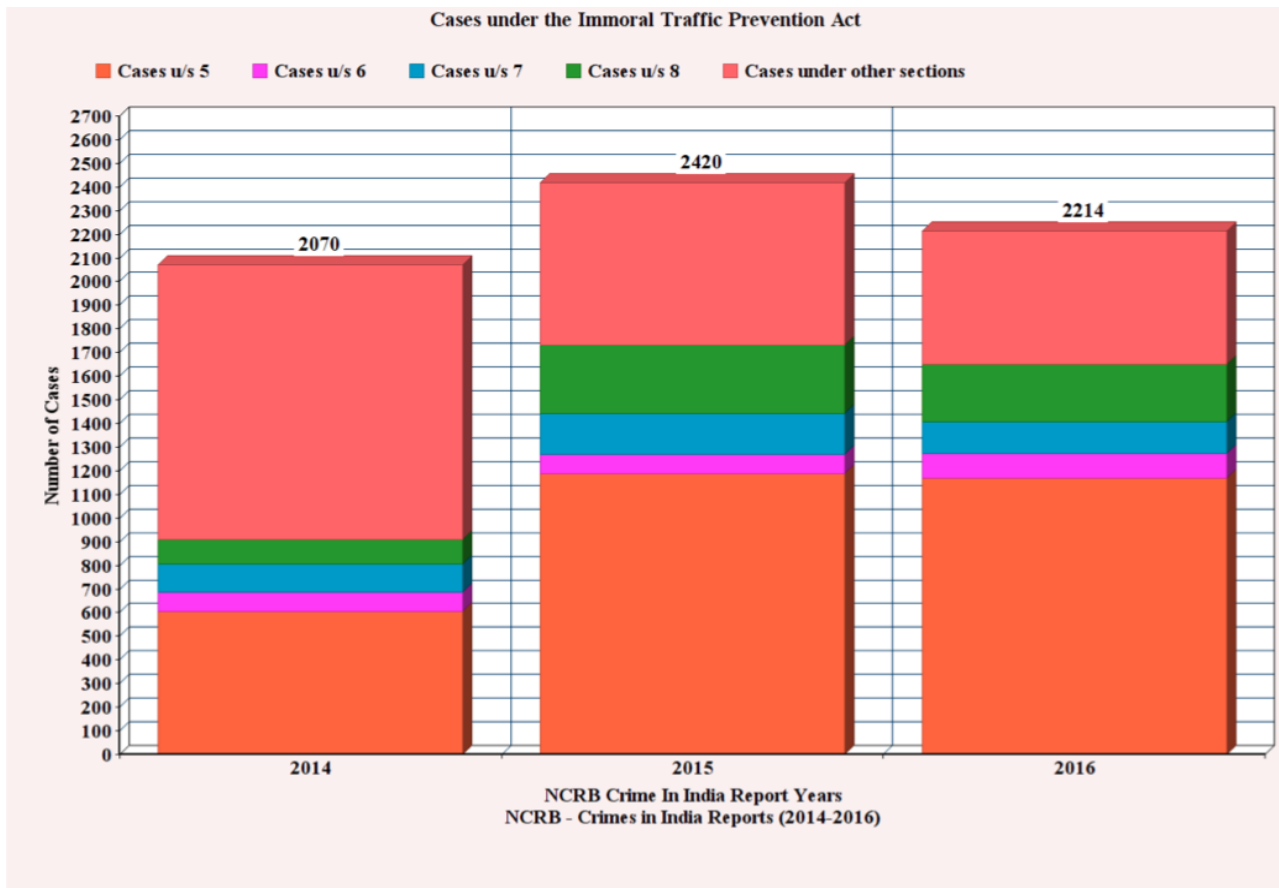
Unfortunately, statistics reveal that hardly any action is being taken against the exploiters while a large number of cases have been booked against the "helpless" victims of trafficking.⁶⁰

There is a need for more detailed information on the use of the ITPA to come to conclusions about how it is being used at a national level. A study of 3 years of data regarding the cases

⁶⁰ *ibid*, annexure II.

under ITPA shows the following;

The table below shows the progression of ITPA over 3 years and the cases under the same have been split according to the Sections. As already stated above, Sections 7 and 8 target women



and the cases filed under ‘other sections’ are more than 1100 in 2015. Their target could very well be the most vulnerable class, i.e. the sex workers themselves. Thus, police abuse and misuse remains rampant. Unfortunately, before 2014 such detailed breakup was not provided by NCRB and only the total number of cases registered were stated in the Annual Crime in India Reports⁶¹.

It is clear that the local police administration ends up victimizing women in sex work by misinterpreting the mandate of the ITPA. In this context it is important to note the circular by the DGP Karnataka which recognizes some of the abuses by the Act and lays down what the ambit of police action must be which is in consonance with the Act.

⁶¹ ‘Crime in India, 2014 Compendium’, 91 (*National Crimes Record Bureau*, 1 July 2015) <www.ncrb.gov.in/StatPublications/CII/CII2014/Compendium%202014.pdf> accessed 13 May, 2019.

‘3. Booking of a woman sex worker under Section 8 tantamount to re-victimizing the woman when she is already a victim of trafficking and sexual exploitation. It is, therefore instructed that henceforth no woman sex worker should be booked u/s 8 of ITP Act unless the woman in question is a "Madam" or a brothel keeper. Needless to say, men who solicit on behalf of women and those who run a brothel or live on the earnings of these women sex workers including "madam" and pimps, should be vigorously pursued and prosecuted under appropriate sections of law. In future, any cases are booked against women sex workers for "soliciting" the explanation of the concerned officer should be called and if there is any lack of bona fides, action should be taken.

4. A large number of complaints have been received from different places that sex workers are man handled, ill-treated, assaulted and abused in an inhuman manner by the police personnel. It is also alleged that the local police is in the habit of extracting money from these sex workers which itself amounts to extortion and living on their earnings. Needless to say, that this pernicious practice, if true, should be stopped forthwith and strict disciplinary action should be taken against such officials.’

Unfortunately, the Police administration is yet to act to bring its actions within the mandate of the Constitution as well as within the framework of action laid down by the DGP Karnataka in 2005.⁶² The police fail to see law and morality as separate spheres with their duty being the enforcement of law, but rather as the protection of society’s morals. Nowhere is this more in evidence than in the fact that they use an Act meant for the protection of women to target women themselves. It might be immoral to sell sex, but the law only considers it illegal for third parties to make money out of the selling of sex.

BRINGING ADMINISTRATION INTO CONFORMITY WITH THE CONSTITUTION

The police administration is yet to internalize the idea that sex workers are persons and entitled to full Constitutional rights. This lack of understanding is responsible for the implementation of the ITPA as a charter of oppression against sex workers.

The police are not complying with the letter and spirit of the ITPA as seen through a constitutional lens. The act is meant to target trafficking and in those who exploit and live off the earnings of prostitution of another person. In the facts of the present case as per the police

⁶² Office Circular No : SMS-612512004-05, dated; 30-9-04.

case itself there is nothing to indicate that all the women arrested are either living off the earnings of the prostitution of another person or that they are running a brothel. There is also a misapprehension of the very understanding of prostitution under the ITPA. The ITPA after its 1986 amendment under Sec 2(f) understands prostitution as, ‘the sexual exploitation or abuse of persons for commercial purposes and the expression prostitute shall be construed accordingly.’ The definition has been changed from Section 2(f) of the 1956 Act, which understood prostitution as, ‘the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or kind and whether offered immediately or otherwise and the expression prostitute shall be construed accordingly.’ The crux of the change in definition of prostitution is that it is meant to criminalize only those activities where there is sexual exploitation or abuse for commercial purposes. If such a relationship is not present, regardless of the nature of public opinion or perception of morality, the police have no business playing the role of moral policemen and harassing, torturing and arresting sex workers. This conclusion is further buttressed by a circular issued by the DGP Karnataka State which reiterates the point that Sec 3,4,5, and 6 are meant to be used against traffickers, pimps and other agents and facilitators of commercial sexual exploitation of women and children.

Very similar circulars have been issued by the DGPs of Tamil Nadu and Andhra Pradesh. There is also an emerging academic opinion which supports the above conclusion. Jacob Punnoose, the Addl DGP of Police, Kerala has noted, ‘There are wide differences between moral precepts on one hand and social prejudice and enacted law on the other hand. Being a prostitute is not an offence as per law but being a prostitute is considered immoral...The law today permits the woman to sell privately and the man to buy it. It prohibits a third party from making money out of it.’⁶³

It’s important for the police to both interpret and implement the ITPA within four corners of the Constitution, taking on board the range of developments in the jurisprudence of the ITPA as well as interpretations of the Constitution and in particular the development of the notion of constitutional morality.

⁶³ PUCL-K, Policing morality in Channapatna, (*PUCL-Karnataka*, 2007)
<<http://feministlawarchives.pldindia.org/wp-content/uploads/Policing-Morality-in-Channapatna-PUCL-K.pdf>>
accessed 10 May, 2019.

RECOMMENDATIONS

A. Long Term Legal Measures

1. The Immoral Trafficking in Persons Act, 1956 should be repealed. Sex work should be decriminalized, and legal and other kinds of discrimination against sex workers should be brought to an end.
2. Section 375 of the IPC, which defines the offence of ‘rape’, should be amended and a comprehensive sexual assault law should be enacted to protect all persons such that transgender persons are also protected from sexual assault.
3. In accordance with the *NALSA*⁶⁴ judgement, every person must have the right to decide their gender expression and identity, including transsexuals, transgenders, transvestites and hijras. They should also have the right to freely express their gender identity. This includes the demand for *hijras* to be considered female as well as a third sex.
4. In accordance with the *NALSA*⁶⁵ judgement civil rights under law such as the right to get a passport, ration card, make a will, inherit property and adopt children must be available to all regardless of change in gender/sex identities.

B. Immediate Recommendation for Police Reforms in Karnataka

1. The police should forthwith disband vigilante force such as the *Obavva Pade* and ensure that all police action is henceforth undertaken within the framework of the Constitution.
2. The police at all levels should strictly follow the interpretation of the import and ambit of penal provisions in the ITPA as laid down in the Circular of the DGP, Karnataka in 2004.
3. The police administration should appoint a Standing Committee comprising Station House Officers and human rights and social activists to promptly investigate reports of gross abuses by the police against sex workers in public areas and police stations, and the guilty policeman immediately punished.
4. The police administration should adopt transparency in their dealings with sex workers and make available all information relating to procedures and penalties used in detaining sex workers.

⁶⁴ NALSA (n 49).

⁶⁵ *ibid.*

5. Protection and safety should be ensured for sex workers to prevent rape in police custody and in jail.
6. Transgenders should not be sent into male cells with other men in order to prevent harassment, abuse and rape.
7. The police at all levels should undergo sensitization workshops by human rights groups/trans rights groups in order to break down their social prejudices and to train them to treat sex workers within the frame of constitutional morality and not social morality.
8. Practice of detaining sex workers for hours, without any charge or reason and, Collection of 'FINES' from sex workers where neither receipts are given nor records made, should be stopped forthwith.
9. Cases of Intimidation or harassment of women or transgenders in street based sex work by police personnel using threats or abusive language or chasing in the streets or any other physical violations, should be treated as punishable under Section 354 of the IPC and action should be taken against the concerned police personnel.
10. State Legal Aid Authority should conduct workshops for police personnel in all stations on the law and on the proper use that does not criminalise sex work.

ANNEXURE 1 (TRANSCRIPT OF TESTIMONIES)

Padma

I am Padma from Magadi where I was born. My parents had 4 children and I am the second daughter. I was not sent to school as we were very poor and they married me off when I was 12 years old. I had a child when I was thirteen. My husband was a coolie worker. After we were married, I went to live with him in his house but he did not take good care of me. I brought up my children by being a domestic help and washing vessels and by removing the leftover eaten leaves in marriage choultries. Only if I was in good terms with the supervisor would I get the leftover food otherwise he would say it is not there and send me home. My husband would come home drunk every day and beat me black and blue. He died 25 years ago because of his addiction to alcohol. My sister in law i.e. my husband's sister got me a job in a silk factory. There too, the owner being aware of my poverty had his eye on me. He would threaten saying that he would fire me from the job if I did not go with him. I did as asked by the owner as I had to take care of my children and give them education. I worked there for 5 years and had sexual relationship with him. Even though he promised to increase my salary, he did not but continued to use me sexually. He not only failed to pay me but also used me to satisfy his sexual needs. As time passed the other workers and my sister in law too came to know that I was in a relationship with the owner. Some of them advised me saying why are you having a relationship with him. He will only use you and not pay even a rupee. Instead, if you sleep with other men you will earn Rs 300 – Rs 500. Acting upon their advice, both me and my sister in law quit the job.

After sometime I joined a factory producing China goods. And there too, the factory supervisor used me sexually but paid me a good salary. He warned me saying that if I did not listen to him, he would fire me from the job. Twice a week, he would take me to some place and use me sexually. Life went on like this and one day I got acquainted with a woman who was helping him. She would drop me in City Market and at the Banyan tree in Victoria Hospital and make money by getting clients to have sex with me.

Each time, the future of my children would loom large before my eyes and so for 30 years I was dependent on this person.

Once, when I was still new to the *dhandha*, a lady police made me get into an auto, took away Rs 50 that I had and dumped me on the road. From then on, I began to be harassed by the police. I have likewise suffered from harassment by a police constable belonging to the State Home. Apart from this, every time I go near the Annamma Temple in Majestic, the police come wielding a lathi and chasing me in public. The public think I am a thief who the police are chasing and get involved in the chase. They abuse me with filthy words and call me a prostitute in front of everyone.

On 14 January at 12'0clock when I was standing on platform 9, the 5 member *Obavva* team came upto me and started abusing, saying: "Why are you here? Come on, get going you loafer!".

I told them I had just come and even showed them the ticket I had purchased. But they would not listen. They called for the Hoysala van and two more of the members and took me to the O.P station. At the station, a single star police looked at me and said abusively: "Sit. You people should be sent to the jail. Sit you prostitutes. We will celebrate tomorrow's festival here today."

There were already 8 women when I arrived at the police station and the police staff were abusing the women in filthy language. By then a lady sub inspector began to beat the women with the lathi. As I was a little far away she did not beat me. Then she turned to the *Obavva* team and pointing to me asked them who I was. They told her: "She too is like them madam. A week back she used to come every day but then stopped. She has come again today." The madam asked me: "Where had you been?" I told her "I had been to Om Shakti madam and so I did not come this side",. She became even more enraged at this and beating me with the lathi abused and sarcastically said "For the saintly work that they do, these prostitutes go to Om Shakti!" From the impact of her lathi beatings my bangles broke into pieces and cut my hand which started bleeding.

She told me: "I will get you a job that will pay Rs 6000. And when I told her: madam, get me one that will pay Rs 20000" she abused saying: "You are feeding your children by selling your body and your children survive by eating that food." Then they collected Rs 300 from all the women.

Again, on 6 February at 2 pm the *Obavva* team took me to the O .P station, fined me for Rs 300 and let me go at 8 pm. They did not allow me to take the BMTC bus to reach home.

My worry is what will be our children's future if every time the police harass and trouble us when we accompany our family to go to our village.

It is very upsetting.

Rekha

My name is Rekha and I am originally from Davangere. My parents have 4 children – 2 girls and 2 boys. I am the third daughter. I was married when fifteen and I was a house wife for 15 years. I have a daughter. My husband is a coolie worker. I worked in the garments for 2 years. They would torture me to give higher production in the garments. I quit the job and stayed at home for 6 months. An aunty who became acquainted with me, introduced me to the *dhandha* business. I initially started doing *dhandha* in the Majestic area. As my husband was only a coolie worker, it was very difficult to manage the family. My mother in law was forcing me to go out and work. She was torturing me and telling me to get money by whatever means. Unable to bear her torture, I took to this profession as my daughter's future was staring at me. And so, since 4 years, I am in this profession.

There was no problem or harassment in the first 3 years of this profession. But this year, I have suffered terribly from police violence. The new DCP who has taken charge of the Upparpet police station has formed the *Obavva* team. This 12 member team abuses me at the BMTC bus stand and in front of the public with filthy words. They say: "You prostitutes, why do you come to the bus stand? Don't you have husbands at home?" Wielding the lathi menacingly in front of us, they drag us to the O. P police station.

On 2 January, at around 2.45 pm the *Obavva* team took me to the O.P police station and asked me to sit. I said I have to go somewhere and I will not sit. But they kept insisting that I sit. I told them: "I will hang myself with my saree; I have to go." They told me: "Pay the fine and go otherwise we will not let you go." They did not listen when I told them that I don't have the money. But somehow I managed to pay Rs 250.

On 31 January, at around 2.30 pm when I was standing at platform no 22, 3 police constables out of the 6 member *Obavva* team came there. Upon seeing them, I panicked and got into the BMTC bus. Seeing me get into the bus they too boarded the bus. They harassed me asking me to get off the bus. The commuters in the bus were looking at me and talking amongst themselves. I told the *Obavva* team that I was going to Yeshwantpur and was not going to get off the bus and that they were harassing me. Crying, I told them: "I will hang myself here itself." They said: "You take this ticket and go." They told the conductor to give me one. I told them: "I have the money and there is no need for you to buy the ticket." Then they got off the bus.

I went to Yeshwantpur and after that I went to Public T V. I collected the mobile number of Ranganath sir. I called him up and told him all that had happened. He said: "If you are harassed like this again call me up or send a message."

There have been innumerable such incidents that have taken place but I don't remember all of them.

I have suffered emotionally because of such incidents. If my husband or my relatives had happened to be in the same bus and had seen me, I would have been a living corpse. What would happen to my daughter's future? My life will be in shambles if my family comes to know about my profession. Me and my daughter will become orphans. Because of them, it has had a huge impact on the lives of women in our society. There are many women who struggle every day for a morsel of food. Women have to take care of their old parents and children. We are tortured mentally and physically by the general public.

Manjula

I am Manjula. Although my birth place is Kolar, I grew up in Marathalli. I am the fifth daughter for my parents. My parents worked as coolies and brought us up. I was not educated because we were poor. They married me off when I was 12 years. My husband was a coolie worker. Heeding his mother's words, he beat me and threw me out of the house. At that time my older daughter was 3 years and my younger 2 years. I took up a separate house and lived with my daughters.

I did not know what to do to eke out a living. It was at that time that my family members introduced me to *dhandha*. They asked me how will you pay rent and told me if you go to Majestic, men will give you money. And that is how I came to be in the profession in Majestic. It is 15 years now since I came into this profession. My husband also died and none of my relatives informed me about his death.

I am doing this business in Majestic. Ten years ago, the Upparpet police took us to the police station and made us sit there till the evening after which they took us to the court. They made us to apologise and to say sorry to the judge and then fined us. They sent me to the beggar's colony. Even then it was the Sadhana Mahila Sangha that got me out from there. Now, since a year, they (police) are troubling us a lot. The *Obavva* team which has been formed in the Upparpet police station and O.P station take us to the station telling us that we have been summoned by the police officer and that we have to come to the station and sign.

They abuse us with filthy words saying: "Do you have to come here to satisfy your bodily lust... you should be ashamed of yourselves. Go and die somewhere. You come here in search of men"...and many such abuses. We should not come to the bus stand even to board the bus. They threaten saying they will call our sisters and tell them we are prostitutes. I plead with them saying: "Please don't call them. I have told them I am going for work."

They have tortured me the entire month of December 2018. On 2 January, the *Obavva* team took me to the station and made me sit the whole day and let me go after fining me Rs 250. On 6 January at 2 pm, 3 members of the *Obavva* team came to the place where I was standing and told me: come to the station and took me there. In the station, they started abusing: "Why do you come here to get *****. You people will not even hesitate to kill your husbands and sell your bodies."

On 6 February, they picked me up from the Majestic platform no 6 and took me to the station. They threatened me saying we will inject you with HIV infection and kill you. The *Obavva* team confiscated my mobile and told me that they would call my husband and tell him that I come there to do prostitution. Then they proceeded to call the first number and asked the person do you know of this person *Manju*. The person on the other end has told them "she is my sister. I am her elder sister and we are both living in the same house. And when she asked them: who are you? They have cut the call. A dark complexioned policeman in the station hit me on my

knees with his lathi. Another bald and big bellied policeman hit me on my left shoulder with his lathi. They also hit me on my head and then let me go.

What is the fate of our children if one day when the *Obavva* team is chasing us and we get trapped under the bus or any vehicle and die? Or if I lose an arm or a limb, will these police give maintenance for me to live. I will sell my body and survive. If I have committed any robbery or crime, let them punish me. They chase me even when I have not committed any crime. The Govt gives salary to these police. They give them maintenance for life. Will the Govt give me maintenance? In these times, it is difficult even to just survive with the result our children starve.

Diamond Rani

I am a Mangalamukhi. I am originally from Bellary. Born into a lower middle class family, I did my SSLC after which I could not continue. My friends, the people in the village, the public, looking at the way I spoke, my gestures, gait would deride and call me *Henuga, Khoja, Chakka*. And my parents too got a bad name because of me. Later, I completed my PUC and BBM degree course through correspondence.

I did not know what to do afterwards.

As days passed, I began to feel my feminine self growing stronger and felt very uncomfortable to live amidst our society. I was doing begging and sex work. Later I began to frequent the BMTC Majestic bus stand to do sex work. Here, the police and the staff of the *Obavva* team harass us a lot. They abuse us in filthy language in front of the public and beat us. How can we survive if they do like this? We can't do anything else other than this. I come every day with my community to eke a living.

So please create the space for us to survive. Treat us too as human beings. Treat us kindly and give us respect. Allow us to live.

Soumya

I am Soumya from Shivamogga. I have studied till the 8th standard. I wanted to study further but could not continue because my friends at school would, looking at me, derogatorily call

me *Khoja, Chakka, Kothi*. As days passed my feminine desires became stronger and my parents began to scold me saying I was good for nothing and threw me out of the house. I came to Bangalore then. In order to survive, I went to a hotel seeking work. But the hotel did not give me a job as they knew I was a *mangalamukhi*. Feeling hungry, I sat crying in Majestic. Some *mangalamukhis* who came there saw me and after making enquiries and confirming that I too was a *mangalamukhi* like them, they took me along with them.

At present, I am doing sex work at the Majestic BMTC bus stand. From the past six months, the violence by the *Obavva* team has increased. The police and the *Obavva* team chase us inhumanly like cattle and drag us to the police station. They abuse in filthy language saying: “You come here to die? Go sleep with your mother. You come here to do oral sex for men.” Just in this one month, they had put 3 *mangalamukhis* in the beggar’s colony (rehabilitation centre for the shelter less) I was there for a night. Our guru bai came there and after paying Rs 5000, released us from there. They did not give any receipt for the money that was paid. Our very right to life is under threat from this relentless violence from the police.

ANNEXURE II (CIRCULAR OF DG AND IGP, KARNATAKA)

22-11-2005

CIRCULAR

Sub: Action under Immoral Traffic (Prevention) Act,
1956.

Ref This office Circular No: SMS-612512004-05, dtd: 30-
9-04

National Human Rights Commission, National Commission for Women, State Commission for Women and various NGOs have repeatedly been pointing out that Immoral Traffic (Prevention) Act, 1956 is not being implemented in its true spirit by the Police Department. The very name of the Act is "Immoral Traffic" conveys that the Act is intended to control/prevent the trafficking in human beings. Therefore, it is logical to conclude that police action should be primarily against the traffickers of human beings, exploiters, pimps, brothel keepers, those living on the earnings of sex workers, etc. and not against the sex worker, women who are victims of the trafficking. Unfortunately, statistics reveal that hardly any action is being taken against the exploiters while a large number of cases have been booked against the helpless" victims of trafficking.

In this connection a circular was issued by this office vide reference cited above, reiterating the above premise. But it seems that the harassment of the women sex workers continues unabated. It is therefore, felt necessary to reiterate the earlier instructions in the matter as under:

1. Section 4 of ITP Act states that any person, living on the earnings of the prostitution of any other person, is liable for the offence under this section- This section can be effectively used against brothel keepers, pimps and other similar agents. It may be noted that section 4(2) of the ITPA provides that the burden of proof that a particular person is not living on the earnings of the prostitution is on the accused.
2. Similarly, sections 5, 6 and 7 provide for stringent action against the traffickers and pimps and, under all these sections, the burden of proof of innocence is placed on the accused.

3. Booking of a woman sex worker ill 8 tantamount to re-victimising the woman when she is already a victim of trafficking and sexual exploitation. It is, therefore instructed that henceforth no woman sex worker should be booked u/s 8 of ITP Act unless the women in question is a "Madam" or a brothel keeper. Needless to say, men who solicit on behalf of women and those who run a brothel or live on the earnings of these women sex workers including "madam" and pimps, should be vigorously pursued and prosecuted under appropriate sections of law. I± in future, any cases are booked against women sex workers for "soliciting" the explanation of the concerned officer should be called and if there is any lack of bona fides, action should be taken.

4. A large number of complaints have been received from different places that sex workers are man handled, ill-treated, assaulted and abused in an inhuman manner by the police personnel. It is also alleged that the local police is in the habit of extracting money from these sex workers which itself amounts to extortion and living on their earnings. Needless to say, that this pernicious practice, if true, should be stopped forthwith and strict disciplinary action should be taken against such officials.

Please acknowledge the receipt this circular.

Sd/
(B.S.Si,al)

Director General and

Inspector General of Police.

To,

The Commissioner of Police, Bangalore City/Mysore City/Hubli-Dharwad City All Range
Inspectors General of Police,

All Superintendents of Police, Incharge of Districts; Including KGF and Railways.

Copy to: The Director General of Police, COD, Training Spl Units and Economic Offences,
Bangalore.

All ADGPs.

1

For Director General and Inspector General of Police

**ANNEXURE III (REPRESENTATION TO DGP, KARNATAKA DATED 4.02.19 REGARDING
ASSAULT OF SEX WORKERS)**

**ANNEXURE IV (REPRESENTATION TO COMMISSIONER, BENGALURU POLICE DATED 9.10.18
REGARDING ASSAULT ON SEX WORKERS)**

**ANNEXURE V (REPRESENTATION TO STATE HUMAN RIGHTS COMMISSION DATED 16.01.19
REGARDING ASSAULT ON SEX WORKERS)**

**ANNEXURE VI (REPRESENTATION TO DCP, UPPARPET POLICE DATED 20.11.17 REGARDING
HARASSMENT OF MEMBERS OF SADHANA MAHILA SANGHA)**

Annexure VII (Evidence of Assault recorded in Medico Legal Certificates)

Annexure VIII (Immoral Trafficking: Law and Enforcement, Jacob Punnose (Add DG of
Police Kerala Retired)

