

# RAIDED

*How Anti-trafficking Strategies Increase  
Sex Workers' Vulnerability  
to Exploitative Practices*



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# Raided

How Anti-Trafficking Strategies  
Increase Sex Workers' Vulnerability  
to Exploitative Practices



RIGHTS  
FOR  
CHANGE



# Acknowledgments

We gratefully acknowledge the central role of sex workers who implemented the study. Special credit goes to the community researchers who meticulously worked to identify and speak with women who were raided in the name of anti-trafficking measures.

**T**his document is a compilation of findings of research to understand the impact of anti-trafficking laws and policies on women in sex work in India. This study was undertaken as a partnership between Rights4Change, SANGRAM and VAMP.

SANGRAM and Veshya Anyay Mukti Parishad gratefully acknowledge the central role of sex workers who implemented the study. We acknowledge the valuable contributions of the Kerala Network of Sex Workers, Uttara Karnataka Mahila Okkutta, Srijan Foundation, Saheli Sangh and Aadhar

Bahuddeshiya Sanstha. Special credit goes to the community researchers who meticulously worked to identify and speak with women who were raided in the name of anti-trafficking measures.

SANGRAM and VAMP specifically acknowledge the valuable contributions of Marjan Wijers and Lin Lap-Chew from Rights4Change for actively working to design and implement this study in India. Their assistance in training sex workers on the Right Guide has enabled the community to emerge as peer researchers and obtain valuable narratives from the field.

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**The team meticulously applied methodologically sound research tools which enabled the sex workers to speak out.**

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# Foreword

**This research is designed to have sex workers speak for themselves. I hope they will be listened to, because in the end, defending rights and combating violence and abuse are two sides of the same coin.**

This report is the result of research carried out by Veshya Anyay Mukti Parishad (VAMP) and Sampada Grameen Mahila Sanstha (SANGRAM) in cooperation with sex worker collectives in Kerala, Karnataka, Maharashtra and Jharkhand. The research examines the impact of The Immoral Traffic (Prevention) Act (ITPA) on the protection of the human rights of sex workers. It discusses the relevant national and international legal frameworks, analyses the case law on sex work. Above all, it gives voice to sex workers themselves.

This research study employed the Right Guide, a tool to investigate and analyse the human rights effects of anti-trafficking laws and policies, link these to the human rights obligations of the government, and use the outcomes to more effectively advocate for rights-based and evidence-led policy reforms.

### **The Right Guide is built on the following principles :**

**State accountability :** the tool is premised on the understanding that States have undertaken binding human rights commitments by ratifying human rights treaties. Governments can be held accountable if they do not live up to their human rights promises. Knowledge/evidence-based action: the tool aims to go beyond ideological debates. It requires rigorous data-collection as a basis for analysing and understanding the actual impact of laws and policies on the human rights of affected persons.

**Participation :** the tool requires the participation of groups affected by the policies concerned. This is a fundamental principle and an essential element in the process of collecting

evidence and understanding the impact of a policy.

**Bridging movements and building alliances :** the tool aims to facilitate bridging the divide between anti-trafficking organizations, sex workers' rights, migrants' rights and human rights organizations by presenting human rights as applying to all these groups and movements in specific, yet universal, ways.

Groups and communities that are directly affected by a certain law or policy should be involved in its development, implementation and evaluation. Failure to do so, may lead to ineffective measures or even have negative effects. However, though sex workers are the first whose lives, safety and health are impacted by laws and policies on trafficking and prostitution, their voices and lived experiences are seldom heard nor listened to.

This research is designed to have sex workers speak for themselves. It does so in two ways. First, the participating sex worker collectives organized focus group discussions with their colleagues on how the Immoral Traffic (Prevention) Act, 1956 (ITPA) affects their daily work and life. In addition, focus group discussions and interviews were held with sex workers who were picked up in so-called 'raid and rescue' operations as a method to stop trafficking.

A theme that runs through all their stories is the daily exposure to arbitrary arrest and detention, and police abuse. Rather than combating trafficking, the ITPA creates the conditions under which adult, consenting sex workers can be arrested without due process under the flag of rescue operations, detained in 'rehabilitation' or 'correction homes'

that are in fact prisons, sometimes for upto five years, subjected to forced medical tests, humiliated and abused, coerced into sex and extorted with impunity in the process. If produced before a court they often do not even know what the charges are and are instructed by the police to just admit to whatever the judge says, under the threat of being beaten up and sent to jail if they refuse to do so. "A consequence of this culture of police abuse is that it also sends a message to other groups in society that sex workers can be abused with impunity," said Sangeeta Manoji from VAMP.

The abuse is exacerbated by the degrading way media, and in some cases also courts, talk about sex workers. The Supreme Court in one of its judgments declared, "The differences between a woman who is a prostitute and one who is not certainly justify their being placed in different classes".

A second theme is the denial of their agency to do sex work for a living. Although many sex workers are the heads of their households and the primary providers for their families, they are considered to be incapable of taking decisions about their own lives.

When 'rescued', for example, the ITPA requires that even adult women are handed over into the 'safe custody' of a husband, parent or guardian or even a younger brother, often accompanied by the signing of an affidavit that they will not go back to sex work. This not only denies that a woman can actually decide to do sex work for the income and independence it offers them, it also ignores the fact that a woman trafficked into sex work may decide to remain in sex work under certain conditions.

As stated by one of the interviewed sex workers, "We do our work in the form of sex work. We are also earners. We also have problems with customers just like anyone providing services. We are sex workers and our money is hard earned money. I take care of my kids, my mother, my brother's family. Now I am supporting my granddaughter's education. I am happy with the money I get from sex work. I am not pickpocketing nor stealing from any bank. I am earning on my own. For money I am providing a sexual service and this is our work."

The study identified the persistent conflation between trafficking and sex work to be one of the underlying problems. It is not clear what the ITPA aims to combat: trafficking or prostitution, traffickers or sex workers. As a result, adult, voluntarily working sex workers are treated as helpless victims in need of rescue or, when they refuse to identify themselves as victims, as perpetrators or deviants who deserve punishment. Similarly, media reports oscillate between conflicting portrayals of sex work as 'rape' and/or 'easy money'.

Many of the findings represent serious violations of human rights, such as the right to protection against arbitrary arrest and detention; violence and discrimination; the right to freedom from cruel, inhuman or degrading treatment or punishment; the right to a fair trial; to health; to privacy and family life; to freedom of movement and, above all, the right to equality before the law and equal protection of the law.

States not only have a duty to combat trafficking, they also have a duty to protect the human rights of their citizens. Even those deemed criminal by the state have human rights. That is the meaning of 'human rights are universal': they apply to everybody, including sex workers.

When sex work laws and policies negatively impact fundamental human rights of an already marginalized and vulnerable group and when States persist in such policies despite knowing their harmful effects, there is a serious human rights problem. A problem which cannot be remedied by justifying it as collateral damage that must be accepted to combat trafficking or protect society.

If there is anything fundamentally against the very principle of human rights, it is the idea that it is all right to sacrifice some for the sake of all. It is also a profound reversal of values: human rights are there to protect the individual against the State, not the State against the individual. Besides, it sends the message that the human rights of sex workers are less worthy to protect.

Ironically, it is precisely the idea that sex workers do not have the same value as other human beings that fosters trafficking and other abusive and exploitative practices.

I want to thank the Oak Foundation whose generous support made this research possible. I also want to express my admiration for the stamina and resilience of the sex workers, my colleague Lin Lap-Chew and I got to know through the training in the use of the Right Guide and the subsequent community validation meeting in which the preliminary results of the research were discussed.

In this study sex workers speak. I hope they will be listened to, because in the end defending rights and combating violence and abuse are two sides of the same coin.

MARJAN WIJERS, RIGHTS4 CHANGE

FEBRUARY 2018



# Summary

# Summary

Discussions on anti-trafficking measures have often been overshadowed by debates on prostitution per se as violence and slavery of women; and further muddled by a conflation with sexual exploitation of children. Anti-trafficking initiatives have been largely responsible for the conflation of trafficking and sex work, leading to an overriding conception of sex work itself as ‘violence’, ignoring the violation of the human rights of sex workers and trafficked persons.

This has led to a division between anti-trafficking organizations on the one hand and sex workers' rights organizations on the other. This division has also led to strategies that advocate the abolition of sex work rather than protecting the rights of women in sex work. The anti-trafficking discourse also tends to invalidate the narratives of millions of women migrants. Safe migration and the right to choose a livelihood continue to be hindered by narrow conversations on morality and culture.

The present research is an attempt to forefront the experiences of women in sex work who have been raided, rescued and rehabilitated. We examine women's narratives along with quantitative data about the strategies of raid, rescue and rehabilitation deployed to combat trafficking of women into sex work. The study unravels the impact of laws and policies on the lives of sex workers. We centre the research around the experiences of women who were 'rescued' in raids, 'rehabilitated' for varying periods of time, and are now back in sex work. These complex narratives show a non-linear relationship between trafficking and the decision to continue in sex work.

## Context

India is a signatory to most of the major human rights treaties and conventions and periodically reports on their implementation status. In recent years, sex workers and activists have engaged with treaty body reporting mechanisms to strengthen the articulation of a human rights framework within the country on sex work. The emerging rights discourse at the global and national levels argues that efforts to

respect, protect, fulfil and promote the human rights of sex workers needs to be premised on ensuring their rights as citizens under the Constitution.

However, India has failed to recognize the marginalization, vulnerabilities and human rights of sex workers. Anti-trafficking policies in India, in particular the Immoral Traffic (Prevention) Act, 1956 (ITPA), conflate trafficking and sex work, fail to protect trafficked persons, thus leading to increased violence against sex workers.

Paradoxically, despite the enactment of the ITPA in the decade following Independence, what exactly constitutes trafficking was not defined in any of the Indian laws prior to 2013. The ITPA in action impacts the lives of sex workers by: criminalizing work; criminalizing family and the right to raise children; the right to privacy; unfair or forced eviction and removal from homes or any other place; and by invalidating adult consent. The study analyzed the gap between the letter of the laws relating to trafficking and the manner in which the cases are interpreted and how they are decided, based on the subjective interpretation of judges.

## The Study

Anti-trafficking policies in India, in particular the Immoral Traffic (Prevention) Act, 1956 (ITPA), conflate trafficking and sex work and fail to protect trafficked persons, thus leading to increased violence against sex workers.

The research was an outcome of the partnership between human rights activists, human rights research agencies and sex worker collectives in India. The research was led and conducted by the sex worker collective Veshya Anyay Mukti Parishad (VAMP), the NGO SANGRAM in India and Rights4Change based in Netherlands. The study partners in India were Veshya Anyay Mukti Parishad, Saheli HIV/AIDS Karyakarta Sangh and Aadhar Bahuddeshiya Sanstha, Maharashtra; Uttara Karnataka Mahila Okkutta, Karnataka; Kerala Network of Sex Workers, Kerala and Srijan Foundation, Jharkhand. The study aimed to:

- Understand the application of the international human rights framework to sex workers in India.
- Enable sex workers to understand the human rights framework and participate meaningfully in the data collection and analysis process.
- Identify the gaps between the stated rights for all citizens and their application in the lives of sex workers.
- Collate the experiences of violence and violations faced by sex workers.
- Document and analyze how raids and rescue initiatives impact the lives of sex workers.
- Analyze through community narratives how anti-trafficking laws and policies are applied to adult consenting sex workers.

## The Research

VAMP and SANGRAM developed the framework and selected the research team from sex worker collectives in Jharkhand, Karnataka, Kerala and Maharashtra, which constituted the study sites. A training workshop 'Assessing the Impact of Anti-Trafficking Laws on the Human Rights of Sex Workers' in June 2015 laid down the theoretical framework. A 'Community Research Guide' encapsulated the methodological aspects and shared with the peer researchers.

The study employed the Right Guide, a tool to investigate and analyse the human rights effects of anti-trafficking laws and policies, link these to the human rights obligations of the government, and use the outcomes to more effectively advocate for rights-based and evidence-led policy reforms. The Right Guide – translated into Hindi and Marathi – is built on the principles of: state accountability; knowledge/evidence-based action; participation and bridging movements and building alliances.

The study was conducted using primary sources including focus group discussions (156 participants in 14 FGDs), survey (243 participants) and interviews (23) in all four states. Secondary sources included a scan of

The study employed the Right Guide, a tool to investigate and analyse the human rights effects of anti-trafficking laws and policies, link these to the human rights obligations of the government, and use the outcomes to more effectively advocate for rights-based and evidence-led policy reforms.

judicial decisions, laws and treaty documents and India reports to the UN bodies. Besides the ITPA judgements in cases under the Indian Penal Code, Juvenile Justice Act and other laws were also analyzed. Right to Information applications were also used to access data.

The research studied the impact of anti-trafficking laws on sex workers who functioned in a range of settings: rural and urban; streets, brothels and lodges; as well as 'hidden' sex workers who did not openly do sex work. Participants of the study were identified based on these criteria. The research was conducted in sites where sex workers' collectives were active so that they could take forward the findings in campaign strategies beyond the research period. The preliminary findings were presented at a validation meeting with the researchers and the members of the partnering collectives. Inputs and recommendations were discussed and the findings incorporated into the research.

Data was collated for 243 women who were raided between 2005 and 2017 in four towns of Maharashtra: Kolhapur, Jalgaon, Pune and Sangli through interviews and group discussions, home visits and visits to rescue homes.

The next phase of the research carried out with women who were tracked after having been discharged/released or had escaped from correction homes, centred around the experiences of women who are in sex work of their own volition, who were 'rescued' in raids, 'rehabilitated' for varying periods of time, and their work choices after being released from the rescue homes.

The Collectives, CBOs and NGOs

working in the brothels collected data of the raids and followed up women who had been picked up. In Pune, community researchers spoke with individuals who had been raided and released from rescue homes. They also filed Right to Information petitions to ascertain the status of those in rescue homes and visited rescue homes to speak with the women. Community researchers held group discussions as well as individual interviews with the women who were picked up in raids in the area.

Sensitivity was exercised because many women interviewed had given undertakings and signed affidavits to the court or rescue NGO that they would leave sex work as a pre-condition for release. Care was taken to maintain confidentiality and mask the identities of some participants.

## Findings

The study was a search for evidence to answer crucial questions: If women entered sex work by force then why would they want to return to sex work voluntarily? If they entered because of lack of skills to do other jobs, why did they return after they were taught skills that could have helped them earn? If they entered sex work due to 'force of circumstance' why would they return when those circumstances had changed for the better? If they entered because of deception, lure, by unscrupulous persons who they trusted, why would they return when they were given a chance to make a 'new' life? If they entered because of lack of life choices, why would they 'choose' to return?

The following is a summary of research findings:

The entire process of the raid smacks of a notable disregard for the purported victims who were being rescued. Humiliation, verbal and physical abuse routinely accompanied these raids.

### **Moralistic and arbitrary laws**

- The bedrock of the problem is the law, The Immoral Traffic Prevention Act (ITPA) which in its name itself conflates 'immorality' and 'traffic' in women, the interpretation on the ground being an anti-sex worker approach.
- Analysis of legal cases in Indian High Courts and the Supreme Court from 2010-17 revealed an increase in the number of cases, possibly indicative of lobbies advocating abolition of sex work invoking law as part of their strategy.
- The working of the legal machinery including the interpretations, orders and judgments of courts are coloured by the moral disapproval of sex work and end up infantilizing adult women by deeming them to be 'safe' only in the custody of their families; criminalizing bread winners by making it illegal to "live off the earnings of a sex worker; and impacting not only the livelihoods, but also the safety net for sex workers by criminalizing 'third parties' such as brothel keepers and client procurers.
- Law enforcement mechanisms are weighted against sex workers, and the police often use the law to justify violence, incarceration, fines and extortion, and the legal system holds out little hope.
- Arbitrary police action during raids, with scant respect for the rights of sex workers and those residing in the buildings deemed to be brothels was common.
- The entire process of the raid smacked of a notable disregard for the purported victims who were being rescued. Humiliation, verbal and physical abuse routinely accompanied these raids.
- Misuse of the media and violation of right to privacy, with the police and the media in collusion in order to humiliate the women and sensationalize stories of the raid.
- Sexual coercion and extortion of money from sex workers by the police was used as a sort of insurance against being raided or mis-treated by the police.
- Arbitrary use of the law to detain sex workers who were carrying condoms has an adverse impact on HIV prevention, and forcible testing after being picked is against the law, as is publicizing results of HIV status.
- The impunity with which police inflict violence on sex workers allows other members of the public to do the same.
- Police excesses form a common theme, in some cases amounting to forced labour and even torture-like treatment in police custody.

### **Raids and the aftermath**

- Systematic shaming of sex workers continues into court appearances, where even before any legal process begins, the women detained are treated as criminals with no right to redress. They are also forced to 'accept their guilt' even if the cases are fake.
- Sex workers upon release are faced with massive debts due to the loss of livelihood during the period of incarceration. They are then subjected to debt bondage or other forms of exploitative practices, which is ironical for a process that seeks to save women from exploitation.

### **Rescue : Myth of the better life**

- Women 'rescued' from sex work are sometimes forced to provide sexual services in rehabilitation homes and thus become "victims of rehabilitation".
- "Skill development" was ineffective in the context of a burgeoning corporate economy where skills such as sewing or making papad and pickles are economically unsustainable.
- Procedural aspects of the courts are stacked against sex workers, who are forced to borrow large sums of money to extricate themselves, at high interest rates
- Upon release, sex workers are more vulnerable and under the control of brothel owners who have paid large sums to the police to prevent further raids. Mobility and attending regular health check-ups is also compromised.

### **Combating Trafficking through Collectives**

- Collectives of sex workers have worked out effective strategies to combat the trafficking of girls and women into sex work.

A high percentage of sex workers who had been picked up and 'rescued' in raids had returned to sex work after release. The returnees to sex work included both those who had earlier been trafficked as well as those who had entered sex work of their own volition. Post-raid and rescue, many had returned to sex work at great risk to themselves, given that they had signed undertakings that they would quit sex work.

What do these  
**numbers**  
tell us, and are we  
willing  
to **listen**  
to the **women**  
behind the **statistics?**

**1** **0.82% (2 out of 243) were minors** at the time of the raid, the rest were adults

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**2** **79% (193 out of 243)** of the women stated that at the time of the raid they were **voluntarily in sex work** and had not wanted to be "rescued".

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**3** **36% (13 out of 36)** of women who had been **trafficked** were currently doing sex work and stated that they **wanted to remain**.

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**4** **77% (168 out of 218)** women who were released, **returned to sex work**.

## End Note

The police, NGOs and others involved in ordering and conducting raids are generally not sensitive to the complex trajectory of the individuals they encounter during raids. The persistence of the 'victim mode' runs through the entire enterprise, along with a refusal to listen to those who are purportedly being rescued. Contrary to one of the usual justifications put forth for raids – minors in sex work –, the research found that only a minuscule percentage of those raided were minors. Additionally, the research revealed that an overwhelming percentage of sex workers who had been picked up and 'rescued' in raids had returned to sex work after release. The returnees to sex work included both those who had earlier been trafficked as well as those who had entered sex work of their own volition. Post-raid and rescue, many had returned to sex work at great risk to themselves, given that they had signed undertakings that they would quit sex work.

The evidence from this study indicates that rescue and restore missions have not only proven to be indiscriminate, violent, and destructive of invaded communities, but have also been ineffective in addressing the problem of minors in sex work and adult persons forced into sex work. Generations of police raids have not been able to combat the menace of trafficking in persons.

The only light at the end of this dark tunnel comes from the collectives of vigilant sex workers who are organizing themselves to root out the violence and abuse in their own lives and that of minors and women trafficked into sex work. In any community, the idea that a rescue can be orchestrated from the 'outside' using an oppressive police force that incites violence rather than protection, compounds the problem.

The strategy of raid and rescue without the participation of women in sex work from that particular brothel or community offers no protection to the women forced into sex work. This would perhaps be more evident if the voices of the women at the centre of the debate are amplified.

# Abbreviations

AIR	All India Reporter
CBO	Community Based Organization
CEDAW	Convention on the Elimination of All Forms Of Discrimination Against Women
Cr PC	Criminal Procedure Code
CRG	Community Research Guide
CrLJ	Criminal Law Journal
CSWB	Central Social Welfare Board
FGD	Focus Group Discussion
GR	General Recommendation
HC	High Court
HIV	Human Immuno Deficiency Virus
HRC	Human Rights Council
HRIA	Human Rights Impact Assessment
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
ILO	International Labour Organization
IPC	Indian Penal Code
ITPA	Immoral Traffic (Prevention) Act, 1956
JSS	Jwala Shakti Samuh
KNSW	Kerala Network of Sex Workers
LLJ	Labour Law Journal
NGO	Non-Government Organization
NNSW	National Network of Sex Workers
PIL	Public Interest Litigation

RTI	Right to Information Act
SANGRAM	Sampada Grameen Mahila Sanstha
SC	Supreme Court
SCC	Supreme Court Cases
SITA	Suppression of Immoral Traffic in Women and Girls
SR-VAW	Special Rapporteur on Violence Against Women
STI	Sexually Transmitted Infection
UKMO	Uttara Karnataka Mahila Okkutta
UN	United Nations
UNAIDS	Joint UN Program on HIV/AIDS
UNDP	United Nations Development Program
UNTOC	United Nations Convention against Transnational Organized Crime
UPR	Universal Periodic Review
VAMP	Veshya Anyay Mukti Parishad

## Glossary

Dalal	Agent
Gharwali	Brothel Owner
Goondas	Unlawful elements
Gulli	Brothel Street
Hafta	Bribe
Mohalla	Neighbourhood
Sudhar Gruh	Correctional Home
Tiffin	Packed Food

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# **Chapter 1**

## **Introduction**

This research is designed to have sex workers speak for themselves. It does so in two ways. First, the participating sex worker collectives organized focus group discussions with their colleagues on how the Immoral Traffic (Prevention) Act, 1956 (ITPA) affects their daily work and life. In addition, focus group discussions and interviews were held with sex workers who were picked up in so-called 'raid and rescue' operations as a method to stop trafficking.

This study unravels the impact of The Immoral Traffic (Prevention) Act, 1956 (ITPA) on the protection of the human rights of sex workers. Anti-trafficking laws and policies have located women in sex work at the cusp of violence and impunity by law enforcement mechanisms and anti-trafficking groups. To demonstrate the impact of laws and policies on women in sex work to law and policy makers and other stakeholders, sex workers from Veshya Anyay Mukti Parishad [VAMP] undertook, along with other sex worker groups to document the human rights violations that they experience particularly because of anti-trafficking laws and policies. This initiative emerged from a partnership between human rights activists, human rights research agencies and sex workers' collectives in India. The research was led and conducted by the sex worker collective VAMP, the NGO SANGRAM in India and Rights4Change based in the Netherlands.

## A. Partners

### VAMP

VAMP (Veshya Anyay Mukti Parishad or Sex Workers' Collective Against Injustice) is a community-based organization of sex workers that came together in 1996, addressing social inequality and promoting justice amongst communities discriminated against because of sex work, HIV status, gender, caste and or being a sexual minority.

An independent collective with 5,500 members, VAMP works in Sangli and Satara districts in West Maharashtra and Belgaum and Bagalkot in North Karnataka.

VAMP aims to forge and consolidate a common identity among women in sex work to assert their rights and to work towards a safer and more enjoyable working and living environment. VAMP has a tiered structure based on members' responsibilities and roles, and its board members started as peer educators. Collective meetings decide changes in this structure and the roles of members elected to various posts. VAMP members play a supportive role to community members living with HIV, often becoming their de facto families and care givers. While HIV/AIDS is a significant focus area, considerable attention is paid to the socio-economic impact of women sex workers' health and wellbeing. VAMP plays a crucial role in promoting the interests of its constituents by mediating community disputes, lobbying with the police, helping colleagues access government systems and services and facilitating leadership potential among its members.

### SANGRAM

SANGRAM, established in 1992 in Sangli, Maharashtra, has grown into a series of collective empowerment groups for stigmatized communities (sex workers, men who have sex with men (MSM), and transgender individuals) in six districts of southern Maharashtra and northern Karnataka. SANGRAM is unique in being a women-led, rights-based group that seeks to change community norms and tackle gender inequities at the grassroots level. These inequities include gender-based violence (GBV), access to resources, and rights in terms of protection, property, and power. SANGRAM is a registered non-profit organization with a board of seven women members who live in and

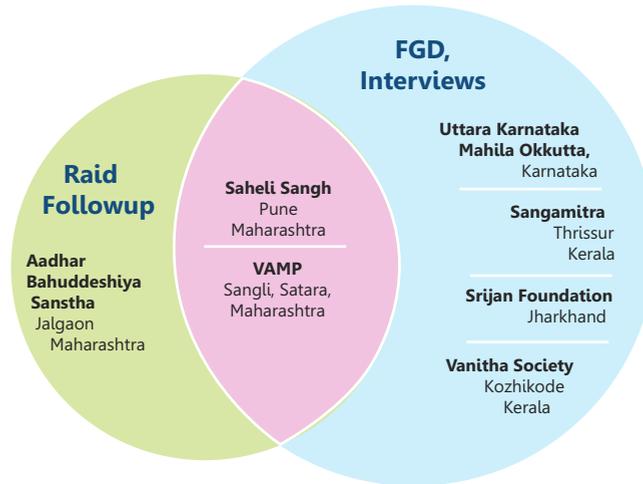


Figure 1 : Organizations participating in the research

around the city of Sangli, and 83 staff members. SANGRAM's activities build on the concept of asserting rights and the core tenet that communities have the ability to find their own solutions.

#### Central SANGRAM principles include

- i) Collectivization of marginalized groups as a tool to access rights
- ii) Organizing to root out exploitative practices in sex work.
- iii) Community-led processes to fight for rights.

#### Rights4Change

Rights4Change is a small collective of Dutch human rights and gender experts. It develops tools to assess the impact of laws and policies on the human rights of those affected and trains organizations in using them. Rights4Change has tools on the health rights of women (HeRWAI), domestic violence (DOVA) and human trafficking (The Right Guide). It also has a tool to map policies on violence against women. The Right Guide helped sex worker collectives to undertake assessments and collate evidence on rights violations. It presents a systematic framework, which enables collectives to analyze the human rights situation on

sex work in India and the relevant policy framework, including treaty obligations.

## B. Background

The human rights framework and emerging international law have incrementally recognized and guaranteed the rights of vulnerable groups of people. There has been a shift in the understanding of sex worker rights precipitated in part by the global HIV epidemic.

- A. The Special Rapporteur on Violence Against Women (SR-VAW) has observed that "measures to address trafficking in persons should not overshadow the need for effective measures to protect the human rights of sex workers". The SR-VAW has also called for a review of the Immoral Traffic Prevention Act, 1956 that criminalizes sex work.<sup>1</sup>
- B. UN Resolutions, International agencies and Commissions have stressed a rights-based response to sex work and the need to protect rights not just by decriminalizing sex work, but by eliminating the unjust application of non-criminal laws and regulations against sex workers.

- i. The UN Economic and Social Commission for Asia Pacific resolution calls on members to address legal barriers<sup>2</sup> to HIV responses including reviews<sup>3</sup> of national laws, policies with a view to eliminating discrimination against vulnerable populations.
  - ii. The Independent Commission on AIDS in Asia,<sup>4</sup> UN Special Rapporteur on Right to Health,<sup>5</sup> Global Commission on HIV and the Law<sup>6</sup> and UNDP Asia Pacific<sup>7</sup> have recommended the decriminalization of sex work involving consenting adults.
  - iii. National Human Rights Institutions have been called upon to hold governments accountable for the protection of sex workers from discrimination, harassment, abuse and violence perpetrated by police or other government officers.<sup>8</sup>
- C. UN organizations, International agencies and Commissions call for recognition of Trafficking in persons
- D. The International Labour Organization (ILO) and UNDP have emphasised the need to provide sex workers with legally enforceable rights to occupational health and safety and the right to participate in the process of developing workplace health and safety standards.<sup>13, 14</sup>
  - E. Sex workers have been recognized as an invaluable resource in the law and policy reform process with a view to developing non-judgmental and rights-based laws, policies and programmes.<sup>15</sup>
  - F. Elaborating the scope of Article 6 of CEDAW; General Recommendation 19 calls on States to recognise that

 1. UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p 19. A/HRC/26/Add1.

2. UN Economic and Social Commission for Asia Pacific (ESCAP) Resolution 66-10, Regional call for action to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific, 2010 (29 September 2011), available from [http://www.unescapsdd.org/files/documents/HIV\\_IGM1\\_INF4.pdf](http://www.unescapsdd.org/files/documents/HIV_IGM1_INF4.pdf)

3. UN ESCAP Resolution 67-9, Asia Pacific regional review of progress in achieving declaration of commitment on HIV and political declaration on HIV/AIDS, 2011

4. Commission on AIDS in Asia (2008), *Redefining AIDS in Asia, Crafting an effective response*, New Delhi: Oxford University Press.

5. Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20, 27 April 2010

6. Global Commission on HIV and law (2012), *op. cit.*, p 43

7. UNDP (2012), *Sex Work and the Law in Asia and the Pacific, HIV and human rights in the context of sex work*. p 34- 39

8. *ibid.* p 39

9. Global Commission on HIV and the law (2012), *op. cit.*, p 43

10. UNDP (2012), *op. cit.*, p 24

11. Human Rights Council (2010), *op. cit.*, p 159.

12. Global Network of Sex work Projects (2013), Third parties briefing paper.

[http://www.nswp.org/sites/nswp.org/files/thirdparties3\\_0\\_0.pdf](http://www.nswp.org/sites/nswp.org/files/thirdparties3_0_0.pdf). Viewed on December 2013

13. ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No 200), Geneva: ILO

14. UNDP (2012), *op. cit.*, p 35

15. WHO, UNFPA, UNAIDS, Global Network of Sex Work Projects, The World Bank. *Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions*. Geneva, World Health Organization, 2013. P XX

sex workers' unlawful status makes them vulnerable to violence and hence need equal protection of laws against rape and other forms of violence.<sup>16</sup> States were asked to report on the measures to protect women in sex work and the effectiveness of these measures.<sup>17</sup> The CEDAW Committee has recommended the need for measures to prevent "discrimination against sex workers and ensure that legislation on their right to safe working conditions is guaranteed".<sup>18</sup>

- G. The Supreme Court of India has observed that sex workers are entitled to the right to life and must be accorded the protection guaranteed to every citizen. It instructed the State to provide recommendations on the rehabilitation of sex workers who wish to leave sex work of their own volition and to provide conducive conditions for sex workers who wish to continue working as sex workers in accordance with Article 21 of the Constitution.<sup>19</sup> A Supreme Court panel recommended that the Central Government and Election Commission issue voter ID cards, relaxing verification requirements, and state governments and local institutions issue ration cards to sex workers.<sup>20</sup>

The emerging rights discourse at the

global and national levels argues that efforts to respect, protect, fulfil and promote the human rights of sex workers need to be premised on ensuring their rights as citizens under the Constitution. Laws, policies and programmes devised in partnership with sex workers are most likely to be effective with such an approach. Despite clear recommendations by international human rights instruments India has failed to recognize the marginalization,<sup>21</sup> vulnerabilities and human rights of sex workers.

Anti-trafficking policies in India, in particular the ITPA, conflate trafficking and sex work, fail to protect trafficked persons, this leading to increased violence against sex workers. The Act, for example, permits searches without warrant and authorises the police to arbitrarily arrest and detain sex workers. Police are unable to differentiate between women trafficked into the trade and others who wish to remain.

Thus raid-and-rescue operations by the police lead to the forced rehabilitation, detention and deportation of sex workers, both trafficked and non-trafficked.

Anti-trafficking initiatives have been largely responsible for the conflation of trafficking and sex work, leading to an



**16.** UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations Nos. 19, Article 6. Adopted at the Eleventh Session, 1992, available at: <http://www.refworld.org/docid/453882a422.html> [accessed 14 December 2013]

**17.** *ibid.* Specific recommendations 24 (h)

**18.** UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the combined seventh and eighth periodic reports: Hungary, 26 March 2013, CEDAW/C/HUN/CO/7-8

**19.** *Budhadev Karmaskar v. State of West Bengal* (2011) 11 SCC 538

**20.** Interim Orders, Sex Workers Rehabilitation Case, Supreme Court of India, 16 September 2011, Law Resource India. <http://indialawyers.wordpress.com/2011/09/16/sex-workers-rehabilitation-case>.

**21.** Marginalization is the process by which people are pushed to the margins or edge of society, resulting in their physical exclusion as well as neglect of their needs and rights.

The human rights framework and emerging international law have incrementally recognized and guaranteed the rights of vulnerable groups of people. There has been a shift in the understanding of sex worker rights precipitated in part by the global HIV epidemic.

overriding conception of sex work itself as 'violence', ignoring the violation of the human rights of sex workers and trafficked persons. This has led to a division between anti-trafficking organizations on the one hand and sex workers' rights organizations on the other. This division has also led to strategies that advocate the abolition of sex work rather than protecting the rights of women in sex work.

The sex worker rights movement in India has been demanding the recognition of sex work as work, safe working conditions and dignity for sex workers. While that is yet to be fulfilled, laws and policies that counter trafficking, often violate the human rights of sex workers without 'ending trafficking, assisting its survivors and penalising its perpetrators.

The Palermo Protocol in 2000 laid out the first-ever definition of trafficking<sup>22</sup> and identified three distinct elements :

- a. The act including recruitment, transportation, transfer, harbouring or receipt of persons
- b. The means to carry out the act which includes the threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power, position of vulnerability, or giving or

- c. receiving payments of benefits to achieve consent
- c. The purpose being to exploit, including the exploitation of prostitution, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>23</sup>

In 2014, India also amended Section 370 of the Indian Penal Code which defined trafficking. However, within the definition of trafficking a new Section 370A was inserted to punish people having sexual intercourse with victims of trafficking. It was feared that the new section would be used to harass clients of sex workers. Indeed, anecdotal evidence from Maharashtra in 2016 has revealed that Section 370A has been used to prosecute clients of sex workers. VAMP has also worked at the local, regional and international level with other sex worker groups to highlight how anti-trafficking policies and measures have negatively affected the lives of sex workers and their families.

Since the raids conducted on Gokulnagar, Sangli in 2005, sex workers from VAMP have spoken at all forums calling for greater focus on the violations committed by law enforcement agencies at the local level



<sup>22</sup>. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the

United Nations Convention against Transnational Organized Crime, 2000.

<sup>23</sup>. Article 3, Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000.

through forced rescue measures. In addition, sex workers are also being incarcerated in rescue homes against their consent under provisions of ITPA, the primary law dealing with trafficking in India.

SANGRAM and VAMP have made numerous successful interventions with government-appointed commissions, treaty bodies and UN mechanisms to develop a more nuanced understanding of sex worker rights at the national and international level.

In 2013 SANGRAM, VAMP and members of the National Network of Sex Workers (NNSW) made a representation to the Justice Verma Committee on the proposed Criminal Law Amendment.

Due to their sustained intervention, the sex workers' movement was able to stave off an effort by abolitionist groups to equate sex work with 'exploitation'. Between 2012 and 2015, VAMP and other collectives of sex workers have made representations before a panel of the Supreme Court of India to read down provisions of the ITPA, in the context of adult consenting sex work and to ensure that sex workers are not harassed by anti-trafficking groups.

In 2013, SANGRAM, VAMP and NNSW members successfully sought the intervention of the Special Rapporteur on Violence Against Women to recommend that the government review the ITPA to ensure that anti-trafficking measures were not impacting the

human rights of sex workers. More recently in 2016, VAMP made submissions to the Human Rights Council for the Universal Periodic Review process of India which was considered in May 2017.

## C. Assessment

### The assessment aimed to :

1. Understand how the international human rights framework could be applied to the context of sex workers in India.
2. Enable a large group of sex workers to understand the human rights framework and participate in the data collection and analysis process.
3. Frame the gaps between the stated rights for all citizens and its actual application in the lives of sex workers.
4. Understand and collate the experiences of violence and violations faced by sex workers.
5. Document and analyze how raids and rescue initiatives impact the lives of sex workers.
6. Analyze through community narratives how laws and policies enacted to respond to trafficking were being applied in the context of adult consenting sex workers.

Since the raids conducted on Gokulnagar, Sangli in 2005, sex workers from VAMP have spoken at all forums calling for greater focus on the violations committed by law enforcement agencies at the local level through forced rescue measures.

## Stages of Assessment

The assessment was carried out as follows :

- A. **Planning to Develop the Study Framework** : VAMP and SANGRAM developed the framework and contacted the groups that agreed to carry out the assessment. The RightT Guide developed by Rights4Change was translated into two languages (Marathi and Hindi). The research schedule was finalized and a research team was selected by VAMP and SANGRAM.

In addition to Maharashtra where VAMP is active, sex worker collectives from Jharkhand, Kerala and Karnataka were identified to implement the research. In Jalgaon, an NGO working with sex workers was identified to partner with sex workers and collate data on raid and rescue.

- B. **Training** : A training workshop 'Assessing the Impact of Anti-Trafficking Laws on the Human Rights of Sex Workers' was held from 4-6, June 2015 to understand human rights and pertinent research methods. The training was a joint effort of SANGRAM and Rights4Change. The participants included women sex workers; adult children of sex workers; lawyers; NGO activists and social workers.

**The objectives of the training were to provide an:**

1. Understanding of the significance and types of human rights.
2. Overview of the RightT Guide process.
3. Introduction to Human Rights

Impact Assessment (HRIA) and proposed research on the impact of anti-trafficking policies on human rights of sex workers.

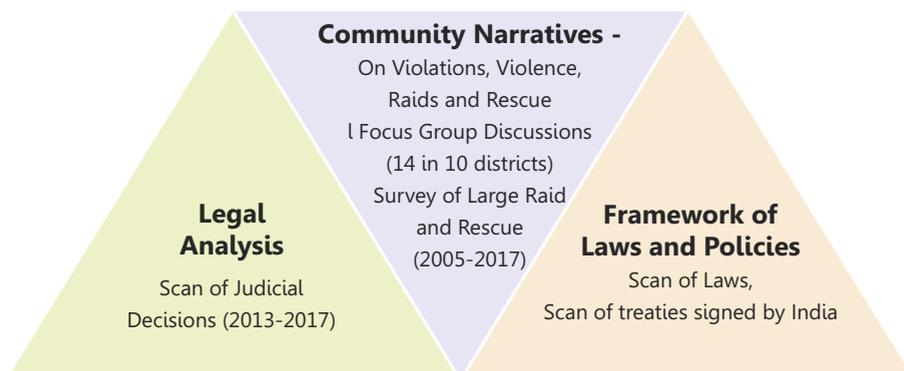
The trainers included Marjan Wijers and Lin Lap-Chew from Rights4Change; Meena Seshu and Aarthi Pai from SANGRAM.

- C. **Community Research Guide** : The research questions were translated into Marathi and VAMP piloted a focus group discussion with sex workers in Sangli in September 2015. The discussion was transcribed and translated by the community researchers and the Community Research Guide (CRG) was finalized. The finalised CRG was shared with other collectives who then undertook the focus group discussions in their collectives in Jharkhand, Karnataka, Maharashtra and Kerala.

- D. **Interviews** : Community partners in Maharashtra in Kolhapur, Jalgaon, Pune and Sangli conducted interviews of women in sex work who had been picked up under "raid, rescue and rehabilitation" measures by NGOs, some of them supported by the local law enforcement machinery.

- E. **Legal Analysis** : A legal expert with experience of working on judicial cases relating to the ITPA legislation conducted a study of the judicial decisions related to sex work and trafficking for the period 2013-2017.

- F. **Validation meeting** : Community groups who participated in the research process met to discuss the findings from the research. Sex

Figure 2 : **Data Analyzed**

workers who participated in the research made presentations about the process and district specific findings. These findings were discussed and debated in the larger group. Inputs and recommendations on the findings were incorporated into the research.

## D. Methodology

The assessment was conducted using primary sources (focus group discussions, survey and interviews) and secondary sources (scan of judicial decisions, laws and treaty documents and India reports to the UN bodies).

Four states were selected for the study with members of the National Network of Sex Workers (NNSW) as participants. NNSW is a national level network of sex workers recognising the principles of sex work as work and advocating for full decriminalization of sex work.

Maharashtra and Karnataka have a long experience of collectivising (VAMP and Saheli Sangh in Maharashtra and a federation called the Uttara Karnataka Mahila Okkutta (UKMO) in Karnataka). UKMO was formed in 2010 with smaller

district collectives from Gadag, Haveri, Koppal, Raichur and Uttara Kannada as its members. Saheli Sangh formed in 1998 is the only sex worker collective in Pune and works with over 2000 brothel-based sex workers.

VAMP which came together in 1996 today works in Sangli, Satara and Kolhapur districts of Maharashtra including Belgaum and Bagalkot districts of North Karnataka, it currently has over 5000 members. The Kerala Network of Sex Workers Network (KNSW) was formed in 2015 with small collectives of street and home-based sex workers running HIV prevention interventions in Thrissur, Ernakulam and Kottayam.

Jwala Shakti Samuh (JSS) in Jharkhand was formed in 2016 and represents home based sex workers in Ranchi, Gumla, Palamu, Dumka and Khumti. Both KNSW and JSS have begun a slow journey towards strengthening collective processes to respond to violence, exploitative practices and injustice.

Data was collected and analysed at the following three levels:

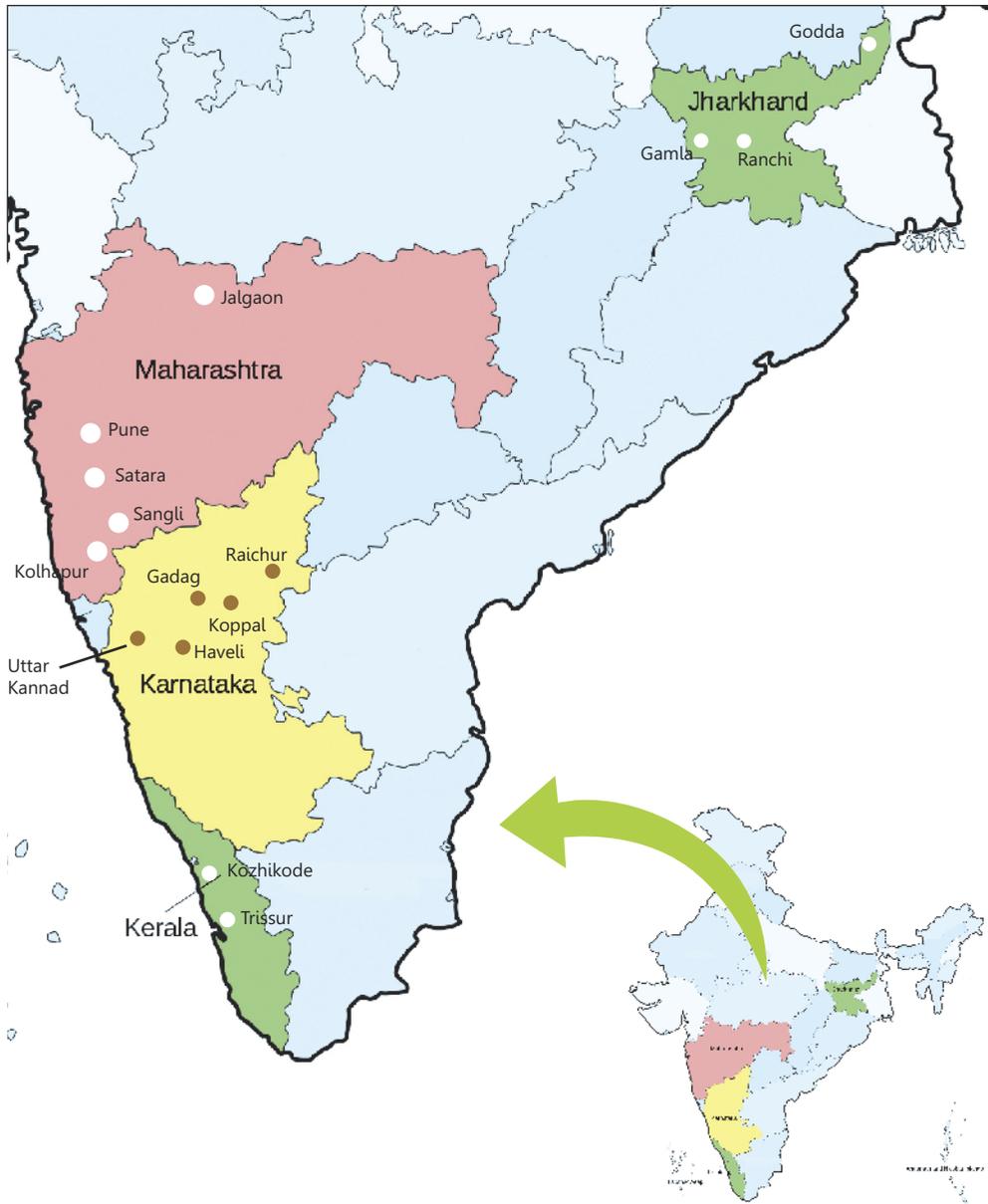


Figure 3 : Districts Represented in FGD and Raid Discussions

## A. Community Narratives

In the first part of the research 14 focus group discussions were held, with 156 participants from the following districts:

The second part of the research was conducted by two community research groups in Maharashtra. Sex workers from Saheli Sangh and VAMP systematically followed up women who had been picked up and detained in raids and forced rescue operations conducted from 2005 to 2017 in Sangli, Satara, Kolhapur, Jalgaon and Pune. In all, 244 adult women were picked up in these operations. The community research team was able to track down 230 women through direct contact, telephone or indirectly through a member of Saheli, VAMP or other collectives.

## B. Legal Analysis

A scan of 73 cases decided by High Courts and the Supreme Court of India was conducted for the period 2013-2017. The cases were reviewed using a keyword search method for terms such as "ITPA", "sex work", or "trafficking". The search was further narrowed down to those cases that had direct bearing on the research questions outlined above.

## C. Framework of Laws and Policies

The laws relating to sex work or trafficking, their background and amendments were reviewed. Regional and international human rights, migrant, labour rights treaties and conventions signed and acceded to by India, the regular status reports submitted and the concluding comments provided by the Committees were reviewed to analyse the

recommendations provided to the Indian government that could apply in the context of sex workers. Specific observations made by Committees relating to the status of sex workers and the concluding comments made in that regard helped to situate the manner in which governments responded to the concerns of sex workers.

## E. Ethical Principles of Research

Research involving marginalized and criminalized communities such as sex workers needs to ensure that safety mechanisms are followed to prevent sex workers from experiencing trauma; societal, family, or legal backlash. Numerous measures were taken to ensure that the design of the research adhered to ethical principles that included:

1. **Community Participation :** participation of the sex workers' community in every aspect of the research – from the design and data collection to validation of research of findings.
2. **Confidentiality :** names of sex workers participating in the research have been changed according to individual requirements to maintain confidentiality. The focus group discussions and parts of the survey of raids were conducted in the office of the sex worker collectives or NGOs.
3. **Informed Consent :** A two-step method to ensure genuine informed consent. The leaders of the collectives were first contacted by VAMP and SANGRAM. In Kerala and Karnataka, an NGO representative

helped to translate the research request and the research objectives were explained to them. A community leader was recruited to conduct the focus group discussions and raid and rescue survey. While conducting the FGD and survey, these community leaders along with the NGO representative explained the purpose of the research. Participants provided their consent to the research and for the use of their real names or in some cases assumed names for the final report.

4. **Trust and Confidence** : participants were aware of or linked with Collectives: Participants for the Focus Group Discussions were selected from those sex workers who knew the local sex worker collective or were members of the CBO. Only those who self-identified as sex workers were asked to participate in the discussions in order to ensure

that the participants had trust and confidence in the research process and the outcomes. This technique also helped forge a link with new collective members in newly established networks such as the Kerala Network of Sex Workers.

5. **Balancing Harm and Research Purpose**: the survey was conducted with women who had been released by the court or from correctional facilities after completion of the detention period. This was a sensitive and difficult process, because some women were released on the condition that they would not enter sex work again. Revealing their identities would pose them further harm. Hence it was crucial to balance the purpose of the research and the potential harm from participation in the research.



## Chapter 2

# The Sex Worker and the Law

An outline of the framework of laws and policies that impact sex work will provide an analytical template to engage with and understand the legal analysis and narratives of affected women.

## A. Laws and Policies Impacting Women in Sex Work

India has a complex set of laws and policies that influence and impact the lives of women in sex work. Discussions on anti-trafficking measures and responses have often been overshadowed by debates on prostitution itself as violence and slavery of women; and further muddled by a conflation with sexual exploitation of children. These discussions have been led by sections of women's groups, anti-trafficking groups and child rights groups in major part in the complete absence of sex worker rights groups. Consequently, the discussion on trafficking has been conducted on a parallel track with efforts to raise awareness on the status of women in sex work, respect their agency and right to choose their work.

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.

Anti-trafficking laws and policies and their application have followed a similar trajectory in India, evident in its international obligations and national laws and policies.

This chapter outlines the framework of laws and policies that impact sex work and the manner in which the government, civil society organizations and more recently, sex worker rights groups and advocates have engaged

with the legal framework and reporting mechanisms of the treaty bodies. This will provide an analytical template to engage with and understand the legal analysis and narratives of affected women.

### Laws dealing with trafficking and sex work

1. The origin of anti-trafficking laws in India can be traced to the period immediately following Independence. India ratified the UN 'International Convention for the Suppression of Immoral Traffic in Persons and Exploitation of Sex workers and others' in 1950, thereafter ratified it in 1953. The Government of India then proceeded to draft the **Suppression of Immoral Traffic in Women and Girls, Act, 1956 (SITA)**.

This domestic law was aimed at *"suppressing the evils of prostitution in women and girls and to provide opportunity to fallen women and girls to rehabilitate themselves as decent members of society"*.

Abolition of vice and rescuing the hapless female victims of male lust underpinned the foundation of this law, rather than the human rights of trafficked persons. The Act was amended in 1978 and again in 1986 when it was renamed the Immoral Traffic Prevention Act 1956 (ITPA).

Penalties were made more stringent through subsequent amendments. In 1978, provisions relating to probation for good conduct were repealed and stricter and higher penalties were provided under the amended Act. Trafficking is not defined under this Act.

2. The **Constitution of India** prohibits trafficking in persons under Article 23(1) and gives the Parliament powers to prescribe punishments for the same.<sup>24</sup> The UN Convention preamble states *“prostitution and the accompanying evil of traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.”* Indian government trafficking policies and court judgments followed the objective of the Convention<sup>24</sup> in that the primary legislation and the government policy approach since the 1950s were focused on regulating prostitution.
3. Crucial shifts in understanding also occurred following the **ITPA amendments of 1986**, and the newly amended ITPA covered male sex work. The new legislation used the term “persons” to cover both male and female genders, while in the original Act, “prostitute” was defined as a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind. In 1986, the definition was amended to mean sexual exploitation or abuse of persons for commercial purposes.
4. There are many levels at which offences under the ITPA impact the lives of sex workers and some of them are a violation of citizenship rights and the dignity of the women.
  - a. **Criminalizing work** : ITPA makes it an offence for a sex worker to solicit in public<sup>26</sup> or in any spaces notified by the state government as a public place.<sup>27</sup> Women arrested or picked up under these offences can be detained in a “corrective institution” for a period of 3-5 years.<sup>28</sup> In the event a man is convicted of a soliciting offence, the maximum punishment is between seven days and three months.
  - b. **Criminalizing family and right to have children** : The ITPA law makes it an offence for any person above the age of eighteen to live off the earnings of a sex worker;<sup>29</sup> which includes adult children and parents living with a woman in sex work and dependent on her earnings. Such an individual can be punished with imprisonment of up to seven to years.
  - c. **Right to privacy** : People who are picked up from brothels during “raid and rescue” operations are required to undergo testing for sexually transmitted infections under Section 15 (5A) of the ITPA. The



<sup>24</sup>. Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

<sup>25</sup>. Convention on the Suppression of the Traffic in Person and the Exploitation of Prostitution of Others, 1951, United Nations, Treaty Series, volume 96, page 271 retrieved from <https://treaties.un.org/doc/Publication/UNTS/Volume%2096/v96.pdf>

<sup>26</sup>. Section 8 makes seducing or soliciting for the purposes of prostitution an offence punishable with six months imprisonment or fine.

<sup>27</sup>. Section 7 makes prostitution in a public space or a space notified as a public place, an offence, including any place which is within 200 metres of a hospital, educational institution.

<sup>28</sup>. Section 10A ITPA

<sup>29</sup>. Section 4 of ITPA makes it an offence for any individual above the age of eighteen years to live off the earnings of a sex worker and such an individual can be punished with an imprisonment of seven to ten years.

results of these tests are conveyed to the magistrate. Mandatory tests and the communication of the results to anyone other than the concerned individual are infringements of the right to privacy and confidentiality.

- d. **Unfair or forced eviction, removal from homes, removal from any place :** Under ITPA, magistrates are empowered to close brothels and remove women from any premises where sex work is believed to be being carried out. A brothel is defined as :  
*"any place where two or more sex workers can be working for mutual gain"*  
 and thus includes places where sex workers are living.<sup>30</sup> The law permits raids of brothels and removal of people and premises regardless of their age and their consent.<sup>31</sup> The provisions do not make any distinction between minors and adults. If any place is being used as a brothel, a magistrate can direct not only its closure, but also direct the eviction of people living in those premises with only a seven-day notice period or by serving a notice to the landlord of the premises. The orders of eviction cannot be appealed against and the premises can remain sealed for one to three years.<sup>32</sup>

In perhaps the starkest violation of a woman's citizenship rights

and freedom of movement, a magistrate can remove a 'prostitute' from any place under his jurisdiction and prohibit her from re- entering it, in the interests and well-being of the "general public".<sup>33</sup> Violation of the removal orders is a continuing offence and can result in the imposition of a daily fine. There is no accompanying law or order on how evicted sex workers can access alternative housing or resources with which to rebuild their homes. The disproportionate application of such laws on women in sex work results in exposing them and their families (often young children) to extreme forms of dispossession, violence and destitution.

- e. **Invalidating adult consent :** A woman who is "rescued" as a consequence of raid and rescue operations<sup>34</sup> can be handed over into the "safe custody" of her husband or parents or guardian and this includes adult women who have consented to being in sex work. Once the magistrate is satisfied about the antecedents and "suitability" of the husband, parents or guardians, he or she may make an order granting custody to them.<sup>35</sup> In many cases such custody is accompanied with an affidavit of the woman undertaking that she will not do sex work in future. Alternately, the magistrate can also pass an order



30. Section 18, 20 ITPA.

31. Section 13 and 15 ITPA

32. Section 18 (1) of the ITPA

33. Section 20, ITPA

34. Section 17 (2) ITPA

35. Section 17 (2) ITPA

detaining the woman in a protective home for a period between one and three years for her "care and protection".<sup>36</sup>

5. **Other laws** too contain provisions bearing on trafficking. The Indian Penal Code (IPC) has numerous sections dealing with offences linked to trafficking. These include offences relating to the kidnapping of women and girls for illicit intercourse or forced marriage (Section 366); procuring minors (Section 366A); kidnapping and abduction for the purposes of slavery (Section 367); buying and selling minors for prostitution (Section 372, 373). The IPC also makes it an offence to compel a person to labour against his or her will. Bonded labour of adults and children has also been prohibited under the Bonded Labour System (Abolition) Act, 1976 and Child Labour (Prohibition and Regulation) Act, 1986.<sup>37</sup> Organ trade is regulated under the Transplantation of Human Organs Act, 1994. Traditional forms of sex work (such as the Devadasi system) have been prohibited or abolished under state-specific laws in Maharashtra, Karnataka and Andhra Pradesh.<sup>38</sup>
6. The **Juvenile Justice (Care and Protection of Children) Act, 2000**, was promulgated after India ratified the Convention of the Rights of the Child and thereafter was amended in 2015. The Act has numerous provisions to protect and safeguard the human rights and well-being of children. The Act defines two

categories of children: those in need of care and protection and those who have committed offences under the law or children in conflict with the law. The comprehensive understanding of a child in need of care and protection includes: those found working in contravention of labour laws; missing children; children who may have been or are likely to be abused, tortured or exploited for sexual abuse; or who are vulnerable to or have been inducted into trafficking.

The law mandates the constitution of a child welfare committee (Section 27) to oversee the well-being, protection and welfare of the child. It establishes mandatory reporting processes for children who are separated from their guardians (Section 32) a detailed enquiry process to ascertain the steps and orders in respect of such children (Section 37) including the process related to their adoption. The law (Section 39) also lays out a detailed map for the process of ensuring the rehabilitation and social reintegration of a child in need of care and protection through adoption, foster care, guardianship, parents or a fit person. The purpose of care homes or children's homes is to eventually facilitate this process of restoration.

7. The Goa Children's Act, 2003 is the only piece of legislation that defines child trafficking. However, the definition conflates adult and child consent. It states,



36. Section 17 (4) Proviso ITPA

37. Bonded Labour System (Abolition) Act, 1976; Child Labour (Prohibition and Regulation) Act, 1986.

38. Andhra Pradesh Devadasis (Prohibition of Dedication) Act 1988; Karnataka Devadasi (Prohibition of Dedication) Act, 1982; Maharashtra Devadasi Abolition Act, 2006.

*“child trafficking” means the procurement, recruitment, transportation, transfer, harbouring or receipt of children legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.*<sup>39</sup>

The section also ignores the well-established position that minors or children are considered incapable of giving consent in law. The UN trafficking protocol considers the consent of a trafficked minor/child as irrelevant, regardless of whether the prescribed means (listed in the definition) have been used.<sup>40</sup> Hence in the case of the Protocol, the offence of child trafficking is established by the “act” and the exploitative “purpose”, without applying the “means” as relevant to determine the offence. This is however not the case with the definition adopted under the Goa Children’s Act.

Another problematic expression in the Act is that children of sex workers are per se viewed as needing to be separated from their mothers for their protection and well-being. According to the law, these children’s rights are being

violated and they are in need of special attention and protection.<sup>41</sup>

The provisions of the Act are in conflict with the rights of sex workers to bear and raise children. Unfortunately, this understanding has permeated the legal understanding of the rights of women in sex work even before the Goa Act was promulgated. In a case decided by the Supreme Court in 1990 and later reviewed in 1997, the Court defined a “neglected juvenile” as a child born to a prostitute, or one who frequents or associates with prostitution.<sup>42</sup>

As noted above, the Goa Children’s Act is the only legislation that contained a definition of sexual exploitation prior to the promulgation of Section 370 of the IPC in 2014 which defined trafficking for the first time in Indian statute books.

The Goa Act states:

*“Commercial sexual exploitation of children means all forms of sexual exploitation of a child including visual depiction of a child engaged in explicit sexual conduct, real or stimulated, or the lewd exhibition of the genitals intended for sexual gratification of the user, done with a commercial purpose, whether for money or for kind. It includes implying allowing, using, inducing or coercing and child to engage in sexual conduct, it also includes the*



39. Section 2 (z) Goa Children’s Act 2003.

40. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in the ... Article. (Article 3(c), Trafficking in Persons Protocol)

41. Section 2 (l) – “Child in need” means all children including those whose rights are being violated or who need special attention and / or protection and shall include for the purposes of this Act – (xii) Children of Commercial Sex Workers

42. Gaurav Jain Versus Union of India, (1997) 8 SCC 114, 137-139

*use of the child in assisting with other persons to engage in explicit sex."*

### Defining trafficking

Interestingly, what exactly constitutes trafficking was not defined in any of the Indian laws prior to 2013. Following the gang-rape and murder of a young woman who came to be called 'Nirbhaya' (The Fearless One) in December 2012, the Justice Verma Committee appointed in early 2013 to review the existing laws related to crimes against women, made extensive suggestions to amend laws relating to trafficking of women and children.

National Network of Sex Workers India (NNSW) members intervened and sought to highlight the violence faced by criminalized populations such as sex workers, from state and non-state parties.<sup>43</sup> The articulation of prostitution from the prism of trafficking in the Committee's report was disappointing. The report argued that prostitution was the inevitable end to offences committed on women.

The absence of a definition of "trafficking in persons" in the statute books was creating confusion on what exactly was being legislated, regulated or criminalized. It was observed that the legislation had been reduced to dealing with prostitution.

*"Offences committed initially on them (women and girls) never comes to light. Over time sexual abuse becomes part of their life. It then gets termed as prostitution and then the abuse borders on being consensual. It is this vicious circle of missing children/ women - trafficking - abuse - prostitution which needs to be curbed with urgent measures."*<sup>44</sup>

The report conflated the concerns of trafficking of women and minor girls, to a large extent obliterating the important aspect of safe migration for labour by adult women in search of livelihood.

The report did recognize that a key problem was the surfeit of laws and provisions dealing with trafficking which operated in dissonance and recommended that an "overhaul and sensitization" of the law was needed to prevent the stigmatization of women.<sup>45</sup>

Its most crucial observation, emerged from the obvious lacuna in ITPA and the penal code, i.e. the absence of a definition of "trafficking in persons" in the statute books creating confusion on what exactly was being legislated, regulated or criminalized. It observed that the legislation had been reduced to dealing with prostitution.<sup>46</sup>

The Committee's definition of trafficking however, gave cause for concern for sex work rights activists. The original formulation of the Committee provided as follows :



<sup>43</sup>. Recommendations on laws relating to sexual assault in India, submission to the Justice Verma Committee, 5 January 2013, National Network of Sex Workers.

<sup>44</sup>. Chapter 6, Trafficking of Women and Children, Report of the Committee on Amendment to Criminal Law. P 152

<sup>45</sup>. Ibid. page 129

<sup>46</sup>. Para 66, p 199, Report of the Committee on Amendments to Criminal Law

*"Whoever for the purposes of exploitation.... commits the offence of trafficking.*

The Section went on to define Exploitation :

*Explanation 1 : The expression "exploitation" shall include, prostitution or other forms of sexual exploitation, forced labour or services, slavery..."*<sup>47</sup>

It was argued that the term "exploitation" could be construed very broadly to include voluntary prostitution. Activists made the following points to the Commission – the manner in which Section 370 was defined, would result in criminalizing all forms of sex work, including voluntary sex work. Section 370 as defined in the proposed Ordinance, conflated exploitation and sex work, thereby giving greater leverage to the police to harass and exploit sex workers.

Following extensive representations from sex workers and rights activists from VAMP, SANGRAM and the NNSW, the Committee acknowledged the error in formulating the definition enabling activists to seek an amended form to be introduced into the final draft of the law. In doing so, the Committee clarified that "the purpose of the law was not to harass adult consenting sex workers and their clients". This was perhaps the first articulation from a government-appointed Committee on the narrow interpretation inherent in anti-trafficking laws.

In the final definition the Criminal Law Amendment Act 2013 removed the wording "prostitution as exploitation".

The Committee observed:  
*"The members of the Committee wish to clarify that the thrust of their intention behind recommending the amendment to Section 370 was to protect women and children from being trafficked. The Committee has not intended to bring within the ambit of the amended Section 370, sex workers who practice of their own volition. It is also clarified that the recast Section 370 ought not to be interpreted to permit law-enforcement agencies to harass sex workers who undertake activities of their own free will, and their clients. The Committee hopes that law enforcement agencies will enforce the amended Section 370 IPC in letter and in spirit."*<sup>48</sup>

In the final definition the Criminal Law Amendment Act 2013 removed the wording "prostitution as exploitation" and arrived at the following formulation of prostitution

*"The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude or the forced removal of organs."*<sup>49</sup>

Another clause in the formulation that has been retained despite opposition,



47. Section 370: Trafficking of a Person, Para 6, p 438, Report of the Committee on Amendments to Criminal Law

48. Email communication dated February 8, 2013 addressed to Ms. Meena Seshu, from Gopal Subramaniam, Verma Committee member. The clarification can be found on the NNSW Website (last accessed February 14, 2018) : <http://www.nnswindia.org/upload/News/Press-Release/Clarification-from-verma-Commission-on-370.pdf>

49. Explanation 1, Section 370, Indian Penal Code

In recent years, sex workers and activists have engaged with treaty body reporting mechanisms to strengthen the articulation of a human rights framework within the country on sex work.

The report of the Special Rapporteur on Violence Against Women in India to the UN General Assembly in 2014 made extensive observations on the status of women in sex work in India.

deals with the offence of exploitation of trafficked persons.

Section 370 A (2) of the Indian Penal Code states that *"Whoever knowingly or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment ..."*.

The section is broad and brings within its ambit the clients of sex workers. Since 2015 there is evidence of this section being used by courts calling for its implementation against clients of sex workers.

## Human Rights Treaties

### Special Rapporteur on violence against women

India is a signatory to most of the major human rights treaties and conventions.<sup>50</sup> Signing these treaties requires States to report periodically on their implementation status. For instance, India has submitted a periodic report to the Committee on Economic, Social and Cultural Rights in 2008, four reports to the Committee on Child Rights; including reports on the Optional Protocol on the sale of children, child prostitution and child pornography. In addition, India has also invited Special

Rapporteurs with thematic mandates from time to time. In terms of addressing treaty obligations related to trafficking and sex work, India and the activists have been active on three treaty fronts – the Special Rapporteur on Violence Against Women (SR-VAW); CEDAW Committee and the Universal Periodic Review Process of the UNHRC. In recent years, sex workers and activists have engaged with treaty body reporting mechanisms to strengthen the articulation of a human rights framework within the country on sex work.

The report of the Special Rapporteur on Violence Against Women in India to the UN General Assembly in 2014 made extensive observations on the status of women in sex work in India. The report highlighted four areas where rights of sex workers are being constantly violated i.e. violence faced within sex work and as a consequence of being a sex worker with family, community and law enforcement; absence of redress and access to justice for violations; forced detention and rehabilitation of sex workers.<sup>51</sup>

The Report underscored the need to address the violence faced within sex work from state and non-state actors and the lack of avenues for legal redress. It noted that sex workers in



<sup>50</sup>. India has ratified the International Convention of Elimination of all forms of racial discrimination, 1965; Covenant on Civil and Political Rights, 1966; Covenant on Economic, Social and Cultural Rights

<sup>51</sup>. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Human Rights Council, twenty-sixth session, A/HRC/26/38/Add.1

"Review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers." (Special Rapporteur, Violence Against Women, India Report, 2014.)

India are "exposed to a range of abuse including physical attacks, and harassment by clients, family members, the community and State authorities".

It further found that "*sex workers are forcibly detained and rehabilitated and consistently lack legal protection*" and that they "*face challenges in gaining access to essential health services, including for treatment for HIV/AIDS and sexually transmitted diseases*".<sup>52</sup>

Calling for the separation of efforts to combat trafficking from sex work the report reiterated that conflating sex work with trafficking had led to assistance that was not targeted for their specific needs. It had also led to coercive rehabilitation measures by the State.<sup>53</sup>

The observations in the report emerge from a sustained effort by VAMP and the NNSW to draw attention to the violence and rights violations faced by sex workers in health, education, access to justice and state impunity. Members of VAMP deposed before the Special Rapporteur in Mumbai and Delhi and called on her to recommend review of laws that criminalized sex work; shutting

down detention centres for sex workers and separating adult and child trafficking amongst others.

In her discussions with interlocutors, the Special Rapporteur noted a tendency to conflate sex work with trafficking in persons and when sex workers are identified as victims of trafficking, the assistance that is provided to them is not targeted to their specific needs. The Report further found that violence against women in custodial settings was a matter of concern and noted that sex workers were also being sent to rehabilitation centres.<sup>54</sup>

The Special Rapporteur called for a review of the trafficking legislation to ensure that the anti-trafficking legislations did not impact human rights of sex workers.<sup>55</sup>

A significant recommendation by the Special Rapporteur was that the government "*review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers.*"<sup>56</sup>



52. Para 20, page 6, *ibid.*

53. *Ibid.*

54. Para 21, page 7

55. The observations in the report emerge from a sustained effort by VAMP and the NNSW, India, to draw attention to the violence faced by sex workers in India. The Network members submitted detailed case studies of violence and rights violations occurring in all spheres prior to the Special Rapporteur's visit. During the India visit, VAMP members and SANGRAM deposed in Delhi and Mumbai and gave recommendations including review of laws and policies that criminalized sex work, shutting down detention centres for sex workers, separating adult and child trafficking amongst others.

56. Para 79, page 21

# CEDAW

## CONCLUDING OBSERVATIONS - 2014

The Committee takes note of the establishment of Anti-trafficking Units, sensitization programmes, the draft protocol and Standard Operating Procedures, as well as the Task Force on human trafficking. However, it remains concerned at the alarming persistence of trafficking in the country, both internal and cross-border, at the lack of protection and services available to women and girl victims of trafficking and sexual exploitation and at the lack of efforts to address their root causes. The Committee is also concerned at the persecution of women in prostitution as a result of measures taken to address trafficking such as raid and rescue operations.

The Committee recommends that the State party:

- (a) Review the Immoral Traffic Prevention Act (1986) and include provisions addressing the prevention of trafficking in women and girls and the economic and emotional rehabilitation of victims;
- (b) Address the root causes of trafficking by promoting alternative income generating activities developing the economic potential of women and raise awareness among the population in rural areas on the risks of trafficking and the way in which traffickers operate;
- (c) Ensure the effective investigation, prosecution and punishment of traffickers and collect data and establish appropriate mechanisms aimed at early identification and referral of, and assistance and support for, victims of trafficking including foreign women, and provide them with remedies; and
- (d) Ensure that trafficked women and girls have access to victim and witness protection shelters, quality medical care, counselling, support programmes for alternative income-generation programmes, for their reintegration in the education system and labour market, as well as access to adequate housing and free legal aid regardless of their availability or willingness to testify against traffickers.

## CEDAW engagement with sex worker rights

India signed the CEDAW Convention, the primary treaty on affirming and upholding the rights of women; in 1980 and ratified it in 1990. Since then three reports (including two combined reports) have been submitted by the Government of India and civil society organizations.

Historically, sex worker rights groups globally have not engaged with either the CEDAW treaty or its reporting mechanisms though there have been windows of opportunities for a systematic dialogue after the introduction of General Recommendation 19 on violence against women (GR19) in 1992;<sup>57</sup> General Recommendation 24 on health (GR 24) in 1999;<sup>58</sup> General Recommendation 26 on women migrant workers (GR 26) in 2005;<sup>59</sup> General Recommendation 28 on the Core Obligations of State parties (GR 28) in 2010; and General Recommendation 33 on women's access

to justice (GR 33) in 2015.<sup>60</sup>

For the most part, women's organizations from the first reporting cycle chose to report on trafficking for sexual exploitation. Both the State and women's groups have focused on Article 6 as the site of discourse, understandably since Article 6<sup>61</sup> deals primarily with trafficking and exploitation of the prostitution of women.

However, the phrase "*exploitation of prostitution of women*" was interpreted to mean "*sex work as exploitation*".

In the process, the struggle of sex workers to gain recognition for their citizenship rights was replaced by the constant effort to repudiate this negative articulation and frame. For instance, the State reports submitted as part of the initial reporting cycles in 1999 views trafficking from the lens of "prostitution" brought on by economic distress and lack of viable choices; though it acknowledged that no study had been conducted towards the causative factors or trends of women



**57.** In its comments to Article 6 dealing with trafficking and exploitation of prostitution, the Committee lays out that poverty and unemployment increase opportunities for trafficking in women and they are placed at special risk of abuse and violence. It goes on to observe that poverty and unemployment also forces women into prostitution. It argues that prostitutes are vulnerable to heightened violence because of their unlawful status in many situations, which further marginalizes them. It concludes that sex workers need the equal protection of laws against rape and other forms of violence. CEDAW General Recommendation 19, Violence Against Women, CEDAW Committee.

**58.** The Committee observes that numerous societal factors can be determinants to health of disadvantaged women such as migrants, internally displaced women and women in prostitution among others and hence special attention needs to be paid to them. Women in prostitution are vulnerable to HIV/AIDS and other STIs and need special attention. It further recommends that States should ensure without prejudice and discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked even if they are not legally resident in the country. CEDAW General Recommendation No. 24, Women and Health, 1999.

**59.** The Committee recognized the plight of undocumented migrant workers who are at high risk of exploitation and abuse because of their immigration status. CEDAW General Recommendation 26, Women Migrant Workers, 2005.

**60.** The Committee stated that women are disproportionately criminalized due to their situation or status, for instance women in prostitution, migrant women etc. The Committee recommends that State parties should consider abolishing discriminatory criminalization and to act with due diligence and provide redress for crimes that disproportionately or solely affect women. CEDAW General Recommendation 33, Women's Access to Justice, 2015.

**61.** State Parties shall take all appropriate measures, including legislation to suppress all forms of traffic in women and exploitation of prostitution of women, Article 6, CEDAW.

The situation was further confused by referring to "child prostitute", for minors in sex work and its conflation with adult sex workers and women forced into sex work.

entering sex work.<sup>62</sup>

The 1999 state report went on to argue that since all women entered sex work due to economic distress or lack of alternatives; such entry constituted force and consequently all these women were sexually exploited.

It states:

*"recognising that certain areas in the country tend to be potential areas from where women in the profession originated, the Government of India feels that the development of such source areas is of critical importance in confronting the problem of sexual exploitation of women... Economic distress and lack of options are major reasons for the introduction and continuation of young women into the prostitution trade as either a child prostitute or as minor or adults. In particular, in the originating families, poor and uncertain family incomes and lack of access to marketable skills and productive resources keep them below the poverty line in important cases. Thus such families are particularly susceptible to this kind of exploitation. Therefore Government feels that a major effort needs to be made for identifying and developing vulnerable source areas."*<sup>63</sup>

The situation was further confused by referring to "child prostitute", for minors in sex work and its conflation with adult

sex workers and women forced into sex work.

*"...a CSWB survey report indicates that the number of child sex workers would be around 15% or so of the total population of sex workers in India ...The report contains recommendations in the area of enforcement of law, removal of child sex workers from red light areas, institutionalized care of such rescued child sex workers, counselling and vocational training for rehabilitation purposes..."*

The concluding comments of the Committee in 2000 called on the State to review the anti-trafficking legislation strengthen law enforcement on women and girls being exploited in prostitution. This was in line with General Recommendation 19 which called on states to report on measures taken to protect women engaged in prostitution; distinct from those women subject to trafficking and other forms of sexual exploitation. The Government of India's report in 2005 provided details of the steps taken to combat trafficking. It acknowledged the need for initiatives that went beyond law enforcement measures.

The joint report of women's groups reporting to CEDAW in 2006, called for alternative opportunities for "aged sex workers". It stated :

*"Alternative opportunities for aged sex workers should be introduced. It has been experienced, often that those who can no longer attract customers by themselves, in order to ensure their income, turn into traffickers or brothel madams. Thus, those who had been victims of violence become the*



**62.** The State report submitted by the Government of India in 1999, finds that "women are forced into this profession without having much choice as a result of economic distress, both individual and familial." It further finds that the "phenomenon of trafficking is largely concentrated in large cities followed by smaller concentration in small towns."

**63.** Para 131, State Report, 1999, CEDAW Committee

At the 58th CEDAW session on July 3, 2014, the Committee posed the following questions to the Indian Government delegation.

“In the absence of adequate monitoring of ITPA, what is being done to ensure that ITPA is not used to violate the rights of or to harass sex workers who are adult consenting women? Especially in light of the Special Rapporteur on Violence Against Women’s recommendation that trafficking response should not overshadow the need to protect the rights of sex workers.”

- **Ismat Jahan,**  
CEDAW Committee Member

“What efforts have been made to provide sex workers access to occupational health services?”

- **Niklas Brunn**  
CEDAW Committee Member

*perpetrators of exploitation. This vicious cycle needs to be broken.”*<sup>64</sup>

During the reporting period in 2014, the Committee’s process was strengthened by a chapter on the status of women in sex work that was included in the joint women’s group report.<sup>65</sup> The government report focused on the setting up of anti-trafficking units and training, setting up rehabilitation homes for victims of trafficking, development of training manuals for medical officers, counselling services for children and judiciary. During the 2014 India session the Committee was much more active in considering the status of women in sex work. As part of the pre-session list of questions, the Committee called on the Government to “provide information on exploitation of prostitution... including whether prostitution is criminalized and the

*measures taken to guarantee the rights of women engaged in prostitution.”*<sup>66</sup>

In the concluding comments, the CEDAW Committee observed that the persecution of women in prostitution as a result of measures taken to address trafficking such as raid and rescue operations was a matter of concern and it recommended that the Immoral Traffic Prevention Act (1986) be reviewed.<sup>67</sup>

### Universal Periodic Review

Since the initiation of the reporting mechanism to the UN Human Rights Committee in 2006, India has reported twice to UNHRC (2008, 2012). Seven recommendations were made by country representatives at the UPR in the second round of reporting relating to trafficking; of which three were accepted by India.



64. Trafficking and prostitution, chapter 4, page 49, India second and third NGO alternative report on CEDAW, 2006, Coordinated by National Alliance of Women.

65. Status of women in Sex Work; Aarthi Pai, Meena Seshu, Manisha Gupte, VAMP. Chapter 3, p 37. 4th and 5th NGO Alternative Report on CEDAW, National Alliance of Women in India. July 2014.

66. List of issues and questions in relation to the combined fourth and fifth periodic reports of India, CEDAW/C/IND/Q4-5, 28 October 2013

67. Para 22, P 7, Concluding Observations on the combined fourth and fifth periodic reports of India, CEDAW/C/IND/CO/4-5, 18 July 2014

# UPR

## Recommendations on trafficking

**40** Strengthen protection of children's rights, including the ratification of the Convention

**107** Accelerate efforts on combating human trafficking

**108** Reinforce efforts to protect and rehabilitate victims of trafficking

**111** Implement monitoring mechanisms to stop people trafficking

### The four recommendations which were not accepted are :

**10** Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the ILO Convention 189 concerning Decent Work for Domestic Workers.

**40** Strengthen protection of children's rights, including the ratification of the Convention on the Rights of the Child, by improving mechanisms and resources for the implementation of existing legislation, and by demonstrating higher conviction rates for crimes against children such as sexual exploitation, child labour, child forced-labour and child trafficking.

**72** Ensure that laws are fully and consistently enforced to provide protections for members of religious minorities, scheduled castes and Adivasi groups, as well as, women, trafficking victims, and LGBT citizens.

**109** Continue stepping up efforts in the area of fighting trafficking as well as consider the possibility of inviting the Special Rapporteur on trafficking in persons, especially women and children to visit the country.

**110** Continue to strengthen its efforts to combat trafficking in persons by providing the necessary budget to establish a larger number of local bodies to combat this scourge.

Related recommendations on signing the Migrant workers treaties and elimination of child labour were rejected by India.

Civil society organizations participated for the first time and reported on the status of human rights in 2012. The second State report in 2011 only mentioned that India had laws relating to trafficking and had ratified the United Nations Convention against Transnational Organized Crime [UNTOC] and its protocols.

The civil society report however drew attention to the problems in the implementation of the laws and the targeting of sex workers in name of anti-trafficking efforts.<sup>68</sup> It pointed out that the laws were being used to arrest sex workers and prevented them from accessing legal protection and other safeguards against violence.<sup>69</sup>

India underwent a review in 2017 and as part of the reporting, civil society organizations made a submission in September 2016.

A key observation made in the submissions regarding women in sex work and the law is the conflation of sex

work and trafficking which results in stigma and harassment of sex workers.<sup>70</sup>

The report also calls for a review of the migration policies for women in the unorganized sector stating that it leaves women vulnerable to trafficking and exploitative labour.<sup>71</sup>

The recommendations call for protective legislation for women in sex work and review of the implementation of ITPA.<sup>72</sup>

### REGIONAL TREATY - SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution

India signed the South Asia Convention on combating trafficking in 2002. The SAARC Convention is a limited treaty with the primary objective of eliminating prostitution. The Convention defines trafficking as “the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking”<sup>73</sup> The Convention calls on States to criminalize trafficking by criminalizing brothels, renting property



**68.** Discrimination in access to justice, p 122, human rights in India status report, working group on human rights, 2012.

**69.** The Immoral Traffic (Prevention) Act, 1956 (ITP Act) covers trafficking for prostitution alone, contrary to the Trafficking Protocol, which requires States to address trafficking into all forms of forced labour, slavery and servitude. Police led raid and rescue operations undermine the rights of victims, who may be prosecuted for soliciting or engaging in sex work in public places even if they are coerced. Offences under the ITPA include soliciting and engaging in sex work in public places. These provisions are not directed at trafficking but are meant to safeguard public decency and morality. Almost all convictions are against sex workers, including those who may have been trafficked. The Act undermines sex workers’ ability to claim protection by the law, while the absence of safeguards has intensified violence and exploitation by brokers, agents and the mafia.

**70.** On the other hand, approaches to trafficking often conflate sex work with trafficking, which together with criminalization of soliciting (an aspect of sex work), results in systemic harassment of sex workers (in addition to the social stigma).

**71.** With few options for safe migration for unorganized sector women workers, they become vulnerable to trafficking and exploitative labour.

**72.** Construct positive legislation for protection of women in informal sector, sex work, special zones and arenas like garment and fisheries industries where women employees are at risk.

The provisions of the ITPA Act should not be imposed upon adult consensual sex work.

**73.** Article 1 (3).

used for the purpose of prostitution (Section 3 (2)).

The Convention also requires States to create awareness about the causes of trafficking including the projection of negative images of women.” (Article 8).

The Convention conflates sex work and trafficking, and also treats adult women on par with children. Without addressing the causes of migration and various forms of trafficking, the Convention is a remarkably limited document in its scope and reach. Ignoring the aspect of voluntary migration, the Convention seeks to limit the rights of migrant women and leaves them open to greater exploitation.

For instance, in 2007, in an attempt to curb sexual exploitation, the Indian government places restrictions on women below the age of 30 from travelling to Gulf countries as domestic workers.<sup>74</sup> In addition all women are required to undergo mandatory emigration checks before visas are granted for any work in certain countries.

Additional restrictions for female workers include employment contracts that need to be attested by the Indian embassy of the receiving country. In November 2014, the Indian government placed further restrictions on migrating women by mandating that women’s applications for blue collar jobs could only be processed by government employment agencies. Similar age bans on single women have also been in place in Nepal since 2012.

### US Trafficking in Persons Reports

It is also appropriate to refer to the pressure to amend trafficking laws and policies due to the pressure by the US Victims of Trafficking and Violence Protection Act of 2000. The Trafficking in Persons Report published by the US Department of State placed India on a Tier 2 Watch List for seven years from 2003 to 2010 for not complying with the minimum standards.

Since 2010 to the current report in 2016, India has been upgraded to Tier 2. In its 2014 and 2015 reports, the Government has asked for further updates on measures taken to reduce commercial sex or forced labour.<sup>75</sup>

These observations and pressures have also been a contributing factor for amendments in law. For instance, in 2006, the US report drew attention to the increasing cases of sexual abuse of women migrants in West Asia contributing to the age ban for Indian female workers, as well as the continued observations to demand criminalization of sex work.

### Judgements and Construction of the Law

High Court and Supreme Court judgments play a large role in the manner in which sex work and sex workers are viewed by lower courts and cases related to them are judged. Since the inception of the ITPA, there have been considerable and sometimes inconsistent opinions voiced by High Courts on the purpose of the Act.



<sup>74</sup>. Banning women from working in the Gulf will lead to more trafficking, say activists, Scroll.in, January 14, 2016 Mridula Chari. <https://scroll.in/article/801710/banning-women-from-working-in-the-gulf-will-lead-to-more-trafficking-say-activists>

<sup>75</sup>. India report, p 187. Trafficking in Persons Report, June 2016.

High Court and Supreme Court judgments play a large role in the manner in which sex work and sex workers are viewed by lower courts and cases related to them are judged. Since the inception of the ITPA, there have been considerable and sometimes inconsistent opinions voiced by High Courts on the purpose of the Act.

The prevailing opinion about the objective of the Act continues to be similar to the observation by the Allahabad High Court in 1959 :  
*"to impose restrictions to mitigate the evil effects of the trade and to protect the interest of the general public".*<sup>76</sup>  
*The Bombay High Court observed that the purpose was to "discourage prostitution and prevent any open acting which would influence others and tempt them from falling into the vocation."*<sup>77</sup>

### The Moral Gaze

The Supreme Court in the landmark case *State of Uttar Pradesh versus Kaushaliya* in 1964 drew an extremely unfavourable conclusion regarding the manner in which the purpose of the Act was to be interpreted. In a judgement that had far-reaching consequences, the apex court observed that the purpose was not only to suppress immoral traffic of women and girls but *"to rescue fallen women and girls" and "prevent the deterioration in public morals"*.<sup>78</sup>

Thus emerged the construction of the sex worker as the deviant, and the need to protect public from such women became a dangerous argument to justify the eviction of sex workers from

their residences, a practice that continues even today. In the case the constitutional validity of Section 20 of the ITPA was challenged as discriminatory, an infringement of the right of a woman to move freely and reside in any part of India and thus a violation of guaranteed fundamental rights.

*(Section 20 gives power to a Magistrate to direct a prostitute residing in his/her geographical area of jurisdiction to remove herself from the area and also to prohibit the person from re-entering without written permission from the Magistrate.)*<sup>79</sup>

The Supreme Court went on to observe that laws which created reasonable classification was permissible under Article 14 and were not in conflict with the right to equality, if it is in keeping with the objective to be achieved by the particular legislation. It held that there was a pronounced and real difference between a woman who is prostitute and a woman who is not; and further between a prostitute who is a public nuisance and one who is not.

The court observed that one of the objects of the Act is to control the "growing evil" of prostitution and the restrictions imposed by Section 20 were



<sup>76</sup> Shama Bai vs. State of UP, AIR 1959 All 57 at 61: 1959 All Cr. R. 427

<sup>77</sup> Begum d/o Hudsain Saheb Kalawat v. State, AIR 1963 Bom. 17: 1963 (1) Cr. L. J 148

<sup>78</sup> State of Uttar Pradesh v. Kaushaliya, AIR 1964 SC 416 at 419

<sup>79</sup> The Act was amended in 1986 to make the provisions gender neutral. However, the provisions continue to be applied to females in sex work.

in public interest. The judgment concluded that the activities of a prostitute in a particular area are so subversive of public morals and destructive of public health that it is necessary in public interest to deport her from that place, then the restrictions imposed are reasonable and permissible.

*“The differences between a woman who is a prostitute and one who is not certainly justify their being placed in different classes. So too there are obvious differences between a prostitute who carries on her trade on the sly or in the unfrequented part of the town or in a town with sparse population may or may not be dangerous to public health or morals as a prostitute who lives in a busy or in an over-crowded town or in a place within the easy reach of public institutions like religious and educational institutions. Though both sell their bodies, the latter is more dangerous to the public particularly to the younger generation during the emotional stage of their life. Their freedom of uncontrolled movement in a crowded locality or in the vicinity of public institutions not only helps demoralise the public morals but, what is worse, to spread diseases not only affecting the present generation”.*<sup>80</sup>

The power to remove a prostitute under Section 20 of the Act was held to be not violative of the right to equality, a reasonable restriction on the right to move freely and reside in a place of choice and constitutionally valid. In one of the earliest cases that differentiated between sex work and

trafficking, the Madras High Court observed that the primary offence sought to be criminalized was “commercialised vice” and there was no intention to abolish sex workers or prostitution.

While observing that the practice of prostitution in public spaces was penalized, the court observed that there were limits in the practice of the profession insofar as it offended “social decencies”. The Andhra Pradesh High Court was amongst the first to articulate the construct of exploitation of prostitution and observe that the ITPA provisions had to be read in conjunction with the provisions of Article 23 of the Constitution of India which prohibited human trafficking and the exploitation of prostitution.<sup>81</sup>

The Gujarat High Court extended this interpretation in 1967 when it observed that the Act sought to abolish traffic in women and girls for the purpose of prostitution as an “organized means of living”.<sup>82</sup>

The construct of the sex worker as an unfit mother was another disturbing legacy. No less than the Supreme Court of India held that efforts must be made to separate children from their mothers who were sex workers and accommodation in hostels and other reformatory homes should be made available to enable this segregation.<sup>83</sup>

In addition, one of the judges also called on the government to take measures to eradicate prostitution. In response to a request for review, the second judgment dated March 30, 1998,



**80.** para 7, page 421, State of Uttar Pradesh v. Kaushaliya, AIR 1964, Supreme Court

**81.** Seetharamamma v. Sambasiva Rao AIR 1964 AP 400 at 402-403

**82.** Bai Shanta v. State of Gujarat, AIR 1967 Guj 211 at 213: 1967 Cr. L. J 1140 (Guj)

**83.** Gaurav Jain Vs. Union of India and Others, order dated 15 November 1989.

set aside direction relating to prostitution and its eradication, though it permitted the central and state governments to formulate their own policies in this regard.

However, the directives with regard to the separation of children of sex workers from their mothers and the establishment of a juvenile home for that purpose was upheld. Once again the absence of sex workers and the complete disregard for their agency was visible in the manner in which concerns of sex workers and their children were addressed.

## B. Anti-trafficking Legislation : Court Orders and Ground Realities

In 2000, the UN framed the Palermo Protocol, an advanced protocol which linked trafficking with organized crime. India signed this protocol in 2000 and ratified it in May 2013. The Palermo Protocol adopted a much broader approach towards trafficking by enlarging the scope of trafficking from the initial construction of just transportation from one place to another and included recruitment and receipt.

Secondly, the definition extended the understanding that trafficking was for commercial sexual exploitation and included other practices such as forced labour, slavery-like practices. In India the major legislation dealing with human trafficking remains the Immoral Trafficking Prevention Act, 1956, although it did not define trafficking. It was only in 2014, that the Indian Penal Code was amended to introduce a definition of trafficking.

## Context of the Current Study

The primary legislation in India dealing with sex work is the Immoral Traffic (Prevention) Act, 1956 (ITPA). In addition, provisions dealing with trafficking, 'loitering' and 'creating public nuisance' under the Indian Penal Code, 1860 (IPC) or police acts of various states are used to harass sex workers. At times emergency provisions under the Criminal Procedure Code, 1973 (CrPC) to deal with public nuisance are also used to restrain or seal premises. Preventive detention laws may be used in the context of 'immoral trafficking' and under some state legislations.

The provisions of any law are to be interpreted to further the object and purpose of the legislation. The aim of ITPA was not to render prostitution per se a criminal offence, or to punish a woman merely because she prostitutes herself. The working of the law in practice is reflected in the cases which come up before courts. There is a gap between the letter of the law and the law in action, that is, the manner in which the cases are interpreted and how they are decided, based on the subjective interpretation of judges, who are also prey to prevalent social biases and prejudices.

The majority of cases pertaining to sex work are decided in Magistrate's courts or 'trial courts' where the trial takes place. In appeal, these cases can go on to Sessions Courts. However, there is no reporting of the judgments delivered by the Magistrate and Sessions courts, at times referred to as the 'lower judiciary'. Some of the cases which go in appeal reach the High Court of the relevant State.

Judgments and orders of High Courts and the Supreme Court are published in law journals like the All India Reporter (AIR), Supreme Court Cases (SCC), Criminal Law Journal (CrLJ) and Labour Law Journal (LLJ). There are twenty two high courts in India : Allahabad, Telangana and Andhra Pradesh, Bombay, Calcutta, Chhattisgarh, Delhi, Gauhati, Gujarat, Madhya Pradesh, Madras, Meghalaya, Orissa, Patna, Punjab and Haryana, Rajasthan, Sikkim and Uttarakhand.

The judgments of all the twenty-two High Courts were scanned in order to locate cases pertaining to sex work/prostitution under legislations like the ITPA as well as under provisions prohibiting trafficking, loitering and creating public nuisance under the IPC or Police Acts of various states which are often used against sex workers. The present study analyses the judgments for the period 2010 till November 2017.

### Scrutiny of legal cases in Indian High Courts and Supreme Court (2010-17)

While laws and treaties against human trafficking can help some individuals, they can also harm others. In particular, they can impact the rights of sex workers, specifically the right to work, the right to residence and the right to mobility. An analysis of the cases throws up certain broad trends as well as continuation of old trends.

### Increase in number of cases

There has been a substantial increase in the number of cases in 2014-2015, even while factoring in the possibility that accessibility to unreported cases and orders may have increased in this period. Media reports tend to corroborate the phenomenon, which may be indicative of lobbies advocating abolition of sex work invoking law as part of their strategy. Perhaps litigation<sup>84</sup> initiated by NGOs like Freedom Firm and Apne Aap Women Worldwide Trust may be reflections of this approach.

### Targeting the customer

The police routinely conduct raids and arrest and charge customers. Given that customers do not fall within the ambit of offences under ITPA, the courts quashed the charges in a number of cases. In several cases<sup>85</sup> analysed, the High Court quashed charges against customers. However, the reluctance of judges to quash charges against customers is at times reflected in observations such as :

*“In my considered view, it is unwise to say that a customer who lurks in day and night in search of hidden avenues to quench his sexual lust is a hapless victim of a crime to place him out of the reach of the tentacles of the law which is intended to eradicate the pernicious practice of immoral trafficking of women. Such an unwarranted sympathy on a criminal will not help achieve desired results though aimed at high”.*<sup>86</sup>



**84.** Freedom Firm vs Commissioner of Police, Pune, (1) CRPIL 4/15 (J); Apne Aap Women Worldwide Trust vs State of Bihar, 2015(1) PLJR

**85.** Shajahan vs State of Kerala, 2014 CrLJ 2261; Sreejith @ Ayyappan vs State of Kerala, CrL M.C. No. 4994 of 2013; Goenka Sajan Kumar vs The State of A.P. 2015 (3) Crimes 281 (A.P); Karthik Hegde vs State of Karnataka, Criminal Petition Nos. 1007/ 2015 ad 1642/ 2014 and Writ Petition No. 60129/ 2014; Katamoni Nagaraju vs State of Telangana, Criminal Petition No. 1536 of 2015;

Mohammed Shaeed vs The State of Telangana, 2015 (1) ALD (CrL) 992 (A.P).

**86.** Mohammed Shaeed vs The State of Telangana, 2015 (1) ALD (CrL) 992 (A.P).

There has undoubtedly been a judicial push to penalize customers. The unprecedented order of the Telangana and Andhra Pradesh High Court in 2015 marks a turning point and portends ill for the future. After quashing the charge under Section 4 of the ITPA, the High Court directed that the Magistrate proceed against the customer under Section 370 A of the Indian Penal Code (IPC) which penalises “exploitation” of a trafficked person.<sup>87</sup>

This judgment has been approvingly quoted by the Gujarat High Court in 2017, which held that even if Section 370 IPC is not applicable in case of sex workers who enter the profession of their own volition, charges against customers would not be quashed. The High Court took the view whether a sex worker came into profession due to force, inducement or coercion or of own volition is a question of fact to be investigated by the police.<sup>88</sup>

Courts have denied statutory bail which is a matter of right, if investigation is not complete in 60 days in case of offences punishable with less than seven years imprisonment, on the ground that the facts make out the graver charge of trafficking under Section 370 IPC punishable with ten years or life imprisonment.<sup>89</sup>

## Undercutting Special Police Officers

Measures introduced in the law to prevent harassment by a series of policemen, such as authorising only Special Police Officers appointed under the ITPA are sabotaged by blanket empowering all police officers above a rank as Special Police Officers. The West Bengal Government authorized all officers above the rank of police

inspectors as Special Police Officers. The Punjab Government also authorized all Deputy Superintendents of Police as Special Police Officers under ITPA. This defeats the very spirit of this salutary provision.<sup>90</sup>

It must be noted that the Commissioner of Police cannot bestow a special power granted by statute ITPA to an officer beyond his jurisdiction.

A Special Police Officer under ITPA can take assistance of officers under him but cannot delegate his powers to them.<sup>91</sup>

In a positive development the High Courts set a trend to set aside searches and investigation done without compliance with the provisions of the ITPA.<sup>92</sup>

However, the Supreme Court has overturned this trend and held that it was wrong to quash the criminal proceedings merely on the ground that the investigation was invalid. It held that in case where the police report is



**87.** S. Naveen Kumar vs State of Telangana, 2015 (2) ALD (CrL) 156 (A.P).

**88.** Vinod vs State of Maharashtra, 2017 SCC Online Gujarat 466

**89.** Abdul Nazar vs State of Kerala, 2016 SCC Online Ker 8673, Kerala High court; Dilip Khan KM vs State of Kerala, 2016 SCC Online 7938, Kerala High Court

**90.** Ashok Hazra vs State of West Bengal, 2015 (1) CHN(CAI) 289; Preeti vs State of Punjab, Cri. Misc. No. M/ 10378 of 2013

**91.** Anthony Vincent vs State of Kerala, 2014 (3) KLJ 517; C.P. Raju vs State of Kerala, 2014, Cri. LJ 2936

**92.** Kuriakose versus State of Kerala, 2016 SCC Online Ker 2050; Shaiyra versus The State, 2016 SCC Online DEL 2352; Shankar Gowda versus State, AIR KANT R353; Firoja vs The State of Maharashtra, Criminal Appeals Nos. 534 and 597 of 2010; Sandhya vs State of Kerala, ORS. MANU /KE/ 0862/ 2017- RILR, 2017 (3) Kerala 171

vitiated due to breach of mandatory provision, criminal proceedings can be set aside, only if it can be shown that the illegality in investigation resulted in miscarriage of justice.<sup>93</sup>

In a rare instance of ensuring accountability, eight police officers were arraigned as accused after being identified by minor girls in a Test Identification Parade at the direction of the High Court.<sup>94</sup>

### Closure of brothels

The Delhi High Court by a recent judgment<sup>95</sup> in January 2016 upheld the constitutional validity of Section 18(1) ITPA which authorizes the District Magistrate or Sub-Divisional Magistrate to order closure eviction and closure of a brothel. Significantly, ordering immediate closure of brothels without giving notice and without giving opportunity to be heard was held to be bad in law. Notice and opportunity to be heard in tune with principles of natural justice was held to be a mandatory requirement under Section 18(1) ITPA before directing closure.<sup>96</sup>

### Indiscriminate arrest and remand

The police arrest and charge found any person found in the premises or in the vicinity indiscriminately regardless of culpability in law. In turn the Magistrates routinely remand the persons rounded up by the police into custody, regardless of any offence being made out. In many instances where the accused persons are able to approach the high court the charges get quashed as no offence has been made out.<sup>97</sup>

Arresting and detaining as 'Immoral Traffic Offender' seems a clear trend in Tamil Nadu under the State preventive detention law 'Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982'.<sup>98</sup>

### Raids on massage parlours/spas

The massage parlours/spa were regularly subjected to raids by the Anti-Vice Squad of the Chennai City Police on the apparent suspicion of sex work being carried on at the premises. In a similar vein raids were carried out in Bengaluru on spas and parlours resulting in harassment.<sup>99</sup> A number of writ petitions were filed by persons running beauty parlours/massage



93. R.A.H. Siguran vs Shankare Gowda, MANU/SC/1086/2017 - 2017(101)ALLC C 281

94. T. Sundar vs Superintendent of Police, CrI. O. P. Nos. 225, 330, 384, 657, 840, 841, 1331 and 2387 of 2015

95. Nitu vs Government of National Capital Territory of Delhi, NCR Delhi, W.P.(C) 4414 of 2012, Delhi High Court

96. M. Ramkrishna vs Sub-Divisional Magistrate and Anr. 2014 CrLJ 2013; T.K. Sadhananathan vs Sub-Divisional Magistrate cum Revenue Divisional Officer, W.P. No. 25663 of 2013 and M.P. Nos. 1 and 2 of 2013

97. Shajahan vs State of Kerala, 2014, CrLJ 2261; Sreejith @ Ayyappan vs State of Kerala, CrI. M. C. No. 4994 of 2013; Goenka Sajan Kumar vs The State of A.P. 2015 (3) Crimes 281 (A.P); Karthik Hegde vs State of Karnataka Criminal Petitions No. 1007/ 2015 and 1642 of 2014 and WP No. 60129/ 2014; Katamoni Nagaraju vs State of Telangana, CrI. Pet. No. 1536 of 2015; Mohammed Shaeed vs The State of Telangana, 2015 (1) ALD (CrI) 992 (A.P); Abhijit Kallianpur vs State of Karnataka, CrI. Pet. No. 1959 of 2017; Abhishek Mishra vs State of Goa, crI. WP No. 77 of 2017

98. Mangamma vs State of Tamil Nadu, 2014 CrI. LJ 3420; Ravi @ Ramkumar vs State of Tamil Nadu, 2014 (2) MLJ , 317; S. Masthan Reddy vs State of Tamil Nadu, 2014 (2) MLJ CrI. 257.

99. Abhijit Kallianpur vs State of Karnataka, CrI. Pet. No. 1959 of 2017; Neeli Mathiya vs State of Karnataka, CrI. Pet. No. 4242/ 2017

centres/spas in and around the city of Chennai. It was submitted that such raids and the frequent interference by the police spoiled their business and amounted to an interference with their fundamental right to carry on a lawful business.

The Madras High Court held that the police are in the habit of carrying out searches in a manner not prescribed by Section 15 ITPA and it is tantamount to an unlawful interference with the fundamental right of the petitioners to carry on any business or profession which is not declared as unlawful by any legislation.<sup>100</sup>

### Public interest or sex workers' interest?

The period under study saw a number of instances of the filing of Public Interest Litigations by NGOs and proceedings in court with no participation of sex workers or their collectives and passing of sweeping orders with regard to a wide variety of subjects.<sup>101</sup> These orders do not necessarily work in the interests of sex workers or protect their right to a livelihood.

In a significant move, courts have taken judicial notice of the role of NGOs in the area of sex work and the instigation to conduct raid and rescue operations and lodge cases.<sup>102</sup> The women 'rescued' had not made any complaints and did

not support the prosecution case.

In a rare instance, a writ petition was filed by sex workers complaining against raids and being beaten up and asking for an order restraining the Commissioner of Police and the local SHO from entering the premises and removing them. The High Court held that the undertaking given by police that they would not evict petitioners without following due procedure prescribed by law was binding and disposed of the petition.<sup>103</sup>

Compensation for illegal detention  
A rare case was where compensation of Rs. 5 lakhs was given for illegal detention in an ITPA case as Section 17 of the Act permits a maximum detention of only three weeks.<sup>104</sup>

### If a sex worker says "no", it is rape

The Sessions Court, Tis Hazari Delhi held that the victim working as a sex worker does not confer any right on accused to violate her and sexual relations without her consent is rape.<sup>105</sup> Not only does the case break the general social myth that "sex workers cannot be raped", it has significance in debates surrounding consent and how it is constructed in cases of sexual violence.



**100.** S. Rangaraj vs Commissioner of Police, 2015 (1) CTC, 7025

**101.** Court of its own motion through Shakti Vahini vs State, Wp (CrI) 891/ 2013 Delhi High Court; Sumeer Ramdayal Sabharwal vs State of Maharashtra, Cril PIL No. 43 of 2015; Freedom Firm vs Commissioner of Police, Pune (1) CR PIL 4/15 (J); Apne Aap Women Worldwide Trust vs State of Bihar, 2015 (1) PLJR 268.

**102.** Indian Rescue Mission vs State of Maharashtra, 2016 SCC Online 4188; Mamta Akash Raju vs State of Maharashtra, 2016 SCC Online 4188; Periyasamy vs Deputy Superintendent of Police, AntiTraffic Cell, CBCID, MANU/TN/ 1965/2017 : 2017 (2) MLJ CrL 675

**103.** Latabai Keshav Maundekar vs State of Maharashtra, WP 1185 of 2015.

**104.** Chandni Yadav Vs. Adhikshika, Rajkiya Nari Sanrakshan Grih, WP 34964 of 2015, Allahabad High Court.

**105.** State vs Deepak, Sessions Case no. 57 of 2013, ASJ Special FTC - 2 (Central) Tiz Hazari Courts, Delhi.

## De-linking sex work and trafficking

Significantly, courts have taken cognizance of reasons like trafficking for factory work in Malaysia, dancing in Dubai or for marriage. Possibly sustained efforts of sex workers collectives at delinking the conflation of sex work and trafficking may have had some impact on the functioning of the legal system.<sup>106</sup>

## Recognition of entry into sex work of own volition

The almost invariable premise of the legal system has been that all persons in sex work were coerced and forced into it against their wishes. In a number of bail and anticipatory bail cases courts have taken on board and recognized that adult women may have entered sex work of their own volition and released the accused on bail.<sup>107</sup> In the Priya Gopal Saha case<sup>108</sup> there is also recognition that she was an adult, capable of taking her own decisions and taking care of herself and was wrongly sent to the shelter home.

## Detention in institutions

Detention in institutions of adults against their wishes and of minors against the wishes of the parents after 'rescue' are a common occurrence. Stereotypes of communities and individuals impact the decisions of

courts directing detention. For example, the stigma and stereotype of the 'Banjara' community can play a role in the suspicion that the parents may have trafficked the child leading to denial of custody to parents and detention in a shelter home.<sup>109</sup> Similarly, in case of adult woman the lack of parents and unmarried status can lead to detention in shelter home against the express wishes of the person.<sup>110</sup> Societal notions of disapproval reflected in phrases in probationary report like 'the neighbours of the victim have not stated any satisfactory remarks about the victim girl and her mother' can result in denial of custody to the mother and detention in a shelter home.<sup>111</sup>

## Sex worker-led dispute redress mechanism

Compared to raids and rescue by police resulting in large-scale violation of rights, sex workers' collectives have advocated control for Internal Dispute Redress Mechanisms to check the entry of minors into sex work and trafficking of minors and adult women. A case where the wife of the brothel owner helped the minor girl on getting to know her unwillingness to do sex work, illustrates that such partnerships with dispute redress mechanisms may be an effective strategy worth exploring.<sup>112</sup>



**106.** Jai Singh vs State, 2016 SCC Online Raj 3898; Sandeep Bhai Karathia vs State of Chhatisgarh, 2017, SCC Online CHH 200

**107.** Dolee Ranglal Rangu vs State of Maharashtra, 2016 SCC online BOM 2560; Jayashree vs State of Maharashtra, 2016, SCC Online 10079; Arun Baburao Chavan vs State of Maharashtra, 2017 SCC Online BOM 7331; Prashant Shambhu Shetty vs State of Maharashtra, 2017 SCC Online MAH 7273

**108.** Priya Gopal Saha vs State of Maharashtra, 2016 SCC Online Bom 6939

**109.** Gheesabai vs State of Madhya Pradesh, 2016 SCC Online MP 7516

**110.** Priya Gopal Saha vs State of Maharashtra, 2016 SCC online BOM 6939

**111.** P. Saraswathi vs State of Tamil Nadu, 2017 SCC online 8299

**112.** Ranjana Pathak vs. State of U.P, Cril Misc App No. 30421 of 2010

### Conclusion :

The working of the legal machinery including the interpretations, orders and judgments of courts are coloured by the moral disapproval of sex work and associated activities. Violence against women is on the rise, yet a disproportionate amount of time, effort and energy of the police is put into setting up 'raid and rescue' operations as well as the elaborate process of sending 'decoy' customers to trap consenting adult sex workers under the ITPA.

Under the guise of 'rescue', the police in the raids forcibly pick up and arrest adult persons who have attained majority, even though they are not accused of any offence and send them to detention in rehabilitation 'homes'.

The same approach is reflected in arresting anyone found in the vicinity during the raid and producing them before a magistrate regardless of whether or not their actions amount to any offence. The magistrates, without due application of mind as to whether any offence is made out against the accused go ahead and remand the persons to custody.

Some individuals who are able to approach the high court manage to get the charges quashed as the ITPA does not penalize customers. At the legislative level there are moves to bring in customers into the ambit of the law. Judges while quashing the ITPA charges at times express their disapproval of the law at not penalizing customers.

However, the 2015 judgment of the Telangana and Andhra Pradesh High Court in the Naveen Kumar case where

while quashing ITPA charges the Court has directed prosecution under Section 370 A of the IPC—which penalises "exploitation" of a trafficked person—is ominous and may be an indicator of future portends. In fact, the Gujarat High Court in 2017 in Vinod versus State of Gujarat held that even if Section 370 IPC is not applicable in case of sex workers who enter the profession of their own volition, charges against customers would not be quashed as it was a question of fact to be investigated by the police.

The same prejudiced approach is reflected in other activities considered immoral and translates into raiding the premises of massage parlours and spas—which are not prohibited by law—under the suspicion that sex work is being carried out on the premises. The creation of a category of 'Immoral Traffic Offender' under the 'Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982' in Tamil Nadu wherein a person can be detained without a trial is another illustration of the impact of morality in law.

The High Courts had been setting a trend of taking a stern view of searches and investigations without compliance with the specific mandatory provisions under the ITPA and set the proceedings aside as invalid in law. In a setback the Supreme Court in a recent 2017 case has overturned this trend and held that it was wrong to quash the criminal proceedings merely on the ground that the investigation was invalid. It held that in case where the police report is vitiated due to breach of mandatory provision, criminal proceedings can be set aside, only if it can be shown that the illegality in investigation resulted in miscarriage of justice.

The scrutiny of cases also brings to the fore the role of NGOs as reflected in the cases by the Freedom Firm and Apne Aap Women Worldwide Trust who without much consultation with sex workers initiate operations of 'raid and rescue' leading to incarceration of adult persons who have consented to sex work. Public Interest Litigation filed by NGOs result in sweeping large scale directions given by courts which impact lives without hearing the principal party concerned: the sex workers. In sharp contrast is the negative attitude of the High Court in the writ petition filed by sex workers in Nagpur reporting beatings in raids and praying for restraining the police from entering premises and removing residents.

The High Court did not take any action with regard to the human rights violations of the sex workers in the raid and disposed of the petition expressing satisfaction with the undertaking by the police that the petitioners would not be evicted without following due procedure in law.

The upholding of Section 18(1) of the ITPA authorizing the closure by the Delhi High Court in January 2016 is a setback. However, there have been a number of other cases where the immediate closure of brothels without giving notice and opportunity to be heard has been quashed.

In law, sexual intercourse without the consent of the woman, including a sex worker, amounts to rape, however, in practice it is extremely difficult to prosecute. In this context, the unequivocal statement by the Sessions Court, Delhi in the State versus Deepak that the victim/survivor being a sex worker does not confer any right on the

accused to violate her and sexual relations without her consent constitutes rape is a positive development. The making of police officers identified by minor girls as accused in T. Sundar vs Superintendent of Police is a rare instance, as policemen involved usually go scot-free despite their complicity.

The Ranjana Pathak versus State casewhere the wife of the brothel owner helped a minor girl could help in efforts at advocating 'Sex Worker-Led Dispute Redressal Mechanisms' rather than raids and 'rescue' by the police to check entry of minors and trafficking in sex work. The awarding of Rs. Five lakh as compensation for illegal detention under ITPA in Chandni Yadav Vs. Adhikshika, Rajkiya Nari Sanrakshan Grih, Allahabad High Court is a positive development and must be used to develop a jurisprudence of compensation for the violation of the life, liberty and rights of sex workers.

On a positive note the efforts at de-linking of the conflation of sex work and trafficking may have had some impact with the courts willing to look into cases of trafficking for other purposes and objects like factory work, dance and marriage. Similarly, there have been efforts at emphasizing that customers should not be prosecuted and courts seem in some cases to record that ITPA provisions do not apply to customers. Courts have also taken recognition that adult persons could have taken a decision to enter sex work of their own volition.

Critical judicial notice appears to have been taken of the role of NGOs in instigating raid and rescue operations and the foisting of cases in the area of

sex work. The Madras High Court in the Amarpreet Kaur Chawla case in 2017 while acquitting her of charges under ITPA emphasized that the idea of ITPA was not to render prostitution per se a criminal offence, or to punish a woman merely because she prostitutes herself. The judgment approvingly quotes the 1962 Madras High Court in Ratnamala case <sup>113</sup> :

*"I desire to emphasise that a careful scrutiny-of the Central Act 104 of 1956 clearly reveals that the Act was aimed at the suppression of commercialized vice, and not at the penalization of the individual prostitute, or of prostitution in itself. This is of some importance in considering the case against the appellant Ratnamala."*

The denial of statutory bail when the offences merit bail is an area which needs to be pursued in courts with regard to sex work cases. Although there has been a lone reported case of the use of provisions of the Criminal Procedure Code dealing with public nuisance to seal hotel rooms and bar entry, but the area bears scrutiny to see the prevalence at the ground level. Similarly, the State of Tamil Nadu under its preventive detention law has included the category of 'immoral traffic offender'. The use of preventive detention laws by states to detain persons in the arena of sex work may be another area on which to keep a watch.



113. Ratnamala versus State 1962 (1) Cri.L.J. 162



# Chapter 3

# Findings

The aim of the research was to understand the impact of anti-trafficking laws on sex workers in a range of settings: rural and urban; streets, brothels and lodges; as well as 'hidden' sex workers. Sex workers' collectives in these sites will take forward the findings in campaign strategies beyond the research period.

Type	Total
Brothel Sex Workers	55
Home based	24
Street Based Sex Workers	72
Children of sex workers	5
Total	156

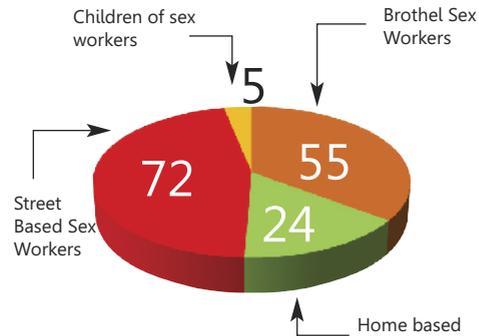


Table 1 : Break up of all FGD participants

## A. The Research

### Phase I : Focus Group Discussions with women in sex work

The aim of the research study was to understand the impact of anti-trafficking laws on sex workers who functioned in a range of settings : rural and urban; streets, brothels and lodges; as well as 'hidden' sex workers who did not openly do sex work. Participants of the study were identified based on these criteria.

The research was conducted in sites where sex workers' collectives were active so that they could take forward the findings in campaign strategies beyond the research period.

'Red light' districts, areas or streets are commonly used to depict an area where sex work is practiced. According to researchers Rohini Sahni and Kalyan Shankar across the urban centres of India, a Red Light Area has grown to be a commonly recognized spatial entity. Typically associated with larger urban

agglomerations (Mumbai, Kolkata), the term evokes a similar understanding when referring even to a lane or street in smaller urban centres (Kolhapur, Sangli).

These areas are of two kinds, an earlier settlement that has grown with the city as in Pune or a new one that came up on the periphery of a new city as in Sangli. For the purpose of this research we chose a range of spaces: small towns and larger cities, old settlements and newer areas. The sex workers in this sample are women who are in contact with a collective of sex workers or are part of the HIV/AIDS programme run by an NGO or a CBO.

In terms of size and population of the locations selected for the focus group discussion, Pune and Ranchi were the only 'Million Plus' cities with populations over a million.<sup>114</sup> Sangli/ Miraj, Thrissur and Kozhikode are classified as 'Class 1' towns or cities with the population varying between 3-5 lakh. Godda, Gumla, Karad, Koppal and Kumta are classified as 'Class 2' towns with populations under 1 lakh.



<sup>114</sup>. City with a population of over 1 million classified as a Million Plus - Provisional Population Total Urban Agglomerations and Cities, Census of India. Retrieved on 25 December 2017 [https://en.wikipedia.org/wiki/List\\_of\\_cities\\_in\\_India\\_by\\_population](https://en.wikipedia.org/wiki/List_of_cities_in_India_by_population)

Place	Brothel	Home based	Street	Total
Godda		10		10
Gumla		9		9
Karad	19		3	22
Koppal			12	12
Kozhikode		2	7	9
Kumta		1	9	10
Miraj	10			10
Pune	19		6	25
Ranchi			12	12
Sangli	7		13	20
Thrissur		2	10	12
<b>Total</b>	<b>55</b>	<b>24</b>	<b>72</b>	<b>151</b>

Table 2 : FGD participants

### FGD Participants

156 participants participated in 14 focus group discussions. 151 women were in sex work. 5 adult children of sex workers also participated in discussions in Sangli and Karad, since they are active in the organizing work of the VAMP collective. Only profiles of sex workers participating in the discussions have been considered for analysis.

### Type of sex work and place of work of FGD participants

Of the women who participated in the discussions all the brothel-based sex workers were from Sangli, Karad, Miraj and Pune. They accounted for nearly 37% of the total participants.

Home based sex workers were predominantly from Godda, Gumla which accounted for 16% of the focus group participants. Street-based sex workers were largely from Ranchi, Sangli, Thrissur, Koppal, Kozhikode and Kumta accounting for 48% of the focus group participants.

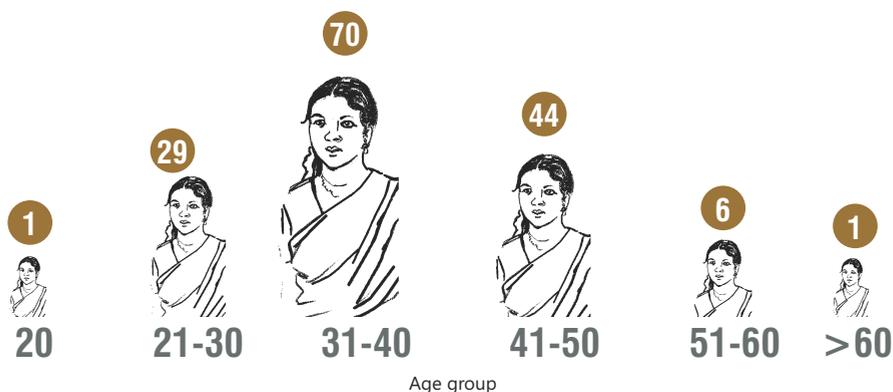


Table 3: Age Group of FGD Participants

	20	21-30	31-40	41-50	51-60	>60	Ttl
Godda	0	1	7	2	0	0	10
Gumla	0	4	5	0	0	0	9
Karad	0	2	8	7	4	1	22
Koppal	0	3	7	2	0	0	12
Kozhikode	0	0	6	3	0	0	9
Kumta	0	1	2	6	1	0	10
Miraj	0	1	7	2	0	0	10
Pune	0	9	4	11	1	0	25
Ranchi	1	3	7	1	0	0	12
Sangli	0	4	10	6	0	0	20
Thrissur	0	1	7	4	0	0	12
<b>Grand Total</b>	<b>1</b>	<b>29</b>	<b>70</b>	<b>44</b>	<b>6</b>	<b>1</b>	<b>151</b>

Table 4 : Age break up of FGD participants

### Age Profile of group discussants

Since the research was focussed on the challenges to sex work currently, a large proportion of sex workers were from a younger age group and actively in sex work.

The mean age of the discussion participants was 37.3 years with the youngest participant being 20 years old and oldest at 62 years. 46% (70 women) were between the ages of 31-40 years. 28% of the participants (44) were between 41 to 50 years of age. 19% women (29) were between 21 to 30 years of age.

As indicated in table 4, participants across all age groups were equally represented in all the group discussions. Women in the age group of 31 to 40 were most evenly distributed across the 11 districts.

### Type of Sex Work

To ensure that the research benefited from the experiences of all people involved in sex work, a variety of discussants were included in the focus groups. While 77% of the participants were engaged full time in sex work, 17% were also managing houses or brothels along with doing sex work. 8 women were only managing brothels or houses of whom 7 were in the age group of 41-50 and one was under 30 years of age.

### Age and type of sex work

There was not much of a difference in the average age of brothel, home and street-based sex workers who participated in the group discussions. 36% of the respondents were brothel based with an average age of 38.2 years.

Type	20	21-30	31-40	41-50	51-60	Above 60	Total
Also Brothel Owner	0	2	11	8	4	1	26
Only Brothel Owner	0	1	4	3	0	0	8
Sex Worker	1	26	55	33	2	0	117
<b>Grand Total</b>	<b>1</b>	<b>29</b>	<b>70</b>	<b>44</b>	<b>6</b>	<b>1</b>	<b>151</b>

Table 5: **Type of sex work**

Two youngest brothel-based participants were 24 and the oldest participant was 62 years. (Table 6) 70% of these participants were between 31 and 50.

16% of the participants were home-based sex workers with a mean age of 37.2 years. 70% of these home-based sex workers were between 31-50 years.

47% of the discussants were engaged in street-based sex work with a mean age of 38 years, of whom 80% were in the ages between 35 and 50.

The discussion was facilitated by a sex worker and an NGO representative using a semi-structured questionnaire format.

The discussions were conducted in the local languages (Marathi, Kannada, Malayalam and Hindi). These discussions were recorded after obtaining the group's consent and thereafter were transcribed in the local languages. In the case of VAMP the transcription was done by the community researchers.

Type	20	21-30	31-40	41-50	51-60	Above 60	Total
Brothel	0	10	21	18	5	1	55
Home based	0	6	14	3	1	0	24
Street	1	13	35	23	0	0	72
<b>Total</b>	<b>1</b>	<b>29</b>	<b>70</b>	<b>44</b>	<b>6</b>	<b>1</b>	<b>151</b>

Table 6: **Age Group and Site of sex work**

	JN	KP	PN	SN	ST	Total	
2005				46		46	19%
2010			24			24	10%
2012			49			49	20%
2013		51				51	21%
2016	21		22		9	52	21%
2017	13		3		5	21	9%
<b>Total</b>	<b>34</b>	<b>51</b>	<b>98</b>	<b>46</b>	<b>14</b>	<b>243</b>	<b>100%</b>

Table 7 : Year of Raids

### Phase II: Follow up of Women Picked up Under ITPA

The second phase of the research was carried out with women who were tracked after having been discharged/released or had escaped from correction homes. It centres around the experiences of women who are in sex work of their own volition, who were 'rescued' in raids, 'rehabilitated' for varying periods of time, and their work choices after being released from the rescue homes.

Detailed follow up and interviews with women picked up in raids in Pune, Sangli, Jalgaon and Kolhapur in Maharashtra during the period 2005 to August 2017, was enlightening.

Data was collated for 243 women who were raided since 2005 to 2017 in these four towns in Maharashtra. The Collectives, CBOs and NGOs working in the brothels collected data of the raids and followed up women who had been picked up.

In Pune, Saheli Sangh community researchers spoke with individuals who had been raided and released from rescue homes. They also filed Right to Information petitions to ascertain the status of those in rescue homes sent by

NGOs such as Rescue Foundation. They also visited the rescue homes in Pune and Bhoiser to speak with the women.

In Sangli and Kolhapur the community researchers held group discussions as well as individual interviews with the women who were picked up in raids in the area. In Jalgaon the NGO runs an HIV prevention targeted intervention for sex workers, and tracked women picked up in raids in 2016 and 2017 and ascertained their current status.

A group of community researchers (themselves sex workers) from each collective/CBO/NGO (VAMP, Saheli Sangh, SANGRAM, Aadhar Bahuddeshiya Sanstha) undertook the task of systematically tracing the women, recording their experiences relating to the raid and rescue, the rehabilitation period and their current status.

Care was taken to maintain confidentiality and to ensure that the women were comfortable in sharing their experiences. This was a sensitive exercise because many women interviewed had given undertakings in court or with the rescue NGO that they would leave sex work as a pre-condition for release. In some cases, the women had also submitted signed affidavits.

	JN	KP	PN	SN	ST	Total
17				2		2
18-20	4	1	31	21	0	57
21-30	26	27	53	12	7	125
31-40	3	13	2	7	5	30
41-50	0	9	0	4	1	14
>50	1	1	0	0	1	3
No Info	0	0	12	0	0	12
<b>Total</b>	<b>34</b>	<b>51</b>	<b>98</b>	<b>46</b>	<b>14</b>	<b>243</b>

**51%**  
of the women  
were in the age  
group 21 to 30  
years of age

Table 8 : Age at time of raid

Hence it was of utmost importance to maintain their confidentiality. Due to this reason, names and dates of some raids have been omitted from the analysis to prevent possible identification of women.

In addition to tracking all the women picked up in raids, the researchers conducted detailed interviews and group discussions with 23 women in Kolhapur, Sangli and Pune.

Some distinct large raids which have been tracked include the 2005 raids in Sangli where 46 women were picked up; the 2010 raid in Budhwar Peth in Pune when 24 women were picked up, the 2013 raid in Domburwada, Kolhapur when 51 women were picked up and the 2016 raid in Jalgaon where 15 women were picked up.

Raids in Jalgaon and Pune have taken place more than once, hence these have been tracked separately. Satara district saw 14 women picked up in 2016 and 2017.

In terms of the raids itself, 40% of the women raided during this period were in Budhwar Peth and surrounding areas in Pune. This was followed by 21%

women from Kolhapur who had been raided in a single instance in 2013 when 51 women were picked up and all the brothels were sealed.

### Age at the time of the Raid

Two main justifications are usually provided for raids: under-age females in sex work and adults being forced into sex work. The study revealed that at the time of the raid, of the 243 who were followed up; two girls were minors, at 17 years of age.

51% of the women were in the age group 21 to 30 years of age, 23% were in the age group 18 to 20 and 12% were between 31 and 40 years. The researchers were unable to track the ages of 12 at the time they had been picked up. (9 women are still in the rescue homes, 2 have been sent to Bangladesh and its untraceable after she came out).

In the Kolhapur raid in which 51 women were picked up at one instance, the average age of the women was 34 years, with a minimum age of 25 and maximum age of 52 years. In the Jalgaon raids conducted in 2016 and 2017, the average age of the women

	JN	KP	PN	SN	ST	Total	%age
Don't know - Not part of collective / CBO			13			13	7%
Trafficked minor				2		2	1%
Non Sex Worker				1		1	0%
Trafficked as per RTI filed by CBO Saheli			7			7	3%
Trafficked but wanted to remain			27			27	11%
Non-trafficked Voluntary entry	34	51	51	43	14	193	79%
<b>Grand Total</b>	<b>34</b>	<b>51</b>	<b>98</b>	<b>46</b>	<b>14</b>	<b>243</b>	

Table 9 : **Whether trafficked at time of raid**

picked up was 26 years, with the youngest being 21 and the oldest being 60 years.

### Whether Trafficked at time of Raid

79% of the women stated that at the time of the raid they were voluntarily in sex work and had not wanted to be "rescued". 34 women tracked in Jalgaon stated that they had been in sex work for 1 to 4 years when they were picked up in raids as trafficking victims. Of these, 24 women stated that they had come from the nearby city of Amalner to Jalgaon for better sex work options when they were picked up in raids. 11% women were former sex workers who were now brothel owners and some of them continued to do sex work.

36 women including two minors (14.8%) were trafficked into sex work. Of these 27(75%) women (all from Pune) stated that at the time of the raid they had wanted to continue to be in sex work. These women were members of Saheli Sangh, receiving their services and had spoken about their wanting to be in sex

work, which has been documented. Seven women were trafficked and wanted to exit as per information provided to Saheli Sangh in response to a Right to Information (RTI) application. 13 women raided were not part of any of the collectives or receiving any services, hence it was not possible to get any information on their status.

Information about the rehabilitation and current status collated for each of these groups of women is also instructive about the process.

**193**  
**women**  
**forcibly**  
**incarcerated**

	Jalgaon	Kolhapur	Pune	Sangli	Satara	Total	%age
1 day -1 month	22	13	2	33	12	82	42%
1 - 6 months	0	27	5	10	2	44	23%
6 month - 1 year	0	11	3	0	0	14	7%
1 - 3 years	0	0	14	0	0	14	7%
Not known	12	0	6	0	0	18	9%
Still in shelter			21			21	11%
<b>Total</b>	<b>34</b>	<b>51</b>	<b>51</b>	<b>43</b>	<b>14</b>	<b>193</b>	

Table 10 : **Correction home incarceration of voluntary sex workers**

### Duration of Rehabilitation

Rehabilitation is the main strategy to address victims of trafficking. Across the five sites where women were picked up and sent to the Sudhar Gruha they were offered rehabilitation counselling and for those who were kept for a longer term, alternative income generation skills were taught.

All the women picked up across the five sites were women known to the collectives, registered with the NGO/CBO/Collective as adults in sex work and accessing services under the HIV Targeted Intervention programmes of the State government.

The indiscriminate raids not only picked up women who were in sex work voluntarily at the time of the raid but they also forcibly 'rehabilitated' them and 'counselled' them against the work they were doing of their own volition.

Little wonder then that the rehabilitation and counselling backfired and 152 of the 193 returned to sex work after release from rescue homes. (Table 13, Page 72).

Out of the 193 who were consenting adults in sex work, research revealed

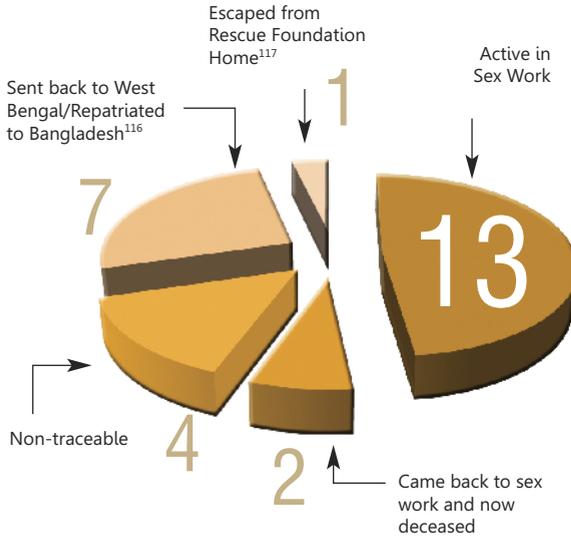
that it took a large number of the women from six months to a year to be released.

14 women (7%) were incarcerated in correction/rescue homes for a period between 1-3 years.

14 women (7%) were incarcerated for a period between six months to a year. 44 women (23%) were incarcerated for up to six months. 82 women (42%) were incarcerated for upto a month. At the time of collating the study, 11% continued to languish in correction/ rescue homes without access to family and friends.

In stark contrast to the myth that consenting sex workers are treated differently from "victims of trafficking who are in need of protection", adult sex workers are treated as people in need of "behaviour correction" (sudhar).

As narratives later indicate, in case the woman is found to be HIV positive, it becomes a ground to detain her since she or her "guardians" are incapable of looking after her. Neither rescue NGOs, nor the government institutions acknowledge this harm being meted out to sex workers



Current Status	Total
Active in Sex Work	13
Came back to sex work and now deceased	2
Non-traceable	4
Sent back to West Bengal/Repatriated to Bangladesh <sup>116</sup>	7
Escaped from Rescue Foundation Home <sup>117</sup>	1
<b>Total</b>	<b>27</b>

Table 11 : **Current status of trafficked women who wanted to remain in sex work**

### Current Status of trafficked women who wanted to remain in sex work .<sup>115</sup>

The researchers found that of the 27 women who said that they had been trafficked but wanted to remain in sex work at the time of the raid, 12 women remained incarcerated for a period between 20 days to 2 years. 13 women who were released are in sex work, and 2 died, 4 remain untraced. 7 women were sent to their state of origin including repatriation to Bangladesh. One woman ran away from the Sudhar Gruha home and remains untraceable. 13 of those who are currently in sex work, clearly stated that they wanted to be in sex work even if they were initially trafficked into sex work.

Out of 27

**55%  
trafficked  
rescuees  
chose to  
return**



<sup>115</sup>. According to the information provided by Saheli Sangh collective, where these women were registered members

<sup>116</sup>. This information was received by the Saheli Sangh collective after filing several Right to Information (RTI) applications.

<sup>117</sup>. This information was provided by Rescue Foundation that the girl in question had escaped from their Rescue Home in Bhoiser, Maharashtra and was untraceable.

Current Status	Total
Returned to Sex Work after release	168
Left Sex Work after release from rescue home	8
Died in Custody	1
Not traceable after release from rescue home	18
Ran away from Rescue Home, not traceable	1
Sent to Bangladesh/ West Bengal	22
<b>Grand Total</b>	<b>218</b>



Table 12 : **Status after release of all women who were picked up in raids**

### Current Status After Release

218 women out of the 243 have been released to date. 199 in India and 22 women repatriated or returned to state of West Bengal.

77% returned to sex work. 8 women (3%) left sex work after their release from rescue homes.

### B. Brutality of Raids

Besides organized raids on brothels, led by NGOs or the police, individual sex-workers are also 'raided' and 'rescued' in a range of spaces: public areas like bus stands or markets, as well as from lodges and private home. Since the ITPA purports to prevent "traffic" in women and offers only raids as the most effective strategy all the women are presumed to have been trafficked and therefore in need of rescue and rehabilitation.

Thus the experiences of women picked up by the police mirror those of women picked up en masse in raids of brothels and are hence analysed in this chapter. These experiences were shared in individual interviews as well as in focus group discussions (FGDs).

Through narratives and quantitative data, this chapter examines the strategies of raid, rescue and rehabilitation deployed to combat trafficking of women into sex work. The women who lived through the raids in Bihar, Jharkhand, Karnataka, Kerala and Maharashtra, talk of the terror of the police and the rescue squads. Some also tell of the violation of rights in rescue and rehabilitation inside correction homes. Their lived experiences, documented through interviews and FGDs backed by quantitative data, point to the futility of raids and rehabilitation as a method of stopping trafficking in women and girls.

While many of the experiences overlap and glide over one another, they have been separated under sub-heads for ease of understanding.

### Green light for arbitrariness

Arbitrary police action during raids, with scant respect for the rights of sex workers and those residing in the buildings deemed to be brothels was found to be common. A 'brothel', under the ITPA is defined as "...any house, room, 3 [conveyance] or place or any portion of any house, room, 3 [conveyance] or place, which is used for

purposes 4 [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more sex workers.”

On May 20, 2005, a raid was conducted in Gokulnagar a red-light district in Sangli, western Maharashtra, India. The police acted on information given by Greg Malstead a U.S. national, and proceeded to conduct a raid. Mr. Malstead claimed he belonged to an NGO Restore International. It was later found that this is not a registered organization, but a Christian ministry started a few years before in South India by Mr. Malstead.

Thirteen people were identified as brothel owners. However, these brothel owners had no women with them at the time. But in order to strengthen the fraudulent case, women were shown to have been in their brothels. 35 persons were also picked up in the raid and two of them were school-going girls who had come home for their school holidays. The medical exam found 31 girls above the age of 18. The police asked for a re-exam and this time, the Sangli civil hospital submitted a revised report stating that 18 women were above 20 and the rest between 16 to 19 years of age. The 18 adult women were released to their parents.

The remaining 17 were transferred to the Child Welfare Committee on the instance of a lawyer from Prerna an NGO in Mumbai. They were remanded till further orders. Two of the school going girls were then released to their parents. One of the school going girls is so embarrassed by the incident and media reports, she refused to go back to school and threatened suicide if sent back. Nine girls produced birth certificates and school-leaving

certificates as proof of them being above 18 but this was not accepted, in violation of the law of the land. They were released to their parents.

Restore International went against the order of the Child Welfare Committee but lost the case in the Session’s court in Sangli. Four of the six remaining young women produced proof of age as above 18 to the sessions court representing themselves, as wrongfully remanded, despite being above 18 and they were also released to their parents. The two girls who were actually minors were released on humanitarian grounds as they were found to be pregnant, ill and pleading for their mothers.

**Arbitrary police action during raids, with scant respect for the rights of sex workers and those residing in the buildings deemed to be brothels was found to be common.**

In 2010 a massive raid took place in Dane Ali of Pune's red-light area in which Andhra Pradesh police along with Pune police raided and forcibly rescued 58 women. The raid began at 2 pm and went on till 7pm in the evening. The road was blocked from either side to prevent people assisting and also to prevent women from escaping. This was a planned and organized police raid with more than 50 police officers being involved in the operation. After the raid 21 women who were kept in the shelter

home of Rescue Foundation tried to run away by breaking the steel gate. However, they were unsuccessful. Seven women however ran away from the Sudhar Gruha in Mundhava.

Places change, but the narratives remain the same. The women in Kolhapur had a similar experience in 2013.

Dombarwada is a place where sex work is done, around 25 women have been living for nearly 40 years on the outskirts of the city. As the city grew residential colonies developed around the brothel area. Slowly the community of sex workers found themselves in the middle of mainstream society. On 19th



**I didn't even have footwear on my feet, I was unwashed, they [police] forced me into a van. There was total chaos, women were trying to run – they pulled the women by the hair, pulled their saris – some women were disrobed, some women were still in their [night] gown.**

August 2013, between 50-60 police came with 5-6 police vans and raided the Dombarwada homes of the women. All the women were adults. Despite that the women were picked up in the raid and forced to undergo medical exams. Sixteen women were released by the court, the other women were sent to rescue homes in Mumbai for 9 to 12 months. Many adult women were forced

to produce their parents as guardians with an affidavit that they would never do sex work again.

### Humiliation not help

The entire process of the raid smacks of a notable disregard for the purported victims who were being rescued.

Humiliation, verbal and physical abuse were routine accompaniments to these raids. Little wonder then that the women thus 'rescued' recalled it as a horrific experience, designed to beat them into submission, rather than rescue women and take action against traffickers.

It must be noted that not all residences in the so-called red-light areas are brothels, nor are all residents of the brothels sex workers. Non-sex workers who happened to be visiting their relatives in the buildings that were raided were also bundled into vans, sometimes in a state of undress. Said Tangevva daughter of a sex workers from Gokulnagar about the raid on May 20, 2005, "I was not in sex work, but they dragged me. I didn't even have footwear on my feet, I was unwashed, they [police] forced me into a van. There was total chaos, women were trying to run – they pulled the women by the hair, pulled their saris – some women were disrobed, some women were still in their [night] gown. The women who were with customers were dragged out as they were – it was one of the most humiliating experiences."

All this is carried out in an atmosphere of immense drama and women are paraded before the media by the police. Says Tangevva from Sangli, "when we reached the police station a lot of media was present. They had been informed by the police. They started



**Women were dragged out from their brothels, beaten up by both male and female police, they were dragged by their hair. No other person including Collective and NGOs staff was allowed to go near to the buildings where the raid took place.**

taking our photographs and videos. "At the time of the raid it was morning time when the women had just woken up", says Pandavva about the Kolhapur raid of 2013. "They were washing clothes, cooking, conducting morning prayers when the police swooped in without warning. They pulled women out of their homes by their hair, abused them and started throwing them into vans. We pleaded that we be allowed to at least wear sarees, but they did not listen to us. We were herded and taken to the police station."

Sama of Miraj related, "Eight years ago, this happened in our locality. One of the sex workers had called her daughter to spend her school holidays with her. One day, we believe, a police informer visited our place. He asked for a girl. A girl from the community was filling water and was going to put the pot into the room. At that time the fake customer closed the door and called police to show her as minor in sex work. We went to the police. They published this information in the press. The police also sent the girl for a medical check and

found that she had had no sexual contact before.

The humiliating two finger test was performed on her. We protested and the then Deputy Superintendent of Police Digambar Pradhan made the statement that she was not a sex worker and released her. But this ruined her life. We care for our daughters and do not allow minors to do business. We fought a lot, held rallies and protests against the media which published the girl's photo in a local newspaper saying 'child sex worker'. It was a fake raid. We had a fact-finding committee report to raise this issue and fight against injustice."

Ironically, after the raid, when the girl returned, she was teased by surrounding boys saying that she was sex worker. So we had to send her back to the observation home. Rallies protesting the violation of her rights followed. She was traumatized by the incident, but is now married in her hometown.

Mahadevi recalls the Pune raid of 2010, "It was a very brutal raid. Police brutality was very visible. Women were dragged out from their brothels, beaten up by both male and female police, they were dragged by their hair. Women in the area along with Saheli Sangh members and other NGOs witnessed the police brutality during the raid. No other person including Collective and NGOs staff was allowed to go near to the buildings where the raid took place. We were just not able to intervene since there was too much police presence. After dragging women out of the brothels where they were manhandled and dumped into the police vans." Misuse of the media and violation of right to privacy

After raids on brothels in Sangli, Maharashtra in 2005-06, the newspapers and television channels carried the photographs of the women detained, in clear violation of the law as well as the right to confidentiality. Since even women who were not minors or were simply living in the same abode as sex workers were picked up, it also impacted the daily lives of women and their prospects for marriage in a conservative society. Tangevva asked, "You tell me who will marry me after my photo is carried in newspapers and television for being arrested in a raid. I was not young and I was not doing sex work at that time. Despite that, I was picked up and sent to the rehabilitation home. I am a Devadasi but I was not doing sex work, I tried telling them that, but they refuse to listen to me. They picked me up."

More disturbing was the fact that the police and the media seemed to be in collusion in order to humiliate the women and sensationalise the story of the raid. "At the police station the press and media were taking our photographs non-stop, they [also] were taking videos. We tried to cover our faces, but they were forcibly lifting our veils and taunting us saying, 'you had no shame there – now why are you ashamed?'"

**Sex workers also implicated the media in biased reporting, using only court versions or police hand-outs without interviewing them or listening to their stories.**

Police also threaten sex workers with media publicity in newspapers and television channels in order to coerce them into having sex, according to the testimony of Meenakshi of Koppal, Karnataka. Street walkers in Ranchi complained that media exposure, especially by publishing photographs, rendered them more vulnerable and put them at greater risk. Sex workers also implicated the media in biased reporting, using only court versions or police hand-outs without interviewing them or listening to their stories. Said Selin of Thrissur, "In court they listen only to the police version, and later outside the court, media is only interested in the news. Police use the media but media will never take women's versions; only the police version. In this way they humiliate women."

### **Sexual coercion as insurance**

Sex workers in Ranchi said that the police ask for free sex in the name of "helping" them in future, a sort of insurance policy, as it were. Many a times, when a sex worker is arrested, eight or ten policemen have sex with her at night. Exploiting their lack of literacy or unfamiliarity with the procedures is common. "Those who don't know to read and write take time to file any complaint or write reports.

The police also ask money to register FIRs. If anyone knows how to read and write, they take the application copy and after two or three days they call on our cell phones and demand free sex first and only after that they proceed with our complaint." One woman shared how she was forced to have sex even though she was heavily pregnant, "they forced me to visit the police station repeatedly."

Said Mina of Sangli, "Four years ago, about 20-25 women were picked up from the road and taken to the police station, I was one among them. As soon as we reached the police station; they asked us to collect our money and jewellery and deposit it with the police. One of the policemen usually came to me for sex. He never paid me though. He would frighten us by saying that if we did not provide sexual services, he would call the police van and arrest us. Due to fear, we agreed. He caught five women that time; his wife is also in the police. She came to us and used bad language and intimidated us. We were released only after paying cash at the police station."

### Extortion, a by-product

Said Lalitha (name changed) from Thrissur, "Police personnel are the beneficiaries of this law because they are getting money from sex workers by misusing sections in ITPA. They want to achieve a monthly target in petty cases so they levy fines on sex workers, through this they earn money beside their salary."

Said Asha (name changed) from Thrissur, "I was waiting for a bus at the bus stand after buying some medicines. After some time, a group of Vanitha police (a special women's police) caught me and fined me Rs.100. I refused to pay and said that I was not doing sex work there or disturbing the public. They said that if I did not give money they would take me into custody. I borrowed money from the nearest shopkeeper and gave it."

Ageism also operates in the "rates" of extortion by the police. Says Rama (name changed) from Pune, "If they arrest an elderly woman, the police

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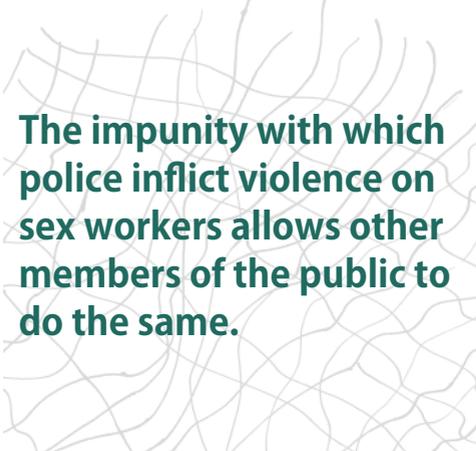
**Police personnel are the beneficiaries of this law because they are getting money from sex workers by misusing sections in ITPA.**

- Lalitha, Thrissur

might take Rs 1000 but if the girl is young they will ask for any amount from Rs 15,000 upward."

Said Meenakshi of Koppal, "One of them [police] called me. Thinking that since he is a policeman and would be earning well and that I would get something, I went to him. He was fully drunk. He started telling me to do all awkward things, I refused. He then beat me and threw me out and did not even pay me. Even then, I tried to threaten him that I would tell others about what he had done. In turn, he threatened that he would publicise my details in TV channels and newspapers."

Kamla of Koppal, Karnataka provided an insight into police harassment by stressing on the monetary aspect, "It is beneficial to police. Police get promotions and other benefits if they catch people. So, they catch us by playing tricks. Some of them call us to a place and others will raid to get those benefits. Women don't want their family to know their identity as sex workers, so they listen to whatever the police say and accept that they were doing something unlawful. Some of them pose as clients and some come as police, they too play a lot for the stars they get on their shoulders."



## The impunity with which police inflict violence on sex workers allows other members of the public to do the same.

### Unhealthy encounters

Kiran from VAMP highlights the impact of arbitrary use of law on health and well-being, "When we are arrested they reveal our identity, so we have to do sex work without revealing ourselves. How will we use Nirodh [condoms] when we are doing sex work if we fear that they are checking our bags. If they find Nirodh in our bags then they accuse us of doing sex work, carrying Nirodh is itself an offence."

Said Meenaxi Kamble from Miraj, "Three years back, there was a raid at Ashok lodge and the manager and two women were caught. We knew the HIV status of one of the women, so we requested the police not to test her for HIV. But they did it anyway.

She was tested for HIV and her status was disclosed all over. While one woman was handed over to her family, the woman living with HIV was sent to the Karad correction home. We went to a lawyer and even then they did not listen.

The police showed the report of her HIV status, as though that was the reason to send her to a correction home."

Tragically, the woman did not live long after this traumatic incident.

### Reign of impunity

The impunity with which police inflict violence on sex workers allows other members of the public to do the same. Sex workers in Karad, Maharashtra, said that anti-social elements (goondas) feel free to behave badly with them, with no fear of consequences.

Reena (name changed) from Pune shared a similar experience:

"Sometimes, we are beaten by customers but police do not come to rescue us. They only see these things from a distance. They will not arrest those who are doing illegal things like gambling, but they will arrest us even though we are doing our business honestly."

Said Zahira (name changed) from Kozhikode, "Even if we leave sex work and get into any other job or give up sex work and be with our family, police always sees us as sex workers and assume that we are going with a client even if we are going with a family member. With this assumption, police directly come up to us and ask 'Are you going with a client?' Police will not listen to what we say or believe us. They only say, 'You have come to Calicut city with a client to do sex work'. Police behave in the same manner when we come to the city with our grown sons. For any purpose – it may be [to collect supplies] from the ration shop or to visit the office we have to come to town and women police insult us in public places. Police arrest women and tell them to present two persons as surety to get them out. Thereafter I started questioning the police and insisted that if they wanted to arrest me they must prove that I was with a client. Police book ITPA cases against sex workers for the following reasons: soliciting, and obstructing vehicles in a drunken state.

The police are not getting any other cases so they target sex workers.”

Some like Farida (name changed) from Kozhikode see minor changes in the attitudes of the police, “Some policemen are treating us well, they don’t beat us now, but a few policemen abuse us with filthy language and force us to get into the police van and release us only after collecting a fine.”

An impact of the law that is evident is that because the law criminalizes or victimizes them, it gives other people the opportunity to exploit them. Said sex workers in Ranchi, “Everyone treats us well if they don’t know that we are sex workers. If police know that we are sex workers, they try everything to exploit us. They abuse us and use very bad language. If we are arrested, the lady police will come and stare at us and each one will pass some bad comment.”

### C. Incarceration in the name of rescue

The rhetoric of rescue and working for the rights of women is hollow when viewed through the prism of the violations perpetrated by the authorities on inmates of correction homes.

Nirmala of VAMP recounted her experience when she was picked up ten years ago, “We were put in Rajwada jail, there were around seven of eight of us, amongst us there was an older woman whose name was Uji. No one outside knew that we had been arrested. Some of the women were crying, a couple of women fell ill and the doctor came to visit. We were told that we must wear a white sari but we refused. We spent nearly eight days inside. They used to

**The rhetoric of rescue and working for the rights of women is hollow when viewed through the prism of the violations perpetrated by the authorities on inmates of correction homes.**

come and ask us daily whether we have a lawyer, whether we have relatives. All our relatives were in the village. After that Kamla Maushi and Bhimavva maushi and VAMP came.

When we became associated with the collective, we got some recognition. After they came, we were told to find a lawyer. We used to cry a lot and we couldn’t even eat due to our misery. Women became ill inside and had high fever. We used to pray to be released from the misery. Savita and Shoba were extremely traumatized. For eight days they didn’t eat or sleep. They took away our jewellery on the pretext that women try to kill themselves and then the jailers lose their jobs. At that time the fine we paid was around Rs 1000 or 1200.”

A decade on, the situation is not much better. Ironically, the women ‘rescued’ from sex work are sometimes forced to provide sexual services in rehabilitation homes. Says Mala from Pune, “A girl who was in an institution told me that they [the rescued women] were asked to wear makeup and fancy clothes and asked to entertain the men who are the visitors there. The girls were forced to provide free sex in the institution.”



**Mallavva from Karad said, “When women are put into the SudharGruha for three or four months at a stretch, it affects their children, who are left in unsafe situations.**

**- Mallavva, Karad**

Said Bharthi from Sangli, “Some have not returned from their village because they were so frightened by the way police behaved with us. They beat us, used bad words, did not allow us to meet our parents for months and did not send us home. One of my friends with whom I was arrested, was so traumatized that she died, probably due to the suffering. Sometimes we were sleeping hungry as we could not eat that uncooked and tasteless food.

My health was deteriorating in the correction home. They were not allowing anybody to give us food. If we stood near the window, the staff would come and close the window and beat us, asking whom we were calling. They made us sign something and they read it out: ‘I will not let my daughter to do sex work again’. And my father signed on it.”

The increased vulnerability of children when their mothers are picked up and incarcerated as part of “rescue” and “rehabilitation” measures rarely comes to the fore. Mallavva from Karad said, “When women are put into the SudharGruha for three or four months at a stretch, it affects their children, who are left in unsafe situations.”

Shaziya (name changed) from Kozhikode described her incarceration in a mental asylum, “The police arrested me and forcibly took me to a mental hospital. I was ignorant but I had not made any mistake. There were many women like me and there was a separate place for mentally ill women. I was there for few days. The food was not good, there was no proper place to sleep and the toilets were bad. They were providing skill development training, but I was not interested and was planning to escape. Finally, I managed to escape.”

There is a lack of transparency about the processes that follow detention in a correctional facility and subsequent release. Said Sudha (name changed) from Pune, “We don’t know where they will take the rescued girls and women and we don’t know where their records are. Nobody knows where those girls go, what they do, where they work. They take a girl’s belongings and say that we will send her back to her village. But what is the proof that they will send her to the village?”

Added Radha (name changed), “When the police rescue the girl – whether minor or major – they say they are taking her to an orphanage or shelter but nobody knows where the girl has gone: to her village or an institution or working elsewhere.”

Said Mala (name changed) from Pune, “Even if police rescue women and keep them in an institution, all the women come back. We have seen most of them coming back.”

Added Beena (name changed), “If a girl has been rescued from one brothel you will find her in another brothel the next

day. Much of this is due to corruption amongst the police, who under the guise of 'raids', extract money from sex workers in order to let them go.

Says Zahira (name changed) from Kozhikode, "Sometimes without any reason they [police] arrest and put sex workers behind bars. As per legal procedures within 24 hours they should produce them in court, but police deliberately delay the process. If questioned, they threaten and abuse us not to teach law to them."

Shalini (name changed) also from Pune states that it was only when she threatened to commit suicide that she was released. "It was a traumatic experience for me in those six months. The quality of the food was very bad, and I was told to wash all the utensils there which I was not used to doing. I fell ill from jaundice and it was only when I threatened to commit suicide that they got scared."

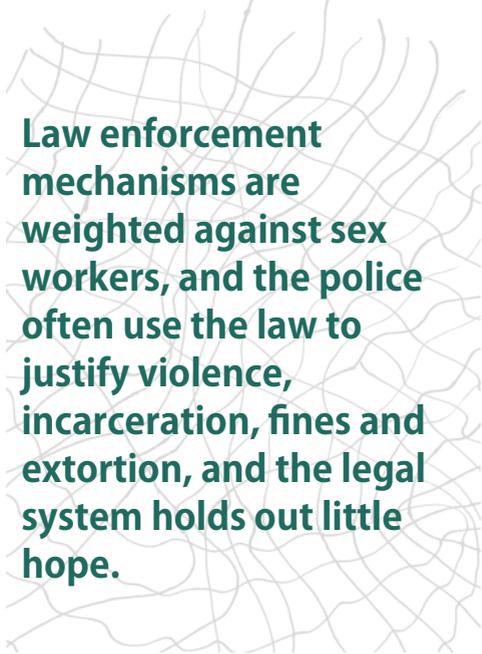
Law enforcement mechanisms are weighted against sex workers, and the police often use the law to justify violence, incarceration, fines and extortion, and the legal system holds out little hope.

### Excesses in custody

Across the country, police excesses form a common theme, in some cases amounting to torture-like treatment in police custody. Said Vidya (name changed), Thrissur, "Police caught us and took us to the police station and they tortured us, they threatened to put chilli powder in our eyes and our private parts."

Besides actual physical assault, the threat of violence is used to humiliate

and intimidate. Rekha from Sangli said, "In the police station, the police tried to frighten us with a big lathi [baton]. We thought that they would beat us. We were asked to stand in a line against the wall."



**Law enforcement mechanisms are weighted against sex workers, and the police often use the law to justify violence, incarceration, fines and extortion, and the legal system holds out little hope.**

In one reported instance, in complete violation of the rights of detainees, police forced women to labour in the police station. Said Zahira (name changed) of Kozhikode, "Police make the women clean the police station, and sometimes they also sexually harass women." Sex workers who have been organized know their rights, but the reality of police violence silences them, as Radha (name changed) of Pune reveals, "Rights are there, but they are in the books. If a woman dares to open her mouth, she will get beaten up."

Those who dare speak up have to bear the repercussions. Said Chandralekha from Thrissur who is a sex worker and employee of a CBO, "I was interacting with sex workers at the bus stand when

**While rejecting the applications for custody by relatives, the trial court proceeded to observe in the case of the women who were found to be positive, “Had the relatives of victims taken proper care, they would not have suffered from such serious disease.”**

police personnel came and picked up sex workers and took them to their jeep. When I questioned them, they arrested me also. I asked the police why you are arresting me? I was taken to the police station by a male police constable. When I raised my voice against this injustice, a male constable beat and threatened me. I was produced before the magistrate and got bail. I informed the magistrate about the physical assault faced from male police during custody. The court mentioned this and submitted a petition. But after that there was no response from the police or court. It is injustice; I am not getting justice even from court, what we will do?”

“The police took us to Vishram Bagh Police Station. We were not given tea or

food. Other women got tiffin (packed food) from their homes if they had somebody with them. But in my case I did not have anyone to get a tiffin from home. We were there in the police station for 13 days after which they took us to hospital for medical check-up and we were released on 14th day,” narrated Kasturi of Sangli, describing a commonly reported practice of detention in a police lock-up without regard for basic needs of detainees.

### **Courting humiliation**

What happens when the women are raided and produced in courts? Does the court actually serve as a mechanism of justice for women? In the raids in Kolhapur, where women were picked up from Domburwada and produced in courts, all the women were sent to Sudhar Gruha and tested for STI and HIV/ AIDS.

While rejecting the applications for custody by relatives, the trial court proceeded to observe in the case of the women who were found to be positive, “Had the relatives of victims taken proper care, they would not have suffered from such serious disease.”<sup>118</sup> Hence the applicants were found to be unfit to take custody of the women against which an appeal was filed. The appellate court not only agreed with the observations of the lower court but went on to observe, “The trial court have rightly observed that had the appellant, the alleged guardian of the victim taken proper care of the victim, she would not have suffered from such serious disease which may occur because of promiscuous sexual relations.” The court finally observed that a rehabilitation home would be



118. Order disposing interim applications, Judicial Magistrate, September 2013, Kolhapur district court

more capable of taking care of the victim of HIV/AIDS rather than the parents who were working as labourers and rejected the appeal. The women in question were released to their relatives after eight to nine months in rescue homes in Mumbai and Nasik.

VAMP points out the irony of 'custody': "The court requires a 30-40-year-old woman to be sent into the custody of her father/ mother/ brother or family member. She may have been actually taking care of these people but in the eyes of the law, these people should protect her.

Systematic shaming of sex workers continues into court appearances, where even before any legal process begins, the women detained are treated as criminals with no right to redress. They are also forced to 'accept their guilt' even if the cases are fake.

Said Nirmala from Sangli, "They rounded us up and took us to the police station. We were kept overnight and then the next day we were all told that we would be presented in court. They would register our names in the police books. It was a humiliating experience to be taken to court. The police would be on either side and we would be made to walk between them all the way to the court. When we were presented in the court they would tell us we were not to open our mouths and when the judge asks us, we must accept our guilt by nodding our head."

Kiran of VAMP related an incident of extreme brutality in Ahmednagar in 2011: "The brothel was shut and the women were produced in court. Amongst them there was a woman who was more than two months pregnant; she was beaten so badly in custody that

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she aborted.

She was produced in court with the same blood-stained sari. She still did not have the courage to say in open court that she was beaten in custody of the police and that she had aborted as a result. The court does not listen to us – it will only listen to the police. All the women caught in the raid scattered all over other places. We have no clues to track their presence and places. The sex work community just got dispersed there."

Raju of VAMP says, "The witness is often someone who lives far away – for instance, journalists or college students who are in other cities. In many cases we have seen that the signature taken of the witness is of a person simply walking by on the street, just to complete legal formalities. When the case comes to court, the police gets witnesses as per their own will. When

**Many women are 'returned' home to families who cannot support them or condemn them for their involvement in sex work and thus refuse to take them back.**

the case comes on board in court; lawyer wants the witnesses physically present at court. This is very difficult. We can't find witnesses and pay them to be present in the court and stand for us."

The procedural aspects of the working of the court are also stacked against sex workers, who are then forced to borrow large sums of money to extricate themselves, at high interest rates, thus being subjected to debt or other forms of exploitative practices. Ironically, it is often the brothel owner who advances the bail amount, thus creating a new cycle of debt.

### **Dubious 'saviours'**

Rehabilitation and restoration of sex workers has often focused on returning them to their families or giving them potentially marketable skills such as sewing. Many women are returned home only to find that their families cannot support them or condemn them for their involvement in sex work and thus refuse to take them back. The

'marketable skills' scheme is also often ineffective in the context of a burgeoning corporate economy. The head of an NGO working in Mumbai has put on record the poor rehabilitation efforts of the government, and reports that many women at these homes/institutions perceive themselves to be used as slave labour.<sup>119</sup>

The most senior official for women's and children's welfare activities in the state of Maharashtra said in 1997 that "Apart from housing... the state has no other welfare measure for the rehabilitation of prostitutes."<sup>120</sup>

Kasturi of Sangli described the dubious strategy used by Greg Malstead and his NGO of befriending the women to gain access to their personal and work spaces before conducting the raid on questionable authority.

Added Rekha, "We did not know that the raid would happen. That white man (Greg Malstead) came for two days, bringing chocolates and condoms. He used to sit in every house and talk with the women there. In the first two days, he developed a rapport with the women by playing and laughing with them and after two days the raid happened. In the meantime, the police came inside my house and started pulling out everything. They picked up six girls along with me."

Minakshi of Miraj said, "Such organizations who are anti-sex work come and raid, pick up girls and send them to the observation home. They think that their role finishes there. They lack any follow up of the girls or help and support to them. Why are they not



**119.** Dhaliwal, M. 'Rescued' Sex Workers: From Here to Nowhere. Mumbai: Lawyer's Collective.  
**120.** Ibid.

keeping track to see what exactly happened to such girls after their raids. Once we visited an observation home after admitting girls and asked about the status. We found that these girls ran away from the observation home; when we asked to the administrator about the same then we got answer that they have file a complaint in police and given news in newspaper. They feel that their role ends there only. They do not keep track of such girls.”

It would seem, from testimonies of the women raided, that the NGO seemed more interested in carving out a name for themselves as “saviours” of trafficked women, rather than carry out any meaningful strategy that would meet their felt needs.

#### D. Flawed Laws

Perhaps the most pernicious element of the law in the eyes of the women are the powers of the police to indiscriminately raid and rescue women in sex work, alleging that they have been trafficked or are being exploited as sex workers. Consent and agency are completely negated in this endeavour prescribed in the name of anti-trafficking initiatives.

Radha (name changed) of Pune pointed out one of the biggest flaws with the ITPA, “Police can come and take anybody into custody. Police don't allow us to wait at places like in front of shops or near temples. Women in sex work are everywhere and not only in the red-light area, but all the restrictions are on women in the red light area and not outside it seems! If women will remain only inside the brothel how they can earn their livelihood?”

Said Nirmala from Sangli, “I was returning home after buying vegetables from the market (Shivaji Mandai). In the middle of the market place, police came

**Perhaps the most pernicious element of the law in the eyes of the women are the powers of the police to indiscriminately raid and rescue women in sex work, alleging that they have been trafficked or are being exploited as sex workers.**

from both sides. I was with my bucket of vegetables and was not doing anything else. Even then the police arrested me. They caught four or five women. They used a sex worker to recognize other sex workers, and used this strategy to catch us in a public place.”

Sakina from UKMO, Kumta, who has received training on ITPA says that the organization has trained volunteers, “We caution our women not to violate the law. Women have started approaching those sections rightly. It has helped all of us a lot. Like, not doing sex work near a bus stand, not to practice sex work near a temple, women have started changing their behaviour, which is useful.”

Adds Pramila, “Two women should not go together in a lodge for doing sex work. In case if raid happens, they will be at fault, I have learnt from it. To avoid paying lodge charges, some people

choose government places like school or government office, etc, if police raid, they will be punished. It's my experience, I used to go to schools for doing sex work, clients used to avoid taking a room, instead, they would say that they would pay that amount to me, I would agree earlier. I am aware know that we should not use such places."

### Infantilization of women

There is a need to unravel the construction of the minor girls in sex work. While sex worker rights activists have clearly defined that their struggle focuses on adult persons in sex work, the contentious space of the age of consent for sex is a huge challenge for rights activists.



**Two women should not go together in a lodge for doing sex work. If a raid happens, they will be at fault.**

- Pramila, Kumta

Kiran of VAMP provides an insight into the infantilization of adult women in the matter of consent, "The construction is that despite the fact that we have become adults and are able to make our own decisions, since we have chosen sex work [bad work] we cannot be exercising our choice correctly." Shaheen (name changed), a street walker from Sangli narrates the harrowing story of trying to reclaim her daughter. "In late 2015, a woman namely Reshma (name changed) was using her home on the 100ft road for

sex work. Due to complaints by neighbours, the police raided her house and in that raid my daughter was also picked up. My daughter was not in sex work, but the police took her into custody. I went to the police station, but the police did not release her. They sent four women to jail and my girl was sent to the remand home. They kept her there for three months. She is now 15 years old." The process of recovering her daughter was a costly one: "I went to three or four lawyers. I gave one lawyer Rs.2000, to another I gave Rs.3000 and to a third I gave Rs.2000. Three other people who said they would help me took about Rs 3000 each. But in the end, it was only the lady lawyer who helped me, only because she understood my feelings."

Says Manju (name changed) from Sangli, "Our case is going on since the last six years; it has gone to Sangli court now. A customer came to my home and asked about any girl there inside. I thought he was a real customer. So I showed him that yes there is one inside. He went inside and asked another woman who was looking thin and young; but she was not a minor. The man asked for her; I told him that he could be with her. Meanwhile he called his other people from the police department and the raid happened. The police picked me along with that woman up and took us for a medical check-up in civil hospital. They kept us in a lock up for two days. And then the case went to court and has been pending since the last six years. They put me in jail under ITPA. The girl was kept for two months in a correction home and she was sent back afterwards. She is a member of my family and an adult. Since she was above 18 she went to correction home and not juvenile home."



**The court requires a 30-40-year-old woman to be sent into the custody of her father/ mother/ brother or family member. She may have been actually taking care of these people but in the eyes of the law, these people should protect her.**

- VAMP, Sangli

Maya of Sangli says, "I recall a case of a young girl who came from Nippani around 2010. She approached Swarna who looks like a gharwali (brothel owner) and does sex work. Swarna took her into the house. She looked very young but in fact she was above the age of 18. We asked for her age proof, but in the end it was decided that the girl looked too young and because of that, other people would get into trouble. So if the girl is above the age of 18 only then will we keep her in the gulli [brothel]. We don't keep underage girls in sex work. We explained to her that in the absence of age proof we could not keep her in the gulli. We asked Swarna to keep the girl in her home where sex work was not happening and go and get her birth certificate.

She went for a couple of days but then the hostel where she was staying refused to give her a document with proof of age. She spoke very well, and

said that I am of age and want to do sex work of my own will and hence I wanted to bring my age proof. After staying a couple of days at Swarna's home, she came to the gulli and started doing sex work. After a month, there was a raid. A policeman made a call from the nearby pan shop and the female police came and picked her up. She was taken to the police station. She told the police that she was above 18 and was willing to take them to the place where she studied and the places where she had done sex work before coming to the gulli. She even told the police that the gharwali should not be abused, because she had come into sex work of her own will and the gharwali had actually helped her. She was sent for a medical test where it was revealed that she was older than 18. Only then Swarna was released. So the gharwali [brothel owner] has to go through a lot of problems, including the family and other people in the area.

VAMP points out the irony of 'custody': "The court requires a 30-40-year-old woman to be sent into the custody of her father/ mother/ brother or family member. She may have been actually taking care of these people but in the eyes of the law, these people should protect her."

The story of Savitri from Sangli further illustrates the infantilization of women coupled with the coercion to leave sex work. During the raid in 2005 she was picked up from Gokul Nagar and sent to a Sudhar Gruha in Karad. She was presented before a judge who asked her whether she wanted to stay in the correction home. Savitri replied that she wanted to go back to the galli (brothel). The judge was abusive and accused her of wanting to stay in a 'gutter', and released her on condition of leaving sex

	JN	KP	PN	SN	ST	Total	
Active in Sex Work	34	41	25	26	13	139	<b>72%</b>
Came back to sex work and now left				4		4	<b>2%</b>
Came back to sex work and now deceased		1		8		9	<b>5%</b>
Left sex work after the raid		3		3	1	7	<b>4%</b>
Non traceable since the raid		6	3	2		11	<b>6%</b>
Repatriated to Bangladesh <sup>122</sup>			2			2	<b>1%</b>
Rescue Foundation home <sup>123</sup>			21			21	<b>11%</b>
<b>Grand Total</b>	<b>34</b>	<b>51</b>	<b>51</b>	<b>43</b>	<b>14</b>	<b>193</b>	

Table 13 : **Current status of 193 adults who were voluntarily in sex work at the time of the raid**

work. She was forced to go back to her home town. Her meagre earnings from daily wage labour on the farm are not sufficient to support her and her two hearing-impaired sisters.

Representatives from the correction home in Karad routinely visited her in her hometown to check whether or not she re-entered sex work. Eventually she did return to sex work, but not without fear and apprehension, she said. The premise of the law and law enforcement machinery is that a trafficked woman or girl will always want to be 'rescued', given a chance. However, the narratives of the women show a non-linear relationship between trafficking and the decision to continue in sex work.

Meenakshi from Koppal, Karnataka, told her story of how she entered sex work and decided to stay on. "I was working under a brothel madam in Delhi. I started working at the age of 12.

**Out of 193  
72% Still Active  
in Sex Work.**



Someone kidnapped and sold me for Rs. 5000. Two more girls were sold along with me. The Karnataka and Andhra Pradesh police raided our brothel area in Delhi as they had received a complaint of trafficking girls from here. So many young girls were trafficked. They brought all of us to Bangalore, trained in bag making etc. Many of us got released and went back to Delhi some are doing sex work there. I came back to my place [Koppal] and started doing sex work here."

The police, NGO members and others involved in ordering and conducting raids are generally not sensitive to the complex trajectory of the individuals



**122.** This information was received by the Saheli collective from Rescue Foundation after filing a Right to Information (RTI) application

**123.** As per information provided by Rescue Foundation to the Saheli Collective after a Right to Information (RTI) application was filed

they encounter during raids. The persistence of the 'victim mode' runs through the entire enterprise, along with a refusal to listen to those who are purportedly being rescued. Kiran from VAMP, Sangli, who was trafficked into sex work in 1992 said that she wishes to remain in sex work. "

Today if you pick me up in a raid and say that you are rescuing me for being trafficked 25 years back, and they tell me 'you are being exploited', I cannot accept that. I am happy today and my life is settled. Opening up an old story and saying that I am victimized is incorrect." Added Maya, "They seek to rake up what has happened in the past. They don't listen to us. Even if we scream and say that I am not victimized and exploited now, they don't agree."

VAMP says, "We don't force anyone to do sex work. It is completely their wish. Also we don't allow a minor into the sex business. We have sent around 20 to 25 minor girls back to their villages and some 10 to 12 to the remand home.

However, we have not heard anything back from the remand home regarding these girls."

### **Criminalizing the bread winner**

Shakuntala a member of Saheli Sangh CBO of Pune brought up one of the stark realities of women earning for their families, "The law says that living off the earnings of a sex workers is a crime but what about our families? Look at a labourer, he will work hard and earn money. But does the government look into his house to see what he is doing with his money? Then why do they want to control our money?"

Said Kusum (name changed) of Pune, "We should not consider the parents as criminals. They know what their daughter is doing but they can eat and stay comfortably because of her earnings that also a fact. If my parents are not well, if my father is not working, if my mother is blind, I have small siblings then if I earn and will contribute to my family they will be happy. They will say that our daughter is supporting

### **Collateral Damage**

Sangita (name changed), was picked up in the 2005 raid in Gokulnagar Sangli when she was 20. She had come from a nearby village and was doing sex work in the brothel areas. Her younger sister had come to visit her during the school break. Her sister Durga (name changed) was picked up and sent to the juvenile home as a minor in sex work. Sangita was also picked up and sent to the Rescue Home. Her protests that her sister was visiting her and not in sex work fell on deaf ears. Meanwhile, due to the media attention around the raid, people from Sangita's village heard of her being arrested. The teacher from Durga's school also appeared in court to testify that she was a regular student. All this led to immense stigma and ridicule in the village against the family. As soon as Sangita was released from the Rescue Home, she left Gokulnagar and went away. Today, both Sangita and her sister cannot be traced either in the community or in their village.

us. We have never heard that the police had arrested any family member under this clause only - living on the earnings of a sex worker. Only the girl will get arrested."

Likewise, Sudha (name changed) pointed out the contradictions in the relating to brothel keepers: "If there is no brothel keeper, where will all the women in sex work go?" According to Sagar, "The woman doing sex work in brothel is safer than a girl working outside. Going to a lodge is not always safe, a woman can earn at least something even if she is giving a cut [commission] to the brothel keeper. So, under the law a brothel keeper might be a criminal but for us she is not. Only rich customers or young sex workers can go to a lodge, many customers coming to us are daily wage earners so the brothel is the best option."

Bharati (name changed) from Kumta narrated how she turned around the section about living off the earnings of a sex worker "A rounding police (not a raiding police) knocked at the doors at about 1.30 at night. He forcibly took away the man who was with me and demanded 5000 rupees to let him go. He then came to me and threatened to click my photograph. I asked him how can a rounding police knock at a woman's door at midnight? Isn't it harassment of a woman? We haven't created any ruckus or not troubled anyone. Is it right to trouble us? By then he already had taken 2000 rupees.

Then I told him that as per ITPA section 4, it is a violation of the law to force take the earnings of a sex worker. I asked him to return the money and told him I will reach the police station in the morning. I could deal with such issue as I had received training. All thanks to the

proper training that we have received." Said Amrita (name changed) of Pune, "We know law says that you should not stand on streets, don't attract customers, but even if we don't do these things, the police still arrest us. So we will earn Rs 200 from a customer and if got arrested then we land up paying Rs 1000 as fine."

"Ok, so we can't give our income to our parents. But then what about the police? They take money from us all the time. They don't only ask us but take money from the customers too. Take them to the ATM and ask to withdraw money and hand it over. And as high as Rs 5000-6000, not just Rs 500 or 1000," revealed Kavitha (name changed) of Pune.

Sakina from Kumta, pointing out that the ITPA is supposed to prevent human trafficking said that now, it is considered a law to control sex workers. But, the law was made to prevent any type of human trafficking, like, forced labour, marriage. Society and the government think that it is meant for sex workers. It takes a lot of time to change this thinking. If someone is trafficked for work or marriage, they think that it is for survival. With sex workers, they won't consider it consensual or voluntary. It's a big challenge, because some sections in the law itself are meant to be for sex workers, like adults cannot live on the earnings of a sex worker, children cannot live in the premises where sex work takes place, etc. It implies that sex workers traffic their children into sex work. But, the fact is that we choose sex work to give our children a better life. Because of this forced separation, relations between a sex worker and her children also become fragile."

Kiran from VAMP highlighted the fact that the objective of the ITPA was not really being met. "There is certainly trafficking of minors and adults. Also, when people want to move in search of work – there is trafficking in that also. But the moral aspect is only applied to sex work. There has been no benefit [of the law] to anyone – people have only suffered the negative impact of this. And it is the sex worker who has suffered the most. If we actually see the working of this law, it does not affect the people it was meant to benefit. For instance, there are children who are moved from one place to another to be forced to work (child labour)."

Significantly, during focus group discussions when sex workers were asked if they had ever heard from any girl/woman that the police helped her if she wanted to leave sex work, the response was "no". Instead, the law was used to harass sex workers or coerce them into quitting.

Said Ambika (name changed) of Thrissur, "We don't know clearly what ITPA is, but police are using this against sex workers. Police release us if someone comes and posts bail or pays a fine. There are cases where women have arrested for one or two months under this act.

According to Mary (name changed) from Thrissur, "We have heard about ITPA but we don't know the sections under this act. Police will tell women when they arrest them. They book them under various sections. If police catch women along with their clients, women have to pay Rs.10000 and produce two persons to provide the bail. Otherwise they have to face six months' imprisonment." Selin says she was arrested for two days when police

caught two women who were in her house. Police gave them money and framed a fake case. All the women were between the ages of 25-30 years. Police arrested me under trafficking and the case was booked under ITPA, public nuisance and for the work of a pimp. Police mentioned in the case that I was involved in a 'sex racket' and trafficking of women from Bangalore and other states. The police circulated the information to all the police stations in Thrissur."

Lakshmi (name changed) of Kozhikode said, "We were arrested by town police at a time when we were not with our clients. Later we got out on bail after judicial custody of 14 days. Lawyers got us out on bail and informed us that we were booked under ITPA and this is not an easy case. It was only then that we came to know about the ITPA."

Farida (name changed) of Kozhikode added, "We know that ITPA is meant to control sex work and sex workers. But society and police has not accepted sex workers and hence we have been marginalized. We want society and police to accept us as sex workers. We want to get rid of this stigma."

Ameena (name changed) of Kozhikode had the most damning comment about the law that is supposed to prevent trafficking: "I have heard about ITPA and it is to punish sex workers."

Sakina of Kumta related a case of gross misuse of the law. "A sex worker was working in our HIV programme. She was responsible for visiting brothels and supplying condoms. Police were eyeing a particular brothel with a view to raid it. On that day, she went to the brothel, gave them condoms, came back and was standing in the bus stand. A policeman came and asked her to come with him to the police station. Since she



**When we go shopping and our relatives are with us while buying vegetables, they (police) would say that we are soliciting and they would catch us.**

**- Nirmala, VAMP**

had conducted police sensitization programmes she thought they might want to talk about the programme, she went along. However, they snatched her phone and bag, put her into a cell and did not even allow her to talk to anybody.

Though she was arrested in a bus stand, they had registered a false case of arrest during a brothel raid, showing that she was a brothel madam. Somehow, we arranged to bail her out. The case went on for four or five years and she did not even know the details of the case. Even the lawyer she had hired kept on asking for later dates so that he could extract as much as possible from her. While doing some sensitization for the judiciary, one of our members shared this story and one judge showed interest and support. Then the case was cleared saying that she was not the brothel madam."

Sakina also revealed that the police wanted to raid the brothel, but some policemen with insider contacts internally used to pass on a warning each time. This time they got a bali ka bakra (sacrificial goat). "She got harassed because of their internal grudge. Also, in a sensitization programme, she had spoken very

strongly about sex worker rights which they did not like it. This had made the men angry about her as she had challenged their ego. This was also a reason to 'fix' her."

The impact of the ITPA on daily life is described by Nirmala of VAMP, "Sometimes we are told to pay Rs. 600, sometimes Rs 1000 or Rs 1500 and then we are let off. We used to think it was over because we had paid the fine and come away. But when we go shopping and our relatives are with us while buying vegetables for example, they would say that we are soliciting and they would catch us. I remember when there was a big raid the police caught us in the middle of the market place and beat us there.

They accused us of gesturing to customers and doing sex work. 'We have caught you in a raid – now come to the police station' they said. At the police station they tell us to pay a fine and then they release us. This is repeated again after five or six days."

Says Tayevva, pointing out a basic flaw in the law, "How do they know who is doing sex work and who has stepped out of the house. How does the law differentiate between the two?" In the month of March, there is a drive to arrest since they want to show number of arrests at the end of the year, she said.

### **Criminalizing third parties**

Another challenge in the law is the criminalization and consequent harassment faced by women who are brothel owners. In the context of brothel-based sex work, narratives show that brothel owners are an integral part of the work. They provide a safe space,

and a supportive environment for sex workers. Many brothel owners are also current sex workers who give their work spaces on rent for other sex workers. The law criminalizes not just the brothel space but also the construct of the brothel owner itself. A Rights-Based Empowerment Approach<sup>121</sup> of Incorporating brothel owners into HIV/AIDS programming has shown that their position of influence can be utilized to the benefit of all interested parties. Further, engaging brothel owners in discussions about sex workers' rights may help brothel owners to work with, rather than against, sex workers. In addition, brothel owners who are themselves sex workers may be in a better position to understand the challenges sex workers face.

Programs following a community-based approach have also recognized the importance of allowing sex workers to collectively determine what role brothel owners should play and negotiate with them. When sex workers are able to define the role of brothel owners, weeding out those intent on maintaining abusive policies, it aids in rebalancing the uneven power dynamic.

Raids and consequent arrests of people for running brothels where adult consenting sex workers are present, further pushes sex workers into a position of opting for unsafe spaces to do sex work. For instance, after the shut down on the brothels in Kolhapur, all the sex workers were forced to do sex work in unsafe spaces.

**Raids and consequent arrests of people for running brothels where adult consenting sex workers are present, further pushes sex workers into a position of opting for unsafe spaces to do sex work.**

### E. New Life after the Rescue : The Myth

Going back to the stories and narratives of 193 consenting sex workers who were incarcerated for various durations, we tried to find out how they shaped their lives after release. Again, the evidence is overwhelming. 152 out of 193 (78 %) women returned to sex work after release.

Today 72% of the total consenting women continue to be active in sex work, 2% had left after doing sex work for some years either to marry partners or to settle in other places. 5% have since died, 11% continue to be incarcerated and 6% could not be traced at the time of the research. 7 women left sex work after the raids (4%).

Of the 11 women who are untraceable, 6 are from Kolhapur. According to anecdotal evidence from their peers, they left Kolhapur in fear after having



**121.** Rights-Based Sex Worker Empowerment Guidelines: An Alternative HIV/AIDS Intervention Approach to the 100% Condom Use Programme Monograph Series 2. Published by Sampada Grameen Mahila Sanstha, July 2008



**In sex work, the money is unlimited but in other work the money is limited. Also, in our own work, we are free to work when we wish and if we don't then we do not.**

- Sugandha, Sangli

been forced to give affidavits that they would leave sex work. No concrete follow-up has been possible regarding these women. Two women had been repatriated to Bangladesh as per reports provided by the NGO engaged in raid, rescue and rehabilitation.

The moot question is how these raids and the subsequent incarceration impact the women when they come out of the correctional homes. The myth associated with the return is that not only do these women give up sex work, but their lives take a turn for the better.

As the data indicates, 85% of the women chose to return to sex work, but even these women did not have it easy after their return. Discussions indicate that the impact of these periods of incarceration is devastating for the woman and her family and in many cases pushes them closer to destitution.

### **Victims of Rehabilitation?**

A discussion with women in Kolhapur generated revealing answers to the question, "You were in a correction home for nine months and were also taught new options for a livelihood. But you came back to sex work. Why have

you not thought of starting a life with the livelihood options that were made available for you?"

Said one of the women, "There was too much debt. My health is not doing well but I come here [to the city]. There is too much of debt, four children to look after and there is no one in the village to take care. It has been eight months since I came back. I have taken a room for rent and am staying there. I had kept my gold with a money lender to see my daughters through the eight months that I was locked up in the remand home. Once out, I went back to sex work in order to look after my four daughters."

Skills training for women in correction homes includes tailoring, embroidery, painting, knitting and pottery among other skills. However, in the absence of marketability of the products, such self-employment schemes remain poorly paid and below subsistence level. By no means can these options be economically viable as compared with sex work.

Sugandha explained why she would rather not do the kind of work that is suggested in the rehabilitation home – sewing or making pickles: "Because the income from this work is less." According to her, "In sex work, the money is unlimited but in other work the money is limited. Also, in our own work, we are free to work when we wish and if we don't then we do not."

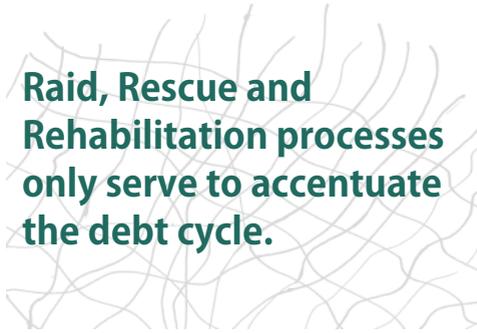
The stigma also contributes to women not wanting to go back to their villages. Says Reena from Pune who has twice escaped from rescue homes, "In the organization, they are asked if they want to stay there or want to go back to their home town. Women are afraid that if

they go back to their village, they will be caught again or not accepted by their parents. So they stay on in the organization and are given some work.”

Some of the women share that they agree to stop sex work in exchange for being released from the rescue homes. However, after staying away for 6 months to a year they return to sex work in the same areas in Pune. In the case of some of the women in Kolhapur, they left Kolhapur and started working in brothels in other places which were more secure from the indiscriminate raids.

Vidya (name changed) has been picked up twice during raids in the Pune brothels. She is hesitant to share her story as she fears that she will be victimised by the police and rescue NGOs. At the time of the first “rescue” she was married with a young child. However, at the rescue home she was repeatedly told by the officer in charge that she “must refer to her husband as a dalal [pimp] and not say that she had a child”. I told them many times to release me but they refused. They told me to learn how to make soap and agarbati (incense sticks). Some of the other women were taught tailoring. I was just not interested, but then the warden beats you if you ask too many questions. I too was beaten a couple of times. Finally, my husband contacted someone and helped me to come out. I went back to my village for a year and then returned to Pune to do sex work.”

Meenakshi from Koppal, Karnataka, told her story of how she entered sex work and decided to stay on. “I was working under a brothel madam in Delhi. I started working at the age of 12. Someone kidnapped and sold me for Rs. 5000. Two more girls were sold



### Raid, Rescue and Rehabilitation processes only serve to accentuate the debt cycle.

along with me. The Karnataka and Andhra Pradesh police raided our brothel area in Delhi as they had received a complaint of trafficking girls from here. So many young girls were trafficked. They brought all of us to Bangalore, trained us in bag making etc. Many of us got released and went back to Delhi some are doing sex work there. I came back to my place [Koppal] and started doing sex work here.”

### Increased Debt Bondage Post Rescue

The research showed that the raid, rescue and rehabilitation process only served to accentuate the debt cycle. Despite a package to rehabilitate ‘victims’ of sex work; income generation skills; small capital to set up income generation units and linkage to the local bank, village panchayat and self-help groups, rehabilitation does not seem to be yielding the intended outcomes.

Ironically, the raids become a burden for the women than a boon since it accentuates the vicious cycle of debt. Almost all the women who were interviewed separately shared that they had to take debts to pay for the legal fees, fines, pay the police. On an average a woman who was picked up in a raid paid anywhere between Rs. 2000-25000. In the case of a woman in Pune

**Many women who have been in rescue homes for several months and out of business are telling us that they not earning much now. They are forced to borrow money either from brothel keeper or money lender.**

she shared that in the first raid her husband paid money for her release. During the second period of incarceration she paid Rs. 5000 to “be allowed to run away” from the rescue home.

In Kolhapur, 28 women picked up reported that they had to pay at different points of time either as fines, to be released immediately or to be released from the rescue homes. Payments ranged from Rs 1500 to the lawyer, Rs 1000-2000 to the police who picked them, Rs 1000 to the police who released them, Rs 2000 to the brothel owner to pay the police for their release and assorted amounts for fines. Families took extensive debts when the women were incarcerated to pay off these amounts. Says one woman who was picked up in the Kolhapur raid, “Even the team of police men who left us in the middle of Aatani village, demanded money. We gave whatever money was left between all of us. We were penniless and in bigger debt by the time we were released.”

In the case of the raids in Satara, six women paid Rs. 6000, for legal fees and documentation. One woman paid Rs. 60,000 towards bail expenses and two women paid Rs. 20,000 to the lawyers. More often than not, it was the brothel owner who advanced the money to the sex workers. Women picked up in raids are usually released after making payments between Rs. 8000 and Rs 10,000 to lawyers, police personnel and other intermediaries. Says one of the women, “We gave Rs. 1000 each to the police, Rs. 2000 to the house owner, Rs. 1000 to the man who came to check if we had parents, Rs. 1500 to the lawyer. After this we were released in two batches of 14 each.” The families of the women took debts from various people to make these payments and after their release from the rehabilitation, women came back to sex work and spent considerable time in repaying these debts.

Mahadevi, member of Saheli Sangh Pune says “Many women who have been in rescue homes for several months and out of business are telling us that they not earning much now. They are forced to borrow money either from brothel keeper or money lender. The interest rates are also very high ranging from 15 to 30% per month. To sustain their daily lives they are taking loans and also send amounts to their family members in the villages. The families also have not been receiving money from the woman for a long period of time and are in need large amounts to make up for the debt that they may have incurred.”

Reena from Puneshares that as she was in shelter for a longer duration and was not able to send money to her parents (she sends at least 20 thousand rupees per month to her parents) she had no choice but to borrow Rs. 1 lakh rupees

from the money lender with 20% interest. She need that money to take care of her old parents and her elder daughter who stays in the village.

This has on occasion led to greater vulnerability for the women. For instance, Seema from Pune shares that before getting 'rescued' by force and before her stay at rescue home she was able to refuse customers if she wants but after coming back to work she is forced to entertain each and every customer as she has incurred a huge debt and has to earn much more to repay that.

Rukavva (name changed), Kolhapur says " I am doing sex work in Sangli now away from Kolhapur. A lot of money was spent during the eight months I was in the rescue home. My gold is pledged to a money lender. I have to take care of four children. I keep going to Kolhapur thinking that they will allot some land for me."

Shantamma (name changed), Kolhapur "When we were doing sex work in Kolhapur in the brothel we were paying much less since we were together. There was a municipal water connection and the electricity bill also was very low. We used to pay around Rs. 500 per month rent. Now we are living separately so the costs have gone up for us."

Bharathi from Sangli described the coercion at the correctional homes to leave sex work and adopt other forms of livelihood, "They said that we have to do the work that they will give us back in our village. We know that if we do that kind of work for a livelihood, our hunger will not go but due to fear of the police we had to say yes. All the time, I was wondering how my family would run without my earnings, my brother alone is the one who runs the



**I am doing sex work in Sangli now away from Kolhapur. A lot of money was spent during the eight months I was in the rescue home. My gold is pledged to a money lender. I have to take care of four children.**

- Rukavva, Kolhapur

house. And on one side the police say that sex work is bad. But I was so frightened that I had to tell them that I would go back to my village and do some work. After being released I was in my village for one and half year."

Gayathri (name changed) from Pune shares that in her stay at the shelter home she was made to learn tailoring, but after some time she was finally released after she said she would leave sex work and go to her village. After living for a year in her village, she returned to Pune to do sex work.

In order to break the cycle of poverty and debt bondage, Huligemma from Koppal relates that they had formed a committee under the District Collector (DC) and called about 40 to 50 sex workers. "In our presence, the DC sanctioned loans. We didn't know that that was a rehabilitation loan, we were told that it was for sex workers. There, they told us to stop sex work and take the rehabilitation facility. One of the government officials said that you can avail the loan because it is available



**Many women have stopped coming to the collective after their return. It has become much more difficult to communicate with them. The fear of the police is very high.**

- Meenatai, Pune

now and that later, we could do whatever we wanted. Some of them wanted to try and went to the bank to apply. There, they started asking hundreds of questions : how will repay, how much do you earn per client, how many clients you do in a day, etc. They denied the loan saying that they will be questioned by their auditors for not having recovery surety. None of them was able to avail the loan. The official record says that 77 of them have taken the loan and stopped sex work, but the reality is something else."

For a process that seeks to save women from exploitation, the raid, rescue and rehabilitation process only served to accentuate the cycle of debt bondage and increase their vulnerability.

### **Fear, Alienation and Destitution**

The experience of incarceration is a traumatic one for many women who emerge with a sense of increased alienation from their families and communities. Not only are they are scared to reaching out to the collectives or groups that they were part of before

being raided, they lose faith in the collective process and reject all assistance. Saheli Sangh which has been working in the Budhwarpeth and has seen the impact of long durations of incarceration on the women when they return.

Meenatai one of the older members of Saheli Sangh and its board member summarizes this, "Many women have stopped coming to the collective after their return. It has become much more difficult to communicate with them. The fear of the police is very high. They prefer to hide their identities from even the collectives and so remain out of the services provided by us."

Mahadevitai, another Board Member from Saheli Sangh adds, "A lot of them are alsoangrywith us for not helping them during the raids. They ask us, "where were you when we were being raided by the police? What did you do to help us? We came out after paying bribes. The brothel owners helped us. So why should we come to you?" Ironically, the raid and rescue measure has also pushed them into the clutches of brothel owners more than ever and pushed them underground.

Shakuntalatai founder member of Saheli Sangh says, "Brothel keepers pay regular 'hafta' to the police in order to prevent these women from being harassed and getting picked up by the police again. A lot of money has been paid to the police to ensure that they don't raid these women again. So they are very reluctant to send those women for attending regular clinic services at the collective."

Sindhu (name changed) from Jalgaon had her own home but after her home was sealed more than 10 family members were affected as they lost

their residence. She is repeatedly called to the police station and court for which she spends a lot of money. Her earnings have gone down tremendously.

There were six cousins and friends of Sindhu and they were living together as a family when the brothel was raided. They lost that support and kinship as a result of the brothel being shut down. Kasturi (name changed) one of the sex workers in the Jalgaon raids was so scared after the raid that she left the area. When she was with us, we had counselled her a lot to start using condoms and to be safe. After the raid, we have lost contact with her. Radhika (name changed) was picked up in one of the raids in Jalgaon. Local goons have destroyed her home. Because of the goons, the police had raided the community saying that there was trafficking happening. Radhika has since lost her home and is living under a bridge in Jalgaon in a temporary squalid shelter made of cloth mats.

### Marked by the Law

The spectre of another rescue and incarceration looms large on the women even after they come of the correctional home.

Bharathi, Sangli says, " My father was asked to sign a paper that I will not let my daughter do sex work again. The police used to keep telling me that if you leave sex work, we will release you. So we told them we will leave sex work and not come back. I went back to the village and I was frightened that if the police see me they will arrest me. They used to come to my house and take my signature. They used to come in police vans and check whether I was there or whether I had gone to another village for sex work. They checked three or four

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**They (police) used to come to my house and take my signature. They used to come in police vans and check whether I was there or whether I had gone to another village for sex work. They checked three or four times. Twice I was in the fields when they came. I did not have a pucca house. Fearful of being arrested I remained in the village for 1 ½ years.**

- Bharathi, Miraj

times. Twice I was in the fields when they came. I did not have a pucca house. Fearful of being arrested I remained in the village for 1 ½ years. Once I had gone to a wedding nearby and was not there to sign. My organization asked me to come to Sangli court and sign. The judge said "why do you have mehndi (colour) on your hands and nail polish – Have you have started doing sex work again somewhere else?"

### F. Combating Trafficking through Collectives

In the context of raid and rescue operations that serve only to increase the vulnerability of women in sex work and do not penalise traffickers, collectives of sex workers have made several successful interventions. The Focus group discussions brought out

many examples of effective solutions by the collectives.

Sakina of Kumta related one instance of their intervention, "Two girls from our community were married to families in Rajasthan. Initially they treated the girls well. But, when they reached home, the girls were forced to get into sex work. One girl kept informing her mother and telling her about the torture she was subjected to. Her mother tried to convince her to stay, reassuring her that



**Suppose I go to a police station and ask for help and tell them that I came from Budhwargalli (red light area) they will say go back to where you came from. You have not asked us when you came here.**

- **Sudha**, Pune

she would speak to her son-in-law and his family. One day the girl called me for help as her mother was not doing anything. She told me that her husband sends her to clients, and if she refuses to go, her mother-in-law beats her up, and denies her food. The girl's mother didn't seem to want to take up the issue. I got a sense of trafficking and insisted on talking to the girl. We got her phone number and reached her. The girl requested us to free her from the family, she did not want to stay there or go back to her mother. We helped her get a job in a clothing shop. Now, she is

on her own and happy."

Mohini related another story, "I sent my daughter for a maid's job to Karwar as that family was known to one of our office staff. To avoid her communicating with me, they had sent her to Pune, from there to Mumbai. Once in a while she used to call me and tell me that they harassed her a lot. Once, she told me that they must have tranquilized her and when she was on her bed, she felt a man sitting on her bed. I informed Mahila Kranti [an NGO] to help to get her back. Three of them went to there they did not let them know the place and instead made them wait near the bus stand. They waited patiently and freed her."

Hazrat Bi shared an incident that occurred in Gadag, "A boy had brought a girl from Naragund town. There was a fair in Gadag that day. They were sitting just outside a brothel, he was planning to sell her there. I happened to go there to get something in a nearby shop. Somehow, she escaped from him and came to me, and started crying and pleading with me to save her. The boy came along with four more men, searching for the girl. He told me that she was his lover, but, she told me that he was trying to sell her to those men. I started beating him in public. There is a police station just opposite to this place. A policeman came running to the spot, but stood by like he was not bothered. I took all of them to the police station asked them to take action. They started giving reasons. I did not take the girl to the police station, we arranged to send her off to her home. The police beat all of them up but did not register a case."

Mahadevi from Kumta related the case of a woman who wanted to leave sex

work and get married, “Two women took her to Pune saying that they would get her married. When she went there with them, they were trying to sell her off to someone. She got to know that they had sold many girls like this before. I knew her well, so I called her a week later. She did not even have currency (in her phone) to speak to me, she was in that state. Somehow, she reached here. Similarly, they had sold another woman whose child was left behind. Initially, they did not file a complaint, but she insisted on filing a case and went to court two or three times. The police however closed the case and she did not get justice.”

Meenakshi of Koppal narrated an incident in Delhi, “In the brothel in Delhi, a girl of about 15-16 was brought there. She kept crying continuously. The people at the brothel threatened, beat and did everything to stop her. I told the girl to keep crying so that they would get scared of the police getting to know. Even after so much of beatings and convincing, she did not agree to continue there. I was coming back to my place then. They sent the girl along with me. I dropped her home in Andhra Pradesh and came back. There is so much trafficking happening.”

Said Deepak an NGO worker from Gumla, “When we take an actual case of trafficking, the police does not want to help us at all, they call us pimps. They are not serious at all and instead they blame us and say that we must have a hand in this.”

Sudha (name changed) from Pune concurred that the police do not respond to sex workers who say they want to quit, “Suppose I go to a police station and ask for help and tell them that I came from Budhwargalli (red light

““

**When we take an actual case of trafficking, the police does not want to help us at all, they call us pimps. They are not serious at all and instead they blame us and say that we must have a hand in this.”**

- Deepak, Gumla

area) they will say go back to where you came from. You have not asked us when you came here.”

Amrita (name changed) of Pune added, “Once, a girl was travelling by train. She was going for someone’s wedding. A man lured her into the red-light area instead. He already had a girl in the area. She saw the new girl and started beating her. I and some other women in the area took that new girl to the police station. She told her entire story. Then we released her from that man. We gave her some money to go back to her home and sent her back. We have rescued two or three girls like that.”

However, rescuing minors is also fraught with risks, revealed Rukmini of Sangli, “Once there was a girl whom someone had got from somewhere to sell in the area. She was good looking and small in build. So, we told her to sit in one room and went and got the police. The police arrested the woman who had gone to inform the police saying that you have kept her in that room so you are the one who got her here for selling it to someone. Seven or



**The gharwali takes care of girls from problem of goondas, and HIV. If anyone is forcing someone to enter into sex work at that time we stop that too. We are not allowing the things which are problematic to girls. We stop those at our doorstep. The gharwali takes care like a mother.**

- Neelavva, Karad

eight of us went and told the truth but the police did not listen to us. So how we should help such girls?"

Lakshmi narrated the story of a girl in Desai Camp, Karnataka, "They had brought a village girl with false hopes of getting her anganwadi teacher's job. Our peer educator got to know about this when she had been there for the field work. She informed the CBO, we went there immediately and enquired with the couple who had brought the girl. They said that they have brought her for maid's work, but when we spoke to the girl, she said that she had been promised that she would get an anganwadi worker job, but, here they are forcing me to do sex work. We took action immediately. We called her parents there and asked them to take her home. They appreciated our help saying that we had saved their daughter whose life could have ruined."

Explaining why they did not approach the police, Lakshmi said, "We discussed

the case and we were ready to go to police, but, we also had to think about the girl's future. If a case is registered, we know how much harassment she would face during the enquiry, that could trouble even her marriage later in life or it might affect her chances of marriage. Hence, we all decided not to go to the police."

Nillavva of Karad highlighted the significance of support from gharwalis (brothel owners), "The gharwali takes care of girls from problem of goondas, and HIV. If anyone is forcing someone to enter into sex work at that time we stop that too. We are not allowing the things which are problematic to girls. We stop those at our doorstep. The gharwali takes care like a mother." If the presence and role of gharwali is recognized, there will be more safety for girls in the community was the consensus.

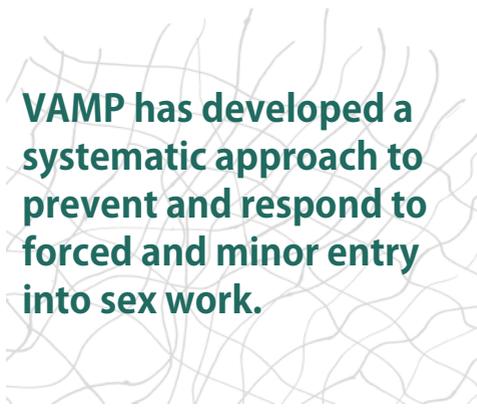
Said Lakshmi of Koppal, "ITPA is supposed to prevent children trafficking. But, some women also are being forcefully brought into sex work. They bring young women from villages by giving false hopes of jobs and push them here into sex work. This is real trafficking. If organizations like ours come to know about such incidents, we go there and inform them about ITPA and inform parents not to send their children without having enquired and confirmed information about the job. We inform both parents and people involved in trafficking about ITPA and send the children back to parents. We are there in the first instance to stop such things."

VAMP has developed a systematic approach to prevent and respond to forced and minor entry into sex work. Until 2000, there were several under-

age sex workers in the communities VAMP works with. Today there is a comprehensive system, monitored by the sex workers themselves, to ensure that no trafficked women or underage girls are working within the community. Every mohalla (site) in which VAMP works, has a committee, which acts as a dispute redress mechanism amongst sex workers. The VAMP mohalla committee monitors trafficking and liaises with the police.

When a new entrant wants to work in the VAMP areas, she must provide a birth certificate or other proof of age. Alternatively, she is encouraged to visit the local government hospital where she receives a certificate of age following a physical examination. The onus is on each gharwali (brothel owner) to ensure that the women working in her house are over 18 and copies of the birth certificates are maintained by VAMP.<sup>124</sup>

Minor girls who come to the communities to work are brought before the VAMP committee. The committee members explain why she should not enter sex work and give her information about her rights as a child. Counselling is a critical part of this process since some traffickers may exploit her vulnerability; it is not enough to just turn them away.



**VAMP has developed a systematic approach to prevent and respond to forced and minor entry into sex work.**

The committee then tries to establish who has sent the girl to the community. If they suspect that the girl has been trafficked, the issue is referred to the police, who acknowledge that women from the VAMP collective inform them whenever young girls are trafficked into the area.<sup>125</sup>

In 2015, this approach enabled the VAMP team to identify a young woman from Nepal who had been duped into marriage, taken to Allahabad and sold. When she came to Sangli, the young woman was supported by the brothel owner who was a member of VAMP to exit sex work and return to her village in Nepal. The brothel owner not only supported her to exit but also accompanied her.<sup>126</sup> To date, VAMP's strategies have enabled it to respond to 26 incidents of trafficking in its areas.



**124.** Interview with sex worker from VAMP, Sangli, India. 5 August 2008.

**125.** M. Gupte et. al., "In the Name of Rescue: A Report of the Fact-Finding Committee Investigation into the Alleged Molestation/Rape of a Minor Girl by a Decoy Customer in Uttam Nagar, Miraj, Maharashtra". May 2007, 3.

**126.** Her story is captured as a graphic narrative to educate sex worker collectives about fighting exploitative practices in sex work <https://www.sangram.org/resources/Daughter-Of-The-Hills-Sangram.pdf>



**Endnote :**

**Why Raid, Rescue  
and Rehabilitation  
Strategies Backfire**

The experiences of sex workers picked up during raids reveal that this strategy rarely addresses the issue of trafficking, but instead results in large-scale human rights violations, and in fact increases vulnerabilities such as falling into debt bondage and other exploitative practices.

“

**“They say sex work is bad and that we should stop sex work. They speak gently, give you food, medicines, toiletries, clothes, and everything but the freedom to be what you want to be”.**

**- Padmawwa,**

(In rehabilitation for eight months)

### **Why raid, rescue and rehabilitation strategies backfire**

Anecdotal information that many women return to sex work even after being ‘rescued’ and ‘rehabilitated’ provided the impetus to collect narratives to inquire into this phenomenon.

#### **We began to search for evidence to answer crucial questions :**

If women entered sex work by force then why would they want to return to sex work voluntarily?

If they entered because of lack of skills to do other jobs, why did they return after they were taught skills that could have helped them earn?

If they entered sex work due to ‘force of circumstance’ why would they return when those circumstances had changed for the better?

If they entered because of deception, lure, by unscrupulous persons who they trusted, why would they return when they were given a chance to make a ‘new’ life?

If they entered because of lack of lifechoices, why would they ‘choose’ to return?

The bedrock of the problem is the law, The Immoral Traffic Prevention Act (ITPA) which in its name itself conflates ‘immorality’ and ‘traffic’ in women, the interpretation on the ground being an anti-sex worker approach.

The law states that a woman who is “rescued” as a consequence of raid and rescue operations can be handed over into the “safe custody” of her husband or parents or guardian and this includes adult women who have consented to being in sex work.

Once the magistrate is satisfied on the antecedents and “suitability” of the husband, parents or guardians, he or she may make an order granting custody to them.

This section in ITPA which infantilizes women is debilitating for women who are in sex work as adults living independent of parents or family.

Many are heads of their households and primary providers for their families. In one instance the younger brother was the only family member. He had to ‘take custody’ of his older sister with the help of an elderly relative who was ‘produced’ for the purpose.

In many cases adult women do not inform their families that they are in sex work. When directed by the magistrate to produce husband/parents/guardians in court they are forced to contact family members in humiliating circumstances.

In many cases such custody is accompanied with an affidavit of the woman undertaking that she will not do sex work in future.

Raid and rescue are the most commonly used strategies to address trafficking in women and girls. However, the experiences of sex workers picked up during these operations reveal that the strategy rarely addresses the issue of trafficking, but instead results in large-scale human rights violations, and in fact increases vulnerabilities such as falling into debt bondage and other exploitative practices.

In the raid, rescue, rehabilitation scheme, women who want to remain in sex work are picked up and detained, which explains the high rate of returnees to sex work.

This research has also revealed the inherent violence during the raids carried out in the name of rescue. When aided by a violent police force in collusion with the 'outsiders' - anti trafficking units or 'saviours' who treat the community like criminals and believe they part of the trafficking nexus, there is a total loss of trust and hope in the women thus 'rescued'.

The narratives and quantitative data in this study demonstrate a failure to achieve both the objectives of the raid,

rescue and rehabilitation strategy: rescuing victims of trafficking and creating better livelihood options or prosecuting traffickers.

The research data validates the experience of women in sex work, realities and experiences that have not been heeded by policy makers and anti-trafficking NGOs alike.

### Listen! The Numbers Speak, the Women Speak

“ Today if you pick me up in a raid and say that you are rescuing me for being trafficked 25 years back, and tell me 'you are being exploited', I cannot accept that. I am happy today and my life is settled. Opening up an old story and saying that I am victimized is incorrect.

- **Kiran**, Sangli,  
trafficked into sex work in 1992

“ They seek to rake up what has happened in the past. They don't listen to us. Even if we scream and say that I am not victimized and exploited now, they don't agree with us.

- **Maya**, Sangli

The police, NGOs and others involved in ordering and conducting raids are generally not sensitive to the complex trajectory of the individuals they encounter during raids.

The persistence of the 'victim mode' runs through the entire enterprise, along with a refusal to listen to those who are purportedly being rescued.

Contrary to one of the usual justifications put forth for raids – minors

in sex work –, the research found that only a minuscule percentage of those raided were minors.

Additionally, the research revealed that an overwhelming percentage of sex workers who had been picked up and 'rescued' in raids had returned to sex work after release. The returnees to sex work included both those who had earlier been trafficked as well as those who had entered sex work of their own volition.

Post-raid and rescue, many had returned to sex work at great risk to themselves, given that they had signed undertakings that they would quit sex work.

What do these numbers tell us, and are we willing to listen to the women behind the statistics?

- 0.82% (2 out of 243) were minors at the time of the raid, the rest were adults
- 79% (193 out of 243) of the women stated that at the time of the raid they were voluntarily in sex work and had not wanted to be 'rescued'.
- 36% (13 out of 36) of women who had been trafficked were currently doing sex work and stated that they wanted to remain.

- 77% (168 out of 218) women who were released, returned to sex work.

The evidence thus indicates that rescue and restore missions have not only proven to be indiscriminate, violent, and destructive of invaded communities, but have also been ineffective in addressing the problem of minors in sex work and adult persons forced into sex work. Generations of police raids have not been able to combat the menace of trafficking in persons.

The only light at the end of this dark tunnel comes from the collectives of vigilant sex workers who are organizing themselves to root out the violence and abuse in their own lives and that of minors and women trafficked into sex work.

In any community, the idea that a rescue can be orchestrated from the 'outside' using an oppressive police force that incites violence rather than protection, compounds the problem.

The strategy of raid and rescue without the participation of women in sex work from that particular brothel or community offers no protection to the women forced into sex work.

This would perhaps be more evident if the voices of the women at the centre of the debate are amplified.





## **Annexures**

**1**

# **Status of Ratification of Human Rights Instruments**

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**2**

# **Analysis of individual cases**

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**3**

# **List of Cases**

## ANNEXURE 1.

# Status of Ratification of Human Rights Instruments

Key International Human Rights Treaties, Optional Protocols, ILO and other Conventions	Status
1. International Covenant on Civil and Political Rights (ICCPR), 1966	Acceded - 10 April 1979
2. International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	Acceded - 10 April 1979
3. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965	Ratified - 3 December 1968 (With Reservations)
4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979	Signed - 30 July 1980, Ratified 9 July 1993 (With Reservations)
5. Convention on the Rights of the Child (CRC) 1989	Acceded - 11 December 1992
6. Convention on the Rights of Persons with Disabilities (CRPD), 2006	Ratified - 1 October 2007
7. Optional Protocol to the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflict 2000	Ratified - 30 November 2005
8. Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution and Child Pornography, 2000	Ratified - 16 August 2005
9. UN Convention against Transnational Organized Crime (UNTOC) a. Protocol to Prevent Suppress and Punish Trafficking in Persons especially Women and Children b. Protocol against the Smuggling of Migrants by Land, Sea and Air	Ratified - May 2011

Key International Human Rights Treaties, Optional Protocols, ILO and other Conventions	Status
c. Protocol against the illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition	Ratified - May 2011
10. ILO Forced Labour Convention, 1930 (No. 29)	Ratified - 30 November 1954
11. ILO Equal Remuneration Convention, 1951 (No. 100)	Ratified - 25 September 1958
12. ILO Abolition of Forced Labour Convention, 1957 (No. 105)	Ratified - 18 May 2000
13. ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Ratified - 3 June 1960
14. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984	Signed - 14 October 1997

### Not Ratified

15. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMRW), 1990	Not Signed
16. International Convention for the Protection of All Persons from Enforced Disappearances (ICPAPED) 2006	Signed - 6 February 2007 Not Ratified
17. First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), 1966. Op Prot -1	Not Signed
18. Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), 1989. Op Prot - 2	Not Signed
19. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), 2008	Not signed
20. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, 1999	Not signed

Key International Human Rights Treaties, Optional Protocols, ILO and other Conventions	Status
21. Optional Protocol to Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 2002	Not Signed
22. Optional Protocol to the Convention of the Rights of Persons with Disabilities (CRPD), 2006	Not signed
23. ILO Freedom of Association and Protection of the Right to Organize Convention 1948 (No. 87)	Not ratified
24. ILO Right to organize and Collective Bargaining Convention, 1949 (No. 98)	Not ratified
25. ILO Minimum Age Convention 1973 (No. 138)	Not ratified
26. ILO Worst Forms of Child Labour Convention, 1999 (No. 182)	Not ratified



## ANNEXURE 2.

# Analysis of individual cases

This section narrates relevant facts, the decisions by the High Court and critical comments with respect to each of the cases.

### 2010-2012

#### 1. Tara versus State W.P. (Crl) 296/2012 (Delhi High Court)

**Facts :** The Andhra Pradesh police conducted a raid in the red light area of Delhi and detained 41 women on the basis of a search warrant dated 20.2.2012 issued in a criminal case by the Magistrate, Anantpur, Andhra Pradesh.

The women were produced before the Magistrate in Delhi asking for transit remand to be taken to Anantpur in Andhra Pradesh. The women were adults and did not want to go to Anantpur.

The Delhi Magistrate passed an order dated 22.2.2012 under Section 17(1) ITPA granting permission to the police to keep the women in safe custody and take them to Anantpur. The women were sent to the Nari Niketan (rescue home) in Delhi to await being transported to Anantpur.

The Delhi Magistrate Order was challenged in Delhi High Court on the ground that the petitioners lived in Delhi and the 'rescue' made by A.P. Police uprooted them and forcibly transported them against their consent and violates the fundamental rights to

equality under Article 14 and life under Article 21 of the Constitution.

The National Commission for Women wanted the women kept in intermediate custody for counselling and till a plan for their rehabilitation was formulated.

**Note :** In a similar operation by the A.P. Police in January 2008, 150 women had been picked up from Delhi where they had been residing, out of which 75 were forcibly transported to Andhra Pradesh.

**Decision :** The Delhi High Court held that the case was not covered by Section 15 as it was not a case of search without warrant. Neither was the case covered under Section 16 where a magistrate authorizes 'rescue' on receiving a complaint.

The High Court held that the coercive manner in which the police acted was violative of the fundamental rights to equality and life and ordered the release of the women detained in the Women's Home in Delhi.

**Comment :** The case is illustrative of :

- (a) The fact that adult persons, in the present case women who have attained majority, are forcibly picked up without their consent from their residing place by the police, even though they are not accused of any offence in the the guise of 'rescue' under the working of ITPA.
- (b) The fact that adult women are then detained against their will and

forcibly transported to places against their consent under the working of the legislation.

- (c) That it is likely that had the requirements of Sections 15 and 16 of ITPA been fulfilled the adult women may have been forcibly transported to Andhra Pradesh.
- (d) That the women were picked up on 22.2.2012 and spent about a month and a half in detention till their release by the High Court order dated 13.4.2012.
- (e) The importance of access of sex workers to the higher judiciary. The magistrate in Delhi had ordered their detention and forcible transportation to Anantpur.

## **2. Sangeeta Ashok Sanap versus State of Maharashtra 2011 Cr.L.J. 2206 (Bombay High Court)**

**Facts :** The Commissioner of Police, Mumbai sealed the premises on the ground that illegal activities attracting the provisions of the ITPA were being carried out. The power of the Commissioner to order sealing was challenged as well as the issue of being within 200 meters of any public place was disputed.

**Decision :** The Court held that the power to attach and evict included the power to seal the premises. The High Court refused to go into the dispute about the premises being situated within 200 meters of a school.

**Comment :** The case is illustrative of the fact that the interpretations of law by courts coloured by moral disapproval of sex work generally favour criminalizing activities around it.

## **3. Renu Bansal versus U.T. Chandigarh 2010 Cr.L.J. 600 (Punjab and Haryana High Court)**

**Facts :** Three women were sitting in a car and one man was standing outside the car. The police sent a 'decoy' customer with marked notes who went to the car and gave the money. The police immediately apprehended them and recovered the notes from the women.

**Decision :** The trial court convicted two women of soliciting for prostitution and the man for living off the earnings of prostitution and procuring, inducing or taking a person for prostitution. The appeal was dismissed by the Sessions Judge.

The High Court held that none of the women were offered to the decoy customer.

The women did not come out of the car or offer their bodies for sexual intercourse and could not be held to be sex workers. The High Court acquitted all three of the charges against them.

**Comment :** The case is illustrative of -

- (a) The importance of access to higher courts. In this instance two lower courts had on specious evidence wrongly convicted the persons under ITPA.
- (b) The discrimination against sex workers evidenced in the practice of sending 'decoy' customers to apprehend persons. The moral disapproval of sex work leads to the acceptability of such a practice which would otherwise fall within entrapment. Such a practice would not be considered acceptable to

establish other offences like theft and robbery.

#### **4. Yogesh versus State of Rajasthan 2010 Cr.L.J. 629 (Rajasthan High Court)**

**Facts :** The accused person lured a minor who got separated from her parents in a train and took her to his village, raped her and compelled her to prostitution.

**Decision :** The accused was convicted of abduction, procuring a minor for prostitution, rape under the Indian Penal Code and for using premises as a brothel and seduction of a person in custody for prostitution under the ITPA.

**Comment :** The case has no bearing on the question of discrimination against sex workers.

#### **5. N. Vijaya versus State of Karnataka 2010 Cr.L.J. 1050 (Karnataka High Court)**

**Facts :** The accused man was convicted of abducting, rape, criminal intimidation, hurt under the IPC and for the offence of taking a person for prostitution under ITPA by the trial court. The woman had alleged that she was taken to various lodges and compelled to prostitution.

**Decision :** The High Court maintained the conviction under the IPC but acquitted the accused of the offence under ITPA.

**Comment :** Under the ITPA, a law purportedly brought in to check exploitation and trafficking, the convictions predominantly are of sex workers. Rarely are traffickers, hotel/lodge owners or pimps convicted

under the legislation.

#### **6. Narmada Govind Kamble versus State of Maharashtra 2010 Cr.L.J. 1220 (Bombay High Court)**

**Facts :** International Justice Mission an NGO, reported that a minor girl A who was previously rescued was again working as a prostitute in the same brothel. The police raided the premises on 3.5.2002 and found two girls with makeup sitting there, A and B. The case pertains to B.

In the statement to the police at the time B stated that she was 18 years of age and was voluntarily working as a prostitute and no one had forced her. B was sent to a rescue home.

On 20.7.2002 B gave a statement to the Probation Officer that she had been brought on the promise of domestic work and forced to prostitution. Five persons were charged with various offences based on the statement.

**Decision :** The High Court confirmed the conviction of three persons for running a brothel and living off the earnings of prostitution under ITPA. The persons were also convicted for procuring, wrongfully confining, selling and buying a minor girl for prostitution under the IPC.

The court held that : "Even if it is presumed that she was 18 years of age at that time, she was brought in the prostitution about 5 to 6 months before that and therefore it can be held that she was minor at the time when she was first put in prostitution".

**Comment :** The case is illustrative of:  
(a) The discriminatory nature of the working of ITPA in the context of B at

the time of raid stating that she was 18 and was voluntarily doing sex work, yet being 'rescued' and sent to a rescue home.

- (b) The working of ITPA in the context of the consent of an adult person at the time of the raid. The court even presuming that B was 18 at the time of the raid held that she 'was a minor at the time she was first put in the prostitution'.
- (c) The working of the raid and rescue policy. A had been rescued three months back and was back at the same place.
- (d) The role of NGOs who without any consultation with sex workers may initiate operations of 'raid and rescue'.
- (e) The working of ITPA in practice leading to detention of sex workers, not charged with any offence, but rescued under the Act.

### **7. Smt. L versus State of U.P. Criminal Misc Application No. 30421 of 2010 (Allahabad High Court)**

**Facts :** A First Information Report (FIR) was lodged by a social organization Sankalp and charges of running a brothel, living off earnings of prostitution, procuring and detaining a person for prostitution were made under ITPA.

The petition in the High Court was for quashing the charges as under ITPA special police officers are to be appointed for dealing with offences under the Act and the FIR had been filed by a private person.

**Decision :** The Court observed that under ITPA the Special Police Officer is

to hold the investigation and carry out searches and seizures, however, the Act does not specify the manner of lodging a FIR. The Court declared that any person can lodge an FIR and refused to quash the charges, holding that the FIR by the NGO was maintainable.

**Comment :** Like the previous case, the case is illustrative of the role of social organizations in 'raid and rescue' operations, which at times can lead to long periods of detention of sex workers in rescue homes.

### **8. Nitu vs Government of National Capital Territory of Delhi, W.P. (C) 4414 of 2012 Delhi H C**

**Facts :** The Sub-Divisional Magistrate, Paharganj, Delhi by order dated 21.7.2012 issued notices to owners/manager to four kotha/brothel owners under Section 18 (1) ITPA for eviction as premises were being used as a brothel. The manager/owners filed replies and were heard by the Sub-Divisional Magistrate and eviction orders came to be passed. The constitutional validity of Section 18(1) ITPA was challenged as arbitrary, unreasonable and violative of the right to equality under Article 14 of the Constitution. The orders were also challenged on the ground that notice had not been issued to the occupiers/residents of the premises.

#### **Decision :**

- i. The High Court held that the power of to issue notice for eviction for use as a brothel under Section 18(1) ITPA was conferred on the District Magistrate or the Sub-Divisional Magistrate as a preventive measure to minimize the chance of a brothel being run within 200 metres of a public place.

- ii. The power under Section 18(2) to pass order of eviction was conferred on a Judicial Magistrate exercisable after conviction under Section 3 or 7 of the ITPA.
- iii. The Court declared that the power conferred under Section 18(1) ITPA was not arbitrary and upheld the constitutional validity of the provision.
- iv. The Court held that under Section 18(1) ITPA it was not mandatory to issue notice to the occupants/residents and the notice could be issued to any of the persons mentioned in the provision - owner, agent of owner, landlord, person-in-charge, tenant, lessee or occupier.
- v. The four orders of the SDM were upheld as valid.
- vi. However, opportunity was given to the petitioners to submit their objections to the SDM within four weeks and the SDM directed to pass orders in accordance with law.

**Comment :**

- a) In the arena of sex work morality plays a role in the interpretations of the provisions as well as their validity.
- b) The provision under Section 20 ITPA giving power of removal of a prostitute from a locality is blatantly discriminatory and violative of equality. However, the Supreme Court in 1964 in the case of State of UP versus Kaushalya Bai upheld the constitutional validity of the provision reflecting the stigmatized position sex workers in society.

**2013**

**9. Shila Devi vs The State of Bihar, Criminal Appeal (SJ) No. 428 of 2013, Patna H C**

**Facts :** According to the prosecution Shila Devi was apprehended along with the victim, a minor girl, while going on a rickshaw. There was a verbal altercation and protest by the victim which attracted the attention of the police and they were taken to the police station. The police found that there is variation in the statement of the Shila Devi and the minor girl and suspected that the girl was being taken for illegal purposes. A case under ITPA was filed and Shila Devi was convicted under Section 5 ITPA. Shila Devi appealed against her conviction to the High Court.

**Decision :**

- (i) The High Court held that the finding that the girl was being taken for prostitution is mere conjecture and it had not been established that she was being taken for prostitution.
- (ii) There were grave material contradictions in the testimony of the girl before the Magistrate and the Court.
- (iii) Shila Devi was given the benefit of doubt and acquitted of the charges.

**Comment :**

- (a) Apprehending and charging persons indiscriminately under ITPA is a common practice.
- (b) The case illustrates that at times mere suspicion and conjecture lead to arrest and detention with no concrete evidence.

**10. State Vs Deepak, Sessions Case No. 57 of 2013 Additional Sessions Judge Special FTC-2 (Central), Tis Hazari Courts Delhi**

**Facts :** The case was of a refugee woman from Rwanda who was kidnapped, robbed, beaten up and raped by four persons in a car. She initially went to the police station but they disbelieved her, refused to take her to hospital and did not file an FIR. It was after two days with the help of an NGO that she was taken to hospital and a medical examination done. There was medical evidence in the nature of injuries, matching of DNA samples, the recovery of the articles robbed from the prosecutrix from the accused. The testimony of the prosecutrix as to the identity of the accused was not clear due to her semi-conscious state and due to darkness at the time of the incident. One of the defences put forth by the accused was that the complainant was doing the work of prostitution and had falsely implicated the accused.

**Decision :**

- (i) The Sessions Court held that "even if it is accepted that prosecutrix was doing the work of prostitution, in view of her claim that accused established sexual relations with her without her consent, the same has to be accepted by virtue of presumption under Section 114A the Indian Evidence Act.
- (ii) The Court held that the mere fact that she was working as prostitute does not in any manner confer any right whatsoever upon the accused to violate her in any manner.
- (iii) The Court convicted the accused for the offences of kidnapping, robbery and gang rape.

- (iv) The Court awarded ten years imprisonment as sentence and reiterated that "simply because the victim was working as a sex worker before the incident in question, does not confer any right upon anyone to violate her dignity or to rob her and can certainly not be a ground to award lesser than the minimum prescribed punishment".

**Comment :**

- (a) Criminal Law is uniform and makes no distinction based on the profession of the person. In law the fact that a person is a sex worker should not impact a complaint of rape. However, in practice it is extremely difficult to get the police to lodge an FIR and prosecute cases of violence and rape against a sex worker.
- (b) In the present case the police initially disbelieved the complainant, refused to take her to hospital and did not lodge an FIR.
- (c) The statement by the Sessions Court that a person being a prostitute/sex worker does not give anyone to violate her dignity is unequivocal and clear.
- (d) Similar pronouncement by courts may contribute to a change in mindset in the context of violence against sex workers.

**11. Preeti Vs. State of Punjab, Crl. Misc. No. M-10378 of 2013, Punjab & Haryana HC**

**Facts :** The petition was filed for quashing of FIR under Sections 3, 4, 5 of the ITPA and Sections 420 and 377 of the IPC. The sole ground submitted was that that the Assistant Commissioner of

Police, Model Town, Jalandhar, is not competent to conduct investigation in regard to offences registered under the Act as the investigation in these cases can be conducted by a Special Police Officer appointed in this behalf by the State Government in compliance with the provisions of Section 13 of the Act. The State submitted that all ACPs were authorised by the Government as Special Police Officers under Section 13 ITPA.

**Decision :**

- (i) All DSPs were authorised as Special Police Officers under ITPA.
- (ii) After introduction of Commissionerate system DSPs were re-designated as Assistant Commissioners of Police and, therefore are competent to investigate offences under the Act.
- (iii) The petition to quash the FIR was dismissed by the Court.

**Comment :**

- (a) The passing of blanket notifications by State Governments authorising all police officers of a rank as Special Police Officers under ITPA detracts from the precautionary purpose to be served by the provision to prevent undue harassment of sex workers.

**12. Hotel Sooriya Heritage Inn versus Collector-cum-District Magistrate, Puducherry, 2013 Cr.L.J. 359 (Madras High Court)**

**Facts :** There were allegations by a woman that she was being compelled to stay with two persons at Hotel Sooriya which she refused and was threatened with dire consequences. District Magistrate ordered closure of the hotel as falling within the definition of 'brothel'.

**Decision :** No material to show anyone in the management of hotel had knowledge of the room being used for "sexual exploitation or abuse". The order of closure set aside by the Madras High Court.

**Comment :** The case without going into the merits of the decision is illustrative of the fact that a law (ITPA) brought in to penalize exploitation and trafficking, in practice overwhelmingly results in the conviction of sex workers. The number of hotel owners or 'agents' convicted under the law is negligible.

**13. Court of its own motion through Shakti Vahini Vs State. W.P. (Crl) 891 of 2013 Delhi H C**

**Facts :** The Delhi High Court on its own motion took up the issue of rescue and guidelines of human trafficking with the assistance of the NGO Shakti Vahini. On 10.7.2013 it noted the rescue and sending back of a girl to her parents in West Bengal as well as the rescue of a girl from Nepal lodged in Nari Niketan and ongoing efforts to locate her parents. In addition, the court directed that a status report regarding the number of rescue operations between 1.1. 2012 and 10.7.2013, the FIRs registered and the fate of the cases be filed in court within four weeks.

The case came up on intervening dates without any significant order being passed. The case was listed on 27.11.2013 and the counsel for the Government of the National Capital Territory of Delhi submitted that Delhi Government shall notify in the Gazette, Minimum Standard of Care, taking into account of the guidelines issued by the State of Andhra Pradesh within eight weeks. She also stated that in addition to the guidelines which were issued by

the Government of Andhra Pradesh, Delhi Government wants to add some additional features to the same.

The counsel further assured the Court that the membership of the State Advisory Committee shall be pruned within a period of four weeks and the meeting of the reconstructed Committee shall be called once a month.

**Decision :** The Court by order dated 27.11.2013 accepted the statement and the assurances by the counsel for the Government of the National Capital Territory of Delhi and noted that it was satisfactory to the petitioners and disposed of the writ petition.

**Comment :**

- (a) The interim court orders do not indicate any data about the number of rescue operations during the period 1.1.2012 and 10.7.2013 or the fate of any cases filed in this regard.
- (b) After initially taking up the issue of the number of rescue operations and follow up proceedings, the High Court seems to have moved away from the subject.
- (c) The short order dated 27.11.2013 indicates that there was a consensus among the Delhi High Court, the NGO Shakti Vahini and the Delhi Government that the Andhra Pradesh guidelines with special features added by Delhi Government were satisfactory and acceptable.

## 2014

### 14. M. Ramakrishna Vs The Sub-Divisional Magistrate & anr. 2014 CrLJ 2013 Andhra Pradesh H C

**Facts :** Ramakrishna was a managing partner of a lodge situated at

Jaggiahpet, Krishna District of Andhra Pradesh. The Inspector of Police, Jaggiahpet Circle raided the lodge on 3.5.2010 and registered offences under Sections 3, 4 and 5 of the ITPA. Based on the information furnished by the police, the Sub-Divisional Magistrate issued a notice dated 2.6.2010 under Section 18(1) of the Act calling for explanation of the petitioner as to why the lodge should not be attached on the ground that it was used as a brothel. The petitioner submitted his explanation on 8.6.2010. The Sub Divisional Magistrate & Revenue Divisional Officer Vijayawada held that:

- (a) The explanation given by the individual is not correct and his version that the hotel is being run by employees shows his irresponsibility and is not convincing.
- (b) That prostitution is being carried out in the hotel and the hotel owners were also aware of the matter.

The Sub Divisional Magistrate & Revenue Divisional Officer, Vijayawada ordered immediate closure of the 2nd and 3rd floors of Hotel Indu, Jaggiahpeta U/s. 18(1) of the ITPA.

**Decision :**

- (i) Section 18 ITPA clearly shows that the Magistrate on receipt of information from the police or otherwise that a house is being run as a brothel, after issuance of notice to the owner or lessor, may pass orders directing eviction of the occupier of house and directing before letting it out during the period of one year the landlord should obtain the previous approval of the Magistrate.
- (ii) The Magistrate was not given any power for attachment of the

premises directly. The order of the SDM of closure of the 2nd and 3rd floors of the lodge with immediate effect was held to be illegal and set aside.

**Comment :**

- (a) Arbitrary action taken by the Executive without following the provisions of the law.
- (b) Shows that there is space of corrective action if persons are able to approach the High Court, although in a number of cases persons may not be in a position to pursue remedies in higher courts.

**15. The State of Maharashtra Vs. Chatish Arunachalam Das 2014(3) Bom CR (Cri) 438 Bombay H C**

**Facts :** A father and two of his friends were accused of rape of his minor daughter aged nine years and charged under Section 376(2)(g) of the Indian Penal Code and under Section 5 of the ITPA. The trial court acquitted the accused of the offences. The State appealed against the decision.

**Decision :**

- (i) The High Court upheld the acquittal of the accused.
- (ii) The testimony of the child that her father would take her on Sunday and send her to two of his friends was tutored by the grandfather.
- (iii) That the grandfather had a dispute with his son-in-law, the father of the minor girl.
- (iv) Medical evidence given did not support the allegation of systematic sexual abuse of the child over a period of time.

**Comments :**

The case is illustrative of :

- (a) The insensitivity of law to trauma

survivor testimony.

- (b) The difficulties of child testimony in the context of the requirements of law, more so in incestuous child sexual abuse.
- (c) The subjection of humiliating procedures like the 'two-finger test' leading to trauma in survivors in cases of rape.
- (d) The application of doubtful procedures and norms of medical evidence accepted by courts as lack of corroboration of the survivor testimony.

**16. Ranjana Pathak Vs. State. 2014 ALLMR (Cri) 2895, Bombay H C Goa Bench**

**Facts :** A minor girl from Bangladesh aged about 14 years was lured by the promise of a job in Dubai and smuggled into India. She was taken from Howrah to Mumbai and thereafter to Ahmedabad. The girl was beaten, raped and forced by the accused Ranjana to have sexual intercourse. Thereafter, she was taken to a brothel in Gandhigram, Gujarat. The girl requested the wife of the brothel owner to help her and that she was not willingly doing such work. The wife convinced her husband not to use the prosecutrix as a prostitute and sent the girl to Mumbai with the hope that the person who brought her would help her to return to Bangladesh. Instead, she was taken to Goa and raped. At the hotel she was taken to, there was an altercation between the hotel manager and the three persons who had taken her there and the police entered the picture. On the basis of the testimony of the girl, various persons including Ranjana were charged with offences under the ITPA and IPC. The Trial Court believed the girl and held that at the relevant time, she

was less than 16 years. Ranjana was convicted and sentenced for offences punishable under Section 4(1), 5(1)(d) of the ITPA and under Section 323 and 342 of the IPC. She was sentenced to the maximum imprisonment of 7 years and also directed to pay compensation of Rs. 50,000 to the victim girl under the provisions of the ITPA.

**Decision :**

- (i) The High Court believed the testimony of the girl and held that the girl was a minor and upheld the conviction.

**Comment :**

- (a) The wife of the brothel owner helped the minor girl on getting to know her story. Compared to raids and rescue by police resulting in large-scale violation of rights, sex workers collectives have advocated control through Self Regulation Boards to check the entry of minors and trafficking. The present case illustrates that self-regulation may be a method worth exploring.

**17. Delhi High Court Legal Services Committee Vs. UOI. 214(2014)DLT1. Delhi High Court**

**Facts :** Two young girls A and B, aged 14 years and 16 years respectively, were rescued by the Delhi Police on July, 29, 2009 and a First Information Report (FIR) was registered under Sections 366A, 368, 373, 323, 376, 109 read with Section 34 of the IPC and sections 3, 4 and 5 of the ITPA. As per the complaint, it appears that A and B, hailing from extremely poor families of South 24 Paraganas in West Bengal, were fraudulently lured to Delhi, sold and compelled into prostitution by their captors till they were rescued by the police. After the rescue the girls were

then produced before the Child Welfare Committee for Care and Protection and lodged in the Children's Home for Girls.

A person claiming to be the father of B filed an application before the Metropolitan Magistrate, seeking custody. The Magistrate scrutinised the voter identification card, ration card and transfer certificate of the applicant concluded that the applicant was the father of one of the girls and passed the order for handing over her custody to the applicant as he was her natural father.

The High Court stayed the order of the Magistrate and directed the Delhi Legal Services Authority to file a petition. The grievance made by the petitioner in these proceedings, was an objection to the failure of the learned Metropolitan Magistrate to conduct the inquiry postulated under section 17A of the IT Act, 1956 before directing release of the victim by the Magistrate. Thereafter the petitioner pointed out that the matter was to be examined in the light of the Juvenile Justice (Care & Protection of Children) Act, 2000 (JJ Act 2000) and not by the Magistrate under section 17A of the IT Act, 1956. It was submitted that only the Child Welfare Committee constituted under Section 29 of the statute would have the jurisdiction to rule on the issue of the competence of the application for custody by a person claiming to be the parent.

**Decision :**

- (i) A person under eighteen years of age who is recovered in police action under Sections 15 and 16 of ITPA has to be treated as a 'child in need of care and protection' within the meaning of the expression under the JJ Act 2000.
- (ii) A person under the age of eighteen

years, if found involved in any aspect of trafficking or prostitution under ITPA or is rescued in police action under Section 15/16 of the IT Act cannot be treated as a juvenile in conflict with law' and has to be treated as a child in need of care and protection' under the JJ Act, 2000.

- (iii) It is only the Child Welfare Committee constituted under Section 29 of the JJ Act, 2000 which has the final authority in respect of the custody and restoration of a child victim, a child in need of care and protection.
- (iv) A person rescued by the police under the IT Act, 1956 and produced before the Magistrate appears to be under 18 years of age, then the person must forthwith be transferred to the Child Welfare Committee.
- (v) The order by the Magistrate giving custody to the father was held to be contrary to law and set aside.

**Comment :**

- (a) The case illustrates the fact that the practice followed by the police and magistrates is often at variance with the law.
- (b) At times, regardless of the benevolent provisions of law the minors 'rescued' experience it as arrest and are treated with stigma as an accused with their rights to life and liberty violated.
- (c) A person who is an accused can be punished with confinement of a fixed period depending on the specific offence for which he/she is convicted.
- (d) A person 'rescued' can be kept in confinement up to the age of eighteen years. While a person accused of other crimes has a right to be released on bail, an accused

does not have any right to release from the juvenile home.

**18. State of H.P. Vs. Shiv Chand. Cr. Appeal No. 485 of 2011. Himachal Pradesh H C**

**Facts :** Shiv Chand and Lalita Tamang are alleged to have committed offences under Sections 363, 366, 368, 120-B of the Indian Penal Code and Section 6 ITPA. However, accused Shiv Chand absconded and could not be apprehended and was declared a proclaimed offender. Lalita Tamang stood trial and was convicted for offences punishable under Sections 365, 368, 109, 376 read with Section 34 of the IPC and Sections 5 and 6 of the ITPA. In the meantime, co-accused Shiv Chand was apprehended and produced for the first time, on, 31.8.2010 before the Learned Sessions Judge, Kinnaur Division, at Rampur Bushahr. Shiv Chand recorded, a statement before the learned Sessions Judge to the effect that the statements of the prosecution witnesses as recorded, in his absence, be read against him. The sessions judge accepted this and acquitted Shiv Chand.

**Decision :**

- (i) The High Court held that the procedure adopted in the circumstances was not valid, set aside the acquittal and remanded the case back to the Sessions Court for re-recording of evidence.

**Comment :**

- (a) The judgment has to do with procedural law pertaining to evidence and does not have relevance from the point of view of sex work.

**19. Ashok Rai Vs. State. Criminal Petition No. 5718 of 2014. Karnataka H C**

**Facts :** Ashok Rai, owner of a bar and restaurant filed a petition seeking anticipatory bail in the event of arrest for offences punishable under Sections 188, 370(3), 370A, 294, 109 of IPC and Section. 35 of Excise Act. The accused argued that the case under Section 188, 370(3) and 370A are not applicable to the case and that admittedly no case has been registered under the ITPA. That the girls were majors and that he was innocent and not involved in the crime to the alleged offences and may be enlarged on bail.

The prosecution submitted that the girls were not entrusted with the work of supplying drinks to the customers coming to the bar and restaurant but were instead asked to dance in "obscene dress", "giving provocation to the sex feelings" and thereby they have been exploited by the accused persons.

**Decision :**

- (i) The High Court held that prima facie, the material collected by the raiding party shows that mikes were fixed and lights were also put in the room leaving the space in the middle for dance.
- (ii) These materials go to show that they have been used and exploited to dance in the presence of the customers and rejected the anticipatory bail application.

**Comment :**

- (a) The issue of bail is discretionary and leaves room for the judge's own biases, prejudices and stereotypes to play out.
- (b) There is no allegation that there were minor girls.

- (c) The dancing was in the bar and restaurant and not a public place.
- (d) It could hardly be said that the patrons of the bar were offended and that the dance constituted public nuisance.
- (e) The raid as well as the rejection of anticipatory bail application seems a direct reflection of the moral disapproval the activity.

**20. Bidhu Bhushan Mahapatra Vs. State of Karnataka. Criminal Petition Nos. 1628, 1637 and 1979/2014, Karnataka H C**

**Facts :** These petitions were filed seeking release on bail of the alleged offences punishable under Sections 4, 5 and 7 of the ITPA and under Section 14 of the Foreigners Act, under Section 67 of the Information and Technology Act, 2000 and also under Sections 370-A(2), 370 and 292 of the IPC.

The case of the prosecution is that the complainant received the information that through international website some persons are indulged in human trafficking in Bangalore city by taking Iranian girls for prostitution and earning money. A decoy was selected to arrange for girls and accordingly, at 6.30 p.m. they went to the specified apartment. The petitioner and two Iranian women were found and taken into custody. It was ascertained that two websites were being run and through it customers were attracted.

The accused petitioners submitted that as per the provisions of the ITPA, a specially authorized officer has to conduct raid in the matter. In this particular case, no such authorization was made and the alleged raid is said to have been conducted by the police officer who was not authorized by any

order. Therefore, the whole raid proceedings are vitiated. Further that it is not the case of the prosecution that accused were indulging in prostitution at the time of raid. According to the case of the prosecution accused Nos. 1 to 3 were present and no clients were there at the time of the raid proceedings. That the investigation of the case is almost completed and the petitioners be released on bail.

**Decision :**

- (i) The High Court observed that as per the prosecution case when they conducted raid proceedings they have seized incriminating materials at the time of raid. Nothing further is to be seized from the petitioners.
- (ii) The Court held that according to both sides, investigation is almost completed and charge is to be filed the next day and directed release of the petitioners on bail.

**Comment :**

- (a) The Court chose not to comment on the crucial issue of the police officer not being authorised under ITPA and therefore the proceedings being vitiated.
- (b) Investigation was almost complete was agreed to by the prosecution and this was a factor which weighed in favour of release on bail.
- (c) Generally, even where no recoveries are to be made and investigation is complete, the prosecution does not admit the state of affairs thus creating obstacles in getting bail for the accused persons.

**21. Antony Vincent Vs. State of Kerala, 2014(3)KLJ517, Kerala H C**

**Facts :** A Police Officer got information that prostitution was going on in Kerala Ayurveda Chikitsakendram, housed in

building No. 39/1440 of Cochin Corporation. On receiving the information, the City Police Commissioner, Kochi authorised the Circle Inspector of Police, Ernakulam Town South Police Station to conduct a raid. He prepared a search memo and forwarded it to the concerned court. According to the prosecution in the raid conducted thereafter, it was found that accused 1 and 2 were engaged in prostitution and accused 3 and 4 were conducting the brothel. 5th accused was waiting for his chance of prostitution. The accused were charged under sections 3, 4 and 7 of ITPA.

**Decision :**

- (i) The essential ingredients to constitute an offense under Section 3 of the Act are that the accused must keep or manage or act or assist in the keeping or management of a brothel. The Court found that there is no allegation either in the FIR or in the final report that the petitioners were found keeping a brothel or managing a brothel or acting or assisting in the keeping or management of a brothel and held that the basic ingredients in Section 3 of the Act were not applicable.
- (ii) Section 4 of the Act deals with punishment for living on the earnings of prostitution. The Court found that it cannot be held that the petitioners ever indulged in the acts prohibited by Section 4 of the Act.
- (iii) ITPA requires that the investigation into the offences be done by an authorised Special Police Officer. The Court held that the Commissioner of Police is not competent to grant a special power conferred by any statute to an Officer beyond his jurisdiction, thereby permitting him

to exercise powers beyond his limits

- (iv) The High Court quashed the charges under Sections 3, 4 and 7 of the ITPA.

**Comment :**

- (a) The case illustrates the tendency of the police to charge under several heads regardless of the specific facts of a case.
- (b) The judgment is a good example of an interpretation in keeping with the object of ITPA which permits only authorised Special Police Officers to investigate the offences under the statute.
- (c) The measure is meant as a salutary measure to prevent abuse and harassment of sex workers by the police.
- (d) Governments have time and again sought to sabotage this by issuing blanket notifications authorising all police inspectors as Special Police Officers and making a mockery of the salutary provision.

**22. C.P. Raju Vs. State of Kerala, 2014CriLJ2936, Kerala HC**

**Facts :** The petition was filed to quash charges under Sections 4 and 5 on the grounds that there was violation of mandatory provision of the Act and the investigation was conducted not by a special officer appointed by the Government under the Act.

**Decision :**

- (i) Under Sections 13(1), 14 & 15 - A special officer appointed under S. 13(1) cannot delegate his powers to other subordinate officers other than on the grounds mentioned in Ss. 14 & 15 of the Act.

- (ii) Though a Special Officer can seek assistance of a police officer under him, it does not mean that the assistant police officer is competent to investigate the offence, since he is not specially appointed by the Statute.
- (iii) A delegated power cannot be further delegated unless otherwise expressly authorised in the special Statute.
- (iv) The Court observed that the case was registered by a Special Officer, but further investigation was entrusted to the S.I. of Police and quashed the final report submitted against the accused petitioners.

**Comment :**

- (a) The judgment furthers the object of ITPA which specifically authorises Special Police Officers to investigate offences under the statute.
- (b) The decision lays down an important principle that the Special Police Officer can take assistance but cannot further delegate his power to another police officer under the Act.

**23. Madhu V.T. Vs. State of Kerala, 2014CriLJ3257, Kerala H C**

**Facts :** The case of the prosecution is that the victim girl, who was aged about 16 years, was coerced and threatened by her own father to have illicit sexual intercourse with other persons telling her that she would get an opportunity as an actress in cinemas and serials. The petitioner submitted that apart from the allegation of the prosecution that he also entered the room evidently to have sexual intercourse with the victim girl, there is no other material to connect the petitioner and he should be discharged from the case.

The father and several others were charged with offences under Sections 4,

5 and 6 ITPA, Sections 366A, 372, 373, 506(i), 511 of 376 and 354 read with 34

IPC and Section 23 of Juvenile Justice (Care and Protection of Children) Act and a total of 52 criminal cases were registered.

**Decision :**

- (i) The High Court held that as per the facts of the case the actions of the accused could well fall within the definition of 'attempt' to commit rape and refused to discharge the petitioner.

**Comment :**

- (a) The judgment in the present case deals with the definition of attempt to commit rape and does not have relevance for the provisions of ITPA and trafficking under the IPC.

**24. Shajahan Vs. State of Kerala, 2014CriLJ2261, Kerala H C**

**Facts :** The petitioners were accused of offences under Section 3, 4, 5 and 7 of the ITPA. The case of the prosecution was that accused numbers 1 & 4 and accused 2 & 3 were found engaged in sexual activities in a rented house and thereby have committed the above offences.

**Decision :**

- (i) The investigation was done and the final report was submitted by the Sub-Inspector of Police, who is not even an empowered officer to conduct the investigation of such cases and that vitiates the final report filed.
- (ii) Except the fact that these persons were engaged in sexual intercourse in a rented building, there is no other material collected by the investigating agency to prove that accused were really engaged in

prostitution and none of the ingredients of the above sections have been established in this case.

- (iii) In order to attract an offence under Section 7 of the ITPA, it must be proved that, there is plurality and single instances would not fall within the ambit of the provision.
- (iv) The Court quashed the proceedings against the accused petitioners.

**Comment :**

- (a) The decision is in tune with the object of the act and affirms that the requirement of the investigation being done by a specially authorised Special Police Officer has to be strictly followed.
- (b) The decision negates the attempts by the State to dilute the provisions of the ITPA which attempt to provide some safeguards against abuse and harassment.

**25. Sreejith @ Ayyappan Vs. State of Kerala, CrI. M.C. No. 4994 of 2013, Kerala H C**

**Facts :** The petitioners were accused of offences under Sections 3, 4, 5 and 7(2)(c) of the ITPA. The prosecution case is that the police conducted a search in a building at Karunagappally and found certain other persons indulging in promiscuous sexual intercourse, and the two petitioners were found just sitting there inside the building. It is not known whether these two petitioners had in fact indulged in such a sexual intercourse or whether anybody had seen them involved in such activities. Along with other accused, these petitioners were also arrested by the police and crime was registered under the above sections.

**Decision :**

- (i) Even as per the allegations in the

final report, they were found simply sitting inside the building, either aiting for their turn, or after their purpose was over.

- (ii) The prosecution has no case that these petitioners have control or dominion over the alleged place of incident or that they were found keeping a brothel, or allowing their premises to be used as a brothel.
- (iii) The prosecution has no case that these petitioners are persons living off the earnings of prostitution.
- (iv) There is also no allegation that the ladies found in the premises were brought or procured by these petitioners for the purpose of prostitution.
- (v) That in these circumstances, a prosecution under Sections 3, or 4, 5 or 7 of ITPA will not lie and the Court quashed the charges against the petitioners.

**Comment :**

- (a) The case illustrates the practice of the police of indiscriminately arresting and charging persons found in raids.
- (b) There was no material to charge the persons with any offence and yet they were accused under four sections of ITPA.
- (c) The judgment is an example of an impartial interpretation of the provisions of ITPA not coloured by moral disapproval.

**26. P. Shanmugavel Raj Vs. State, 2015(1)Crimes536(Mad.), Madras H C**

**Facts :** This was a case of sexual assault of a thirteen-year-old child. The accused were charged under Sections 376, 109, 506(ii) I.P.C. and Section 5(1)(D) of ITPA and Section 4 of POCSO Act. The only issue in the present case was whether the public prosecutor of the

Mahila Court designated as Children's Court could be validly accepted as Special Public Prosecutor under POCSO.

**Decision :**

- (i) The High Court held that the public prosecutor of the Mahila Court designated as Children's Court could be accepted as Special Public Prosecutor under POCSO.

**Comment :**

- (a) The judgment is on a technical law point and does not have much relevance in the context of ITPA, sex work and trafficking.

**27. Mangamma Vs. State of Tamil Nadu, 2014CriLJ3420, Madras HC**

**Facts :** The case involves detention as "Immoral Traffic Offender" under the Tamil Nadu Act 14 of 1982 on the ground that the detenu may be released on bail. The detenu had case registered against him by the Anti Vice Squad-II Police Station for offences under Sections 3(2)(a), 4(1), 5(1)(a) and 6(1)(a) of I.T.P. Act. The detention was challenged by the mother of the detenu.

**Decision :** (i) The High Court held that the detaining order had wrongly equated the case of the detenu with another case and quashed the detention.

**Comment :**

- (a) The judgment does not have relevance from the point of view of ITPA, sex work and trafficking, except in Tamil Nadu.
- (b) Tamil Nadu Act 14 of 1982 is the 'Goondas, Immoral Traffic Offenders and Slum grabbers Act, 1982'.

(c) A separate study of cases pertaining to 'Immoral Traffic Offenders' may be useful.

**28. Ravi @ Ramkumar Vs. Govt. of Tamil Nadu, 2014(2)MLJ(Crl)317, Madras H C**

**Facts :** The case involves detention as "Immoral Traffic Offender" under the Tamil Nadu Act 14 of 1982 on the ground that the detenu may be released on bail. The detenu had case registered against her for offences under Sections 3, 4 and 5 of ITPA. The detention was challenged by the husband of the detenu.

**Decision :**

(i) The High Court held that the detaining order had wrongly equated the case of the detenu with another case and quashed the detention.

**Comment :**

- (a) The judgment does not have relevance from the point of view of ITPA, sex work and trafficking except in Tamil Nadu.
- (b) Tamil Nadu Act 14 of 1982 is the 'Goondas, Immoral Traffic Offenders and Slumgrabbers Act, 1982'.
- (c) A separate study of cases pertaining to 'Immoral Traffic Offenders' may be useful.

**29. T.K. Sadhananthan Vs. The Sub-Divisional Magistrate Cum Revenue Divisional Officer**

**W.P. No. 25663 of 2013 and M.P. Nos. 1 and 2 of 2013 Madras HC**

**Facts :** The petitioners hotel was closed under Section 18 (1) ITPA. The prosecution submitted that during the spot inspection, it was found that the said hotel is being used as brothel place for carrying on prostitution and the order of closure was passed. A case was registered against the petitioner under Sections 3(1), 4(1), 5(1), 6(1), 7(1) and 9 ITPA. The petitioner denied the allegations and challenged the closure order as no notice was issued to him as

required under Section 18(1) of ITPA.

**Decision :**

- (i) The High Court held that the closure order was issued in violation of principles of natural justice as notice required under Section 18(1) was not issued to the petitioner and set aside the closure order.
- (ii) The Court observed that the authorities were free to continue criminal proceedings and issue order after complying with Section 18 (1) of ITPA.

**Comment :**

- (a) The judgment affirms the necessity of complying with the provisions of the law of giving notice and opportunity to the accused to be heard before passing a punitive order of closure of premises under Section 18(1) ITPA.
- (b) After setting aside the closure order, the observations pertaining to continuation of criminal proceedings and passing of future orders under Section 18(1) ITPA against the petitioner seem indicative of moral values entering the picture.

**30. S. Rangaraj Vs. The Commissioner of Police, 2015(1)CTC702, Madras H C**

**Facts :** The petitioners in all these writ petitions are running beauty parlours/massage centres/Spas in and around the city of Chennai. The massage parlours/spa were regularly subjected to raids by Anti-Vice Squad of the Chennai City Police. The petitioners submitted that such raids and the frequent interference by the police spoiled their business, projected them in poor light and amounted to an interference with their fundamental right to carry on a lawful business. The respondents do not contend that the massage centres/spas run by the petitioners are prohibited by law. They do not even contend that these are regulated by any

special law enacted by the Central Government or the State of Tamil Nadu or that the petitioners are running these centres in violation of such law. The only basis on which the raids are conducted in these establishments is that police think that some of these establishments are indulging in offences punishable under the ITPA.

**Decision :**

- (i) Section 15 of the ITPA permits search without warrant by undertaking the following steps:
  - (a) recording the grounds of belief that an offence is being committed in any premises,
  - (b) recording the grounds of belief that a search with warrant cannot be made without undue delay,
  - (c) causing the search in the presence of two respectable inhabitants of the locality and
  - (d) removing the persons from the place of search and producing them before the Magistrate after medical examination.
- (ii) The police do not ensure that all the requirements of Section 15 are complied with:
  - (a) The Special Police Officer or the Trafficking Police Officer is not called upon to produce records to show whether he has documented the grounds of his belief that an offence punishable under the Act is committed or has been committed in respect of a person living in any premises;
  - (b) to produce records to show his subjective satisfaction that the search of the premises with warrant cannot be made without undue delay;
  - (c) to produce records to show that two respectable inhabitants of the locality attended and witnessed the search;

- (d) to show that persons removed from such premises were subjected to medical examination and produced before the appropriate Magistrate immediately; and
- (e) to produce proof to show that two women Police Officers accompanied them and the interrogation of any woman was done only by them.

- (iii) the police habitually carry out searches in a manner not prescribed by Section 15 and it is tantamount to an unlawful interference with the fundamental right of the petitioners to carry on any business or profession which is not declared as unlawful by any legislation.
- (iv) The judgment goes on to discuss the law to govern massage parlours in Singapore and California and directs the government to bring new laws and/or rules to govern massage parlours/spas and report back to the Court.

**Comment :**

- (a) The case illustrates the widespread harassment of establishments considered 'immoral', even though not prohibited by law.
- (b) It illustrates the exercise of arbitrary power by the police to raid and search without following procedures laid down by law.
- (c) The exceptional provision of search without warrant under ITPA authorises Special Police Officers and lays down certain precautionary requirements to be followed to avoid undue harassment by police. These are openly flouted, leading to violation of rights in indiscriminate search and raids.
- (d) The direction to the government to bring in new law and/or rules to regulate massage parlours/spas and

report back seems reflective of moral values of the court, as the matter falls within the domain of the legislature.

### **30. S. Masthan Reddy Vs. The State of Tamil Nadu 2014(2)MLJ(CrI)257**

#### **Facts :**

The petitioner has been branded as an 'Immoral Traffic Offender' under the Tamil Nadu Act 14 of 1982 and detained. The ground of detention is the registration of case for offences under Sections 3(2)(a), 4(1), 5(1)(a), 6(1) and 7(1) of ITP Act and Section 292(a) IPC. The main ground for seeking release is that the detaining authority failed to ask clarification from the sponsoring authority about non serving of arrest memo in a proper manner to the family members, relatives or friends of the detenu. There was no proof to show that the intimation of arrest was given, as the arrest was communicated through cell phone to the brother of the detenu.

#### **Decision :**

- (i) In order to meet fairness, justness and reasonableness, after a person is taken in custody in pursuance of an order of detention, the members of the household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody, by duly intimating as to the place of detention, including the place where the detenu is transferred from time to time, which would ensure the right of the person arrested under preventive detention.
- (ii) If such intimation of arrest has not been made effectively it would

confer a right upon the arrestee to impugn the arrest effected on him or her.

- (iii) In the case on hand, detaining authority has stated that the arrest of the detenu had been communicated through cell phone to the brother of the detenu, but, there is no proof to exhibit such intimation of arrest
- (iv) The detention order would be vitiated on the ground of deprivation of right guaranteed under Article 22(1) of the Constitution of India and the detenu was ordered to be set at liberty.

#### **Comment :**

- (a) The judgment deals with the requirements of preventive detention law and does not have relevance for sex work, trafficking, IPTA except in Tamil Nadu.

### **31. Goenka Sajan Kumar Vs. The State of A.P. 2015(3)Crimes281(A.P.), Telangana & Andhra Pradesh HC**

**Facts :** The petitioner was charged with committed offences under the provisions of Sections 3, 4 and 5 of the ITPA. The petitioner submitted that according to the prosecution, the petitioner is one of the customers of a brothel house. That he is not a person running the brothel house or acting as a pimp for the personnel in the brothel house. That under the provisions of a customer 'to the brothel house is not punishable.

#### **Decision :**

- (i) The petitioner does not fall under the provisions of Sections 3 to 7 of the Act, as the petitioner was not running a brothel house nor did he allow his premises to be used as a

brothel. Neither is alleged to be living on the earnings of prostitution. It is also not the case of the prosecution that the petitioner was procuring, inducing or enticing any person for the sake of prostitution.

- (ii) The Court held that the petitioner is not liable for punishment and quashed the charges under Sections 3, 4 and 5 of IPTA.

**Comment :**

- (a) The case illustrates the practice of the police to round up, arrest and charge everyone on the premises of a brothel.
- (b) The arrest of persons regardless of lack of culpability in law is a reflection of morality at play transgressing the rights of individuals.
- (c) There is a consistent move to criminalize customers in law.
- (d) The sex workers' collectives have publicly opposed this move pointing out that it will serve to drive the profession underground, lead to less safe working conditions, make insistence on condom use by the customer more difficult and hinder steps for HIV prevention.

**2015**

**32. Amarpreet Kaur Chawla vs The State of Jharkhand, Cr. Revision No. 1265 of 2015 Jharkhand HC**

**Facts :** On the basis of information received a raid was conducted and Amarpreet Kaur Chawla was arrested. Amarpreet was convicted by the Judicial Magistrate 1st Class, Jamshedpur under sections 3, 4 and 5 of IPTA.

The District and Sessions Judge, Jamshedpur dismissed her appeal and confirmed the conviction. Amarpreet

approached the High Court. The investigation and search was not conducted by a Special Police Officer or Trafficking Police Officer as laid down in IPTA. The Investigation Officer and the informant were not examined as witnesses in the trial.

**Decision :**

The Jharkhand High Court judgment refers to Madras High Court judgment in *Ratnamala versus State* 1962 (1) Cri.L.J. 162, while speaking of Suppression of Immoral Act, 1956 (presently rechristened IPTA) which succinctly articulates that the idea of the Act was not to render prostitution per se a criminal offence, or to punish a woman merely because she sex workers herself.

The Madras High Court observed: "I desire to emphasise that a careful scrutiny-of the Central Act 104 of 1956 clearly reveals that the Act was aimed at the suppression of commercialized vice, and not at the penalization of the individual prostitute, or of prostitution in itself. This is of some importance in considering the case against the appellants *Ratnamala*."

- (i) The Special Police Officer or the Trafficking Police Officer under IPTA did not conduct the raid and investigation.
- (ii) The police officer and the informant were not competent to conduct the investigation and raid.
- (iii) The Investigation Officer and the Informant were not examined as witnesses by the prosecution.
- (iv) The High Court acquitted Amardeep Kaur Chawla of all charges declaring that there was a fundamental defect in the initiation of the prosecution

which goes to the root of the case.

**Comment :**

- (a) The 1962 judgment of the Madras High Court is an important one with regard to the approach to be adopted by Magistrates and Courts in interpreting provisions of ITPA.
- (b) The judgment categorically holds that investigations not carried out by the Special Police Officer or Trafficking Police Officer vitiate the investigation.

**33. Ashok Hazra Vs. State of West Bengal. 2015(1) CHN (CAL) 289, Calcutta H C**

**Facts :** Raids were conducted, persons arrested and articles seized from a hotel and on the basis of a written complaint. The accused were charged under sections 3/4/5/6/7 of the ITPA.

The Additional Sessions Judge, 3rd Fast Track Court, Lalbagh, Murshidabad acquitted the accused on the ground that the Investigating Officer Debabrata Duboy, Inspector-of-Police was not competent to investigate offences under the Act of 1956 in view of Section 13 of the said Act.

**Decision :** The High Court remanded the case back to the trial court and held:

- (i) That the illegality in the course of investigation would not vitiate the trial unless the same has occasioned miscarriage of justice.
- (ii) That State of West Bengal has empowered all police officers not below the rank of Inspector of Police under the West Bengal Police and Calcutta Police Authority, to act as Special Police Officers in their respective local jurisdiction for

dealing with offences under the Immoral Traffic (Prevention) Act, 1956.

- (iii) That the investigating officer was an Inspector of Police and therefore authorised.

**Comments :**

- (a) Measures introduced in the law to prevent harassment by the police, such as authorising only Special Police Officers appointed under the ITPA are sabotaged by blanket empowering of all police officers.

**34. Chandni Yadav Vs. Adhikshika, Rajkiya Nari Sanrakshan Grih, Writ Petition No. 34964 of 2015, Allahabad HC**

**Facts :** The petition was filed for release of a woman detained in Government Women Protection Centre, Kalindikunj, Agra without her consent illegally. It was submitted that the petitioner is an adult, 25 years of age. She is not wanted in any criminal case nor is accused in any such matter. She has never indulged in immoral trafficking etc. A false story was set up and FIR was registered at Police Station Kotwali, District Allahabad. It was stated that from another house, Allahabad police recovered a large number of girls indulged in immoral trafficking which included the name of petitioner also. FIR was registered under Sections 3, 4, 5, 6, 7 and 9 ITPA, Section 4, 8 of Protection of Children From Sexual Offences Act, 2012 and Sections 370, 370-A, 372 read with Section 34, 120-B IPC. The Chief Judicial Magistrate passed an order for medical examination and further investigation under Section 17(3) ITPA and keeping the petitioner and the 22 girls at Government Women Protection Home, Kalindikunj, Agra.

The woman was produced before the High Court and stated that she is major and has been illegally kept at Government Women Protection House at Agra, without her consent. That she wants to stay and reside with her husband, Palash Das, son of Sri Sukumar Das, who is also present in the Court. The State submitted that she had been kept in the Home pursuant to the order of the Magistrate under Section 17 ITPA.

**Decision :**

- (i) The proviso to Sub Section 17 ITPA authorises the Magistrate to pass an order of detention of a person for a period not beyond three weeks.
- (ii) The petitioner has been kept at Government Women Protection Centre for the last more than seven months.
- (iii) The petitioner has been detained in Government Women Protection Centre, Agra for the last about six months, illegally and without any authority of law, is condemnable and violation of her right to life and liberty.
- (iv) The petitioner was free to go to any place of her choice.
- (v) The Court awarded compensation of Rs. 5,00,000 for her illegal and unauthorized detention.

**Comment :**

- (a) It is a rare case where the Court has ordered a compensation for illegal detention in a case of alleged 'rescue' and confinement.
- (b) Generally, the Court at best orders release of the 'girl' in case of unauthorised detention.
- (c) The case illustrates the fact of practice of the police in raid and 'rescue' operations being at variance with the provisions of law.
- (d) The case illustrates the practice of magistrates routinely directing

detention of persons without application of mind and at times in violation of law.

- (e) The case illustrates the practice of the shelter homes set up for the welfare of the 'rescued' continuing to detain girls in violation of provisions, rather than offering them legal aid and help to be set at liberty.

**35. Momin Muzammil Anwar Vs. State of U.P. 2015(2)ACR1244, Allahabad HC**

**Facts :** A raid was made in the red light area in Agra in which two girls, namely, Soni, Anita and two persons, Akash and Ram Bharat were arrested by the police an FIR was lodged under sections 3/4/5/6 ITPA and 342, 294 I.P.C. While the applicant was going to buy medicine, all of sudden there was a raid and she was also taken away by the police on account of suspicion that she was carrying on illegal activities in the area. She was produced before the Additional Chief Judicial Magistrate who sent her to Nari Niketan. The petition was filed by the husband of the woman for quashing of order and release. It was submitted that under Section 17(3) ITPA "a person can be kept in custody for a maximum period of three weeks from the date of the order for an inquiry under section 17(2) of the ITP Act", but the applicant No. 2 Smt. Shakina @ Babita is confined in NariNeketan since 10.11.2014. That Smt. Shakina has neither been named in the FIR nor a chargesheet submitted against her.

**Decision :**

- (i) Applicant No. 2 is not an accused in the FIR nor any charge-sheet has been submitted against her, hence, it is evident that she has not been

- found indulging in illegal flesh trade.
- (ii) As per the provision of 17(3) of I.T.P. Act, "a person can be kept in custody for a maximum period of three weeks from the date of order for an enquiry under section 17(2) of the Act", but the applicant No. 2 is stated to be confined in Nari Niketan since 10.11.2014.
- (iii) The applicant No. 2 is aged about 23 years old as is evident from her PAN Card and she is at the age of majority and capable of making her own decisions and is also not suffering from any sexually transmitted diseases.
- (iv) The Court set aside the order of detention and held that applicant No. 2, namely, Smt. Shakina @ Babita shall be set at liberty to go according to her own wishes.

**Comment :**

- (a) The case illustrates the practice of the police conducting raid and 'rescue' operations and indiscriminately arresting persons.
- (b) It also illustrates the practice of magistrates' routinely directing detention of persons without application of mind and at times in violation of law.
- (c) It further illustrates the practice of the shelter homes set up for the welfare of the 'rescued' continuing to detain girls in violation of provisions, rather than offering them legal aid and help to be set at liberty.
- (d) It shows that granting of compensation for illegal detention and violation of the fundamental rights of persons in sex work cases is rare and at the most the courts direct release.

**36. Abhishek Mishra Vs. The State of Goa, Writ Petition No. 717 of 2015, Bombay HC Goa Bench**

**Facts :** The application of the petitioner for a liquor licence of the applicant was rejected on the ground of 'criminal background'. The petitioner had a number of cases registered against him including under Sections 3, 4, 5, 6 and 7 ITPA.

**Decision :**

- (i) The High Court remanded the case back to the competent authority for reconsidering the issue of grant of licence as per law.

**Comment:**

- (a) The case has no relevance from the point of view of sex work, ITPA and trafficking and deals purely with discretionary powers for grant of liquor licence.

**37. Sumeer Ramdayal Sabharwal Vs. The State of Maharashtra, Criminal Public Interest Litigation No. 43 OF 2015**

**Facts :** Applications for intervention were filed by Ekveera Devi Sahakari Machimar Sangh stating that police action was necessary since several complaints have been filed by the residents of area that prostitution racket activities are being run in some of the hotels in the said area. That the residents of the said areas have been troubled because of the immoral trafficking and illegal activities of various hoteliers and cottage owners in the said areas in active connivance with the syndicate of anti-social elements which includes auto rickshaw owners/drivers.

**Decision :**

- (i) The Court permitted the interventions in the ongoing public interest litigation.
- (ii) The Court in an earlier order had asked the State Government to

specify its power for taking action. It clarified that the police may be justified about the action being taken in case a complaint is received regarding prostitution racket and illegal activities run in the hotels but should mention the provisions under which the raid had been conducted.

**Comment :**

- (a) The case reflects the hostility encountered by sex workers among residents of localities.
- (b) It is possible that due to morality associated with sex work the Court issued a clarification that its directions in no way meant that the police was unjustified in conducting the raid after receiving complaints.

**38. Latabai Keshav Maundekar vs State of Maharashtra, Writ Petition No. 1185 OF 2015  
Bombay H C Nagpur Bench**

**Facts :** The petitioners are the residents of Ganga Jamuna 'redlight' area in Nagpur for the past several years. According to the petitioners, out of the said 177 petitioners, around 47 petitioners are the owners of the properties and houses in the said locality and the rest of the petitioners are the tenants. It was submitted by the petitioners that on 29.1.2015 about twenty to thirty police officials came to the aforesaid locality and started mercilessly beating the petitioners and their family members.

Further that on 16.2.2015, five or six police officials came to the house of the petitioner Minu Rajesh Kalkhor and asked her to remove herself from the house. The petitioners made complaints against the illegal action of the police authorities, but the police officials have not acted upon the complaints.

The petitioners asked the High Court for a direction restraining the police from entering their premises and removing them. Further direction was sought restraining the State from restricting the petitioners-owners of the properties from leasing their properties to the tenants. It was also prayed that the respondents be restrained from treating the petitioners inhumanly.

The police submitted that the area in which the petitioners reside is a 'redlight' area and some of the women are sex workers and a few petitioners are also involved in activities prohibited under ITPA. The petitioners were directed to file necessary documents to prove their ownership or tenancy, details of family members including their age and occupation and the authorities were permitted to verify the same.

After the submission of documents and verification, the police submitted an affidavit that the area in which the petitioners reside falls within the limits of Lakadganj Police Station and is known for prostitution business in the city of Nagpur. That out of the 137 petitioners, 32 petitioners are the property owners and 105 petitioners are tenants and relatives. Offences were registered against the petitioner nos.1, 9, 16, 46, 49, 61, 94, 97, 102, 112, 113 and 123 under the provisions of ITPA. A chart was annexed mentioning the names of the 12 petitioners and the offences that are registered against them. The police submitted that the concerned petitioners are involved in prostitution. The police tried to curb the activities and thereafter, the petitioners filed the petition with the prayer that the respondents should be prevented from taking action against them. The incident in respect of Minu Kalkhor was

denied by the police. It was submitted that the respondents rescued two minor girls about 14 and 16 years of age from the custody of the petitioner no.7, who forced the minor girls to do the same business for her profit. Cases are registered against some petitioners under ITPA, IPC and Protection of Children from Sexual Offences Act, 2013 (POCSO). The police submitted that there was no intention whatsoever to dispossess the petitioners from their houses or evict the tenants, if the tenancy is lawful and if the petitioners are not indulging in illegal activities. Appropriate action would be taken against the erring petitioners only in accordance with the procedure prescribed by law. The respondents undertook not to evict the petitioners without following the due procedure prescribed by law.

**Decision :**

- (i) The undertaking of the police that they would not dispossess if the tenancy is lawful and there is no illegal activity and would not evict without following the procedure prescribed by law redresses the grievances of the petitioners.
- (ii) General directions against the police sought by 177 petitioners from the area cannot be issued.
- (iii) The police authorities are required to perform their duties and while performing their duties, action could be initiated against the petitioners, who are involved in illegal activities prohibited under ITPA or POCSO.
- (iv) The undertaking that the police would not evict the petitioners without following the due procedure prescribed by law was held to be binding on the respondents.

**Comment :**

- (a) Beating up sex workers and large-

scale violation of their rights is considered 'normal'. There is no procedure of law which permits beating up and yet this common practice in raids with no redress by courts.

- (b) The Courts take no cognizance or steps to redress complaints of being beaten up in raids, including in the present case.
- (c) Courts essentially rely on documents and go by affidavits placed before them.
- (d) The realities are starkly different from that reflected in the papers produced by the State, police and prosecution.
- (e) The Court held that the undertaking by the police to go by due procedure of law redresses the grievance of the petitioner sex workers.

**39. Bhakti Ram Pandey vs State, Crl. A. 679/2015, Delhi H C**

**Facts :**

According to the prosecution ASI Hari Parkash of Police Station Kamla Market was present at a Kotha (brothel) in G.B. Road for investigation of a case. 'X' (identity hidden) surfaced there and recorded her statement. Eleven other girls present also recorded their statements. In her complaint 'X' implicated the appellant Bhakti Ram Pandey, Uma and Vishnu for committing various offence under Sections 363/366/368/372/373/376/342/506/109 /120-B IPC and Sections 3,4,5 & 6 ITPA. Vishnu expired the Trial court acquitted Uma of all the charges. The appellant was also acquitted of the charges under Section 366 read with Section 368/376/506 IPC and Sections 4 & 5 of the ITP Act. The appellant was convicted under section 109 read with Section 376 IPC and filed appeal before

the High Court. The State did not appeal against the acquittals.

**Decision :**

- (i) None of the victims had lodged the FIR on their own. The complaint of 'X' was not produced before the Court despite multiple opportunities.
- (ii) No independent public witness was associated despite their availability. The police officers admittedly used to visit the said kotha routinely and the complainant or other witnesses ever came forward on earlier occasions.
- (iii) The prosecution witness 'S' (assumed name) herself had not lodged any complaint any time to bring police machinery in motion. The prosecution did not produce prosecutrix/complainant and other victims.
- (iv) 'S' aged 22 years on the day of incident was major and continued to stay for sufficient duration in the said kotha and nothing emerges to infer if she ever attempted to come out of the kotha or was forcibly prevented to do so by the appellant. 'S' did not explain why she continued to remain in the kotha despite having the opportunity to escape
- (v) Statement of the victim 'S' was found deficient by the Trial Court to convict the appellant for committing rape upon her at his residence and he was also acquitted of the offences under Sections 3,4,5 & 6 ITP Act.
- (vi) In the cross- examination, 'S' introduced a new story that after Dilip had given her something to eat, she became unconscious and was brought to Delhi. She said that she was left at appellant's house where he sexually assaulted her.
- (vii) There was no evidence that the appellant was the owner of Kotha

No. 56 or used to remain present there or abetted 'S' to have physical relations with any customer. On the date of raid on 10.07.1999, the appellant was not present in the kotha.

- (viii) 'S' did not elaborate as to when the appellant had aided, abetted or facilitated the commission of rape upon her. She never lodged any complaint any time to allege if she was black-mailed any time by the appellant by adopting any means.
- (ix) The Court held that it is unsafe to convict the appellant on the wavering statement of the witness 'S' who was not found reliable to convict the appellant for commission of offence under Sections 363/376 IPC at his residence. The Trial Court was of the view that it was not at all believable that the appellant would commit rape upon 'S' in the presence of his wife and sister.
- (x) The Court allowed the appeal of Bhakti Ram Pandey and acquitted him of the offence.

**Comment :**

- (i) The case illustrates the functioning of the police in the context of using the methodology of raids and 'rescue' to prevent entry of minors and/or trafficking.
- (ii) The facts do not make clear any cohesive story or the motivations for the raid or launching of the cases by the police.
- (iii) There was no FIR by the alleged victim-survivor and the police while on a visit to the kotha record the complaint 'A' which was never produced before the court. The complainant and the witnesses were not examined in court by the prosecution.
- (iv) The entire conduct of the case seems to illustrate the fact that generally

the police have their own agenda primarily oriented towards making money and tailor cases.

- (v) The ground realities of police functioning make a case for trying out self-regulation through Self-Regulatory Boards to prevent the entry of minors and trafficking into sex work.

**40. Freedom Firm vs Commissioner of Police, Pune CR. Public Interest Litigation NO. 4 OF 2015, CRPIL 4/15 (J), Bombay H C**

**Facts :** The main grievance of the petitioner relates to misuse of the provisions of bail, which results in stalling the proceedings under the ITPA and deprives the victims of their rightful claim to rehabilitation. It also has the effect of indirectly encouraging illegal trafficking. The petitioner has proposed to lay down certain guidelines for the Police Officers and the Judicial Officers to be followed at the time of dealing with such cases; especially while deciding the applications for bail. The petition deals with 42 cases of trafficking in Faraskhana Police Station, Pune in which FIRs have been registered and in which the accused are stated to be absconding upon being released on bail. The petitioner seeks to assist, often without reciprocation, the State in its different avatars of the police, the prosecution, remand homes and rehabilitation centres etc. The main grievance of the petitioner is that after the accused are released on bail and more specially after the trial begins and in most of the cases if satisfactory evidence is recorded, the accused abscond. The petitioner gave illustration of eight priority cases in which the accused have absconded resulting in the above described situation.

**Decision :**

- (i) The contentions of both the petitioner and the State have shown that the bane of the trafficking cases is grant of injudicious bail and once that is granted, the road to slip away is open to the accused. The High Court laid down guidelines for the grant of bail in cases of human trafficking and held that the application for bail must take into account:
- (a) The fundamental right of the victim not to be trafficked.
  - (b) The antecedents of the accused.
  - (c) The repetitiveness of the offence since it is a career in crime. It is bound to be repeated upon the accused being released on bail thus trafficking further victims which is the State's duty to prevent.
  - (d) The intimidation and threat that accompanies the relationship between the accused and the victim.
  - (e) The economic position of the accused, if a trafficker, This would reflect in the brothel that he or she runs and which is statutorily required to be sealed and closed by the police.
  - (f) The violence involved in the case reflected from the statement of the victim and the other witnesses, if any. The violence suffered by the victim would show the strength in the position of the accused.
  - (g) The subterfuge deployed by the accused in diverting the police machinery from himself or herself when non traffickers and other docile persons who may be working for the accused in various positions may be kept in the frontline for arrest and who need to be released on bail as

- harmless co-accused.
- (ii) Bail should be denied to habitual offenders (traffickers) except upon exceptional, special and compelling reasons upon the most stringent conditions.
  - (iii) The Court shall call for and consider the antecedents report of the accused in all trafficking cases before passing any order of bail maintained by the Anti-Human Trafficking Unit and the local police.
  - (iv) Bail should be refused to brothel owner until the brothel is close and sealed under Section 18 of the ITPA.
  - (v) Bail should also be denied if the victim is a minor except in case of any extraordinary, compelling or special circumstances to be explained in the order itself and upon the most stringent conditions.
  - (vi) Bail should also be denied its case of violent offence which would be seen from the statements of the victims and witnesses. The Court would do well to take into account the expected intimidation and threat to the victims and/or witnesses.
  - (vii) If bail is applied on the ground of death of a family member the Court should ensure that clear documentation is produced to prove the genuineness of the ground.
  - (viii) Bail, upon stringent conditions (if at all), be granted to the trafficker or the brothel owners only after the statement of the victim is recorded under Section 164 of the Code of Criminal Procedure.
  - (ix) This would include a victim impact statement which may be considered with regard to the violence, if any, suffered by the victim or the other psychological and mental trauma having been faced by her whilst granting bail and fixing the conditions of such bail.
  - (x) Anticipatory bail should be denied in ITPA cases.
  - (xi) The Court shall specify the condition of at least weekly attendance of the accused pending the trial with a further rider that failure of the accused to attend the police station shall be a ground for cancellation of bail.
  - (xii) The accused must never be allowed to gain access to the victim as the safety of the victim is of prime concern when the accused is released on bail. The Court shall give directions and make special conditions and provisions for supervision to ensure that there would be no contact between the accused and the victim.
  - (xiii) The Court may also consider the condition of externment in the bail order.
  - (xiv) The victim shall not be allowed to sign any Vakalatnama (authorization of the lawyer by the litigant) without the permission of the Court.
  - (xv) No Advocate shall be allowed to appear in ITPA cases on behalf of the accused as well as the victim.
  - (xvi) The victim deserves to have legal representation and emotional support. The victims of ITPA offences and should not be treated as criminals or solely as a source of evidence.
  - (xvii) The Court shall permit any of the known NGOs and legal officers to work for assisting victims and prosecution and to represent the victims.

- (xviii) The Court shall provide a lawyer from the Legal Services Authority or from any organization of service providers to represent the victims from the stage of the first remand of the accused and the application of bail itself or whenever an order of detention is passed against the victim under Section 17 of the ITPA as such an order is appealable.
- (xix) The police shall appoint specially trained and sensitized police officer as special police officer for dealing with offence under the ITPA as mandated under Section 13 of the ITPA.
- (xx) Upon the first remand, the victims shall be sent to the relevant statutory authorities being the Child Welfare Committee (CWC) in case of child victims and the National/State Commission for women in case of adult victims.
- (xxi) No victim shall be released to any person who claims her custody except upon verification of the identification of the claimant along with photograph and details of name, age, local address, native address and contact details of such claimant and after consent of the victim is obtained.
- (xxii) A woman accused of being a trafficker, brothel keeper or pimp has the benefit of not being arrested after sunset. Hence if she has to be arrested the next day or has to be directed to report to the police station the next day, it should NOT be stated to be a reason for granting bail; she should be arrested during the legally permissible hours and her application for bail must be considered on the foresaid parameters the next day.
- (xxiii) If a manager, a sweeper, who has been charged or "framed upon a raid being conducted is released on bail, which would be justifiably granted, the main accused who is the trafficker or brothel owner, cannot claim or be granted 'parity', he/she is not on par.
- (xxiv) The Magistrates and Judges shall use the following bail checklist proforma while deciding the application for bail :
- (a) Whether antecedents of the bail applicant have been checked.
  - (b) Whether antecedent report has been submitted before the Court.
  - (c) Whether the address of the bail applicant and the local surety has been verified by the police and whether a report has been submitted before the Court.
  - (d) Whether the bail applicant has had bail cancelled in the past.
  - (e) If bail is applied for on medical grounds, whether treatment within the jail is possible.
  - (f) Whether accused is likely to have contact with the victim and intimidate or threaten her.
  - (g) Whether the accused is likely to repeat the offence; i.e. whether he/she would be able to return to and run the brothel.
  - (h) Whether the brothel is already sealed (and if not to undergo the process of sealing before any order of bail is passed).
  - (i) Such proforma check list shall be duly completed and kept in the record & proceedings of the cases along with the order of bail.
- (xxv) The State shall create a database of offenders, who are human traffickers under the ITPA in the entire State of Maharashtra together with their Post Card size photograph name, age, local address, native address, names of their parents or guardian, contact

- details etc. as also details of their antecedents maintained by the Police Department more specially the Social Security Branch of the office of the Commissioner of Police in each city which shall be made known and available to all the police officers, prosecutors as also the NGOs who run services pro bono or otherwise in support of the victims so that they are in turn made known to Court.
- (xxvi) The State shall prepare a database of all the absconding offenders under the ITPA in the entire State of Maharashtra. The police shall thus maintain an active centralized database storing antecedents of human trafficking offenders.
- (xxvii) The Court also issued guidelines with regard to sureties for release on bail:
- (a) Legal sureties must be provided; Cash bail shall as far as possible not be allowed.
  - (b) There shall be 2 sureties to be provided. At least 1 surety shall be a permanent resident and having at least 1 property within the jurisdiction of the Court.
  - (c) No surety shall be accepted except upon proof of record of birth, residence, education, identity, property, contact details amongst other requirements.
  - (d) The permanent address including the native address of the accused as also the surety along with copies of their original identification documents such as Voter's Card, Ration Card, Aadhar Card, Passport and Post Card size photographs of the accused and the surety etc. along with their identification features in detail be collected and maintained by the police and verified before the accused is released from custody. Passport and type of visa of foreign nationals e.g. Nepalese, Bangladeshis etc. must also be verified.
  - (e) The details of their immovable property, if any, be collected and the relevant entry be made in the Revenue Record.
  - (f) The verification report of the sureties must have the permanent address of the sureties shown in their Aadhar Card, etc verified with their current residence by the local police and attested and approved by the Anti Human Trafficking Unit AHTU) / Social Service Branch (SSB) / Crime Branch.
  - (g) The Registrar of District Courts shall prepare a computerised alphabetical register maintaining the details of the accused and the sureties of all ITPA cases. These details can be fruitfully shared with the NGOs who render services to the victims, the lawyers who represent the victims as also the Centralised Database, showing the antecedents of the accused as and when established.
  - (h) The Court shall appreciate that the prices of all the commodities escalate. So shall be the amounts for bail i.e. for sureties, (as would also be for imposing fines and compensation) which should be commensurate with the deterrence required not to jump bail.
  - (i) A person shall stand surety only for 1 accused at a time i.e. till the end of his / her trial. Such surety cannot be allowed to be a surety for any other accused. This direction would rule out the menace of "professional surety". The database/ computerised

register of the sureties which would show if the applicant has been a surety before in any other ITPA case.

- (j) The sureties shall not have any prior criminal antecedents.

The High Court directed that: A copy of this judgment is to be forwarded to all the Magistrates, Special Court of ITPA, Sessions Judges, Additional Sessions Judges dealing with the cases of ITPA by way of appeal or revisions, the Director General of Police for circulation to all the police stations, the Directorate of Public Prosecutors for circulation to all Additional Public Prosecutors as also the Maharashtra Judicial Academy (MJA), Uttan, District Thane, Maharashtra and the District Legal Services Authority (DLSA), to be used in the periodical training of Police Officers, Prosecutors and Judicial Officers.

**Comment :**

- (a) As in the case of most PILs the decision is taken without sex workers and their collectives having any say in the matter.
- (b) The courts are in the enviable position of passing orders without having the responsibility of implementing them.
- (c) The judgment has given sweeping directions governing various aspects from protection of victim/survivors to the release on bail of various actors including detailed prescriptions for sureties, identification papers and preparation of various data bases.
- (d) The impact of the judgment on ground realities needs detailed study and scrutiny to assess the results.

**41. Ranjeet Kaur vs State (NCT Govt. of Delhi), 2015(152) DRJ653, Delhi HC**

**Facts :** The prosecution alleged that Accused 1 after administering stupefying substance to the prosecutrix 'X' (identity hidden) aged around 20 years at New Delhi Railway Station took her to her residence with an intention to facilitate the commission of rape by her acquaintance. Thereafter, 'X' was confined inside the house and A-2 committed rape upon her and Accused -1 and Neelam @ Billo abetted the commission of offence of rape upon the prosecutrix.

The accused were charged under Sections 376, 376 read with Section 34 and 109 IPC and Section 5 ITPA Act. Accused 1 was convicted under Sections 109/34 IPC r/w Section 376 IPC and Section 328 IPC. A- 2 was convicted under Section 376 IPC and appealed to the High Court.

**Decision :**

- (i) The testimony of 'X' was found to be cogent and without material contradictions and reliable.
- (ii) Suggestions that 'X' was a prostitute and was falsely implicating the accused were disbelieved by the court.
- (iii) 'X' had undergone treatment for mental trauma for two months but suggestions that her testimony could not be relied on were rejected.
- (iv) The convictions of the accused were upheld by the High Court.

**Comment :**

- (a) The case deals with testimony in case of rape and as there was no conviction under ITPA. It is interesting to note that the accused attempted to discredit the testimony of the complainant by alleging she was a sex worker, who is always assumed to consent to sexual intercourse.

**42. G.S. Madusudan vs State, Crl. P. Nos. 5297, 5439 and 5632 of 2015, Karnataka H C**

**Facts :** On receipt of a telephone call from the victim to the Police Commissioner of Mysore, the Child Welfare Committee of Mysore District visited the house of the victim, rescued the minor girl and sent her to the children's home. The victim-survivor stated that she was forced by her mother, Accused No. 1 and her friend Geetha, Accused No. 2 and other accused persons for sexual assault and was subjected to sexual assault by Accused Nos. 4 to 9.

The petitioners were accused of offences under Sections 376, 366(A), 343 r/w Section 149 of IPC and Sections 3, 4, 5 and 6 of the ITPA and Section 23 J.J. Act and filed bail applications. It was submitted that the prime witness namely the victim girl herself turned hostile and there is nothing left to the prosecution to prove the case and the petitioners be given bail.

**Decision :**

- (i) The minor girl resisted and made the complaint that she was subjected to sexual assault with the co-operation of the mother.
- (ii) The case is based on material witnesses and the persons are accused of heinous offences.
- (iii) Bail was granted to the accused the ground that they had already spent two years in jail but with the condition that they would not contact the minor girl.

**Comment :**

- (a) The judgment establishes that entire case does not go out of the window because the minor victim/survivor turned hostile, prosecution and trial

can continue on the basis of other evidence.

**43. Karthik Hegde vs State of Karnataka, Criminal Petition Nos. 1007/2015 and 1642/2014 and Writ Petition No. 60129/2014, Karnataka H C**

**Facts :** The petitioners in three different cases were all charge-sheeted for offences punishable under Sections 3, 4, 5 and 7 of the ITPA and approached the High Court for quashing of the cases.

**Decision :**

- (i) There is no incriminating material against the petitioners proving commission of offences under Sections 3, 4, 5 and 7 of the ITPA.
- (ii) None of the witnesses have given statements showing involvement of the petitioners in the offences.
- (iii) The cases against the petitioners were quashed by the Court.

**Comment :**

- (a) The case illustrates the practice of the police to arrest and charge whoever is found in the place during raids regardless of involvement in the commission of offences.

**44. Madhu vs. State of Karnataka, 2015(3) AKR 784, Karnataka H C**

**Facts :** The petitioner, accused No. 3 for the offences punishable under Sections 399, 366-A, 366-B, 370, 370(A), 372, 373 r/w 34 of IPC and u/Ss. 3, 4, 5, 6, 7, 9ITPA & under Sections 3, 4, 7, 8, 17 of POCSO Act and applied for bail. It was submitted that the petitioner was present at the particular address but had no involvement in any offence.

**Decision :**

- (i) The victim/survivor does not name

- the petitioner in her statement.
- (ii) There is no reference to the petitioner in materials produced.
  - (iii) The petitioner was released on bail with the condition that he would not threaten witnesses or tamper with evidence.

**Comment :**

- (a) The case illustrates the routine practice of the police of arresting and charging any person present while conducting raids, regardless of culpability.

**45. Satish vs State, Criminal Appeal Nos. 1019 and 1322/2010, Karnataka H C**

**Facts :** Reshma, 20, committed suicide by hanging. The accused were charged under Section 498-A IPC, Sections 3 and 4 of Dowry Prohibition Act, Section 304B of IPC read with Section 5(b) and (d) of ITPA read with Section 34 of IPC and Section 306 of IPC. The District and Sessions Judge, Mysuru convicted Accused No. 1 under Section 498-A of IPC and acquitted the other accused. Accused No. 1 appealed against the decision in the High Court. The mother of the deceased Reshma appealed against the acquittals.

**Decision :**

- (i) The conviction of Accused No. 1 under section 498 A IPC was confirmed.
- (ii) In addition Accused No. 1 was convicted under section 306 IPC for abetment to suicide.
- (iii) The acquittal of the other accused was upheld by the High Court.

**Comment :**

- (a) The case deals with analysis of evidence for the offences under Sections 498 A and 306 IPC.
- (b) The case does not have relevance

from the point of view of sex work and trafficking.

**46. State of Karnataka vs Farzana, 2015(6)KarLJ 617, Karnataka H C**

**Facts :** The prosecutrix, the prosecution witness 1, living at Kadapa in Andhra Pradesh State, came about 15 days prior to 22.08.2006 to Bengaluru in order to meet her sister Smt. Kamalbee. Kamalbee's husband (CW-6) was running a watch shop in the City Market, Bengaluru. Prosecutrix got down from the bus at city bus stand and went to her brother-in-law's watch shop. However, the watch shop was closed. As she could not get the address of the house of her sister, so she went to the house of her sister's friend Smt. Farzana (accused No. 1) at Avalahalli and told her that she wants to meet her sister; Farzana (accused No. 1) took the prosecutrix to the house of Smt. Hasina (accused No. 3) at Anepalya and asked P.W.-1 to stay in the house of accused No. 3 till she meets her sister. Prosecutrix came to know that accused Nos. 1 to 3 were carrying the business of prostitution.

Accused Nos. 2 and 3 confined P.W.-1 in their house. Accused No. 4 subjected P.W.-1 to forcible sexual intercourse; subsequently, number of other persons had sexual intercourse with the victim against her will for about 10 days. Thereafter she was taken to Mumbai and managed to escape, was intercepted by the police and narrated the facts and cases were registered. The accused-respondents were acquitted of the offences punishable under Sections 342, 366A, 376 read with Section 34 of IPC and Sections 3, 5 and 6 ITPA. The State of Karnataka appealed against the acquittal.

**Decision :**

- (i) The High Court held that the detailed evidence given by the victim is reliable and established that the accused forced her to prostitution.
- (ii) The High Court convicted Accused Nos. 1 to 3 under Sections 3,5 and 6 ITPA and section 342 IPC (wrongful confinement).

**Comment :**

- (a) The evidence in a case remains the same.
- (b) It is in the appreciation of evidence that subjective factors of the individual judge come into play.

**47. T. Sundar vs The Superintendent of Police, CrI. O.P. Nos. 225, 330, 384, 657, 840, 841, 1331 and 2387 of 2015, Madras H C**

**Facts :** This case relates to Puducherry Sex Racket/Scandal involving several persons. The Chairperson, Child Welfare Committee, Puducherry enquired from two minor girls aged about 14 and 16 respectively it came to light that they were subjected to sexual harassment, initiated in prostitution by certain pimps. Based on the report, the Grand Bazaar Police, Puducherry registered a case under Sections 4, 6 and 16 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Sections 3, 4 and 7 of the ITPA. The High Court while hearing a bail petition directed conducting of Test Identification Parade through video conferencing in the presence of a lady magistrate with respect to policemen who were also alleged to have been involved in this sex racket. In their statement, the victim girls have described the policemen who have raped them. In the Test Identification Parade, the victim girls had identified the eight police officers who were

petitioned the High Court for anticipatory bail.

**Decision :**

- (i) The High Court observed that it was only at the intervention of the Court that Test Identification Parade was conducted and the victim girls identified the petitioners.
- (ii) The petitioners are not ordinary persons and have long experience of crime and criminal law and are familiar with many hideouts and escape routes.
- (iii) The petitioners are policemen and have the men, money and material at their disposal and can overawe the poor victim girls.
- (iv) The petitioners can interfere with the investigation of the case.
- (v) The incriminating materials against the accused require custodial interrogation.
- (vi) The anticipatory bail applications of the policemen were dismissed by the High Court.

**Comment :**

- (a) Generally, the police are well aware of the activities in their area and are complicit for financial and other gains.
- (b) It is a rare case where the complicity and the role of the police in the entry of minors into sex work came to light and they are arraigned as accused in the case.

**48. ApneAap Women Worldwide Trust India vs The State of Bihar, 2015(1)PLJR 268, Patna H C**

**Facts :** ApneAap Women Worldwide Trust India was established to provide for education, health care, legal protection and job skill to women and children found in the red light area. The trust filed a petition to direct the State

to carry out its constitutional obligation enshrined in Article 23 of the Constitution (Prohibition of traffic in human beings and forced labour) by strictly enforcing the provisions of the ITPA and to conduct operations in red light area and other areas in presence of women social worker, to appoint Special Police Officers not below the rank of Inspector for dealing with the offences under the Act and to maintain the victims rescued in shelter homes certified by the State Social Welfare Department as per ITPA norms.

The State of Bihar submitted that the Department of Social Welfare has formulated State Plan of Action called 'Astitva' providing for integrated approach by several Departments of the Government (Education, Rural Development, Social Welfare, Labour, Human Resources, Health, Police, District Administration etc.) vide resolution of the Government issued from Social Welfare Department. The basic objectives of 'Astitva' were:

- i. To prevent, control and eradicate human trafficking, ensure qualitative action at source, transit and destination areas of trafficking.
- ii. Ensure and prioritize proper rescue, rehabilitation and sustainable repatriation with special emphasis on livelihood, socio-economic empowerment.
- iii. Human trafficking is an organized crime, therefore, ensuring legal action against pimps, traffickers etc.
- iv. Ensuring sensitization, mobilization and capacity building of Government/Non-Government bodies for minimizing the vulnerability of human trafficking in the State.

It was submitted by the State of Bihar that a District Level Anti Human Trafficking Unit has been formed in all

the districts of Bihar which meet on regular basis to deal with the issues relating to human trafficking, such as, prevention, raid & rescue and rehabilitation of trafficked victims. Further that to build the capacity of different functionaries involved in the Anti Human Trafficking Programme steps are being taken in the light of the guidelines of the Government of India to sensitize, develop the capacity of the officers by imparting training to not only the officers but also to the trainers.

#### **Decision :**

- (i) The Court gave directions under four sub-headings, namely, Prevention, Raid & Rescue, Rehabilitation and Prosecution

#### **A. Prevention:**

The State, District Level Anti Human Trafficking Body has already been constituted but till date no such body at the Village level has been constituted to prevent trafficking at grass-root level. Accordingly, it is directed that in every village/ward of Gram Panchayat/Urban agglomeration including red light area where an Anganwadi Centre is already established Village/Ward Level Anti Human Trafficking Body be constituted within a reasonable time not exceeding two months from the date of this judgment.

Anti Human Trafficking Body so constituted may be the same Village/Ward Level Child Protection Committee, which is required to be constituted at the village level in terms of the Integrated Child Protection Scheme, Chapter-2 Paragraph 3(i). It shall be the duty of the Village/Ward Level Anti Human Trafficking Body/Village/Ward Level Child Protection Committee to collect all relevant data concerning the children

aged between 0-18 years residing within its jurisdiction i.e. date of birth, gender, family's income, status of the child attending Anganwadi or school and to draw the individual Child Care Plan for each child residing within its jurisdiction

### **B. Raid & Rescue:**

(i) To eliminate the menace of trafficking for sexual purposes there should be regular raid/search and rescue from brothel(s) as defined under Section 2(a) of the Act as also in other premises wherever women, children are in distress by the Special Police Officers appointed under Section 13 of the Act and duly trained so that while conducting search they comply with the requirement of sub-section (2) of Section 15 of the Act and conduct search of the premises/in presence of two or more respectable inhabitants of the area.

One of whom should be a woman need not be a resident of the same area. During search, the Special Police Officer leading the search party should also observe the mandate of sub-section (6A) of Section 15 of the Act.

### **C. Rehabilitation:**

In order to protect, provide vocational training to the trafficked victims Social Welfare Department should establish an adequate number of Protective Homes and Corrective Institutions in each district of the State. To begin with the Department must establish one Protective Home, Corrective Institution and One Stop Crisis/Nirbhaya Centre in each district as early as possible, in any case within a reasonable time.

The Protective Home, Corrective Institution, One Stop Crisis/Nirbhaya Centre must be managed by a person or

authority who is licensed under subsection (3) of Section 21 of the Act with the help of trained staff.

### **D. Prosecution :**

For successful prosecution of the trafficker, it is necessary that the cases registered under the Act are investigated by the Special Police Officer and also prosecuted before the Special Court constituted under Section 22-A of the Act within a time frame so as to ensure that the prosecution witnesses do not become hostile.

### **Comment :**

- (a) As in the case of most PILs the proceedings are conducted without any participation by sex workers and their collectives.
- (b) This leads to directions which do not take into account the large scale violation of the human rights of sex workers in the raid and 'rescue' operations and coercive rehabilitation measures.
- (c) The judgment has given sweeping directions as to prevention, raid and rescue, rehabilitation and prosecution.
- (d) The problem with sweeping judgments is implementation and the actual impact, if any, on ground realities.

### **49. Salma Bibi vs State of Rajasthan, S.B. Criminal Misc. Petition No. 3158/2015, Rajasthan H C**

**Facts :** Salma Bibi, the accused-petitioner filed this criminal miscellaneous petition under Section 482 Cr.P.C. for the following reliefs:

- "
- (a) The impugned cognizance order

dated 22.5.2015 passed by learned Chief Judicial Magistrate, Kota in Criminal Case No. 333/2015 may kindly be quashed and set aside;

- (b) The respondents may kindly be directed to pay immediate interim relief of Rs. 5 lacs and final compensation of Rs. 10 lacs for the unlawful detention and mental harassment of the petitioner;
- (c) The respondents No. 1, 2 & 3 may kindly be directed to declare the petitioner as a victim and not an accused;
- (d) To quash and set aside the entire proceeding against the accused-petitioner;
- (e) The respondent-State may kindly be directed to record the statement of the petitioner under Section 161 Cr.P.C.;
- (f) The respondent-State may kindly be directed to follow the due process of law as enshrined under Section 15(5A) of the Immoral Traffic Prevention Act, 1956;
- (g) The respondents may kindly be directed to follow the due process of law as enshrined under Section 17 of the ITPA.

**Decision :**

- (i) The High Court held that the petition cannot be entertained under Section 482 CrPC for quashing of charges and has to be preferred under other criminal revision provisions of the CrPC.

**Comment :**

- (a) The petition raised interesting issues especially given the conception of ITPA which is meant to treat sex workers as victims but in practice ends up treating them as accused.
- (b) The judgment is on a technical jurisdiction point of law.

**50. KatamoniNagaraju vs State of Telangana, Criminal Petition No. 1536 of 2015, Telangana & Andhra Pradesh H C**

**Facts :** The petitioner, accused No. 4 along with A1, A2 and A3 is accused of committing offences under Sections 3, 4 and 5 ITPA. The police raided a flat in Kothapet and found the premises being used for prostitution. A.1 and A.2 were said to be the brothel house organizers, whereas A.3 and A.4 are the customers.

A.4 filed the petition in the High Court and submitted that none of the Sections 3, 4 and 5 or other sections of ITPA describe a customer as offender and therefore, the prosecution of the petitioner is a abuse of the process of law and hence the proceedings against him may be quashed. However, taking recourse to powers granted to provide directions under the Criminal Procedure Code under Section 482; the court directed the Magistrate to initiate proceedings against the petitioner for sexual exploitation of a victim of trafficking.

**Decision :**

- (i) The High Court held that a customer is not an offender under ITPA and quashed the criminal proceedings.
- (ii) Magistrate directed to take cognisance and initiate proceedings against petitioner for offence of sexual exploitation of victim of trafficking.

**Comment :**

- (a) Without ascertaining whether the woman was sexually exploited; proceeding against the client for sexually exploiting her as a victim of trafficking has set a precedent for criminalization of clients.

(b) The automatic presumption that any individual visiting a sex worker is liable to be proceeded against as a sexual exploiter of a trafficked victim is problematic *"in my considered view, to secure the ends of justice, the High Court can exercise its inherent powers when the material placed by the prosecution i.e. charge sheet discloses the commission of offence under Section 370A."*

(c) The case illustrates the practice of arresting and charging persons found in the premises in raids regardless of culpability.

**51. Mohammed Shaeed vs The State of Telangana, 2015 (1) ALD(CrL) 992 (AP), Telangana & Andhra Pradesh H C**

**Facts :** Mohammed Shaeed, the petitioner, accused No. 5 along with A. 1 to A. 4 and A. 6 were accused of committing offences under Sections 3, 4 and 5 ITPA. The police raided a residential and found the premises being used for prostitution. A. 2 and A. 4 were said to be the brothel house organizers. A. 1 and A. 3 were pimps whereas A. 5 and A. 6 were the customers. The petitioner submitted that that none of the Sections 3, 4 and 5 or other sections of the Act describes a customer as offender and therefore, the prosecution of the petitioner, A. 5 is a abuse of process of law and hence the proceedings against him may be quashed.

**Decision :**

(i) The High Court held that a customer is not an offender under ITPA and quashed the criminal proceedings.

**Comment :**

(a) The role of morality at play can be

seen in the observations of the judge while acquitting the accused:

"In my considered view, it is unwise to say that a customer who lurks in day and night in search of hidden avenues to quench his sexual lust is a hapless victim of a crime to place him out of the reach of the tentacles of the law which is intended to eradicate the pernicious practice of immoral trafficking of women. Such an unwarranted sympathy on a criminal will not help achieve desired results though aimed at high".

(b) The case illustrates the practice of arresting and charging any person found in the premises on a raid regardless of culpability under law.

**52. S. Naveen Kumar vs The State of Telangana, 2015 (2) ALD(CrL) 156 (AP), Telangana & Andhra Pradesh HC**

**Facts :** The police registered an FIR after raiding a flat. They found two ladies and one person and on their confession came to know that A1 was running the brothel house on the premises and A2 is looking after the maintenance of the same on the instructions of A1. A1 brought victim lady (LW1) and recruited her for prostitution and A1 sent A3 customer and A2 took Rs. 2,500 and showed the victim. Charge-sheet was filed against A1 and A2 for the offence under Section 370A IPC and Sections 3, 4, 5 and 6 ITPA and against A3 under Section 4 ITPA. S. Naveen Kumar A3 filed petition for quashing of charges and submitted that assuming that charge sheet allegations are true, still they would reveal that petitioner, A3 is only a customer and not an organizer of the brothel house or pimp and therefore, charge under Section 4 of the ITPA is not applicable to him, since the said section relates to the person who lives off the earnings of prostitution.

**Decision :**

- (i) The High Court held that a customer is not an offender under ITPA and quashed the criminal proceedings under Section 4 of ITPA.
- (ii) The High Court directed that the Magistrate should proceed against the petitioner under Section 370 A, IPC (Exploitation of trafficked person).

**Comment :**

- (a) The case illustrates the moral disapproval and values of the judge at play.
- (b) The State had not charged the petitioner Naveen Kumar under Section 370A IPC.
- (c) The petition was by Naveen Kumar for quashing the charge under Section 4 ITPA and not by the State seeking any relief.
- (d) The decision of the High Court on a petition by the accused for relief to direct proceeding against him under Section 370A is unprecedented and needs adjudication.

**2016****53. Abdul Nazar vs State of Kerala, 2016 SCC Online Ker 8673, Kerala High Court**

**Facts :** It was alleged that the petitioner accused engaged in international trafficking of minors and adult women by luring them with attractive salaries and then taking them to brothels abroad.

The petitioners were accused of the offences of trafficking of person under Section 370 of the Indian Penal Code, 1860 (hereafter referred to as IPC); Exploitation of a minor trafficked person (Section 370A (1) IPC); Exploitation of a trafficked person (Section 370A (2) IPC);

Criminal conspiracy to commit and attempt to commit these offences under Sections 120B and 511 of the IPC. The offences are punishable with a maximum of seven years imprisonment. In case investigation is not completed within 60 days a person is entitled to be released on bail after 60 days for offences punishable with less than ten years punishment under Section 167(2) of the Criminal Procedure Code, 1973 (hereinafter referred to as CrPC). The petitioners had been in custody for about two months and applied for release on statutory bail as more than 60 days had passed.

**Decision :**

- i. The Court held that the petitioners had not been charged with trafficking of more than one person under Section 370(3) IPC; The punishment under Section 370(3) IPC is ten years and may be extended to life imprisonment.
- ii. The Court held that the material discloses that the accused person were involved in the trafficking of more than one person which is punishable with life imprisonment under Section 370(3) IPC;
- iii. Therefore there is no statutory right to be released after the lapse of 60 days. The offences are very serious and there is material to connect the accused with the offences. If released on bail, the accused may repeat offences; may flee from justice and intimidate or influence witnesses. The bail plea of the accused was rejected.

**Comment :**

The accused were charged with offences punishable with up to seven years imprisonment and entitled to release after 60 days. The judge used his

discretion and concluded that the material shows that accused trafficked in more than one person and punishable with up to life imprisonment under Section 370(3) IPC and so there is no right to statutory bail. Likelihood of repeating offences, fleeing and intimidating or influencing witnesses are valid grounds for rejection of bail.

#### **54. Col (Retd) Ajay Ahlawat versus State 2016 SCC Online Del 5833**

**Facts :** The petitioner was alleged to be involved in human trafficking and international sex racket. The petitioner was accused of illegal confinement (Section 341 and 342 IPC) and exploitation of trafficked person (Section 370A (2)). The petitioner applied for anticipatory bail in the High Court alleging false implication because of filing complaints against Income Tax officers.

#### **Decision :**

- i. The court observed that there were serious allegations against the accused by the prosecutrix about illegal confinement.
- ii. The prosecution produced various communications and Whats App messages that the accused was involved in procuring girls and supplying them to various persons.
- iii. The anticipatory bail application was rejected by the trial court by a comprehensive order.
- iv. The petitioner withdrew an earlier anticipatory bail application before the High Court.
- v. There are no new developments after the withdrawal of the earlier anticipatory bail application.
- vi. The petitioner did not join investigation and cooperate with the police and proceedings to declare him an absconder are going on.

vii. The anticipatory bail application was rejected by the High Court.

#### **Comments :**

The petitioner did not join investigation even after the rejection of the anticipatory bail by the trial court and proceedings to declare him an absconder and attach property were initiated against him.

The petitioner withdrew an earlier anticipatory bail application and furnished no new developments for bringing a fresh application.

There is presumption of innocence in law, however, the above factors contributed to rejection of the anticipatory bail application.

#### **55. Ali AK versus State of 2016 SCC OnLine Ker 19846 Kerala High Court**

**Facts :** The accused was charged with trafficking of minors and adults and applied for bail.

**Decision :** The petitioner was released on bail after being two months in custody with stringent conditions to report to police station and not tamper with evidence and witnesses.

**Comment :** Even though there is a presumption of innocence, courts tend to favour custody of under trials for a period and then are more inclined to release on bail.

#### **56. Ashok versus State of Karnataka 2016 SCC Online Kar 2522**

**Facts :** The petitioners were charged for running a brothel under Section 3 of the Immoral Traffic Prevention Act, 1956 (ITPA) and for procuring or taking a person for prostitution under Section 5 ITPA and applied for anticipatory bail.

**Decision :** The anticipatory bail petition was rejected as the offences were against society and there was apprehension of tampering with witnesses. There was no material to show that the police had the intention to humiliate the petitioners.

**Comment :** Apprehension of tampering with witnesses is a valid ground for rejection of anticipatory bail. All offences are against society in law. Probably the stigma and outrage associated in cases of sex work the factor of offence against society plays more of a role in denying bail.

### **57. Sandhya versus State of Tamil Nadu 2016 SCC OnLine Mad 20416**

**Facts :** The accused was detained under Section 3(1) of a local Tamil Nadu preventive detention law Act 14 of 1982 as an 'Immoral Traffic Offender'. A habeus corpus petition was filed by the wife to set aside the detention. The accused has nine cases under ITPA pending against him. The only ground urged in court was an illegible page in the reasons for detention supplied.

**Decision :**

- i. The Court held that the reason to supply the grounds for detention is to make a representation against the detention.
- ii. The accused had made no representation against the detention and so could not have a grievance that one page was ineligible.
- iii. The petition of the wife of the accused was rejected.

**Comment :** Courts are to be approached after exhausting other alternative remedies provided in law. In this case the alternative remedy of representation against the preventive

detention order was not attempted.

### **58. Central Bureau of Investigation versus Raja Bhattacharya, 2016 SCC OnLine 249**

**Facts :** The trial court had granted bail to the accused in case of human trafficking. The CBI approached the High Court for cancellation of the bail granted.

**Decision :**

- (i) The accused had been in custody for a sufficient period of time.
- (ii) There are no allegations that the accused tampered with witnesses after release on bail.
- (iii) There is a list of more than 100 witnesses and the trial is going to take a long time.
- (iv) There are no previous convictions or criminal cases pending against the accused.
- (v) The High Court refused to cancel the bail granted and dismissed the CBI petition.

**Comment :**

- i. The presumption of innocence demands that persons not be kept in custody until convicted.
- ii. Cancellation of bail already granted requires substantial grounds like tampering with witnesses by the accused after release on bail.

### **59. Dilip Khan KM versus State of Kerala 2016 SCC OnLine 7938**

**Facts :** It was alleged that the petitioner accused engaged in international trafficking of minors and adult women by luring them with attractive salaries and then taking them to brothels abroad.

The petitioners were accused of the offences of Trafficking of person under Section 370 of the Indian Penal Code,

1860 (hereafter referred to as IPC); Exploitation of a minor trafficked person (Section 370A (1) IPC); Exploitation of a trafficked person (Section 370A (2) IPC); Criminal conspiracy to commit and attempt to commit these offences under Sections 120B and 511 of the IPC. The offences are punishable with a maximum of seven years imprisonment. In case investigation is not completed within 60 days a person is entitled to be released on bail after 60 days for offences punishable with less than ten years punishment under Section 167(2) of the Criminal Procedure Code, 1973 (hereinafter referred to as CrPC). The petitioners had been in custody for about two months and applied for release on statutory bail as more than 60 days had passed.

**Decision :**

- (i) The Court held that the petitioners had not been charged with trafficking of more than one person under Section 370(3) IPC;
- (ii) The punishment under Section 370(3) IPC is ten years and may be extended to life imprisonment.
- (iii) The Court held that the material discloses that the accused person were involved in the trafficking of more than one person which is punishable with life imprisonment under Section 370(3) IPC;
- (iv) Therefore there is no statutory right to be released after the lapse of 60 days.
- (v) The offences are very serious and there is material to connect the accused with the offences.
- (vi) If released on bail, the accused may repeat offences; may flee from justice and intimidate or influence witnesses.
- (vii) The bail plea of the accused was rejected.

**Comment :**

- (a) The accused were charged with offences punishable with up to seven years imprisonment and entitled to release after 60 days.
- (b) The judge used his discretion and concluded that the material shows that accused trafficked in more than one person and punishable with up to life imprisonment and so there is no right to statutory bail.
- (c) Law is also technical and the omission to charge with an offence punishable with ten years imprisonment would generally go in favour of the accused.
- (d) Likelihood of repeating offences, fleeing and intimidating or influencing witnesses are valid grounds for rejection of bail.

**60. Dolee Ranglal Rangu versus State of Maharashtra 2016 SCC OnLine Bom 12560**

**Facts :** It was alleged that the applicant was acting as an agent in the vocation of prostitution and earning her livelihood from it. Accordingly, the applicant was accused of trafficking of persons (Section 370 IPC) and for keeping a brothel (Section 3 ITPA); Living off the earning of prostitution (Section 4 ITPA) and detaining a person where prostitution is carried on (Section 6 ITPA). The applicant applied for release on bail.

**Decision :**

- i. The victim girls stated that they were facing financial crisis. The applicant advised them to enter prostitution to which they willingly agreed.
- ii. That they used to get a certain quantum of money and the applicant got a commission.
- iii. That the victims were indulging in the vocation of their own free will.

iv. The applicant was released on bail.

**Comment :**

- a) It is one of the rare court orders recognizing the woman victim/survivor women entered and were engaged in the vocation of sex work of their own free will.
- b) Generally, the law as well as its working in practice takes no account of the will of the persons in sex work and does not treat them as adult persons who can choose to exercise agency and will.

**61. Gheesabai versus State of M.P. 2016 SCC OnLine MP 7516**

**Facts :** The petitioner parents of a minor filed a habeas corpus writ petition in the High Court for the production of their minor girl. The girl was recovered in a raid in a dera of the Banjara community, by the police pursuant to an FIR registered under Sections 3, 4 and 5, ITPA, Sections 3(c) and 4 of the Protection of Children from Sexual Offences Act, 2012 and Section 372 IPC. The parent petitioners did not turn up for custody and the minor girl was sent to the Kundan Kutir Balika Grah, Jaura, District Ratlam under the Juvenile Justice (Care and Protection of Children) Act, 2000. The petitioners pleaded that it was a case of Immoral Trafficking and the minor girl was not involved in immoral trafficking.

**Decision :**

The High Court dismissed the petition in view of the order under the Juvenile Justice Act.

**Comment :**

- (a) In raids often minors are sent to juvenile homes despite the protests of the parents.
- (b) In the present case as the parents

did not turn up for custody – the Juvenile Welfare Board may have felt that the parents may have been complicit.

- (c) The general stigma and stereotype of the Banjara community is of being involved in crime and prostitution.
- (d) This stereotype colours the working of the laws and is likely to come into play in parents of the community seeking custody of minors.

**62. Miss Hanumavva versus State of Karnataka 2016 SCC OnLine 1971**

**Facts :** The petitioner Miss Hanumavva who worked as a coolie introduced her minor neighbour to two persons who committed rape on the girl. The petitioner approached the High Court for bail. It was alleged that she indulged in child trafficking for sexual exploitation.

**Decision :**

- i) Introducing the victim girl to the alleged offenders by itself does not establish the involvement of the petitioner in trafficking.
- ii) The petitioner was released on bail.

**Comment :**

- (a) Courts many times mechanically deny bail in cases where the charges are grave, more so in the highly surcharged area of trafficking.
- (b) In the present case the court looked into the facts and observed that prima facie the offence of trafficking may not be made out.

**63. Haseena versus State (NCT of Delhi), 2016 SCC OnLine Del 3500**

**Facts :** Haseena was convicted for keeping a brothel (Section 3 ITPA), causing or inducing a person to carry on prostitution (Section 5(1)(d) ITPA)

and for detaining a person where prostitution is carried on (Section 6 ITPA). The conviction was challenged in the High Court. The FIR was registered on a complaint of a minor girl who was lured from Darjeeling with the promise of a job and sold.

**Decision :**

- i) The High Court held that the testimony of the victim/survivor was clear that she was forced against her wishes into prostitution.
- ii) That the counselling of the girl is as per law and cannot be said to taint the testimony as improvement.
- iii) The convictions were upheld by the High Court.

**Comment :**

- (a) The consensus view of sex workers collectives is that no minors are to be allowed in the profession.
- (b) Similarly, that no person is to be coerced or forced into the profession against their wishes.
- (c) The clear testimony of a person that as a minor she was forced into sex work against her wishes unequivocally establishes the commission of the offences.

**64. Indian Rescue Mission versus State of Maharashtra, 2016 SCC OnLine Bom 10248**

**Facts :** James Verghese of the NGO Indian Rescue Mission filed a FIR and a raid was conducted and two minor girls rescued. One of the minor girls was released in the custody of the father by the Sessions Court. The release was challenged by the India Rescue Mission in the High Court. The High Court interviewed the girl and found her to be articulate and clear as to the facts and circumstances.

**Decision :**

- i) The girl was not well versed in Hindi at the time of rescue and her statement recorded the same day in Hindi had inaccuracies as to her home situation.
- ii) The girl had sharp cognition and had picked up Hindi and was quite articulate and clear as to her home with her grandmother and step father to take care of her.
- iii) The High Court released the minor girl to the custody of the father and dismissed the India Rescue mission petition.

**Comment :**

- (a) In the working of criminal law like the ITPA it is the State which has the responsibility take steps.
- (b) Third parties generally have no role in the working of criminal law.
- (c) Increasingly, NGOs like the India Rescue Mission initiate actions and litigations in courts infringing the rights of individuals.

**65. Jai Singh versus State, 2016 SCC OnLine Raj 3898**

**Facts :** Two girls from Alwar District in Rajasthan had been sent to Dubai for earning through dancing by one Tinkuraj.

**Decision :**

- i) The woman sent had no connection with sex work and prostitution.
- ii) The court felt that action should be taken against Tinkuraj.
- iii) The police sought two weeks time to investigate as the accused may be involved in human trafficking.

**Comment :**

- (a) Trafficking has been for long conflated with sex work.
- (b) In the present case the Court

categorically recorded that the two girls had no connection with the profession, yet the investigation was to proceed further.

- (c) Perhaps an indicator of the efforts towards de-linking the conflation of sex work and trafficking.

**66. Jayashree versus State of Maharashtra, 2016 SCC OnLine 10079**

**Facts :** The applicant was charged under Sections 3, 4 and 5 of the ITPA and applied for anticipatory bail. The major ground pleaded was that all the girls were major and had volunteered for the profession. There were 18 other similar cases against the applicant and she had been arrested in one such matter.

**Decision :**

- i) The Court rejected the anticipatory bail application of the applicant.

**Comment :**

- (a) The ground pleaded for anticipatory bail that all the woman were majors and were voluntarily in sex work is a positive step.  
 (b) It was not accepted in the present case and the factor of 18 other criminal cases played a role in the denial of anticipatory bail.  
 (c) However, it makes strategic sense to take this ground in applications for bail and anticipatory bail.

**67. Kuriakose versus State of Kerala, 2016 SCC OnLine Ker 2050**

**Facts :** The petitioner was charged with offences of keeping a brothel; living off the earnings of prostitution; procuring or taking for prostitution and prostitution in the vicinity of a public places under Sections 3, 4, 5 and 7 ITPA respectively. The petitioner pleaded that there was no legally conducted search.

That under Section 15(2) ITPA there should be at least two respectable inhabitants of the locality – one of whom should be a woman - to witness the search. There were no such witnesses in the case.

**Decision :**

- i) There was no legally conducted search as per the requirements of law.  
 ii) Prosecution cannot prove that a brothel was running from the premises.  
 iii) Offences against the petitioner are not legally sustainable since the basic premise that a brothel was running from the premises is not established.  
 iv) The Court quashed all further proceedings against the petitioner.

**Comment :**

- (a) In many cases due to social mores and stigma attached to sex work and activities around it like running a brothel, the courts do not take seriously the violations of the provisions of law committed in raids and rescue operations.  
 (b) It is a rare case where serious charges under ITPA were quashed as the search provisions were not followed by the police.

**68. Lonakaran Chotamaiji Parmar versus State of Maharashtra, 2016 SCC OnLine Bom 9851**

**Facts :** A woman Sunita approached the mother of the complainant with a proposal for marriage of the complaint. The boy was stated to be from Ahmedabad with a job in Mumbai. Parmar the applicant for bail in the present case and Sunita took the complainant and her mother to

Ahmedabad and got her married to Nitin Jain.

After the marriage Nitin informed the complainant that he was a resident of Rajasthan. That he had purchased her for Rs. 5 lakhs. The complainant was ill treated, harassed and sexually abused and not given the status of a wife. The complainant bore two children. After five years Nitin abandoned the complainant who was 20 years old now, she came back to her mother's house and lodged a complaint about the events which has occurred five years back. Case was registered for illegal confinement (Section 342 IPC); Kidnapping and Kidnapping to compel marriage (Sections 363 and 366 IPC respectively); Selling minor for prostitution (Section 372 IPC); Buying minor for prostitution (Section 373 IPC); Rape (Section 376 IPC) and penetrative sexual assault; sexual assault and sexual harassment under sections 4,8 and 12 of POCSO. Parmar applied for bail urging that there was inordinate delay of five years in filing the complaint.

**Decision :**

- i) Prima facie it was a case of trafficking under the garb of marriage.
- ii) The delay was due to the helpless economic condition of the complainant and is not fatal to the prosecution.
- iii) The applicant and his agent Sunita had cheated the complainant and ruined her life.
- iv) The bail application was rejected.

**Comment :**

- (a) Trafficking has been for long conflated with sex work.
- (b) The Court took recognition of trafficking under the garb of marriage.
- (c) A positive indicator of the efforts

towards de-linking the conflation of sex work and trafficking.

**69. Mahesh Madhurkar Pawar versus State of Maharashtra, 2016 SCC OnLine 11233**

**Facts :** A couple desirous of a child adopted a child from a ShishuGriha at Nanded and payed 1, 92000/- to the institution. The child was with them from the age of 11 days for a period of one year and nine months. The child was well looked after and good care and medical treatment provided for the ailments by the parent couple who were very attached to the child. Subsequently, a complaint was lodged of trafficking under Section 370 IPC. The child was taken away from the couple and sent to a children's institution by the Child Welfare Committee. The couple approached the High Court for quashing the case against them.

**Decision :**

- i) The Court admitted the case to examine whether in the facts and circumstances a case of trafficking was made out.
- ii) Interim custody of the child was given to the couple in the best interests and welfare of the child.
- iii) An undertaking was taken from the couple about providing medical treatment to the child.
- iv) The couple were free to initiate proceedings for appointment as guardians of the child.
- v) The couple were to take regular counselling suggestions at Tata Institute of Social Sciences, Mumbai.

**Comment :**

- (a) A mechanistic application of the law at times does not lead to any resolution of the issues.
- (b) An innovative approach adopted by

the Court in the present case may lead to a more humane resolution in the facts and circumstances.

- (c) Increasing recognition by courts of trafficking for objects other than sex work.

### **70. Mamta Akash Raju versus State of Maharashtra, 2016 SCC OnLine Bom 4188**

**Facts :** The applicants were convicted for illegal confinement and wrongfully keeping kidnapped person under Sections 344 and 368 IPC. They were also convicted under Sections 3, 4, 5 and 6 ITPA. The applicants prayed for suspension of sentence and release on bail.

The FIR was lodged by one Anson Thomas. The applicants and the two women who were the main prosecution witnesses were residing in Jamuna Mansion – a brothel whose activities were known to the police. That in the past several years not a single person had approached the police station, which was barely half-a-kilometre from the Mansion, on their own complaining of being detained against their will. That it was at the behest of NGOs that raids were conducted at the premises. The complainant in the FIR was harassing the residents to convert to Christianity. The applicants had filed complaints and even a writ petition about the harassment by the complainant in the FIR and that they have been falsely implicated in the case.

#### **Decision :**

- i) The two prosecution witnesses were majors when they entered Jamuna Mansion.
- ii) There is no evidence that they were forced into prostitution against their will or illegally confined by the Applicants.

- iii) The applicants had lodged complaints against the complainant in the FIR and this prompted him to file the case.
- iv) The Applicants while on bail were residing in Jamuna Mansion which is a brothel, and the plea that they committed similar offences while on bail cannot be taken into consideration.
- v) The sentence of the Applicants was suspended and they were released on bail.

#### **Comment :**

- (a) The case illustrates the phenomenon of NGOs having vested interests using the criminal law for their own agendas.
- (b) That even in cases where the persons are majors and have entered sex work of their own volition, NGOs foist false criminal cases.
- (c) The order clearly takes judicial notice of the role of NGOs in the area of sex work and the instigation to conduct raids and rescue and lodge false cases.
- (d) The stigma associated with sex work has not coloured the decision in the present case.

### **71. Manjunath P. Versus State of Karnataka, 2016 SCC OnLine Kar 255**

**Facts :** A bar and restaurant were raided by the police and the customers were arrested and charged with trafficking under Section 370 IPC and Exploitation of trafficked person under Section 370A IPC amongst other lesser sections like Obscene acts and songs. The petitioners moved the High Court for quashing the charges. It was argued that it was not the case that the petitioners had trafficked persons and were merely enjoying food and drinks. That if

incidentally there were women dancing it was not at the instance of the petitioners.

**Decision :**

- i) The Court observed that petitioner No. 5 was Accused 106 and it was evident that there were more than a hundred persons at the bar and restaurant.
- ii) That it was not the case of the prosecution that each of them was trying to befriend a particular woman or exploit a particular woman.
- iii) That it was unclear and vague as to who was trying to exploit whom.
- iv) That characterizing the women as sex workers was unfair to the women employed as waitresses to serve food and drink.
- v) The criminal proceedings were quashed by the High Court.

**Comment :**

- (a) The case is illustrative of the approach of the police in applying the trafficking provisions.
- (b) The role of morality coming into play to indulge in moral policing to harass customers at bars and restaurants.
- (c) At times the mere mention of sex work and trafficking serves to prejudice the courts.
- (d) The fair Court order also illustrates that the stigma associated with sex work and trafficking has not come in the way of interpreting the law.

**72. Priya Gopa Saha versus State of Maharashtra, 2016 SCC OnLine Bom 6939**

**Facts :** Priya Gopal Saha was rescued and sent to shelter home Navjeevan Mahila Vasatigruha, Deonar, Mumbai by the Metropolitan Magistrate for one

year for training in skills like stitching, paper bag making, paper dish making, fancy bag making. Saha, an adult, had no parents and was unmarried. The order was confirmed by the Sessions Court. Saha approached the High Court for quashing of the order and had already spent 10 months in the shelter home. The Applicant stated that she is 28 years old, has been living with her maternal sister since birth at Kamathipura and is capable of looking after herself and was ready to give an undertaking that will not indulge in similar activities in future.

**Decision :**

- i) Applicant is a major and capable to take care of herself.
- ii) Applicant had voluntarily indulged in prostitution and was not forced by anyone.
- iii) Applicant was sent to the home has had no parents and was unmarried.
- iv) Applicant is ready to give an undertaking that will not indulge in similar activities in the future.
- v) Applicant has already spent 10 months in the shelter home.
- vi) The order sending Saha to the shelter home was quashed and her release ordered by the High Court.

**Comment :**

- (a) The facts illustrative of the undermining the consent of an adult and being rescued in 'raid and rescue' operations under ITPA.
- (b) The working of the law not taking into account that the individual sent to the shelter home against her will is an adult capable of taking her own decisions and managing her life.
- (c) Illustrates that the natures of skills being taught in the shelter homes for rehabilitation at best generate very poorly paid work.
- (d) The total lack of taking into account

the reality of the Saha living in Kamathipura since birth and the mockery of taking an undertaking that will not indulge in similar acts.

- (e) The manner of functioning of courts which because of lack of parents and unmarried status sent Saha to the shelter home.
- (f) The injustice suffered as the Applicant had already spent 10 months out of the one year detention ordered by the time of the quashing and release by the High Court.

**73. Sukhendu Nath Bhattacharjee vs State of WB, 2016 SCC OnLine Cal 6574**

**Facts :** The Deputy Magistrate and Deputy Collector, Diamond Harbours conducted inspection in Hotel River View, found 'immoral trafficking were being carried on' and sealed rooms in the hotel. FIR was lodged for wrongful restraint (Section 141 IPC), disobeying public servant (Section 188 IPC) and criminal intimidation (Section 506 IPC). The rooms were sealed to avoid filthy environment under Section 133 of the Criminal Procedure Code (CrPC) which empowers a District Magistrate or Sub-Divisional Magistrate to make orders for removal of nuisance. Under Section 144 CrPC which empowers to pass orders in urgent cases of nuisance or danger orders were passed prohibiting any person to enter and reside in the rooms sealed.

The petitioner applied to the Judicial Magistrate for opening of the rooms which was turned down and the matter reached the High Court.

**Decision :**

- i) The High Court rejected the petition of the applicant.
- ii) The petitioner did not take steps

against the orders passed under Section 133 and 144 CrPC in the appropriate forum.

**Comment :**

- (a) Rooms were sealed under the CrPC provisions to prevent nuisance on the grounds as steps to avoid filthy environment on the suspicion of immoral activity being carried out at the premises.
- (b) The powers under the CrPC provisions are to prevent nuisance or apprehended danger and have no application in sealing rooms as 'immoral trafficking were being carried on' in the premises.

**74. Sahil Patel versus State of A.P. 2016 SCC OnLine Hyd 24**

**Facts :** The petitioners approached the High Court to quash charges against them under ITPA on the plea that the investigations at best reveal they were customers and were not running the brothel or living off the earnings of prostitution.

**Decision :**

- i) The Court took the view that the provisions of ITPA are not applicable to customers.
- ii) However, Sections 370 and 370A of the IPC have been introduced by the 2013 amendment.
- iii) The High Court refused to quash the charges.
- iv) The petitioners were free to approach the trial court for discharge on merits.

**Comment :**

- (a) Illustrative of the practice of the police arresting and charging anyone present during raids regardless of the provisions of law.
- (b) An indicator that courts inclined to

prosecuting customers under Section 370A IPC – Exploitation of trafficked person.

### **75. Shaiyra versus The State, 2016 SCC OnLine Del 2352**

**Facts :** Shaiyra was convicted of offences under Section 3, 4 and 5 of ITPA and appealed to the High Court. Section 13 ITPA envisions the appointment of Special Police Officers to carry out investigations under the Act. A major part of the investigations were carried out by a police officer who was not a Special Police Officer under ITPA. The persons rescued mentioned various men with whom they had come away from their respective hometowns. At the time of the raid most of the women rescued were majors or on the verge of attaining majority.

#### **Decision :**

- i) Investigations conducted by an officer not designated as Special Police Officer under ITPA were without jurisdiction and unsustainable.
- ii) Victims had accompanied strangers from different places on the pretext of a good job without informing their parents.
- iii) There was nothing to show that the appellant Shaiyra had any nexus with the persons who abducted or kidnapped the victims.
- iv) It was not established that any of the victims were minors at the time of the incident.
- v) It was not established that the victims were forcibly subjected to prostitution against their wishes.
- vi) The possibility that the victims were consenting parties cannot be ruled out.
- vii) The identity of customers who allegedly abused the victims was

not ascertained.

- viii) Shaiyra was acquitted by the High Court in appeal.

#### **Comment :**

- (a) The judgment clearly takes on board that 'victims' 'rescued' may be actually consenting parties.
- (b) Rescued women may have entered the profession on their own and not forced into it.
- (c) That the stigma and prejudice associated with sex work and prostitution must not be allowed play and the burden of proving the various facts to establish offences is on the prosecution in law and is equally applicable to ITPA cases
- (d) Evidence must be produced to establish abuse and coercion and mere bald allegations are not sufficient for conviction in law.

### **76. Shankar Gowda versus State, AIR Kant R 353**

**Facts :** The petitioner was charge sheeted under Sections 3, 4, 5, 6, 7, 8 & 9 of ITPA and applied for quashing of charges. Section 13 of ITPA mandates the appointment of a Special Police Officer under the Act not below the rank of Inspector of Police. The investigation, search and arrest in the present case were carried out by a Sub-Inspector of Police.

#### **Decision :**

- i) Investigation was not steered by a Special Police Officer appointed under Section 13 of ITPA was held to be illegal and vitiated.
- ii) The charges were quashed by the High Court.

#### **Comment :**

- (a) The following of procedures for investigation and search as laid

down under ITPA are many times disregarded by the investigating agencies.

- (b) The registration and investigation without following the procedure specified under ITPA must be set aside by courts.

**77. Abhijit Kallianpur vs State of Karnataka, Criminal Petition No. 1959 of 2017 Karnataka H C**

**Facts :** The petitioner was arrested in a raid at the Shivai Thai Massage Spa, Bengaluru as a customer and charged with offences under Section 370 IPC and Sections 3, 4, 5, 6 and 7 ITPA. The raid was carried out on the suspicion that sex work was being carried out at the Spa. It is after the raid and the preparation of panchnama that an FIR was registered. The petitioner approached the High Court for quashing of charges.

**Decision :**

- (i) The petitioner was present on the spot at the time of the raid indicating that he had gone there as a customer for massage.
- (ii) A customer is not covered under any of the provisions like running a brothel (Section 3 ITPA); earning off the livings of prostitution (Section 4 ITPA); Procuring a person for prostitution (Section 5 ITPA); Detaining a person where prostitution carried out (Section 6 ITPA) and prostitution in vicinity of public place (Section 7 ITPA).
- (iii) Registration of FIR after the carrying out of the investigation raid and preparation of panchama vitiated the proceedings.
- (iv) The FIR was quashed holding that allegations made do not constitute any of the alleged offences.

**Comment :**

- (a) There is no law prohibiting spas and massage parlours.
- (b) Raids by police on the suspicion that sex work being carried out.
- (c) The practice of the police to make any persons present at the time of the raid an accused, regardless of the facts and law.
- (d) Investigation and raids before an FIR vitiate the proceedings in law.
- (e) The stigma and discrimination associated with sex work gets attached to spas and massage parlours leading to harassment.

**78. Abhishek Mishra vs State of Goa, Criminal Writ Petition No. 77 of 2017, Bom HC (Goa Bench)**

**Facts :** The police conducted a raid on the massage parlour run under the name and style as "Venus & Mars Salon-Spa Body Care" in Mapusa, Goa on the premise that the girls engaged therein were carrying on prostitution in the spa by way of cross massage. Charge sheet was filed under Sections 3, 4, 5 ITPA and Section 370 IPC. The petitioner approached the High Court for quashing the charges arguing that there was no material to connect him with the offences.

**Decision :**

- (i) There is no mention of the petitioner in the FIR.
- (ii) The petitioner is not mentioned by the victims amongst the customers.
- (iii) There is no reason to force the petitioner to stand the trauma of a trial.
- (iv) The charge sheet against the petitioner was quashed.

**Comment :**

- (a) Raids on the suspicion of sex work being carried out causing

harassment of the establishments and the customers, even though Spas and Massage parlours are legal.

- (b) Routine practice of arresting any persons present on the spot at the time of the raid and making them an accused, regardless of the factual and legal position.
- (c) The stigma and discrimination associated with sex work gets attached to spas and massage parlours leading to harassment.

**79. Anju Devi versus State of West Bengal, 2017 SCC OnLine Cal 809, Cal HC**

**Facts :** A minor girl was kidnapped. The girl was not recovered and the main accused could not be arrested. The mother of the minor pleaded ineffective investigation and approached the High Court for proper investigation.

**Decision :**

- (i) The minor girl appeared to have been taken out of the State of West Bengal.
- (ii) The case was transferred to the Anti-Human Trafficking Unit attached to CID, West Bengal.

**Comment :**

- (a) Cases of inter-state trafficking of minors require co-ordination with other states.
- (b) A specialized unit familiar with patterns may be more equipped to investigate rather than the local police station where the offence committed.

**80. Arun Baburao Chavan vs State of Maharashtra, 2017 SCC OnLine Bom 7331, Bom HC**

**Facts :** A raid was organized on a lodge in Karad and the owner of the lodge

was arrested and charged with offences under Sections 3, 4 and 7 ITPA and Section 370 IPC. The applicant has already spent one and a half years in jail and applied for bail which was rejected by the Sessions Court. The applicant approached the High Court.

**Decision :**

- (i) The four victims found in the lodge were all above 21 years of age and none of them was a minor.
- (ii) The victims/survivors have not stated that the accused had induced or forced them into prostitution.
- (iii) Bail was granted to the accused.

**Comment :**

- (a) Sustained campaign by sex workers that adult women may enter sex work without being induced or forced seems to be having an impact.
- (b) The Courts appear to be taking on board the fact of adult women entering sex work on their own volition specially in the context of releasing the accused on bail.

**81. Firoja vs The State of Maharashtra, Criminal Appeal Nos. 534 and 597 of 2010, Bom HC**

**Facts :** The accused were charged with offences under Sections 3, 4, 5 and 6 ITPA and for procurement of a minor girl for illicit intercourse under Section 366A of the IPC. The trial court held that as the provisions for appointment of and raids by Special Police Officers under Section 13 and 15 ITPA had not been followed and the offences under ITPA were not established. The trial Court convicted the accused under Section 366A IPC and the case reached the High Court in appeal.

**Decision :**

- i) The girls state that they are minors but without giving the reasons for this estimate and oral testimony cannot be relied on.
- ii) The evidence of the doctor merely states the conclusion that the girls were minors.
- iii) The basis of the conclusion that the girls were minors has not been deposed to by the medical doctor.
- iv) There can be an error of two years in the estimates based on bone ossification test.
- v) The prosecution has neither taken steps to get birth certificates or school leaving certificates nor examined the parents of the girls or the Principal of the School.
- vi) The girls/ woman being minors under the age of 18 years has not been established beyond reasonable doubt.
- vii) The accused were acquitted of the charge.

**Comment :**

- (a) The Trial Court took on board that the fact that the provisions as to appointment of and searches by Special Police Officers were not followed and therefore offences under ITPA were not established.
- (b) The bone ossification test relied on in prosecution in a number of cases has wide variation and a two year margin of error and is not conclusive in establishing that a girl is a minor.

**82. Gudia Swayamsevi Sansthan vs Satyabhama, 2017 SCC OnLine 417, Supreme Court**

**Facts :** The accused were arrested for human trafficking and forcing minor girls into prostitution. In a raid in May 2016, forty-one minor girls were recovered. There were allegations of

giving growth hormones to small girls for prostitution.

The accused were charged under Sections 370 to 373 IPC for trafficking, buying and selling minors for prostitution. They were also charged with offences under Section 3, 4, 5, 6, 7 & 9 of the ITPA. The Allahabad High Court released the accused on bail. An appeal was lodged in the Supreme Court for the cancellation of bail.

**Decision :**

- i) Given the seriousness of the allegations, the High Court should not have granted bail in a mechanical manner without noticing the facts of the case.
- ii) The girls were kept hungry, given drugs and kept intoxicated.
- iii) There is a gang involved in human trafficking and operating to force minor girls into prostitution.
- iv) The approach of the High Court was not proper given the serious allegations.
- v) The release of the accused on bail was cancelled.

**Comment :**

- (a) The factors in a decision to cancel bail are different from those involved in granting bail.
- (b) Generally, bail is cancelled due to conduct after release like influencing witnesses and tampering with evidence.
- (c) The Supreme Court has named a minor in the order, despite the law being clear about not identifying minors.

**83. Jitendra Kumar vs State of Uttarakhand, Criminal Appeal Nos. 29, 34 and 41 of 2014, Uttarakhand HC**

**Facts :** Occupants of a room in a hotel complained to the receptionist about ruckus in adjoining room. The receptionist informed the Manager who contacted the police. The police raided the room found men and two women in naked and semi-naked position and arrested the three accused, while a fourth ran away. The doctors opined that the age of the girls recovered from the room was 16-17 years and 17 years respectively. The Manager and the Receptionist turned hostile and did not identify the accused. The accused were convicted under Section 373 IPC for buying minor for purpose of prostitution and appealed in the High Court.

**Decision :**

- i) The prosecution should not keep back eye witnesses as their evidence is likely to go against the prosecution.
- ii) It is the duty of the prosecution to present the best evidence and assist the court in reaching a proper conclusion.
- iii) If persons who have witnessed the incident are deliberately kept back the Court may draw an adverse inference and record it as a serious infirmity in the proof of the prosecution case.
- iv) The Court held that in the present case the two girls and the occupant of the neighbouring room who lodged the complaint were material witnesses and were not examined by the prosecution.
- v) The High Court drew an adverse inference against the prosecution, held that the offence was not proved beyond reasonable doubt and acquitted the accused persons.

**Comment :**

- (a) The judgment makes an important

point about the duty of the prosecution to lead the best evidence to assist the court.

- (b) This needs to be kept in mind when the prosecution chooses to produce witnesses in its favour and hold back witnesses which are likely to go against the prosecution case.
- (c) That an adverse inference ought to be drawn against the prosecution and it should be counted as a serious infirmity in the prosecution case.

**84. Kamala Thusang Lama vs State of Maharashtra, 2017 SCC OnLine 5160, Bom HC**

**Facts :** The applicant for anticipatory bail was moved apprehending arrest by the accused in a FIR with charges like wrongful confinement (344 IPC), Kidnapping, Procurement of minor girl, trafficking, buying and selling of minors under sections 344, 363, 366A, 370 A, 372, 373 IPC; Sections 3, 4, 5, 6, 7 ITPA and Sections 4 and 17 POCSO. The Applicant pleaded that she was the owner but was unaware of the activities of the co-accused. That the girls were between 17 and 19 years of age and the POCSO sections are to be deleted. That the applicant has been cooperating with the police during the interim pre-arrest bail.

**Decision :**

- i) The main allegations are against the co-accused.
- ii) There are no criminal antecedents of the applicant-accused.
- iii) The anticipatory bail granted was confirmed by the High Court.

**Comment :**

- (a) Generally the grave nature of the charges weighs heavily with the judge in deciding the question of

- bail and more so anticipatory bail.
- (b) It is rare for anticipatory bail to be granted in such cases particularly those involving allegations of trafficking of minors.
- (c) Rarely are other factors given due weight in the decision to grant or refuse bail and anticipatory bail as seems to have been done in the present case.

**85. Liyakat Ali Mansab Ali Chaudhary vs State of Maharashtra, 2017 SCC OnLine 7073 Bom HC**

**Facts :** A girl was rescued in a raid on a brothel named "Sheesh Mahal" and claimed that she had merely gone to the place to meet a friend. The claim was disbelieved by the trial court as the girl was found in a room with the decoy customer sent by the police. The girl gave two names of her mother and gave the ages and names of four brothers and two sisters. The Probation Officer of the NGO Rescue Foundation gave different names and ages of the siblings. As the information given by the girl did not match the information collected by the NGO Rescue the trial court sent the girl to a rescue foundation for protection, safety, vocational training and rehabilitation. The victim woman challenged the detention order in the Sessions Court. The appeal was dismissed noting the discrepancy and mismatch of names and ages of siblings, the lack of any relative of the woman approaching to claim her and asking for setting aside the detention order and the genuineness of the documents produced like Aadhar card was also doubted. Thereafter, a petition was filed in the High Court by two persons claiming to be the father and mother of the girl.

**Decision :**

- i) The name given by the mother Anjuma did not match the name given by the girl as Anjuman or Fico.
- ii) The girl had not referred to father in her statement.
- iii) The court observed that there was serious doubt about the petitioners being the relatives of the girl and dismissed their petition.

**Comment :**

- a) Minors at times sent to juvenile homes against the wishes of the parents.
- b) At times names and documents of persons living at the margins of society are not so clear cut and fixed.
- c) The anxiety of the court is that persons falsely claiming to be relatives are seeking custody and intend to send the girl back into sex work.

**86. Navin Kumar Chhotelal Tiwari vs State of Maharashtra, 2017 SCC OnLine 5261, Bom HC**

**Facts :** A fifteen year old girl from Bangladesh was found in Hotel Ratnagar in Daman where the applicant-accused was working as manager. According to the girl one person Raju brought her to Ahmedabad and kept her there for eight days.

Thereafter, she was handed over to another person who brought her to Hotel New Ratnagar in Nani Daman. The accused was working as Manager in the hotel.

The applicant and other hotel staff had forcible sexual intercourse with her. On 18/4/2016 at about 1.30 am, she opened the flap of the window and shouted for help. The patrolling police on hearing her shouts came to the hotel

and found her. The accused was charged with Sections 3, 5, 6, 7 & 8 of ITPA and sections 3 & 4 of POCSO and applied for bail.

**Decision :**

- i) The girl has made specific allegations against the accused and three others of forcible sexual intercourse.
- ii) The medical report categorically records forcible sexual intercourse.
- iii) The manner in which the girl was found were also held against the accused.
- iv) The High Court denied bail to the accused.

**Comments :**

- (a) Sex workers collectives have consistently taken a stand against the entry of minors.
- (b) Similarly sex workers collectives have been against forcible induction into the profession.
- (c) The circumstances of the rescue suggest that the minor girl was illegally confined in the hotel.

**87. Neeli Mathiya vs State of Karnataka, Criminal Petition No. 4242/201, Kar HC**

**Facts :** A Sub-Inspector of police conducted a raid on a spa in Bengaluru, after sending a decoy customer and arrested the accused persons who were charged under Sections 3, 5 and 7 ITPA and 370 IPC. The accused filed the present petition for quashing of charges against them on the ground that the entire investigation was done and charge sheet filed by a person who has not been appointed as Special Police Officer under Section 13(1) of ITPA.

**Decision :**

- i) The investigation was vitiated due to

legal infirmity as it was not conducted by a Special Police Officer mandated by Section 13(1), ITPA.

- ii) The charges against the accused were quashed by the High Court.

**Comment :**

- (a) Continuing trend of raiding Spa and Parlours on the suspicion of prostitution.
- (b) Courts are increasingly taking the view that compliance of the requirements of ITPA with regard to investigation by Special Police Officers appointed under the law is mandatory.
- (c) Investigations conducted by police officers who are not appointed as Special Police Officers are without jurisdiction and are liable to be set aside.

**88. P. Saraswathi vs State of Tamilnadu, 2017 SCC OnLine 8299, Mad HC**

**Facts :** Case under section 4(2)(c) ITPA for acting as a pimp or tout of a prostitute was filed against three persons. The rescued girl was sent to the government Malhir Home, Combaitore by the Magistrate and an inquiry by a Probationary Officer ordered. The girl had done SSLC and the Ayurveda Nursing Certificate Course. The petition by the mother for custody of the girl was dismissed by the Magistrate and the matter reached the High Court.

**Decision :**

- i) Section 17(3) of ITPA allows a maximum custody of three weeks.
- ii) The period of three weeks had long lapsed even by the time the Probationary Officers report was filed.
- iii) The order dismissing the mother's

petition for custody records: "On persusal of the Probationary Officers report, it is stated that the neighbours of the victim have not stated any satisfactory remarks about the victim girl and her mother, and somebody told that they are not leading law abiding and peaceful life."

- iv) The High Court allowed the petition of the mother for custody and directed the release of the girl from custody.

**Comment :**

- a) Illustrative of 'rescue' of adult persons against their will.
- b) The violation of ITPA which allows a maximum of three weeks custody which is habitually not adhered to by the court.
- c) It also illustrates the stigma against sex workers that on the basis of a vague statement that neighbours have not stated 'satisfactory' remarks, the girl was sent into custody at a detention home by the Magistrate.

**89. Periyasamy vs Deputy Superintendent of Police, AntiTraffic Cell, CBCID MANU/TN/ 1965/ 2017:2017(2) MLJ(C rl)675, Mad HC**

**Facts :** The petitioner was convicted for living on the earnings of prostitution under section 4(1) and procuring a person for purpose of prostitution under Section 5(1) of the ITPA by the trial court. The conviction was upheld by the Sessions Court. The accused appealed in the Madras High Court. The allegation was that Accused 1 & 2 engaged the petitioner to procure girls for them. The petitioner engaged the two girls and instructed them to go to the hotel. At the hotel Accused 1 & 2

instigated them for prostitution and had sexual intercourse with them. The petitioner submitted that there was no material to show that he induced the girls to involve in prostitution. The medical report put the age of the girls as between 18 and 20 years. One of the girls 'rescued' turned hostile. The second girl in her statement before the Magistrate did not name the petitioner. The police did not seize the phones of the two girls or produce call records to show that the petitioner called the two girls. An NGO appears to have been involved in the raid and has given evidence as a prosecution witness.

**Decision :**

- i) The victim girls did not support the case of the prosecution and have merely stated that they were arrested by the police on suspicion.
- ii) There were lot of discrepancies between the police and NGO about the time of arrival at the hotel and the arrest of the petitioner.
- iii) The prosecution has not shown any evidence to establish that there was meeting of minds between the petitioner and the girls prior to the incident.
- iv) The High Court acquitted the petitioner of all charges.

**Comment :**

- (a) It appears to be a case of consensual sex work by an adult.
- (b) Appears to be illustrative of the role of NGOs in pushing their agenda and pushing a reluctant police to raid and 'rescue'.
- (c) The reluctance of the police reflected in not collecting phones or call records to establish the ingredients of the offence.

**90. Prashant Shambhu Shetty vs State of Maharashtra, 2017 SCC OnLine Mah 7273, Bom HC**

**Facts :** The police raided Sai Lodge, Pune and 'rescued' 14 'victims'. Case was filed under Section 3, 4 and 5 ITPA against the owner and managers. Prashant Shambhu Shetty, the owner filed the present application for anticipatory bail claiming that he had no knowledge of the running of the brothel at his lodge.

**Decision :**

- i) The court observed that none of the fourteen girls was a minor.
- ii) The statements of the girls do not reveal that they were forced or compelled into sex work.
- iii) It is difficult to believe from the statements of the girls that the applicant owner of lodge was not aware of the running of a brothel from his lodge.
- iv) The High Court granted anticipatory bail to the petitioner.

**Comment :**

- (a) Sex workers campaigns have been focusing for taking cognizance of sex work undertaken on own volition by adult persons.
- (b) In matters of bail and anticipatory bail, the courts appear to be taking on board the fact that the persons 'rescued' were not minors.
- (c) That the adult persons 'rescued' in their statements are not claiming to have been forced or compelled into sex work is being considered as an important factor in granting bail and anticipatory bail by courts.

**91. R.A.H. Siguran vs Shankare Gowda, MANU/SC/1086/2017: 2017 (101) ALLC C 281, Supreme Court**

**Facts :** The Magistrate had committed the case for trial and charge sheet had been filed in the Sessions Court under Sections 3, 4, 5, 6, 7 and 8 ITPA and sections 366A and 372 IPC. The accused Shankare Gowda approached the High Court for quashing of the case. The High Court quashed the criminal proceedings on the ground that the Investigating Officer was not competent to investigate as he was not a Special Police Officer as mandated by ITPA. The matter reached the Supreme Court in appeal.

**Decision :**

- i) The High Court was wrong in quashing the criminal proceedings merely on the ground that the investigation was invalid.
- ii) In case where the police report is vitiated due to breach of mandatory provision, criminal proceedings can be set aside, only if it can be shown that the illegality in investigation resulted in miscarriage of justice.
- iii) The Supreme Court set aside the High Court order and directed the trial court to proceed with the matter in accordance with law.

**Comment :**

- (a) The high courts had been treating breach of the provision of ITPA requiring that investigation be done by Special Police Officer under the Act as enough to quash criminal proceedings.
- (b) The Supreme Court in a reversal has laid down that for criminal cases to be quashed it must be shown that the illegality in investigation resulted in miscarriage of justice.

**92. Ramakrishnamma vs State of Karnataka, 2017 SCC OnLine Kar 1299, Kar HC**

**Facts :** The petitioner woman was charged as co-accused with subjecting a 16 year old girl to sexual abuse and trafficking while the victim was in her house for four days and then selling her to another accused. She was charged with serious charges of wrongful confinement, rape, trafficking, exploitation of a trafficked person under the IPC, Sections 3, 4, 5, 5A, 6 and 9 of the ITPA and sections 4, 7 and 16 of POCSO. The petitioner applied for bail. It was argued that the applicant is a lady and given the nature of allegations, she may be released on bail.

**Decision :**

- i) The punishment for exploitation of a trafficked person under Section 370A IPC was five years extendable to seven years.
- ii) Given the role attributed to the applicant her continued detention was not required.
- iii) The petitioner was given bail by the Court.

**Comment :**

- (a) Presumption of innocence in law operates for all offences.
- (b) However, in offences particularly with allegations involving buying and selling of minors, trafficking, sexual abuse and rape – the seriousness of the charge weighs heavily in deciding the issue of deciding the issue of release on bail.
- (c) Contrary to the law with regard to non-disclosure of the identity, the High Court has named the minor girl.

**93. Sandeep Bhai Karathia vs State of Chhatisgarh, 2017 SCC OnLine Chh 200, Chh HC**

**Facts :** There were allegations of luring 22 villagers to work in a factory in Malyasia promising high wages, medical and other facilities. The workers were bonded, forced and tortured to work with no high wages and facilities. The accused were charged with trafficking of more than one person under Section 370(3) IPC and approached the High Court.

**Decision :**

- i) There was enough material to show that a prima facie case is made out against the petitioner.
- ii) The case was sent back to the Sessions Court with a direction for expeditious disposal.

**Comment :**

- (a) Trafficking was for years totally conflated with sex work.
- (b) Sex workers campaigns have been consistently trying to de-link trafficking from sex work.
- (c) The efforts may have an impact with the investigating agencies and the courts taking an increasing number of cases of human trafficking for purposes other than sex work like the present case.

**94. Sandhya vs State of Kerala and Ors., MANU/KE/0862/2017: ILR 2017(3)Kerala171, Kar HC**

**Facts :** The accused were charged under Sections 3, 4, 5, and 7 ITPA. They approached the High Court for quashing of criminal charges. The search had been carried out and the arrest effected by a Sun-Inspector of Police and not by the Special Police Officer mandated under ITPA.

**Decision :**

- i) The search conducted by the Sub-Inspector was without any authority and illegal.
- ii) The criminal case against the petitioners was quashed by the High Court.

**Comment :**

- (a) In a strict interpretation, the non-compliance of the provisions of ITPA with regard to investigation, search and seizure by Special Police Officers held as undermining the base of the criminal case itself.

**95. Vinod vs State of Maharashtra, 2017 SCC OnLine Guj 466, Bom HC**

**Facts :** The accused Vinod a customer, was found sitting in a room waiting for his turn in a raid on a brothel was charged under sections 3, 4, 5 ITPA and section 370 IPC. Vinod approached the High Court for quashing of charges on the plea that customers are not liable under the provisions. Attention was drawn to the clarification issued by the Verma Committee to Ms. Seshu on behalf of the National Network of Sex Workers that the proposed section was not intended to harass sex workers who undertake it of their own free will or their clients.

**Decision :**

- i) Sections 3, 4 and 5 ITPA were held to be inapplicable to the accused customer.
- ii) Even taking into account that section 370 IPC is not applicable to sex workers who are in it of their own volition and not due to inducement, force or coercion – the court held that it is a question of fact to be investigated by the Investigation Officer.
- iii) Charges under Section 370 IPC were not quashed.

**Comment :**

- (a) Regardless of the provisions of law, the opinion of judges that customers cannot go scot free and must be punished impacts the interpretation placed by courts.
- (b) Naveen Kumar versus State of Telangana decision in 2015 is along similar lines and was approvingly quoted in the present judgment.





# ANNEXURE 3.

## List of Cases

### 2010

1. Renu Bansal versus U.T. Chandigarh 2010 Cr.L.J. 600 (Punjab and Haryana High Court).
2. Yogesh versus State of Rajasthan 2010 Cr.L.J. 629 (Rajasthan High Court).
3. N. Vijaya versus State of Karnataka 2010 Cr.L.J. 1050 (Karnataka High Court).
4. Narmada Govind Kamble versus State of Maharashtra 2010 Cr.L.J. 1220 (Bombay High Court).
5. Smt. L versus State of U.P. Criminal Misc Application No. 30421 of 2010 (Allahabad High Court).

### 2011

6. Sangeeta Ashok Sanap versus State of Maharashtra 2011 Cr. L. J. 2206 (Bombay High Court)

### 2012

7. Tara versus State W.P. (Crl) 296/2012 (Delhi High Court).

### 2013

8. Court of its own motion through Shakti Vahini vs State Writ Petition (Crl) 891/2013 Del HC
9. Hotel Sooriya Heritage Inn versus Collector-cum-District Magistrate,

Puducherry, 2013 Cr.L.J. 359 (Madras High Court).

### 2014

10. M. Ramakrishna versus Respondent: The Sub-Divisional Magistrate &nr. 2014 CrLJ 2013
11. The State of Maharashtra versus Chatish Arunachalam Das 2014(3)Bom CR(Cri)438
12. Ashok Hazra versus State of West Bengal 2015(1) CHN (CAL) 289
13. Ranjana Pathak versus State 2014 ALL MR(Cri)2895
14. Delhi High Court Legal Services Committee versus UOI. 214(2014)DLT1
15. State of H.P. versus Shiv Chand. Cr. Appeal No. 485 of 2011
16. Ashok Rai versus State. Criminal Petition No. 5718 of 2014
17. Bidhu Bhushan Mahapatra versus State of Karnataka. Criminal Petition Nos. 1628, 1637 and 1979/2014
18. Antony Vincent versus State of Kerala. 2014(3) KLJ517
19. C.P. Raju versus State of Kerala. 2014 CriLJ2936
20. Madhu V.T. versus State of Kerala. 2014 CriLJ3257
21. Shajahan versus State of Kerala. 2014 CriLJ2261
22. Sreejith @ Ayyappan versus. State of Kerala. CrL. M.C. No. 4994 of 2013

23. P. Shanmugavel Raj versus State. 2015(1)Crimes 536(Mad.)
24. Mangamma versus State of Tamil Nadu. 2014CriLJ3420
25. Ravi @ Ramkumar versus Government of Tamil Nadu. 2014(2)MLJ(Crl)317
26. T.K. Sadhananthan versus The Sub-Divisional Magistrate Cum Revenue Divisional Officer. W.P. No. 25663 of 2013 and M.P. Nos. 1 and 2 of 2013
27. S. Rangaraj versus The Commissioner of Police. 2015(1) CTC 702S.
28. Masthan Reddy versus. The State of Tamil Nadu. 2014(2)MLJ(Crl)257
29. Preeti versus State of Punjab. Crl. Misc. No. M-10378 of 2013
30. Goenka Sajan Kumar versus The State of A.P. 2015(3)Crimes 281(A.P.)
31. State versus Deepak. Sessions Case No. 57 of 2013 Additional Sessions Judge, Special FTC -2 (Central), Tis Hazari Courts, Delhi
38. Freedom Firm versus Commissioner of Police, Pune (1) CRPIL 4/15 (J)
39. Ranjeet Kaur versus State (NCT Govt. of Delhi). 2015(152) DRJ653 [ HC of Delhi]
40. State of Himachal Pradesh versus Reeta Devi. Cr. Appeal No. 734 of 2008
41. G.S. Madusudan versus State. Crl. P. Nos. 5297, 5439 and 5632 of 2015
42. Karthik Hegde versus State of Karnataka. Criminal Petition Nos. 1007/2015 and 1642/2014 and Writ Petition No. 60129/2014.
43. Madhu versus State of Karnataka. 2015(3) AKR 784
44. Satish versus State. Criminal Appeal Nos. 1019 and 1322/2010
45. State of Karnataka versus Farzana. 2015(6)KarLJ 617
46. T. Sundar versus The Superintendent of Police. Crl. O.P. Nos. 225, 330, 384, 657, 840, 841, 1331 and 2387 of 2015

## 2015

32. Chandni Yadav versus Adhikshika, Rajkiya Nari Sanrakshan Grih. Writ Petition No. 34964 of 2015
33. Momin Muzammil Anwar versus State of U.P. 2015(2)ACR1244
34. Abhishek Mishra versus The State of Goa. Writ Petition No. 717 of 2015
35. Sumeer Ramdayal Sabharwal versus The State of Maharashtra Criminal Public Interest Litigation No. 43 of 2015
36. Latabai Keshav Maundekar versus State of Maharashtra. Writ Petition No. 1185 OF 2015
37. Bhakti Ram Pandey versus State. Crl. A. 679/2005, Cr. Public Interest Litigation No. 4 of 2015 [ HC of Delhi]
47. Shila Devi versus The State of Bihar. Criminal Appeal (SJ) No. 428 of 2013
48. Apne Aap Women Worldwide Trust India versus The State of Bihar. 2015(1)PLJR 268
49. Salma Bibi versus State of Rajasthan. S.B. Criminal Misc. Petition No. 3158/2015
50. Katamoni Nagaraju versus State of Telangana. Criminal Petition No. 1536 of 2015
51. Mohammed Shaeed versus The State of Telangana. 2015 (1) ALD(Crl.) 992 (AP)
52. S. Naveen Kumar versus The State of Telangana. 2015 (2) ALD(Crl.) 156 (AP)

**2016**

53. Abdul Nazar vs State of Kerala, 2016 SCC OnLine Ker 8673, Kerala High Court
54. Col (Retd) Ajay Ahlawat versus State, 2016 SCC OnLine Del 5833
55. Ali AK versus State of 2016 SCC OnLine Ker 19846, Kerala High Court
56. Ashok versus State of Karnataka, 2016 SCC OnLine Kar 2522
57. B. Sandhya versus State of Tamil Nadu, 2016 SCC OnLine Mad 20416
58. Central Bureau of Investigation versus Raja Bhattacharya, 2016 SCC OnLine 249
59. Nitu vs Government of National Capital Territory of Delhi, W.P. (C) 4414 of 2012, Delhi H C
60. Dilip Khan KM versus State of Kerala, 2016 SCC OnLine 7938
61. DoleeRanglal Rangu versus State of Maharashtra, 2016 SCC OnLineBom 12560
62. Gheesabai versus State of M.P., 2016 SCC OnLine MP 7516
63. Miss Hanumavva versus State of Karnataka, 2016 SCC OnLine 1971
64. Haseena versus State (NCT of Delhi), 2016 SCC OnLine Del 3500
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66. Jai Singh versus State, 2016 SCC OnLine Raj 3898
67. Jayashree versus State of Maharashtra, 2016 SCC OnLine 10079
68. Kuriakose versus State of Kerala, 2016 SCC OnLine Ker 2050
69. LonakaranChotamajji Parmar versus State of Maharashtra, 2016 SCC OnLineBom 9851
70. Mahesh MadhurkarPawar versus State of Maharashtra, 2016 SCC OnLine 11233
71. Mamta Akash Raju versus State of Maharashtra, 2016 SCC OnLineBom

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72. Manjunath P. Versus State of Karnataka, 2016 SCC OnLine Kar 255
73. PriyaGopaSaha versus State of Maharashtra, 2016 SCC OnLineBom 6939
74. Sukhendu Nath Bhattacharjee vs State of WB, 2016 SCC OnLine Cal 6574
75. Sahil Patel versus State of A.P., 2016 SCC OnLineHyd 24
76. Shaiyra versus The State, 2016 SCC OnLine Del 2352
77. Shankar Gowda versus State, AIR Kant R 353

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78. Abhijit Kallianpur vs State of Karnataka, Criminal Petition No. 1959 of 2017
79. Abhishek Mishra vs State of Goa Criminal Writ Petition No. 77 of 2017
80. Amarpreet Kaur Chawla vs The State of Jharkhand, Cr. Revision No. 1265 of 2017
81. Anju Devi versus State of West Bengal, 2017 SCC OnLine Cal 809
82. ArunBaburao Chavan vs State of Maharashtra, OnLineBom 7331 2017
83. Firoja vs The State of Maharashtra, Criminal Appeal Nos. 534 and 597 of 2010
84. GudiaSwayamseviSansthan vs Satyabhama 2017 SCC OnLine 417
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  94. Ramakrishnamma vs State of Karnataka 2017 SCC OnLine Kar 1299
  95. Sandeep Bhai Karathia vs State of Chhattisgarh 2017 SCC OnLineChh 200
  96. Sandhya vs State of Kerala and Ors.MANU/KE/0862/2017: ILR 2017(3)Kerala171
  97. Vinod vs State of Maharashtra, 2017 SCC OnLineGuj 466.





This research was an outcome of a partnership between human rights activists, human rights research agencies and sex worker collectives in India. The research was led and conducted by the sex worker collective Veshya Anyay Mukti Parishad (VAMP), the NGO SANGRAM in India and Rights4Change based in Netherlands. The study partners in India were Veshya Anyay Mukti Parishad, Saheli HIV/AIDS Karyakarta Sangh and Aadhar Bahuddeshiya Sanstha, Maharashtra; Uttara Karnataka Mahila Okkutta, Karnataka; Kerala Network of Sex Workers, Kerala and Srijan Foundation, Jharkhand.

The study was a search for evidence to answer crucial questions: If women entered sex work by force then why would they want to return to sex work voluntarily? If they entered because of lack of skills to do other jobs, why did they return after they were taught skills that could have helped them earn? If they entered sex work due to 'force of circumstance' why would they return when those circumstances had changed for the better? If they entered because of deception, lure, by unscrupulous persons who they trusted, why would they return when they were given a chance to make a 'new' life? If they entered because of lack of life choices, why would they 'choose' to return?

