

9th June 2008
Adv/sexwk/t/118/08

Shri Manmohan Singh
Honb'le Prime Minister of India
7, Race Course Road, New Delhi

Re: Appeal to reject the Immoral Traffic (Prevention) Amendment Bill, 2008

Honb'le Shri Manmohan Singh,

I write to you on behalf of the Lawyers Collective HIV/AIDS Unit - a public interest group working on HIV and law for over a decade. We would like to draw your urgent attention to **Official Amendments** to the **Immoral Traffic (Prevention) Amendment Bill, 2006 ("ITPA")**, which are due for Cabinet approval in the next few days. Proposed by the Ministry of Women and Child Development (MWCD) in response to Recommendations of the Parliamentary Standing Committee and subsequent deliberations by a Group of Ministers (GoM), the revised Amendments fail to address concerns raised time and again over the amending sections.

Despite consideration, the **ITPA Amendment Bill remains flawed** on many counts:

1. Riddled with legal infirmities

Sections of the proposed Amendments are poorly drafted; likely to result in improper implementation. It is important to bear in mind that the ITPA is a penal statute imposing mild to severe punishment on offenders. A cardinal principle of criminal law is that what constitutes an offence must be clear and not vague. Yet, sections of the proposed Amendments violate this basic rule. Terms such as "*or for consideration of money or in any other kind*" that expand the prostitution under Section 2(f), and "*position of vulnerability*" as a means to criminalize recruitment into sex work as trafficking in Section 5A are examples of vague language, incapable of meaning and/or precise interpretation.

We are aware that Ministers on the GoM have objected to ambiguous clauses in the Amendments. We confirm their apprehension and believe that portions of the ITPA Amendments are "bad" in law and could expose the statute to attacks on constitutional grounds.

2. Non compliance with Parliamentary Standing Committee Recommendations

You may be well aware that the original Amendment Bill, 2006 was reviewed by Parliamentary Standing Committee (PSC) on Human Resource Development through discussions with stakeholders including anti-trafficking agencies and sex workers. The PSC made pertinent observations on the Amending Bill as well as on ITPA generally in its 182nd Report on the Immoral Trafficking (Prevention) Amendment Bill, 2006.

Disappointingly, the revised Amendments ignore a number of key submissions of the PSC. These include recommendations to - (i) adopt clearer definitions in keeping with legislative intent, (ii) prevent further victimization, (iii) improve facilities for rehabilitation, (iv) participation of sex workers in anti-trafficking activities, (v) decriminalise voluntary spending by sex workers, and, most importantly, review the ITPA in its entirety. Refusal to accept the PSC's verdict not only shows disrespect for democratic institutions but smacks of contempt for participatory democracy, itself.

We, therefore urge the Cabinet to take note of and deliberate on the PSC's observations before proceeding with ITPA Amendments.

3. Disregards views of the most affected constituency

As you know, the existing ITPA consolidates the law on prostitution or sex work. As a result, it is *sex workers* who are significantly and directly impacted by the Act. Democratic governance demands that the most affected community be consulted first and foremost on decisions that vitally affect their lives. Yet, it is this very community whose voice has been ignored in the Amendment process. The MWCD has repeatedly declined requests for dialogue with sex workers. Where the community has made its views known, that is, before the PSC, recommendations for reform have been squarely rejected.

We, therefore, urge the Cabinet to direct the MWCD to hold open, transparent consultations with sex workers and take their views on board.

4. No protection for victims of trafficking

The ITPA Amendments are ostensibly intended to streamline the law on human trafficking. Yet, the nature of reforms proposed disprove the avowed objective.

Firstly, the bill restricts penalties to trafficking of persons for prostitution only, leaving other sectors unlegislated. This narrow scope flouts India's commitment under international law, notably, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000 which mandates States to penalize human trafficking in all areas and not just commercial sex.

Secondly, the Amendments do not provide statutory protection to victims of human trafficking. Provisions for medical assistance, counseling and legal aid are conspicuously absent. The Amendments also do not recognize the victim's right to compensation – a 'must' in progressive anti-trafficking legislation around the world.

Thirdly, the Amendments do little to improve opportunities for rehabilitation of trafficked persons. There is no denying that existing facilities for rehabilitation are woefully inadequate, both in terms of capacity as well as services. The thrust on rehabilitation ought to have been stronger as millions of sex workers risk losing their livelihood due to penalization of clients under 5C. In this scenario, the lack of attention on rehabilitation exposes the falsity in MWCD's claims that the ITPA Amendment will protect victims of human trafficking.

We, therefore, demand that the Cabinet instruct MWCD to review the Amendments to address victims' protection and welfare.

5. Antithetical to Women's Rights

The ITPA, indisputably, seeks to protect women and girls from harmful practices of trafficking, coerced prostitution and other forms of sexual violence. However, in its implementation, the Act has done just the opposite. Police records and empirical studies confirm maximum use of Sections 7 and 8 that penalize women for prostitution in public and soliciting, respectively. While the MWCD had rightly proposed repeal of Section 8 in the original Amendment Bill of 2006, we have come to know that penalties under Sections 7 and 8 are being reintroduced in the Official Amendments, 2008. This will only inflict more harm on women without having any impact on trafficking and related abuses.

Secondly, the proposal to lower rank of Police tasked with ITPA implementation from Inspector to Sub-Inspector under Section 13(2) will escalate abuse and harassment of poor women. The PSC too, had advised against the suggested amendment for reasons outlined above.

Thirdly, the proposal to increase detention of female offenders convicted under sections 7 and 8 from five to seven years under Section 10 A is shocking, to say the least. While female offenders convicted under sections 7 and 8 serve imprisonment for three months and six months respectively, corrective detention proposed to be increased from five or seven years is grossly excessive. There is no gain in enacting the suggested change, which offends dignity and civil rights of women. This amendment was rejected by the PSC as well. In fact Section 10A deserves to be repealed completely.

In view of the above concerns, we ask the Union Cabinet to direct the MWCD to revise the Amendments, in keeping with its commitment towards women's rights.

6. Hampers HIV prevention; threatens the nation's health

The proposed amendments have severe implications for prevention and control of HIV, which, according to epidemiological surveys is driven by unprotected commercial sex. Countries that have successfully averted large scale HIV epidemics in Asia, namely -Thailand and Cambodia, have done so by promoting condom use in sex work. Though politically unappealing, programs to encourage condom use in commercial sex are imperative for protection of public health. These findings are affirmed by the Commission on AIDS in Asia headed by noted economist Prof. Chakravorty Rangarajan, in a report titled '*Redefining AIDS in Asia: Crafting an Effective Response*'

We are aware that the National AIDS Control Organisation (NACO) and the Ministry of Health have expressed reservations over the proposed criminalization of clients visiting brothels under Section 5C. Like the aforementioned agencies, we too apprehend that punishing clients and/or sex workers will drive them underground away from HIV prevention.

We urge the Union Cabinet to be mindful of health considerations of Amendments to ITPA. We also hope that learned Members of the Cabinet will opt for rational policy rather than ideological propaganda/beliefs on sex work.

7. Warning: Anti-trafficking law in Cambodia

We take this opportunity to alert you to similar and disturbing developments in Cambodia – a country that recently enacted a “Law on Suppression of Human Trafficking and Sexual Exploitation” under international pressure. Intended to counter human trafficking, the law has had severe negative repercussions on sex workers’ health and human rights. To quote from a Cambodian organization – Women’s Network for Unity: -

“The law was introduced to eliminate trafficking by stamping out the sex industry. Since then brothels, bars, street areas, and karaoke clubs across the country have been closed or gone underground. Hundreds of women have been arrested and imprisoned, or have had to move. Dozens have been raped and beaten by police and prison guards. HIV prevention and care programs have collapsed. This law makes us easier prey for traffickers, and makes it impossible for us to use condoms.”

Like the ITPA Amendments, the Cambodian legislation also moots a wider meaning of prostitution besides containing ill-defined offences of buying, selling and exchanging of human beings. We seek an assurance from the MWCD and the Union Cabinet that mistakes from Cambodia will not be replicated in Indian law on trafficking and sex work.

In light of the above concerns, which we hope will be deliberated on by the Union Cabinet, we ardently appeal to you to **reject the ITPA Amendments in their current form.**

Yours sincerely,

Anand Grover
Project Director
Lawyers Collective HIV/AIDS Unit