



To: Shri Nilanjan Sanyal, Additional Secretary, Ministry of Women and Child Development, Government of India

CC: Ms. Aditi Ray, Senior Economic Advisor and Rajiv Kumar Roy, Consultant (Trafficking), Ministry of Women and Child Development

From: The Lawyers Collective (Contact: anandgrover@gmail.com; tripti.tandon@lawyerscollective.org)

Subject: **Submissions on suggested amendments to the Immoral Traffic (Prevention) Act, 1956**

Dated: 12 November 2012

At the outset, the Lawyers Collective (“LC”) acknowledges the opportunity to participate in the discussion on amendments to the Immoral Traffic (Prevention) Act, 1956 (“ITPA”) through the Inter Ministerial Group (“IMG”) constituted by the Ministry of Women and Child Development (“WCD”). At the same time, LC laments the absence of representation from sex workers, a community which is vitally concerned with and has useful insights to offer on the law, in the IMG. LC further notes with regret that while the WCD invited written responses from certain NGOs who were not members of the IMG, it did not provide an opportunity to sex workers’ organizations to comment on the law. LC wishes to remind the WCD that participation of citizens and communities in decisions that affect their lives is an important constituent of good and democratic governance, as recognized in international and domestic law. LC urges the WCD to engage in a wider consultative process and hear the views of sex workers with an open mind.

LC assures its cooperation to the WCD in facilitating such a dialogue and is confident that it will go a long way in framing an effective law on trafficking for prostitution.

I. Legislative intent and history of ITPA

Before crafting amendments to the ITPA, it is important to bear in mind the purpose and intent of the law as also its legislative history, including the last statutory amendment that took place in 1986.

The Suppression of Immoral Traffic Act or “SITA” was passed by Parliament in 1956 following India’s accession to *United Nations International Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949*. The Convention mandated State parties to punish persons profiting from the prostitution of others especially women and children *without prejudice* to how signatories address prostitutes themselves. SITA mirrored the UN Convention.

The SITA sought to inhibit prostitution from being carried out on an organized scale. This was reflected in the ***various provisions of the Act, which were carefully drafted so as not to punish prostitution or prostitutes***. This status has been maintained through successive amendments to the law.

To illustrate, Section 3 of the Act prohibits keeping or managing or acting in or assisting in the keeping or management of a brothel or offering premises for use as a brothel but does not criminalise working in a brothel as a sex worker. Section 4 punishes persons living off the earnings of prostitution of another person but does not criminalise a sex worker for making a living from prostitution. Section 5 penalises procuring or inducing a person for prostitution but does not criminalise a sex worker for engaging in sex work.

In the same vein, Section 6 criminalises detaining a person in a brothel or premises for prostitution but does not condemn a sex worker for being present in premises for prostitution. The only provisions that condemn sex workers' conduct are Sections 7(1) and 8, which prohibit the carrying on of prostitution in public and/or notified areas and soliciting for prostitution respectively. Both these sections are meant to contain public nuisance, which may result from the activities in question. It is therefore clear that the law penalises acts that are incidental to prostitution but not prostitution *per se*.

In 1986, Parliament introduced significant changes to the law, which was renamed ITPA. The most perceptible reform was in the definition of prostitution in section 2(f) of the Act which read: - "prostitution means the sexual exploitation or abuse of persons for commercial purposes and the expression prostitute shall be construed accordingly." Previously, under the SITA, prostitution was defined as "the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind"¹ and a prostitute was defined "to mean the female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind."²

The ***change in the legislative meaning ascribed to prostitution signals that the Parliament sought to target "exploitation" or "abuse" with a "commercial" intent.*** The new definition, by implication, covers acts of persons other than the prostitute, for it is legally not possible for someone to exploit or abuse her/himself. Pursuant to the 1986 Amendment, wherever the expression 'prostitution' is used in the ITPA, it does not include sexual activity in exchange for money or other consideration, where elements of exploitation, abuse and commercial gain are non-existent.

¹ Section 2(f) under SITA, 1956

² Section 2(e) under SITA, 1956

Another important change introduced in 1986 was substitution of the words “women and girls” with “person” throughout the Act.³ This was to end the prevailing legal bias against female sex workers, which was evident in enforcement and interpretation of the Act.

Despite its indubitable intent, the ITPA has seen disproportionate and misguided application against sex workers. Studies conducted over the years have revealed that Section 8 is the most used provision of the Act.⁴ The obvious reason for this is that sex workers are the ‘easiest’ targets for the Police. Once arrested, most plead guilty to the charge of soliciting, doing away with the need to investigate, produce witness and hold a trial. Statistics reveal that over 60% cases registered under the ITPA are against female sex workers under Section 8; over 90% of such cases result in conviction and more than 80% of the complainants are men.⁵ This finding makes a mockery of the Act, which was meant to protect women. Instead, it has been used to arrest, prosecute and convict women at the instance of men.

If the Act is sought to be amended now, it must, among other things, correct this anomaly. ***The amendments must strengthen the law’s reach over exploitation and abuse in organized prostitution.*** LC believes that unless offences against sex workers are omitted, ITPA enforcement will be misdirected against sex workers, while persons who exploit or abuse the prostitution of others

³ The SITA used the words “women and girls” and “female undertrials” in respective sections. In 1986, the same was replaced by the term “persons” in order to cover all persons, whether male or female, who are exploited sexually for commercial purposes.

⁴ Nair PM and Sen, S., *Trafficking in Women and Children in India*, Institute of Social Sciences, National Human Rights Commission and UNIFEM, published by Orient Longman (2005).

⁵ Lawyers Collective Women’s Rights Initiative, *Traffic in Persons for Commercial Sexual Exploitation: Legislation, Role and Effectiveness of the Law Enforcement and Law Adjudication Machinery*, 2003. (unpublished; on file with authors).

remain out of bounds. ***The Act can be ‘fit for purpose’, if it deletes provisions that do not fulfill the intended purpose of eliminating exploitation, abuse and trafficking for prostitution.***

This line of thinking is in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”) supplementing the United Nations Convention on Transnational Organised Crime, 2000. These legal instruments, which India has ratified, mandate criminalization of trafficking for exploitation of the prostitution of others, and not criminalization of prostitution *per se*.⁶ On the contrary, several UN bodies express support for the decriminalization of adult consensual sex work.⁷

It is feared that if penalties are strengthened without removing existing provisions against sex workers, then the inadvertent consequence will be the targeting, arrest and conviction of sex workers, who will now face heavier fines and punishment.

It is in this context that LC makes the following suggestions for amending the ITPA. The rationale provided seeks to address the concerns raised by WCD and others during the deliberations of the IMG.

⁶ See United Nations, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, New York, 2006. The commentary notes at pg 347 - “*The protocol addresses the exploitation of the prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms “exploitation of the prostitution of others” or “other forms of sexual exploitation” are not defined in the protocol, which is therefore without prejudice to how States parties address prostitution in their respective domestic laws.*”

⁷ See United Nations Development Programme, “*New UN report takes a stark look at links between sex work, HIV and the law in Asia and the Pacific,*” Press Release dated 18 October 2012 and, United Nations 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, A/HRC/14/20 (2010).

II. Suggested ITPA Amendments

| ITPA Provision | Existing Section | Amendment proposed by LC | Rationale |
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| 2(a) | <p>"Brothel" includes any house room, conveyance or place or any portion of any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes</p> | <p>"Brothel" includes any house room, conveyance or place or any portion of any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person.[Delete "or for the mutual gain of two or more prostitutes".]</p> | <p>The words "<i>for the mutual gain of two or more prostitutes</i>" imply that places where sex work does not involve exploitation or abuse by third parties are treated at par with places where sexual exploitation occurs for the third party gain. This may violate the equality clause under Article 14 of the Constitution which holds that unequals most not be treated alike.</p> <p>Even if the words "<i>or for the mutual gain of two or more prostitutes</i>" are deleted from the definition of a brothel under section 2(a), a place run by prostitutes will still be liable to closure under section 18(1), which covers two kinds of premises, that is, brothel as well as places used by prostitutes for carrying on their trade. It is clear from section 18(1) that a brothel is different from a place used by prostitutes for carrying on prostitution.</p> <p>This addresses the concerns raised by WCD and other members of the IMG regarding co-operatives run by prostitutes, which are not allowed under existing section 18(1).</p> <p>The suggested change is in keeping with the intention of the Act, which is not to punish sex workers. According to section 16, a person who is carrying on prostitution</p> |

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| | | | in a brothel, may be 'rescued', not arrested by the Magistrate. Further, under section 19, a person who is carrying on prostitution, can seek protective custody. It is therefore, quite clear that the object of the ITPA is not to punish a person who is carrying on prostitution. Amendments being proposed to the Act at this stage must further reflect this intent. |
| 2(aa) | "Child" means a person who has not completed the age of sixteen years | "Child" means a person who has not completed the age of eighteen years . | This is in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Trafficking Protocol") supplementing the United Nations Convention on Transnational Organised Crime, 2000 and reflects consensus in the IMG. |
| 2(b) | "corrective institution" means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which [persons], who are in need of correction, may be detained under this Act, and includes a shelter where [undertrials] may be kept in pursuance of this Act | To be deleted | 'Correction' of prostitutes is an archaic concept. It is also inconsistent with the rest of the Act, which intends to offer support to sex workers through rehabilitation. |
| 2(ca) | "major" means a person who has completed the age of eighteen years | To be deleted | Unnecessary in light of amendment to section 2(aa) |
| 2 (cb) | "minor" means a person who has completed the age of sixteen years but has not completed the age of eighteen years | To be deleted | Unnecessary in light of amendment to section 2(aa) |

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| 2(k) New definition of "trafficking in persons" | | "trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of a person by means of threat, force, coercion, fraud, deception, misrepresentation, undue influence or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of sexual exploitation or abuse. | This is in keeping with the Trafficking Protocol. The terms "abuse of power or position of vulnerability" which are used in the Trafficking Protocol have been replaced by the words "misrepresentation" and "undue influence", which are well understood in the Indian legal system. Besides, it is a settled principle that in incorporating provisions of an international agreement in domestic law, countries must adopt the purpose and meaning of the various provisions of the Agreement and not incorporate the text or language of the Agreement <i>verbatim</i> in new laws or amendments. |
| 3 | Punishment for keeping a brothel or allowing premises to be used as a brothel | | Scale of punishment may be enhanced provided the definition of brothel is amended to exclude premises run for the mutual gain of two or more prostitutes. |
| 4 | Punishment for living on the earnings of prostitution.—(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings | Replace "Any person over the age of eighteen years" with "Any person who, not being a dependent within the meaning of section 125 of the Code of Criminal Procedure, 1973" , knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, | This is to exclude major daughters and sons of sex workers, who although above the age of eighteen are still dependent on their mothers' earnings as well as aged and unemployed parents of sex workers from penalty. The exclusion is in line with the penal obligation to maintain a category of persons under Section 125 of the Code of Criminal Procedure, 1973. |

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| | <p>relate to the prostitution of a child, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.</p> <p>(2) Where any person over the age of eighteen years is proved,— (a) to be living with, or to be habitually in the company of, a prostitute; or</p> <p>(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding abetting or compelling her prostitution; or</p> <p>(c) to be acting as a tout or pimp on behalf of a prostitute,</p> <p>it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).</p> | <p>or with both, and where such earnings relate to the prostitution of a child, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.</p> | |
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| 5 | <p>Procuring, inducing or taking [person] for the sake of prostitution.—(1) Any person who—</p> <p>(a) procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or</p> <p>(b) induces a person to go from any</p> | <p>Procuring, inducing, taking or [trafficking] a person for the sake of prostitution .—(1) Any person who—</p> <p>(a) procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or</p> <p>(b) induces a person to go from any place, with the intent that he/she may for the</p> | <p>Includes a new offence of 'trafficking in person' in keeping with the Trafficking Protocol</p> |

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| | <p>place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or</p> <p>(c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution ; or</p> <p>(d) causes or induces a person to carry on prostitution;</p> <p>shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:</p> <p>Provided that if the person in respect of whom an offence committed under this sub-section, is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life.</p> | <p>purpose of prostitution become the inmate of, or frequent, a brothel; or</p> <p>(c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution ; or</p> <p>(d) causes or induces a person to carry on prostitution;</p> <p>(e) traffics a person into prostitution</p> | |
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| 8 | <p>Seducing or soliciting for purpose of prostitution. - Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not-</p> <p>(a) by words, gestures, willful exposure of her person (whether by sitting by a window or on the balcony of a building or a house or in any other way) or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of any persons for the purpose of prostitution; or</p> <p>(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public places or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year and also with</p> | To be deleted | <p>This provision is the most used provision of the law. It prejudices sex workers and has nothing to do with trafficking or sexual exploitation or abuse in prostitution. The purported public nuisance that it seeks to contain, can be addressed through sections 268 {public nuisance} and 294 {obscene acts} of the Indian Penal Code, 1860.</p> <p>The Ministry of Home Affairs, as well as the DIG in several States has already issued advisories to the Police to not invoke section 8 of ITPA.⁸</p> |
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⁸ Ministry of Home Affairs, Government of India, Office Memorandum – *Advisory on preventing and combating human trafficking in India*, f no F.NO.15011/6/2009-ATC, dated 9 September 2009 at Para 2.5.

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| | <p>fine which may extend to five hundred rupees.</p> <p>Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.</p> | | |
| 10 A | <p>Detention in a corrective institution.—</p> <p>(1) Where—</p> <p>(a) a female offender is found guilty of an offence under Section 7, and</p> <p>(b) the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instruction and discipline as are conducive to her correction,</p> <p>it shall be lawful for the court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years, as the court thinks fit:</p> <p>Provided that before passing such an order,—</p> <p>(i) the court shall give an opportunity to the offender to be heard and shall</p> | To be deleted | <p>'Correction' of female offenders is an antiquated concept. It is prejudicial and discriminatory, as it applies only to female offenders who are guilty of the offence of carrying on prostitution in public (section 7) or soliciting (section 8).</p> <p>The period of detention in a corrective institution is between two to five years whereas the punishment for offence under section 7 is three months and section 8 is six months. This violates Articles 14 and 15 of the Constitution of India as it imposes an unduly harsh punitive burden on women. It could also be rendered infirm on grounds of infringing Article 19 and 21 of the Constitution.</p> <p>Some members of the IMG were in favour of converting 'corrective institutions' into 'rehabilitation homes'. Under the existing Act, 'corrective institutions' are distinct from 'protective homes' (sections 2(g) and 21), with the latter serving the purpose of rehabilitation and the former morally</p> |

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| | <p>also consider any representation which the offender may make to the court as to the suitability of the case for treatment in such an institution, as also the report of the Probation Officer appointed under the Probation of Offender Act, 1958; and</p> <p>(ii) the court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.</p> <p>(2) Subject to the provisions of sub-section (3), the provisions of the Code of Criminal Procedure, 1973, relating to appeal, reference and revision, and of the Limitation Act, 1963 as to the period within which an appeal shall be filed, shall apply in relation to an order of detention under sub-section (1) as if the order had been a sentence of imprisonment for the same period as the period for which the detention was ordered.</p> <p>(3) Subject to such rules as may be made in this behalf, the State Government or authority authorised in this behalf may, at any time after the expiration of six months from the date of an order for detention in a</p> | | <p>reforming female offenders. The two institutions cannot be collapsed into one as the purpose, target, conditions and procedure for entry and exit is entirely separate.</p> |
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| | <p>corrective institution, if it is satisfied that there is a reasonable probability that the offender will lead a useful and industrious life, discharge her from such an institution, without condition or with such conditions as may be considered fit, and grant her a written licence in such form as may be prescribed.</p> <p>(4) The conditions on which an order is discharged under sub-section (3), may include requirements relating to residence of the offender and supervision over the offenders activities and movements.</p> | | |
| 20 | <p>Removal of prostitute from any place.</p> <p>- (1) A Magistrate on receiving information that any person residing in or frequenting any place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received and issue a notice to such person requiring her to appear before the Magistrate and show cause why she should not be required to remove herself from the place and be prohibited from reentering it.</p> <p>(2) Every notice issued under subsection (1) shall be accompanied</p> | To be deleted | <p>This section has nothing to do with trafficking or sexual exploitation or abuse in prostitution. It empowers the Magistrate to arbitrarily oust a sex worker from a place or locality, even if she is not carrying on prostitution in that place or locality.</p> <p>The Ministry of Home Affairs also discourages the use of this section by law enforcement officers.⁹</p> |

⁹ Ministry of Home Affairs, Government of India, Office Memorandum – *Advisory on preventing and combating human trafficking in India*, F.NO.15011/6/2009-ATC, dated 9 September 2009 at Para 2.5

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| | <p>by a copy of the record aforesaid and the copy shall be served along with the notice on the person against whom the notice is issued.</p> <p>(3) The Magistrate shall, after the service of the notice referred to in subsection (2), proceed to inquire into the truth of the information received, and after giving the person an opportunity of adducing evidence; take such further evidence as he thinks fit and if upon such inquiry it appears to him that such person is a prostitute and that it is necessary in the interest of the general public that such person should be required to remove herself therefrom and be prohibited from re-entering the same, the Magistrate shall, by order in writing communicate to the person in the manner specified therein, require her after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove herself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit her from reentering the place without the permission in writing of the Magistrate having jurisdiction over such place.</p> | | |
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| | <p>(4) Whoever, -</p> <p>(a) Fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting her from re-entering a place without permission is in force, re-enters the place without such permission, or</p> <p>(b) Knowing that any person has, under this section, been required to remove herself from the place and has not obtained the requires site permission to re-enter it, harbours or conceals such person in the place, shall be punishable with fine which may extend to two hundred rupees and in the case of a continuing offence with an additional fine which may extend to twenty rupees for every day after the first during which she or he has persisted in the offence.</p> | | |
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III. Views on suggestion to impose client criminalization

LC does not support any proposed provision to criminalise clients of sex workers.

Legislation to criminalise clients is being influenced by law from Sweden and some other Nordic countries where sex workers are not punished but clients who pay, or offer to pay for sex are. The intent is to protect prostitutes by sending out a strong warning to

men looking for commercial sex and ultimately eliminate prostitution itself. The result, however, has been quite the contrary. Although sex work is less visible, it has neither diminished nor effaced in such countries. It has simply gone underground. Sex workers have been pushed into dangerous and isolated sites, outside the reach of medical, social and legal help. Dependence on pimps and criminal gangs has intensified. The law is difficult to implement, as there are no victims or complainants. Sex workers are unwilling to testify against clients. Worse still, interdiction of forced prostitution or trafficking has become difficult as much of sex work has shifted underground. It is also important to remember that Sweden and other Nordic countries are small with a limited number of sex workers and a strong welfare and social security system. These conditions are absent in India. Therefore, it would be disastrous to 'copy' a law from a social and political context which is entirely different from ours.

It may be pointed out that a provision that punishes "persons visiting a brothel" carries with it a tacit acknowledgement that despite the prohibition under ITPA, brothels do exist and that persons can and do visit them. The WCD may wish to consider this aspect in light of explicit provisions to criminalise,¹⁰ raid¹¹ and close down brothels¹² under ITPA.

The provision to punish persons visiting brothels is wide and unwieldy, incapable of application. It is vague and open to misuse, especially by the Police. It is a cardinal principle of criminal law that what constitutes an offence must be clear and not vague. An imprecise provision, such as the proposed Section 5C in the ITPA Amendment Bill, 2006 will likely be challenged in Courts.

¹⁰ Section 3, ITPA, 1956.

¹¹ Section 15 and 16, ITPA.

¹² Section 18, ITPA.

Client criminalization will jeopardize India's large and successful HIV prevention and control programme. Over the last few years, the rate of new HIV infections in the country, especially the southern states which hitherto had high HIV incidence has declined.¹³ This success has been attributed to 'targetted interventions' with female sex workers, which has increased condom use among sex workers and their clients.¹⁴ These interventions were possible because ITPA does not criminalise prostitution *per se*. The impending challenge before the National AIDS Control Programme is to contain the risk of HIV among migrants, who are known to be clients of sex workers.¹⁵ Any proposal to criminalise clients will hinder provision of services and cut off access to prevention programmes for vulnerable groups.¹⁶

It has been argued that the Trafficking protocol mandates legislation to criminalise clients. This is not correct. The penal obligations under the Trafficking Protocol are contained in Article 5, which requires State Parties to establish the conduct set forth in Article 3 (trafficking in persons) as a criminal offence when committed intentionally. Visiting a brothel or buying sex is not covered within the meaning or scope of 'trafficking in persons' under Article 3 and therefore, cannot be deemed as conduct to be proscribed under the Trafficking Protocol. Article 5 also requires criminalization of accessory acts such as participation in, organizing and directing other persons to commit the offence of trafficking in persons. This too, does not cover the act of visiting a brothel or paying for sex. The reference to measures to "*discourage the demand that fosters all forms of exploitation of persons, especially women and children*"

¹³ Department of AIDS Control, Ministry of Health & Family Welfare, Annual Report 2011-12.

¹⁴ R. Kumar, S. Mehendale, S. Panda, et al. "Impact of Targeted Interventions on Heterosexual Transmission of HIV in India." BMC Public Health 2011, 11:549.

¹⁵ National AIDS Control Organisation, Ministry of Health and Family Welfare, Government of India, *Targeted Interventions: National AIDS Control Programme, Phase-III, India*. Available at <http://nacoonline.org/upload/IEC%20Division/Parliamentarian%20Forum%204-5%20july%202011/TI%20Monograph.pdf>

¹⁶ John Godwin, *Sex work and the law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work*, United Nations Development Programme, October 2011.

under Article 9, Para 5 of the Trafficking Protocol is not penal in scope. Therefore, criminalisation of clients of sex workers is not a legal requirement under the Trafficking Protocol.

It may be pointed out that existing provisions in the ITPA and other penal laws are sufficient to deter and punish men who seek sexual services from girls or unwilling women. Under existing Section 5 (1) of the ITPA, procuring or taking a person for prostitution against their will is punishable with imprisonment between seven and fourteen years. Similar punishment is provided where such person is a child or a minor. Though “procuring” predominantly covers acts of pimping and pandering, at common law, the term has been held to apply also to a man who causes a woman to have illicit intercourse with himself.¹⁷ Section 7(1A) of the ITPA prescribes seven years to life imprisonment to a person who carries on prostitution with a child or minor. Although this section comes into effect if the offence is committed within notified areas or premises that are within 200 metres of a school, hospital, place of worship etc, the geographical scope is wide enough to cover known brothels or places of sexual exploitation or abuse. Further, Section 375 of the Indian Penal Code, 1860 describes rape as sexual intercourse committed with a woman against her will, without her consent or where such woman is below the age of sixteen years. Paying money or offering to pay money for such sexual intercourse is not a defence to the charges of rape and/or attempt to commit rape. Further still, the recently enacted Protection of Children from Sexual Offences Act, 2012 provides comprehensive and stringent measures against child sexual abuse including in prostitution. Therefore, there is no need or justification for a new provision for client criminalisation under the ITPA.

IV. Confiscation of property and assets of offenders

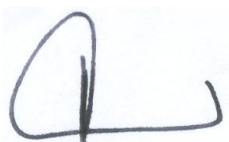
¹⁷ *Williams* (1898) 62 JP 310 and *Cook* [1954] 1 All ER 60

Measures to forfeit property derived from proceeds of crime committed under the ITPA may be introduced provided all provisions that criminalise the conduct of sex workers are omitted. LC would like to reiterate that unless changes to sections 2(a), 4(1), 8 and 20 (as suggested above) are not made, property forfeiture will also be applied against sex workers, robbing them of their earnings and savings. This cannot be intended or allowed. The ITPA must focus on persons who exploit the prostitution of others and not sex workers themselves.

Please do revert to us for any clarification.

Thank you for considering our views, We look forward to receiving the draft amendment Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Anand Grover', written on a light blue background.

Anand Grover

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