



LAWYERS

C O L L E C T I V E

12 September 2014

Adv/itpa/15/t/14

Shri VS Oberoi
Secretary
Ministry of Women and Child Development
Government of India
Shastri Bhavan A - Wing,
Dr. Rajendra Prasad Road,
New Delhi – 110001
Tel: 011-23383586
Email: secy.wcd@nic.in

Re: Proposed Amendments to the Immoral Traffic (Prevention) Act, 1956

Dear Shri VS Oberoi,

I write to you on behalf of the Lawyers Collective, a leading human rights organization that has been actively advancing equality, non-discrimination, freedom and civil liberties, health and other social and economic entitlements over the last three decades. We have had the pleasure of working with the Ministry of Women and Child Development (“MWCD”) on a number of laws including the *Protection of Women from Domestic Violence Act, 2005*, the *Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013* as well as the Rules thereunder. We have also associated with MWCD on many policy questions concerning women’s rights of national and international import.

We have recently come to know that the MWCD has **proposed amendments to the Immoral Traffic (Prevention) Act, 1956** (“ITPA”). We are surprised that the proposed ITPA amendments have not been opened up for consultation by placing the Bill on the MWCD’s website. This is not in keeping with MWCD’s practice of seeking comments on legislative bills. It is also contrary to the ‘*pre-legislative consultation policy*’ adopted by the Government of India (vide O.M. No. 8/01/2-14-Restg., dated 20th February, 2014), which requires every Ministry/Department to publish and make available legislative bills, draft Rules and other related documents like explanatory notes in the public domain for at least 30 days. It also encourages Ministries/Departments to proactively share and consult on proposed legislation. In particular, the pre-legislative consultation policy requires Ministries to seek out the views of marginalised groups and those most affected by the proposed legislation including through holding consultations.

63/2, 1st Floor, Masjid Road, Jangpura, New Delhi - 110014 · Ph: +91 11 4680 5555

Fax: +91 11 2437 2236 ·

Regd. Office: 4th Floor, Jalaram Jyot, 63, Janmabhoomi Marg, Fort, Mumbai-400001. Ph: +91 22 43411600

Fax: +91 22 22821724

Website: www.lawyerscollective.org

Amendments to the ITPA have tended to be a **complex issue**, especially as they relate to sex between adults for consideration of money or kind. Although the existing ITPA does not criminalise adult consensual sex work, it has been applied in a manner that burdens sex workers with penal sanctions. At another level, adult sex workers are treated as 'victims' and detained in homes, against their will, ostensibly to rehabilitate them. This is not only in violation of fundamental rights protected under the Constitution of India but also contrary to international guidelines. During her recent mission to India in April 2013, the UN Special Rapporteur on violence against women, Ms. Rashida Manjoo, noted with concern that "*many sex workers are forcibly detained and rehabilitated, and they also face a consistent lack of legal protection.*"

We have learnt that the **proposed ITPA amendments fails to make the distinction between trafficking and sex work** and further conflates the two. It also introduces criminal provisions against sex work related activities, even when no trafficking is involved.

The ITPA also has important **public health consequences**. You may be aware that the National AIDS Control Programme targets over *7.18 lakhs* female sex workers, and a number of male and transgender sex workers throughout the country through community based targeted interventions. Increasing condom use among sex workers and their clients has led to a decline in infection among sex workers as also in the general population. Such large scale community organizing and health provision was possible because the ITPA does not criminalise sex work.

Lastly, you are aware that the **Criminal Law (Amendment) Act, 2013** incorporated many new offences in the Indian Penal Code, 1860. The new **section 370, created the offence of 'trafficking in persons' which includes trafficking for sexual exploitation and provides stringent punishment** for the same. **Section 370A also criminalises the act of engaging a trafficked person for sexual exploitation**. These two provisions fulfill a longstanding gap in India's anti-trafficking law and are in line with obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000. Since the new provisions have only been in force for a little over a year, it is imperative to assess their implementation before framing new and overlapping legislation on the same subject. In this context, the **proposed ITPA amendments may be both untimely and unnecessary**.

We, therefore, urge you to make the proposed ITPA Amendments public and invite comments from affected groups, including sex workers. We also urge you to keep the distinction between consensual sex work and trafficking clear in framing policy or making legislative change.

We would be happy to provide detailed feedback and clause by clause suggestions to the MWCD, when the ITPA Amendment Bill is made public.

Thank you,

Yours sincerely,

Anand Grover
Director, Lawyers Collective

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