



## **OBSERVING INTERNATIONAL DAY TO END VIOLENCE AGAINST SEX WORKERS**

*December 17 is observed world over as the International Day to End Violence Against Sex Workers. It was created to call attention to the discrimination, violence and crimes committed against sex workers globally. It has become an occasion for sex workers, rights advocates to come together, organise and remember all those individuals who have faced acts of violence. It also calls on governments, civil society to remove social stigma and discrimination which leads to violence faced by sex workers. Over the years this day has become a symbol of sex workers' solidarity and resistance to oppression and violence.*

**In India the National Network of Sex Workers (NNSW) calls attention to the stigma and discrimination faced by sex workers by state and non state actors.**

***Violence against sex-workers in India is linked to the perception of sex workers are criminals and not citizens.***

This has led to systemic, systematic and large scale violation of human and fundamental rights such as the right to life, dignity, equality, equal protection and due processes under the law.

Stigma attached to sex work exposes them to violence in personal spaces from family members as well as from intimate partners. Violence is used as a mechanism of asserting sexual control; it is normalised as punishment for having sex with other men.

Since there is little appreciation amongst police of the contexts and factors affecting sex workers lives, they ignore complaints related to family and partner violence; instead offering advice to women about stopping sex work and settling domestic matters 'amicably'.

On their part, sex workers are unaware of provisions of the domestic violence act which provide redress against partner violence. Police apathy to the plight of sex workers results in denial of access to provisions under the Protection of Women from Domestic Violence Act (PWDVA 2005).

Sexual assault of sex workers is also high with little social or legal recognition. Myths surrounding the violence of rape against sex workers ensure that they are constantly on the fringes of access and redress to justice. These myths include "A sex worker cannot be raped" (i.e, if she has consented to multiple partners or commercial sex, she has given up the right to refuse other partners or other acts).

People in positions of authority routinely demand sexual favours from sex workers for speedy redress of grievance or accessing entitlements. They regularly verbally abuse sex workers using specific sexual

innuendo and language. The law enforcement is regarded by sex workers as the most repressive state agency. Police abuse sex workers, illegally detain, sexually assault and torture them in custody.

Sex workers report being arrested under public nuisance or obscene conduct provisions of the penal code. They are produced in court and released on the payment of fines. Most sex workers choose not to contest their arrest under these provisions since they find it easier to pay fines and be released.

This structural violence further aggravates discrimination in the lives of women in sex work. It creates a fertile ground for social exclusion and denial of rights. As a result of law and social practice, sex workers face difficulties accessing health care, housing, and supplementary employment opportunities. They risk verbal, physical, and sexual abuse, arbitrary arrests, and harassment. Stigma decreases their ability to seek protection from the courts or the police when they suffer from violence and discrimination.

### ***Conflation of trafficking and migration, leading to denial of labour rights***

There is an urgent need to distinguish between “trafficking”, “sex work” and “migration”. The SR- VAW observed there was a tendency to conflate sex work with trafficking in persons. She observed that when sex workers are identified as victims of trafficking the assistance that is provided to them is not targeted to their specific needs.

Though many sex workers have been deceived or lured by payments into sex work and might be said to be “trafficked”, there is a large number, who have not entered sex work due to any basis involving coercion or deceit. They have moved in search of a better life and livelihood. Though poverty and inequality are reasons for people to enter sex work and indicate inadequate “free choice”, it cannot be said that all people suffering from such conditions have been trafficked. They, should benefit from human rights support, including social and economic choices.

When trafficking is confused with women’s voluntary migration (for the purpose of employment, residence, or escape from persecution by State or non-State actors) protectionist measures steeped in patriarchal control over women’s mobility result in curbing female migration within and outside the borders of the country. This limits women’s access and opportunity to travel away in search of a better life. ***Even though the lines between deceitful transport of a person and her will to travel may be blurred*** (with women facing either situation at different points in their lives), curbing women’s mobility is not the answer.

The problems are multiplied for women in sex work. Lack of support from family and unsafe, inadequate workplaces (as well as from family members who would like the income to reach back home, but without the ‘sullied’ woman returning home) renders an older sex worker destitute and disenfranchised, even if she may have earned a considerable income during her working years.

### ***ITPA and Emerging Violations against consenting adult sex workers***

While sex work is not an offense in India; the Immoral Traffic (Prevention) Act 1956 (ITPA) consists of a range of provisions that criminalise almost every aspect relating to sex work. Provisions of ITPA have been used to arrest and harass sex workers, regardless of whether they are in sex work voluntarily or have been coerced.

Raids are executed by the police for many reasons, including complaints lodged by NGOs who intend to rehabilitate sex workers and repatriate them, in an effort to abolish this work. The complaint is lodged under the ITPA to rescue minors and adult women believed to have been trafficked into sex work. The raid could also be undertaken to evict sex workers from a "red light area" under ITPA and other public nuisance laws. Raids are often used to 'sweep the streets' of sex workers, and clients under vagrancy laws, and soliciting under ITPA. Police conduct the raid and indulge in physical violence and extreme verbal abuse which is often sexual in nature, to intimidate sex workers.

### ***Rescue and rehabilitation***

Perhaps the most widespread human rights abuse emerges from the rescue and rehabilitation provisions of ITPA. These interventions involve brothel raids by special police officers and NGO workers, where women are "rescued" and placed in rehabilitation facilities. Police raids, frequent in red light areas and under the pretext of rescuing minors, do not distinguish between minors and consenting adults. Narratives of raid and rescue operations indicate the highly abusive and violent nature of these operations.

**Consent of the adult women in sex work who are "rescued" is immaterial, and they are remanded to correction homes despite testifying that they were in sex work willingly. These adult women are released into the care of parents or family members by courts, on the condition that they will give up sex work.** Often the judgments handing over "custody" of the adult sex worker to the parent or family member are based on moral judgments. Detention in custodial institutions can be from a period extending upto five years.

The final step in the rescue intervention is the involuntary rehabilitation of women in sex work. Rehabilitation programmes are run either by non-governmental organisations or are part of government programmes. Sex workers are taken to rehabilitation programmes where they are kept in jail-like conditions; experience repeated sexual abuse; and eventually released.

Sex worker organisations have drawn attention to the health and safety concerns of women involuntarily removed from brothels. Rehabilitation programmes often undermine the very purpose of their existence, given the high rates of violence experienced by women in rehabilitation homes; the return of women to sex work; and, disrupting their everyday existence because of being detained for extended periods of time. Despite observations made by the SR- VAW and the Supreme Court, forced rehabilitation continues to be the norm.

### ***Denial of safe environment and labour protection***

Sex work happens in informal settings and is an occasional form of income or a long term occupation. Despite this, **a safe working environment through standard labour protection measures** continue to be denied to sex workers. This includes **access to benefits, legal redress for workplace grievances, adequate health and safety regulations. Detention of sex workers in rehabilitation centres without access to legal counsel or right to appeal are human rights infringements that need protection under adequate labour clauses.**

## **The National Network of Sex Workers Calls for the Following**

- The National Network of Sex Workers Calls for the Full Decriminalisation of Sex Workers in India. This includes removal of all laws that criminalise sex work and their families and their support systems.
- There is an urgent need to monitor the implementation of the ITPA across India, especially to prevent its application against adult consenting sex workers and their clients.
- Immediate measures need to be taken including guidelines for the district and state judicial officers by the Hon'ble Supreme Court that practices such as; detaining adult consenting sex workers for their rehabilitation, "handing over" adult consenting sex workers into the custody of family or guardians, passing orders require adult consenting sex workers to provide undertakings that they will give up sex work as a pre – condition to their release; must be stopped immediately.
- Complaints of illegal detention, abuse in detention or while in custody must be immediately registered and timely action must be taken against erring officers.
- Consent should be taken at the time the women were found. Rescuing as trafficked victims after years in sex work and sending to a correction home is a faulty and inhuman policy. Adult women should be treated as adults. Denying them consent is a violation of their human rights.
- Guidelines must be developed for law enforcement officers on handling arrests of sex workers, registering complaints of stigmatized people such as sex workers.
- These complaints must be dealt with a sensitive manner and within a prescribed time frame. Compliance of these guidelines must be regularly monitored.
- Further the confidentiality and privacy of sex workers approaching the law enforcement and judiciary for redress of cases of sexual assault, exploitation and violence.
- Police personnel and counsellors must be trained on handling these cases with sensitivity.
- Strengthen National Human Rights Institutions to increase their accountability to respond to complaints of violence and rights violations by State actors and initiate suo moto action also.

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