



WHO STOLE THE TARTS? Sex work and Human Rights

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Synopsis

The title of this monograph and all the chapter headings are drawn from Lewis Carroll's *Alice's Adventures in Wonderland*. Besides the allusion to tarts, the pejorative term for sex workers, the farcical fantasy of Alice's adventures in the mythical Wonderland seems an apt reference to the unfamiliarity of the terrain, and Alice's experiences echo much of our experiences in writing this paper. Coming as we do from decades of work using the human rights framework, it is indeed difficult for us to critique it. But we see the need to revisit this framework and do a reality check as to where it has succeeded and where it has failed. The successes are well documented and therefore we choose to dwell on areas where it has not delivered as promised. We claim that the human rights framework is a necessary but not a sufficient condition to address the problems faced by some populations, in particular the sex workers. We do not claim that it has failed entirely here either. However,

there is a need to take into account the issues highlighted in this monograph.

In addition the title reflects some of the absurd ways human rights are constructed and applied to sex workers¹. The attitudes of morality that surround sex work are mirrored in much of the tale. From ground experience, the human rights framework, in the context of sex work seems to be as farcical as the trial in *Alice in Wonderland*. Human rights, their violations, and lack of access to the universal justice that it purports to offer, and indeed the framework itself, is the focus of this paper. How does it work with sex workers? Through a literature survey and by talking to sex workers in unstructured interviews, this paper critically engages with the dilemma that human rights presents to those in sex work. The paper attempts to inspire a lively discussion on this topic rather than provide answers.

¹ Mindful of the distinction between the terms 'sex worker' and 'people in prostitution', we choose 'sex workers' as this is how it is referred to in much of the literature we surveyed. This does not discount nor is in way disrespectful of the people in prostitution.

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I. Down the Rabbit Hole

Just as Alice fell down the rabbit hole into Wonderland and into her adventures, we begin in this introduction by leaping into the muddled waters of Human Rights ².

From the middle of the 20th century, human rights are widely accepted as *the* system of making wrongs rights whether for women, children, immigrants or prisoners. Indeed, the concept of human rights has been viewed as the most powerful tool to better the lives of the disadvantaged. Rights-based programming has been vigorously pushed in the development sector as a progressive move away from the needs-based approach; the notion of 'helping' and 'deserving' has been replaced by emphasis on 'accountability', 'participation' and 'entitlement'. Because the foundational ideas of human rights – equality, liberty, freedom, opportunity, dignity and autonomy – are purported to be 'for all humans', the viability of human rights in different contexts has barely been considered. From the international agency to the local NGO, the persuasiveness of rights appears throughout. However, establishing human rights as a philosophy and applying it strategically to safeguard the integrity of people and communities, has neither been altogether successful nor genuinely a 'ground-up' task. As one writer notes, the result is that rights can go sadly wrong.³

Enormous gains have been made for many peoples by invoking the human rights framework. These gains have been hard won, and have ameliorated the lives of people. For example, the human rights framework has been used very effectively by the women's movement and the dalit movement to name but two social movements. The Indian Constitution has used the rights framework in the section on fundamental rights. The International human rights instrument of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been used to file the petition against sexual harassment at the work place.⁴ We in no way disregard the human rights framework or struggles that have gained by using it.

However, when it comes to sex workers, the human rights framework is as farcical as the trial in Alice in Wonderland – and a working example of where rights are going dreadfully wrong. In this paper, we critically engage with human rights, bringing to the table the question of whether it is an adequate tool of delivering justice to sex workers, and exploring where it works for and against them. Given the profound social stigma attached to sex work, particularly for women, we explore how the human rights framework excludes sex workers on account of their multiple sex partnerships in a commercial context. We consider the manner

²We are aware of the debates surrounding the human rights framework and the rights approach of various actors in the development arena. We are more concerned with the framework and how it operates on the ground.

³See Batliwala, 'When Rights Go Wrong' Seminar . Issue No. 569. January 2007. http://www.india-seminar.com/2007/569/569_srilatha_batliwala.htm

⁴Vishaka and Ors vs. State of Rajasthan and Ors , JT 1997 7 SC 384

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in which human rights works with the assumption and constructs of 'good' or 'bad' woman. We demonstrate how it bears down heavily on those who don't fit this construct and how rights actually become adverse to those contravening the expected norms of gender and sexual conduct.

Paradoxical and shocking though it may seem, human rights are being used to violate sex workers rights. The very framework of human rights does this because it depends on interpretation – and interpretation is easily laced with social prejudice. When, as is often the case, sex work is interpreted as removing a woman's 'dignity', and being of moral harm to all women, then the principle of indivisibility – all rights are equally important – becomes an oppressive tool to those who want to practice sex work for economic or other reasons. The right to do sex work is dismissed because sex work is deemed oppressive and a human rights violation to women. Perhaps what is more disturbing is that everybody thinks this is correct. In the name of human rights, unethical and even violent actions against sex work populations are not only widely endorsed, but given accolades. Witness the incidents of 2002 and 2004 in Nippani, Karnataka, and Baina, Goa (where large communities of sex workers were evicted from their homes) and again, this year the clamping down of the Hijra population in Bangalore. Such actions are often carried out in the moral frame of 'cleaning up' and further submitted as protecting of human rights. In the end, it is the moral rights of the 'decent' people that are defended not the legal or Constitutional rights of the sex worker. And yet, despite the rhetoric and attempts to save, people continue to do sex work for myriad reasons. Hence, an imperative question is how a rights-based approach can be navigated, how effective it actually is, when sexual morality⁵ is the principal narrative that is operating.

We are certainly not the first to critique human rights. There has been much reflection on the problem of human rights from

a cultural perspective and from a legitimacy angle, arguments about cultural relativism and of legal rights having more leverage than human rights.⁶ Rather than debating these issues here, we focus on looking at the trouble that 'human rights' is causing on the ground; how, for example, it is used as a position to justify rescue operations and the rehabilitation of sex workers against their will; how censorious judgements issued by law implementing agencies are made through moral prejudice, and in the name of human rights. In this paper, we do not doubt that the notion of 'human rights for all' has been an extremely useful idea, instrumental in delivering justice to those in struggle against oppression, and in bringing world attention to massive violations. Civil and political rights for blacks in America, the dismantling of the apartheid system in South Africa and the gains made by the women's movement are but a few cases in point. Indeed we recognize that the language of rights combined with collective power is a powerful instrument, offering socially marginalized groups, including sex workers, a level of authority to negotiate in hostile situations. Clearly, though, human rights must go beyond the rhetorical if they are to be truly transformative. Otherwise there is the danger that rights could further disadvantage the already vulnerable. Women's organizations, for instance, state that when women complain of domestic violence and try to assert their rights, there is often increased violence.⁷

The trouble being caused by human rights increases exponentially when examined in a context of sex workers. It is ideal to examine the paradigm of human rights vis-à-vis sex workers, as the common understanding is that sex workers neither have nor deserve human rights. They need to be 'rescued'. Indeed, the idea is that rescue from sex work is the beginning of the assertion of their human rights, reiterating the deep-rooted belief that human rights exists only when one lives in conditions of socially accepted morality. Today, the world over, there are organizations working for the rights of sex workers, but few

⁵ The sexual morality that is dominant is that women's sexuality should be contained only in heterosexual monogamous marriages.

⁶ For a detailed analysis see Chapter 10 of Amartya Sen's *Development As Freedom*, 1999

⁷ Organizations like Vimochana, Bangalore and Hengasara Hakkina Sangha, Bangalore

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engage with the right to sex work. Accounts of sex work in the 'developing' countries are bound to images of misery, seen as 'violence' and lack of choice. An overriding representation of the female sex worker in India is as 'trafficked'. Trafficking in women means young women and girls being transported and forced into prostitution, usually by fraud. In this paper, we critique the paradigm of sex work and trafficking. We examine how and why this construct of the 'suffering' sex worker operates through the untenable links being made between sex work, coercion and trafficking. The alarming words that describe a female sex worker's 'condition' in the 'third world' – such as 'indescribable physical and mental torture'; 'institutionalized sexual slavery'; 'victims of the evil devadasi custom' become social 'truths', thwarting a more encompassed understanding of sex workers as people, not dissimilar from ourselves. We examine the conceptual schema that underlie the project of anti-trafficking, unpacking how these 'fit' with what the powerful consider to be 'problems'. Rescued from awful conditions, her dignity is restored and self-esteem supposedly regained through learning the craft of basket weaving or tailoring. Such seemingly straightforward 'facts' about sex workers in India are extremely compelling – especially so because they fit in with colonial assumptions about poverty, the 'east', gender oppression etc. – but these make us lose sight of other, very important, facts. The fact, for instance, that often sex work is not a pitiable situation or even a survival strategy, but a *better livelihood option* than other forms of unskilled and low paid labour to many women and men, often with additional problems of sexual harassment. Some of the women in sex work have spoken about the advantages of sex work over other forms of labour: that the hours are more flexible, enabling childcare, and

allowing for taking up other kinds of work. They claim that sex is a 'given' in marriage and not always desired by women. Being paid for sex, they argue, provides a greater level of independence as compared with other women – free from controlling husbands or boyfriends – and other workers who necessarily work under command. However, these facts are ignored.

Another unseen 'fact' is that some women do sex work because it gives them purchasing power. Sex workers are no different from most people in that they want the security of owning a home, have aspirations for their children, and desire for things that make life more convenient and comfortable. Without ignoring the difficulties that are involved in sex work, these are truths too. Does a sense of moral indignation drive the refusal to see sex work as a valid job option? Why does the same logic of morality not apply when we are talking about women working in fish factories? Why, when a woman says she chooses to do sex work, is that choice read as fictitious, preferring the conviction that there is no 'real' choice in sex work? And in this respect, what is a 'real' choice as compared with 'unreal' choice?

What is needed is a greater engagement with prostitution, as opposed to the projection of 'them' as 'the problem'. More often than not an engagement takes the form of looking at human rights as the end to all problems. We posit that this uncritical invoking of human rights often does more harm than good. The framework as it has been constructed and evolved has inherent problems. We examine some of them, raise questions and hope to evolve approaches that go beyond human rights to social justice and life with dignity for all.

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II. A Mad Tea Party

The mad party is where things don't look the way they are. What is offered is not available, like the wine. We use this allegorically as the promises of the human rights framework.

Indeed human rights have emerged as 'the tool' to address all issues of suffering, wrongs and injustices done. Since the 10th of December 1948 when the United Nations adopted the Universal Declaration of Human Rights, it has morphed many times into CEDAW, Convention on the Rights of the Child (CRC) etc. with more and more rights claimed as 'human' and therefore universal.

However, we see the limitations of human rights in addressing many of the 'injustices' around us. The social, and often familial, injustices remain un-addressed within the human rights framework. If human rights framework is the powerful tool it is perceived to be, where does it fail? Where is it inadequate? Are there any strategies, actions and histories beyond human rights? Further, there have been little or no social theories of human rights. Rights history has been chequered with many struggles,



by different groups often claiming special rights, women, children and dalits to name a few. The struggle tends to be perceived as the agenda of a special group, rather than a concern that affects everyone. With the proliferation of international human rights instruments, organizations and rhetoric, almost all issues are framed as human rights issues, be they for workers, women, children, disabled, the list could go on. Development too, has had its share of human rights advocates.

Before we begin to analyse the framework more closely, let us revisit the promise that rights offer people to live a life of dignity. Here we focus on the rights of all persons to dignified and fulfilling work. These are universal, indivisible and interdependent rights. The list below has been culled from various human rights instruments:

The right to:

- Work and receive wages that contribute to an adequate standard of living
- A standard of living adequate for well-being, health and life

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- Freedom of association
- Protection from forced labour
- Adequate and safe working conditions
- A clean and safe environment
- Reasonable limitation of working hours, rest and leisure
- Education and access to information, including vocational training
- Freedom from discrimination based on race, sex or any other status in all aspects of work
- Equal pay for equal work
- Freedom from sexual harassment in the workplace
- Proper consideration of women's reproductive rights and sexuality
- Protection during pregnancy from work proven to be harmful
- To equal rights within the family
- To unemployment protection and social security⁸

One would imagine that since these are human rights they are equally applicable to all humans. However, sex workers - both male and female - seldom exercise these rights. Of course, it can be argued that there are flaws and inefficiencies in the implementation of rights. However, we focus upon on problems with the human rights framework itself – or as Srilatha Batliwala puts it, 'when rights go wrong'.

The accessing and exercising of rights have to lead to a transformation of society. After all, rights are framed and institutionalized to put right what is wrong and often as an answer to a specific problem. The discrimination of women is a case in point. Women's rights have been added to from time to time as more issues have been raised by the women's movement. However, the undergrid is that rights should bring about equality

by challenging and transforming unequal social dynamics.

There have been several critiques of human rights from a variety of sectors. It is useful at this juncture to consider the viewpoints and ideologies behind these.

Rights Critics

From an anti-rights position it is argued that "progressive" individuals and social movements have been fooled by the promise of rights. It is claimed that rights advocates have been unable to show how to implement a practical politics of rights and that rights merely confront the powerful with their abuses.⁹ From Marxist, critical and feminist perspectives, rights are said to be individualistic, abstract and disempowering. Rights struggles are either examples of depoliticized culture or invocations of dangerous discourse.¹⁰ A prime example of this is the women's struggle in India. By and large, this has ceased to be a political struggle on the ground, and has moved into de-politicized work such as credit and savings, and self help groups.¹¹ This has come about partly through over usage of rights rhetoric. Because rights are confrontational, the dialogue becomes very scattered and skewed.

Some writers on the Left have warned that a politics of rights led by new social movements threatens to shift social struggle away from the structural conditions at the root of inequality. Fudge and Glasbeek warn of the danger of the legalization of politics.¹² They contend that in attempting to achieve changes that go to the heart of social relations, social movements are thwarted by elements within legal discourse itself. The problem of the rights discourse includes hegemonic concepts such as the public/private distinction, individualism and commodification. The view

⁸ <http://www.pdhre.org/rights/work.html>

⁹ Fudge & H Glasbeek, "The Politics of Rights: A Politics with Little Class", *Social and Legal Studies* Vol 1 1992: 45 - 50

¹⁰ D Herman, "Beyond the Rights Debate", *Social and Legal Studies* Vol 2 1993: 25

¹¹ For more on this see Batliwala and Dhanraj's article "Gender Myths that Instrumentalize Women: A view from the Indian frontline" in *Feminisms in Development: Contradictions, Contestations and Challenges* (eds.) Cornwall, Harrison & Whitehead. 2007

¹² Fudge & Glasbeek

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that women should have sex only within marital relations is one example of a problem of struggle that involves the state.

Even cases that have been regarded as “victories” of the legal battle by progressive forces, are not considered transformative since, at a deeper level, the dependency of rights claims upon legal processes leaves unchallenged the myriad of factors external to law, which drive the politics of litigation. One example is when there is domestic violence. Women do not want to access courts of law, because of the adverse impact that it has on their reputation. Again, the Supreme Court of India has declared sexual harassment at the workplace a human rights violation. However, many women or men don't complain because their character, behaviour, morality, ethics etc. will be torn to bits. Apart from structural and systemic lacunae, it is often these kinds of cultural forces that prevent women from accessing the courts and institutions of justice.

Marxists believed that rights place too much power in the hands of the state. The struggles should be to wither away the state. In recent years, feminist scholars have detailed a particular critique of the gendered character of international law and the human rights framework. They argue that modern international law has assimilated many assumptions about law and the place of law in society, from Western legal thinking. These include essentially patriarchal legal institutions, wherein the assumptions are that law is objective, gender-neutral and universally applicable, and the division of society into public and private spheres.¹³ The patriarchal order is deeply internalized by the people, be they men or women in state institutions. The assumption that law is gender neutral often has a juridogenic¹⁴ effect on women. The human rights instruments and the legal institutions have failed to ameliorate the oppression and discrimination of women. Carol Smart suggests that rights discourse, “has become more of a

weapon against, than in favour of women.” She argues that rights discourse reduces intricate power relations in a simplistic way and that the promise of rights is impeded in practice by inequalities of political and economic power. The balancing of competing rights, she claims, often results in a reduction of the power of women and the appropriation of rights by more powerful groups.¹⁵

There have been numerous debates about the universality of human rights by the cultural relativists. These have revolved around whether rights are culture-specific or universal. One argument is that the intersection of strong systems of collectivism i.e. tribe, caste, family and religion make for different cultural specificity than the assertion of universality claimed by the political North. Though the scope of this paper doesn't permit us to discuss this here, we maintain that irrespective of human rights being universal, their assertion is culture specific.

We now turn to examine how rights operationalize, particularly those of sex workers. Are their rights violated in the name of human rights? Is morality and sexual morality thinly disguised as rights? Whose rights are being protected in the name of human rights? And how does this impact on the lives of sex workers?

Firstly the human rights framework, as we see it, is extremely State-centric. The State both confers and violates rights. Human rights are constructed as the right of the individual vis-à-vis the State. But often the logic of the State is anything but in the spirit of human rights. Take, for example, the amendment to the Immoral Traffic Prevention Act 2006 (ITPA) The object of this law is not to victimize or punish the women doing sex work but to tackle their exploitation. However, the State, in this case, violates the rights of women to work by criminalizing the client as well as the sex worker who works independently, and potentially her family members too.¹⁶ The problem of this amendment is at

¹³ H Charlesworth, C Chinkin & S Wright, “Feminist Approaches to International Law”, *American Journal of International Law* Vol 85 1991: 613 - 644

¹⁴ Impact of judicial intervention like the iatrogenic effects of medicines. The juridogenic effect is the adverse effect that the law and judicial process have on women.

¹⁵ Smart, *Feminism and the Power of Law* Routledge, London:1989

¹⁶ ITPA Amendment 2006 Section 2 (f) : definition of prostitution extends to include individual instances of sex work ; Section 5 c : punishment of those found visiting or in a brothel ; Section 4: punishment of those living off earnings of a sex worker

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two levels. As one member of Veshya Anyay Muqabala Parishad (VAMP) member points out, the rights violations will have a knock on effect on the containment of HIV:

“He (the client) will go to someone else and then three or four people will get infected. He might have sex with relatives who are not aware of HIV and the need for condoms. They may not have the power to insist on condoms.”¹⁷

The law affects the women in concrete terms. However it is the State that chooses the amendment it passes. “It concerns us, then why don’t they ask us?” says a sex worker in VAMP.

Given that the exercise of rights is through the courts of law the position between parties is automatically adversarial. It is usually the State against the sex workers. Any possibility of negotiation is severely thwarted. For instance, many collectives of sex workers work with the police to prevent minor girls from doing sex work. The sex workers in fact become the watchdog in the community. By working with the communities where the sex workers work, not only is minor exploitation curbed, but also an active AIDS prevention is possible. The valuable resources of compromise and coordination are lost when adversarial positions are adopted.

In India, there is a very strong sense of collectives and belonging. This could be a traditional collective such as the family, caste and religion-based organizations or non-traditional, like women’s collectives. The Constitution of India too guarantees collective rights and is supported in Article 17, which abolishes untouchability, and under Article 15(4), which enables the State to make special provision for the “advancement of any socially and educationally backward classes of citizens”. However, human rights being posited as the ‘individual’ vis-à-vis the State, leaves very little room to manoeuvre for collectives. This, in a country

like India, could have an adverse impact on collectives, particularly non-traditional ones. Sex worker collectives are able to use collective strength and negotiate with the police. Much time and effort has been spent to encourage a good working relationship with the forces as this VAMP member explains; “Now we have a good relationship with the police. When a koti¹⁸ was murdered, we were able to help them.”¹⁹ Often the collective is better at negotiating because it offers greater bargaining power. Going to the courts and accessing rights through seeking individual justice may, or may not, damage these collectives particularly so with sex worker collectives as they are in a fledgling state. However, we would not like it to be understood that we are advocating that no individual should fight for rights.

In fact rights violations could be also be a group violation. The Baina incident is a case in point as this report testifies:

“At 7 am on 14 June 2004, as the monsoon unleashed its full force on the state of Goa, the residents of Baina – a settlement of migrant people, many of whom migrated to Goa years ago – woke to the sound of bulldozers tearing thought they neighbourhood, brutally and ruthlessly razing their homes. In a matter of hours, hundreds of homes were bulldozed and thousands of people, including a community of sex workers, lost their homes and livelihood.

In a gross violation of human rights, they were intimidated, abused, beaten and arrested by the police [...] the government of Goa had violated their basic right to shelter.”²⁰

Given the inability of rights to deal with the idea of collective rights, the redressal of this violation would have to be at an individual level.

There is a notion in India, as indeed all over the world, that only ‘good women’ deserve rights. As Srilatha Batliwala says,

¹⁷ Personal interviews with VAMP collective members

¹⁸ A homosexual male who may or may not be a sex worker

¹⁹ Personal interviews with VAMP

²⁰ *Of Veshyas, Vamps, Whores and Women* 2006

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“The idea of the ‘good woman’ and ‘bad woman’ was created with different sets of attributes ascribed to each, the principal being sexual chastity.”²¹ In other words, sex workers being ‘bad’ neither have nor deserve human rights. What then happens to the universality of human rights? The primary characteristic of human rights is that they are applicable because one is human. The repercussions of this binary construct are borne out in the many instances of sex workers being beaten by the police, thugs, pimps and partners. An oft-repeated sentence about the sex worker, indeed any woman whose conduct is construed as sexually suspect, is ‘they deserve what they get’. How then can we apply the rights framework to sex workers given such social stigma? It is obvious that invoking rights to address wrongs does not help unpack normativity or why there are certain kinds of bodies, characteristics or groups that evoke ‘disgrace’.

In this case it is not the body that is disgraced and immoral but body parts and, to what end they are used and who is involved in their usage. There is no moral outrage at a number of occupations that are undoubtedly harmful to the body. Carrying heavy loads, or working in asbestos industries or for hours at a stretch handling frozen prawns are all jobs that women do. These are deleterious to their health, but the women are not considered immoral for doing them. Using the genitalia for ‘work’ is considered immoral. But again it would seem that ‘work’ is constructed to fit a public context. In other words, the place in which sexual organs are being put to use seems to matter. The dominant social value is that the genitals should be used exclusively for reproduction and this must happen in a heterosexual monogamous marriage. For many women, sex within marriage for women is ‘work’. But sex ‘work’ in marriage is not considered immoral. What is morally loaded is the use of the vagina for an exchange of money.

The human rights framework finds it difficult to acknowledge sex workers as a work force because they are breaking with a series of social norms – i.e. women engaging in sexual activity outside of marriage and exchanging sex for money outside of the marriage framework. Sex work has to be imagined as undignified and immoral because otherwise social/patriarchal control of female sexuality would have to be challenged and operationalized differently. This suggests a need to examine the notions of ‘dignity’ and ‘morality’. There is a need to divest the body of constructs of immorality and remove the value of morality for body parts and where and how sexual pleasure is taken. Then the human rights framework could be invoked.

Another point we argue is that rights must be situated within the given social context. Without dealing with the particular issues that comprise the social matrix a rights approach to dealing with the states of injury²² faced by sex workers intensifies hostility towards already vulnerable individuals. Very often sex workers do not complain of gross violations, because of the way that the police treat them. Assumed morality superiority is at the base of rights violations of sex workers. In the name of ‘cleaning Bengaluru’, at 11 am on 20th October, police catch five hijras²³ near a traffic signal. They are taken to the police station. In the station, Assistant Commissioner of Police (ACP), H. T. Ramesh beats one of them with a lathi, breaks her bangles and makes her bleed. Police force another hijra to clean the floor of the police station. Police later charge them with false charges under section 341 (wrongful restraint) and 384 (extortion) of the IPC (Indian Penal Code). There was a meeting of all Human Rights Organizations, to protest the wrongful arrest and the abuse. However, the Police Commissioner said in a press Conference that there was nothing wrong and it was part of the ‘clean up’ plan.²⁴

²¹ Batliwala, “Sexuality and Women’s Empowerment – the fundamental connection”. In *Plain Speak* 2006: 2

²² A term coined by Wendy Brown in her book “*States of Injury: Power and Freedom in Late Modernity*”

²³ Male to female transgender

²⁴ Times of India 28 October 2008

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The Nippani incident is another case in point. On 18 February 2002, an armed mob of ruffians hounded 30 female sex workers out of their homes in Nippani, a small town in Karnataka. VAMP had acquired a piece of land in Nippani for its regular HIV/AIDS prevention meetings. They were then threatened and subjected to violence. Shabana Kazi complained to the police and asked for protection. The police refused to file her complaint, verbally abused her, and threatened to rape her. Fearing for their lives, the women fled to neighbouring villages.²⁵ These cases are clearly a backlash to the process of rights assertion. Without the necessary mechanisms to deal with this backlash, i.e. a powerful collective, human rights can result in even more extreme forms of violence.

In 1998, the International Labour Organization recognized sex work as work and recommended that governments extend labour rights and protections to people in the sex industry.²⁶ Further, according to The People's Movement for Human Rights Education, The Human Right to Work is the human right of all women, men, youth and children to a dignified, creative and productive labour, free from discrimination and exploitation, enabling all persons to live in peace, security, justice and dignity. All workers have the human rights to basic labour protection. Engagement in any kind of production should be fruitful and rewarding.²⁷ However, when it comes to sex work, such principles do not seem to percolate down. It is the 'sex' not the 'work' that becomes the focus for society at large. Taking money for what should essentially be given freely, construes the sex worker as 'bad'. Hence, there is a perceived need for the rescue and rehabilitation of the women. However, this is masked as being 'for public good'. As a sex worker in VAMP said,

"Why do they have to rehabilitate us? We are working and standing on our own feet. Why don't they rehabilitate beggars, people on the pavement, in railway platforms? They need it. We don't."²⁸

Clearly such interventions violate the rights of sex workers.

It would seem then that we are a long way from seeing the effective deployment of rights by sex workers. In actual terms, rights remain at the level of being a rhetorical tool, or as Amartya Sen puts it, merely 'heart-warming sentiment'.²⁹ Does this make human rights quite meaningless and are rights not rights at all for sex workers? According to another critical viewpoint it does not necessarily follow that law made in the name human rights equals more justice. In fact, they can have a retrograde effect. Ratna Kapur suggests, "the proliferation of laws in the name of human rights serves at times to remind us how our good intentions, passions and progressive 'swords' may have turned into boomerangs."³⁰

A serious problem with accessing rights in India is that there is no language of rights in popular parlance. India is a country, despite its claim to modernity, where society functions largely on status rather than contract. For example, the relationship between a maidservant and employer is not based on a contract of a certain amount of money for a specified amount of hours of work. Rather the relationship it is based on the higher caste and/or class status of the employer. Examples of this may be found in other areas as well. It could be the status of gender, caste, religion that operates. These relationships operate not only in day-to-day activities, but also in engagement with the legal institutions. Though India has ratified most of the international (United Nations) human rights conventions and covenants, rights assertion remains largely on paper. For one, the whole process of getting 'justice' is an arduous task. At each of the levels and institutions involved, be they lawyers, police, or the judiciary, there is disbelief of women complaining of rights violations and the notion of 'good' and 'bad' women is the undergrid of the disbelief. When 'bad' (i.e. women who don't adhere to the strict societal norms, women who are independent, sex workers)

²⁵ Of Veshyas, Vamps, Whores and Women. SANGRAM 2005

²⁶ Lin Lean Lim (ed.) *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia*.

²⁷ *The Struggle to be Human – A Training Manual*. SANGRAM-VAMP and Point of View.

²⁸ Personal interview with VAMP members

²⁹ Sen, *Development as Freedom* pp. 228

³⁰ Kapur, "Human Rights in the 21st Century: Take a Walk on the Dark side" Vol 28:4 *Sydney Law Review* 665-687

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women complain there is the disbelief at best or 'you deserve it' at worst. The dominant attitudes of status and social prejudice operate at every stage. Take for example the Prevention of Domestic Violence Act 2005. Often, the government officers at the local level, obligated to take complaints of domestic violence, refuse to do so as they 'know' the women are lying.³¹ When sex workers try to access the courts, their visibility as sex workers renders them victims of social stigma. A strong social movement, committed to social justice is a necessary condition for rights assertion. It is collective strength that can legitimate a woman going to court, as well as provide her support. The experiences of Sadana Mahila Goompu³² in Bangalore and the VAMP collective in Sangli exemplify this. The problem is that more and more struggles are moving from the street to law courts.

Human rights become more of a sword than a shield in the case of sex workers, where the majesty and power of the State is used to deny women their basic and fundamental human rights. As Wendy Brown elaborates very often the way rights are framed privileges the advantaged rather than the disadvantaged. She argues that "rights differentially empower different social groups, depending on their ability to enact the power that a right potentially entails."³³ The advantaged have more resources - monetary, human and time - to approach the courts. Rights are indivisible and there can be no hierarchy of rights. However, while NGOs working with sex workers struggle to ensure the rights of sex workers, many do not frame their struggle as the right of the sex worker to sex work. Sadhana Mahila Goompu for instance focuses on the violence that sex workers face. The right of a life free from violence, that is, the right of the sex worker. Their primary focus is not the right to sex work, that is, the right to livelihood. As iterated earlier, the emphasis is on sex and less on work.

Clearly many of the problems and injustices that sex workers face in their lives are of a social nature. This is illustrated by

Lack of institutions and access to them. Most often sex workers face discrimination at hospitals and other institutions Such as courts, police stations, government offices

The poverty of time. Sex work could be very demanding of time. Since they work mainly in the late evenings and at night, and rest in the day, this leaves them very little time for social and familial interactions

The seasonal dimensions of work. Sex work needs to be done irrespective of the weather. During the monsoons, they would find it difficult to do the work in safety and comfort

The lack of social, political and recreational places for the poor

The insecurities they face. These could be many, their families, financial, social and political. Further, the laws could be changed at any time, thus making their lives more difficult

looking at the issues and injustices faced by sex workers through the Robert Chambers web of deprivation. (see Box)

This is drawn from Robert Chambers: 'Participation, Pluralism and Perceptions of Poverty', paper for The Many dimensions of Poverty conference, presented in Brazil, 29-31 August 2005

This exemplifies the social spaces that the human rights framework does not enter. Creating fresh rights and more legislation is not a solution to the problems outlined above because there would be no mechanisms through which these

³¹ Personal communication with Ms. Indu Subramaniam. Director Hengasara Hakkinna Sangha, Bangalore

³² A sex workers collective organized by Vimochana, Alternative Law Forum and Peoples Union for Civil Liberties

³³ Brown, *Suffering the Paradoxes of Rights* in *Left Legalism/Left Critique*. Eds. Wendy Brown and Janet Halley, London: Duke University Press: 2002

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Physical well-being or lack thereof. The physical well-being and safety of sex worker is always at stake. They face violence from many quarters – the police, the local thugs, the pimps as well as their partners.

Material poverties. They are not organized, there are no courts of appeal if anything happens to them. They don't get loans from banks if they want to buy property

The difficulties of social relations. Social relations as sex workers could be problematic for several reasons. The local morality would necessarily limit their social relations

Ascribed and legal inferiority. As mentioned earlier, their legal inferiority as 'bad' women further disadvantages them

Lack of political clout. Since most sex workers are not organized they do not become a constituency or a vote bank in electoral politics. Their power of negotiation is negligible or nil.

Lack of information. All too often sex workers have no access to information that could literally save their lives.

rights can be exercised. For instance, for lack of information to be addressed, just making a new right, indeed as is the Right to Information Act, certainly does not ensure that sex workers will have the necessary information to make aware choices.

Even if the sex workers do try and articulate their struggles in the rights framework, it is more than likely that they would be further disadvantaged. Invoking rights necessarily means visibilizing the fact that they are sex workers. Visibility has its own problems of stigma. When actions are taken by or for

already stigmatised groups there seems to be more violence³⁴. Moreover, visibility does not seem to have resolved the problem of non-acceptance³⁵. The strategy of finding sensitive political allies is perhaps a better strategy.

Stigma is a social issue and cannot, perhaps, be dealt with by the human rights framework. Sex workers face stigma almost in all areas of their lives. Landlords often refuse to rent to sex workers. On the streets they are called 'whore' and other pejorative terms. Their children find it difficult to get into schools, and so education is denied to them. In police stations and hospitals they are humiliated. The list could go on endlessly. Though rights are promised as a tool to better lives, it leaves the question of stigma untouched. This is faced almost on a daily basis by the sex workers who are visible either by choice or accident or through 'sting' operations, and seriously impacts on their lives.

Wendy Brown elaborates upon this. She says that subordinated people cannot access rights to resolve injury and the process of invoking and attempting to access rights often makes their condition or 'injury' worse,

"Thus rights for the systematically subordinated tend to rewrite injuries, inequalities, and impediments to freedom that are consequent to social stratification as matters of individual violations and rarely articulate or address the conditions producing or fermenting that violation" ³⁶

This is particularly true of social stigma. Members of sex worker collectives say that in dealings with police or any other violent or oppressive forces, the collective provides the courage, support and often tools to overcome the violence, which takes the shape of wrongful arrest and abuse by the police. To attempt to deal with this individually would rewrite their injury.

³⁴ The VAMP collective designed a system of red cards for sex workers so that they could access the public health system. This however, identified them as sex workers and had an adverse impact. The idea was abandoned.

³⁵ In the western context irrespective of a whole host of rights for lesbian and gay people, most do not profess their sexual orientation publicly due to fear of non acceptance.

³⁶ *Suffering the Paradoxes of Rights* in *Left Legalism/Left Critique* (2002) ed. Wendy Brown and Janet Halley. Duke University Press London:2002

III. Advice From A Caterpillar: the problem of conflating sex work with trafficking

The advice of the Caterpillar to Alice is “keep your temper”. This might be useful to all of us when we look at the hysteria surrounding sex work.

When we look ‘beyond’ rights at other possible pathways to justice for sex workers, we need to question the current paradigm, where prostitution is read *through* the discourse of trafficking. This paradigm inhibits a comprehensive understanding of the issues at hand. A blurring of the categories of migration and trafficking further confuses the overall picture. The result of collapsing sex work and trafficking is an overriding conception of sex work in a country like India is as ‘violence’ and lack of choice. A theoretical shift is required.

We believe the links made between sex work, coercion and trafficking are untenable. They often do not reflect what is taking place on the ground. The belief that all women in prostitution are trafficked, and that trafficking exists because of the sex work industry, is a ‘truth’ that has gained worldwide attention. This renders sex workers in the third world as victims, and, if they wilfully move across borders, it criminalizes them as well. Because of the asymmetry of power between anti-trafficking organizations and those who work from streets, homes and



brothels - where sex work is part of life - the truth claims of the powerful are listened to and others are not. When listened to, these increasingly attain the status of common sense.

Anti-trafficking initiatives have been largely responsible for the ‘common-sense’ notion that sex work and trafficking are the same phenomena. The conflation of the two issues has the effect of circumscribing what is known about sex workers. It is virtually impossible to see beyond the misery that seems to epitomise the ‘lot’ of a sex worker. This partial understanding blocks perceiving the sex worker as a person who is happy *and* sad, or imagine aspects their lives apart from the experience of sex work. The following excerpt is but one example:

“The popular perception that women in prostitution are criminals continues to be perpetuated by the state’s insensitivity. Courts and policy-makers now well understand that prostitute women and children are merely the victims of that violence and not criminals and even the NCW now refers to these women as Commercially Sexually Exploited (CSEs). The state is also aware that prostitution is a crime only in that it is a form of violence on the prostituted women, therefore

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these women deserve compassion and access to proper rehabilitation.”³⁷

Is it possible that an ordinary woman can be envisaged from such repeated descriptions? An important step towards addressing this one-sided depiction of sex workers is to use reflexivity as a resource. We unpack some of the conceptual schemes that make this knowledge plausible. In this chapter, we look at how conceptual schemes are shaped to fit what the powerful consider to be ‘problems’. Here, we are referring to the powerful as non-sex worker, middle-class, feminist or human rights activist or academic. Some women in sex work have spoken about how they prefer less free situations to work in because it offers more protection or is more economical.³⁸ When advocates of human rights operationalize meanings of ‘freedom’, ‘exploitation’, ‘oppression’, to secure rights for women, this is often done without consulting women on what *they* experience as freedom, exploitation or oppressive conditions. In securing abstract notions of human rights, there is a tendency to ignore the diversity of lived experience. This could lead to causing more harm to the people one is claiming to ‘help’. Raiding the homes of sex workers and forcibly rehabilitating them is an example. Can there be a more paradoxical situation than human rights suspending people’s human rights? One of the questions that need engaging with is what is achieved through considering sex work a social problem and who benefits from this problematising.

The impact of conflating sex work with trafficking

The emphasis of knowledge that construct sex workers as victims functions to bolster righteous interventions. In our view, action taken on partial knowledge has unprecedented consequence.

These consequences are often far more disastrous to the sex worker than the conditions themselves.³⁹ Much has been documented on how anti trafficking interventions severely impact upon the mobility, livelihood and the basic safety and security of sex workers, migrant and immigrant women.⁴⁰ Conflating sex work with trafficking impacts upon sex worker’s lives in many tangible ways. Firstly we discuss the effects on women’s material conditions.

A US-funded Christian NGO regularly initiates police raids on a powerful collective of sex workers in Sangli. Many of the women are devadasis⁴¹ and extremely articulate about their rights. Clearly the aim is two fold: to silence and quell the political mobilization of these women and eradicate the customary practise of the devadasi. The raids do not distinguish between those who do sell sex and those who do not. Since they are planned and executed under the auspices of rescuing ‘minors’, any young woman who is found in the house of a sex worker is presumed to have been trafficked. In these raids these women are arrested despite most being above the age of legal consent. Taken from their homes, they are then detained in police cells, forced to take a bone density test to ascertain age, and sent to remand homes or rehabilitation centres. At each stage of the intervention, women experience gross human rights violations Their right to livelihood and their right to reside wherever they want is suspended; their right to privacy and their right to liberty and equality before the law is taken away because they are being ‘taken care of’. Some sex workers sustain injuries in trying to escape being ‘rescued’.

These methods of rescue are violent and extremely disruptive to the daily lives of women and they further impact on actual earnings. With more raids, there is an increase in fear on the streets and hence fewer clients. This does not mean that sex

³⁷ Desouza, “Razing Baina, Goa: In Whose Interest?” *EPW*, July 24, 2004

³⁸ Agustin, *Sex at the Margins: Migration, Labor Markets and the Rescue Industry*. 2007:33

³⁹ Ronald Weitzer, “The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade”. *Politics & Society* Vol. 35 No. 3 September 2007: 447- 475

⁴⁰ See Kapur, 2005; Schreter & Jewers, 2005; Murray, 1998; Doezema, 1998

⁴¹ A tradition of dedicating men and women to the goddess Yellamma

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work stops, but working conditions become aggravated and this can only mean women take greater risks to secure daily income. In the moment of 'rescue', the idea that sex work may offer women a better option than other forms of unskilled or low paid labour is entirely disregarded.

Secondly collapsing trafficking and sex work has the effect of clouding understandings about the sites and forms of violence that women in sex work experience. The majority of sex workers speak of violence perpetrated by the state, not by clients or traffickers. The police ask for free sex, rape and beat them and demand bribes to drop cases. Earlier, fearing greater violence, women in VAMP would plead guilty to soliciting or 'prostitution' despite this not even being a crime. With knowledge of the law and strength of the collective, they are now pleading not guilty. However, State violence continues as they are taken to court where they face the scorn of judges. This is despite the fact that the Indian Constitution guarantees equality before the law. Anti trafficking discourse overlooks these sites and forms of violence because of the emphasis on violence of the trafficking experience - and on the allegedly violent relationship between the trafficker and the women.

Sex work, like many other types of work, has its hazards. However, the inseparability of sex work as a category from trafficking policy tends to increase these hazards. The suggested amendment to the ITPA that criminalize clients in the name of curbing trafficking is but one example of how women will face greater hazards in their work.

Our own standpoint - Putting 'self' into knowledge production

We invest in the belief that one's standpoint - in other words, where one is positioned in the socio-cultural hierarchy - influences one's judgments.⁴² It is important to explain the relevance of this, rooted as it is in the ethics of sociological inquiry and an interrogation of knowledge production.

Examining the conceptual schemes of sex work and trafficking is important because these constitute our social location. In other words how does a social location influence the way a person frames certain kinds of questions and projects? What are the assumptions being made about women and their sexuality, or about the relationship between sex and work for instance? These assumptions will have significant impact on the knowledge produced and, more importantly, on the effects this knowledge has on targeted populations. In short, there is no "objective" knowledge production about social problems.

The schemes underlying the conflation of sex work with trafficking

What are we talking about when we say there are conceptual schemes underlying the move to conflate sex work and trafficking? Essentially we mean not accepting, uncritically, what is presented as the definitive 'reality' of sex workers (i.e. they are 'injured' by sex work) and asking questions about how this seeming reality has been put together. We ask: Why does the anti trafficking discourse not target men or transgender people in sex work? Why do the anti-traffickers not target women in Global North nations? Why are sex workers who work from five star hotels not deemed 'vulnerable' to sexual exploitation and subsequently rehabilitated? Is anti-trafficking really about protecting women's interests?

A moral crusade against women

The tensions within the debates on sex work and trafficking are to do with women's, and not men's, participation in the sex industry, and the movement of women across national borders. This points to a conceptual scheme of the anti-trafficking discourse that is heterosexist and typically gendered - where the domains of sexual exploitation and sex work are marked out according to archetypal constructs of gender and sexuality. Fixed beliefs about men and women's behaviour or characteristics are

⁴² Sandra Harding. "Rethinking standpoint epistemologies". In L. Alcoff and E. Potter (ed.) *Feminist Epistemologies*. Routledge, New York: 1992

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projected. The value beneath this is that women and men should be monogamous, and have sex free only in 'loving' relationships.

Hence when women have multiple sexual relationships or are involved in trading sex for money, moral indignation surfaces. When men are sex workers, or procure sexual services from women, society judges them in very different ways, if at all. The exclusion of male sex work from the anti- trafficking debates is blatant and yet barely commented upon. We suggest the omission functions to keep women, and the contention of their sexuality, at the centre. However, through this only a partial account of what is actually happening on the ground is presented.

Research and experience points to the fact that there are as many men in sex work as there are women; that men can be exploited in the sex industry and that trafficking of men and boys into sexual service occurs. These issues get discussed within a context of containing HIV or preventing child sexual abuse but rarely within debates on trafficking. Neither male sex work nor trafficking of boys and men seems to incite the moral outrage that is witnessed over women.

Studies conducted in India have shown high prevalence of men selling and buying sex from each other.⁴³ The focus of the research has been on sexual behaviours of MSM (men who have sex with men) for HIV prevention. A lacuna remains in knowing how men encounter sex work. For example, whether they experience sex work as exploitative, the social and economic contexts that lead them to sex work, the sites, types and incidence of violence they experience, and the relationship between male sex work

and migration to trafficking networks, are issues hardly known. A study conducted in 2007 on male sex work and *launda* dancing reveals that young men⁴⁴ are 'trafficked' by 'peer pimps' to rural Bihar and Uttar Pradesh.⁴⁵ The obscuring of these experiences within trafficking debates serves to underscore the 'problem' of sex trafficking as a 'gender' (read 'women's') issue.

Further, the anti-trafficking discourse completely overlooks the prevalence of women procuring paid sex from men. Research shows this does not give a true picture. A situational analysis of prostitution amongst boys⁴⁶ in the city of Hyderabad for example found that the majority of the boys' clients (76 per cent) were women.⁴⁷ Disregarding the possibility that women can be 'sexual exploiters' and procurers of paid sex not only discounts the male sex worker's experiences but shores up the fiction that women can only occupy a victim position in a matrix of power between men and women.

Hence, archetypal constructs put a boundary around what is considered a legitimate scope of inquiry so that certain things can be said in debates on trafficking. (i.e. sex trafficking is a women's issue). Indian law and international standards on preventing trafficking state that *anyone*, be they male or female (and presumably transgender), can be trafficked. They also assume that trafficking in persons is primarily for the purpose of prostitution⁴⁸. And yet in actuality anti-trafficking measures target neither men and boys as 'victims' of sex trafficking nor women as sexual exploiters. If commercial sexual exploitation is the issue at stake, then surely there should be no apparent reason why men and boys are not likewise targeted by anti-trafficking initiatives and rescued and rehabilitated from sex

⁴³ See Khan, 2001; Dandona, 2005; Asthana, & Oostvogels, 2001

⁴⁴ The majority of the sample (69% n=400) was between the ages of 20 and 26 years.

⁴⁵ Lahiri & Kar, "Dancing Boys: Traditional Prostitution of Young Boys in India" 2007

⁴⁶ The study follows the CRC as its definition of child. However, data reveals that 63% (n=30) of the study's sample of 'boys selling sex' was 18 years of age which means that they were 'adult'.

⁴⁷ Akula, S L. "A Situational Analysis Report of Prostitution of Boys in India (Hyderabad)". ECPAT International, 2006:38

⁴⁸ UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others – Article 1. The Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person. ITPA section 5a - Where any person recruits, transports, transfers, harbours or receives a person for the purposes of prostitution. US Protocol 2000 Article 3: Trafficking in persons shall mean... Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation

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work. Most feminists and social activists uphold the importance of targeting women as victims of sex trafficking justifying it with a causal argument: social and historical oppression of women lead to increased risk of being trafficked and sexually exploited. However, for two reasons neither point can be empirically demonstrated. Firstly, as we have shown here, without hard evidence to suggest otherwise, we cannot assume that men in sex work experience less exploitation and are not trafficked for sex work. Secondly, the imprecise definitions of trafficking and its conflation with migration, mean that the statistics delivered on victims of trafficking are equal to those who have migrated voluntarily. As Kapur notes, “the absence of women or girls is routinely considered tantamount to ‘missing persons’, and therefore trafficked”.⁴⁹

One can only conclude that the huge investments being made in the area of sex trafficking and sexual exploitation have less to do with these phenomena and more to do with controlling women’s mobility and their sexuality. The real problem is women saying they want to be in multiple-partner partnerships in a commercial environment. When women go against the archetypal stereotype of a ‘good’ woman, they are considered the ‘problem’. It is they who are regulated, rather than trafficking.

Constructed ‘Differences’ of Global South and North

When women are poor, from Global South (henceforth referred to as South and North) nations and do sex work or migrate, there is an increased sense of moral outrage. Underlying the ‘concern’ for such women another conceptual scheme is operating: this is the belief that the experiences of women from the South are radically ‘different’ from those in the North. The ‘difference’ between realities is constructed thus: women’s lives are limited by gender power relations in the South, while in the North they are emancipated from gender inequality and experience more

‘freedom’ and therefore more ‘choice’. The primary referent here is the notion of freedom. There are deeply racist assumptions operating from this referent and a moral civilising mission at its core. It is from here that the impulse to ‘liberate’ springs: the Afghani women must be liberated from the burka; the devadasi from barbaric customs and women in general from the ‘shadowy syndicates of trafficking’.⁵⁰ Women in the North conversely are perceived as no longer oppressed by their gender; as less in need of protection; as in control, politically equal, economically autonomous and sexually ‘liberated’. When making the decision to do sex work, they are not considered to be doing so under duress or because of their subjugated gender position in society. In fact, in the North sex workers are increasingly posited as markers of a sexually progressive society- as part of the rainbow of diverse sexualities to be proudly claimed, albeit with ‘political correctness’ as the undergrid. Chandra Mohanty maintains that this ‘difference’ has been advanced by western feminist discourse on women in the ‘Third World’. She charges feminism with portraying the ‘Third World Woman’ as a singular monolithic subject and views this in effect as colonization of the subject. In her words this constitutes “a discursive or political suppression of the heterogeneity of the subject(s) in question”.⁵¹ In our view, the debates that collapse sex work with trafficking, ‘read’ the female sex worker in Third World settings in precisely this way; *through a discursive and political suppression of her lived reality*. Mohanty argues that Western feminism has projected its own class-culture as the norm through repeated and erroneous description of third world women as “ignorant, poor, uneducated, tradition-bound, religious, domesticated, family-oriented, victimized”⁵² Sex workers in the South are portrayed similarly, their multiple layers of experience subjected to a singular representation of suffering.

Feminist knowledge is an important resource for social change agents, informing social programming. The radical feminist

⁴⁹ Kapur, *Erotic Justice* 2005:145 . See also Kapur and Sanghera (2000) on the questionable evidence of trafficking statistics.

⁵⁰ Doezeema, “Ouch! Western feminists’ wounded attachment’ to the ‘third world prostitute”’, 2001

⁵¹ Mohanty, Chandra Talpade. “Under Western Eyes: Feminist Scholarship and Colonial Discourse” *Feminist Review*, 30 1988:61

⁵² *Ibid*: 65

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argument posits sex work as unequal power relations between men and women and as an extreme form of violence against women. The feminist analysis is appealing to social change agents because women are categorized as homogenous, sharing the commonality of gender oppression as the most violent of all forms of oppression. By default, the category of 'woman' becomes equated with powerlessness in relation to men. The problem with feminism, as with some political discourses, is that it attempts to find a variety of cases to prove the point that women as a category are powerless. Feminism's political agenda ends up being at the cost of focussing upon the specificities that create powerlessness in a particular context.⁵³ Irrespective of how women in sex work actually experience powerlessness, they are presumed powerless in the act of selling sex because sex work is deemed unequivocally a relation of exploitation. . Though sex work has been a divided debate for feminists, it is plain to see that this understanding of sex work in the South has been extremely influential.

Class as a conceptual scheme

When women in prostitution in the North no longer are read as violated by sex work or as 'victims' and there is a growing 'politically correct' outlook towards them, why are Indian sex workers not similarly read? Partially the shift in perception is to do with the way that sex work is represented in the public domain. Media significantly influences public opinion. As one recent study found, Indian print media routinely projects the sex worker 'victim' image in news stories, which would account for why the 'victim' holds public sway so powerfully.⁵⁴ Shifting material and economic conditions also influences the way sex work is read. For example, the business of sex work has been revolutionized by information technology. Many women now independently conduct business through mobile phones and the Internet. Autonomy means increased economic power for women; in real terms, the sex worker no longer symbolizes the

victim. She is often wealthy, independent, savvy and enviable. As the lives of American and European sex workers have been changed by technology, so have Indian sex workers', including those from poorer backgrounds. Many of the VAMP women, for example, conduct business without pimps earning relationally the same as a western sex worker. Far from exemplifying 'exploited' women, they are the role model of a successful woman for other women who come from the villages, moving up the social ladder through gaining more economic power⁵⁵. This is reflected in buying land, owning homes, driving and owning vehicles and sending their children to private schools. And yet, an equivalent shift in understanding about these lives has not taken place. An image of the affluent, commanding and techno savvy sex worker is reserved for the North or 'high-class' sex worker. At best there is doubt and at worst complete disbelief that a working class sex worker can be equally empowered. This class distinction is embedded in the assumptions that power anti- trafficking interventions. It is the working class and poor sex worker who are beleaguered by the victim rhetoric, and it is their agency denied. In a privileged position of determining the problems, the middle class preserve a state of immunity by maintaining the focus on the poor.

What the sex work and trafficking debates are saying and how people get convinced

Since it is impossible to justify 'saving' empowered, confident, and happy women, the picture of misery and victimization surrounding sex workers in the third world is a necessary myth to maintain. This provides justification for anti-trafficking organizations to promote rescue and rehabilitation. We subscribe to view that the image of misery that surrounds the third world sex worker has captured a popular imagination *not* because it defines actual social conditions. Rather, it reflects a series of claims *about* social

⁵³ Ibid: 66

⁵⁴ See "Beyond Vice and Victimhood: Content Analysis of Media Coverage on the Issues of Sex Workers." SANGRAM, 2008:9

⁵⁵ We learnt this from a sex worker in VAMP

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conditions being made by anti-trafficking organizations. These claims include but are not limited to the following: -

- 1) Prostitution, by definition is evil and therefore a human rights abuse
- 2) Prostitution is universally and categorically a form of violence, because the sex acts that take place within prostitution are degrading and involve violence and coercion
- 3) Sex workers lack agency and there are no elements of choice in taking up sex work
- 4) Prostitution is both the cause and effect of sex trafficking and so most women who are in sex work have been trafficked
- 5) The magnitude of both sex work and trafficking has greatly increased on a global scale
- 6) Legalising prostitution would have the effect of increasing sex trafficking
- 7) Clients and traffickers are evil

Each of the above claims works to support another, and together they produce the effect that prostitution is a global 'social problem' that is growing in seriousness and magnitude through trafficking. One understanding is that these claims constitute the ideology and institutionalization of a moral crusade.⁵⁶ The ideology is that prostitution is immoral.

A nexus of religious right, patriarchal and traditionalist and feminist individuals and groups has constituted this ideology and come together as the anti trafficking movement. Agreement, and a working relationship, is formed between them, because all strive for an ideal of what is morally 'right' from their social location. In this ideal, prostitution is inherently and morally 'wrong' and

therefore a 'problem' for society. Subscribing to beliefs of any one of these groups, political leaders are lobbied by anti-trafficking organizations to execute international and state policy on sex work and trafficking. These claims then become extolled in policy, gradually convincing wider public opinion of their truth-value. The interests of each of these groups are diverse. The religious right's rationale for making these claims is based on a patriarchal norm of controlling women's sexuality articulated as an ethic of sexual integrity. Many religious traditions believe that prostitution is evil because it violates the relationship between love, sex and reproduction. However, the grounds for this belief are located in the fact that while in sex work, women are not under male control within the family. Traditionalist and conservative groups use the feminist construct that prostitution violates women per se, but their argument has very little to do with women's equality. Rather they feel that prostitution threatens traditional sexual arrangements. Feminists have clashed over prostitution, liberal and radical viewpoints being the most divergent. The anti-trafficking movement has drawn upon radical feminism, evaluating prostitution as that which degrades all women. This is connected to a wider analysis of power and male domination. Radical feminists would deny that their arguments are based in morality; yet the moral message is evident in the claims. This assumes an idea of female sexuality that is contaminated by sex and all the more so when sex is separated from love and exchanged for money. None of these understandings leave room for the female sex worker to speak of her own subjective experience.

Moral crusades, as Weitzer suggests, rely on research executed by activists who subscribe to a particular ideology. Research provides the ground for authenticating social problems. It provokes public concern and a wider reaction of moral panic. Despite it being noted that there can be no proper counting of trafficked sex workers because of imprecise definitions, and the extremely enigmatic issues of will, choice and coercion, there is nevertheless a plethora of research conducted 'on' trafficked women in the South.⁵⁷ Often such research - despite narrating dubious statistics - earns legitimacy because it is commissioned

⁵⁶ Weitzer, 2007

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by prestigious organizations. One tactic to endorse findings is the repeating instances of atrocity, used to indicate how the 'problem' of sex trafficking is escalating. Research on sex trafficking has been known to rely heavily on convenient and non-random samples. Violating research ethics, results are generalized onto a wider population.⁵⁷ By claiming a universal reality based on the worse case scenario, the diverse experiences of sex workers and migrants are erased. For many sex workers and migrating women, the choice is often between different levels of exploitation, since their social location and experience does not provide them immunity from exploitation. Thus, a certain amount of exploitation may be acceptable towards a perceived better future, a more profitable destination. Yet, research studies on sex work and trafficking do not accommodate these facts.

Though research is one way of convincing the public of the need for a 'better' life for sex workers, the urge to improve others' lives operates at an individual level too. It is often a dedication to helping others that is the force behind a moral crusade. This becomes an identity and much time is spent in thinking about how people ought to live and how to achieve that vision.⁵⁹ While we do not attempt here a psychological analysis, it is important to ask the question why there is no self-reflection in social agents. The conviction that sex workers are only victims - and acceptance of this as social fact not social construct - must be challenged.

The way forward - What we can do

Re-looking at interpretations of violence and ourselves

Thinking outside of traditional constructs of violence may bring us closer to understanding why many sex workers want the protection of a pimp. Secondly, there is a problem when women

are not seen as *anything but* sex workers. Their other identities - as productive wage earners, contributors to local economies, carers of families, mothers, sisters, wives or autonomous and extremely capable women - are wholly overlooked in lieu of a singular view of them as either fragile and in need of protection or as a threat to a notional idea of decency. Neither reading offers a possibility to shift thinking about sex work - in fact subdues the freedom to think⁶⁰. Without acknowledging the interlocking connections that sex workers have with many people, the complexity of their relationships is often reduced to a flat view, seeing them only in relation to pimps, clients or brothel owners.

What is needed it is a greater engagement prostitution. This engagement should involve as Martha Nussbaum suggests greater care over scrutinising "all our views about money making and alleged "commodification" and to be "on guard against two types of irrationality: aristocratic class prejudice and fear of the body and its passions"⁶¹

In sum, our contention is that all those working on preventing trafficking must be concerned with the *method* of knowledge production in order to conceptually de-link sex work from trafficking. This involves not only evaluating how much the process of inquiry on trafficking has been from a social location of the interventionists - who have the means to be heard - but crucially, creating opportunities for hearing from persons who have traditionally been excluded from knowledge production. We argue that the latter knows something that the former does not. Because the powerful always think they know better, the road ahead will be difficult and problematic, but it is crucial and it will be exciting.

⁵⁷ See Agustin: 2007:38

⁵⁸ Wahab and Sloan, "Ethical dilemmas in sex work research" 2004:3

⁵⁹ Agustin. 2007: 4

⁶⁰ Sen. *Identity and Violence: The Illusion of Destiny*. 2006: 174

⁶¹ Nussbaum, "Taking Money for Bodily Service" in *Sex and Social Justice* 1999: 280.

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IV. The Pool of Tears: rights, sex workers and the judiciary

Looking at the judiciary and the legal systems made us aware of the pool of tears that is often entails.

In this chapter we focus on judgements and the legal system, and the potential and actual adverse impact of this on the lives of sex workers. Firstly, we examine the language used by the judiciary and how this reflects negative attitudes towards sex work. The judgements are infused with victim rhetoric and infantilize women, which leads to denied agency. Secondly, we look at how courts and judgements are steeped in sexual morality and the ostensible protection of general society. Thirdly, we argue that though the court claims to be non-violative of rights, many of the judgements are inherently violative of rights. In judicial custody there are further violations. This is despite the fact that sex workers have committed no crime.

The language used by the judiciary leaves everything to be desired. It reflects a view and attitude of moral outrage at sex work. It is the undergrid of many of the judgments. The outrage however, is often not at the issues involved. Rather, it is at sex work. This can be seen in the first extract. Here, the judge's indignation is on the 'racket' of sex work, which he understands to be a 'national menace'. The issues of kidnapping, illegal confinement or the fact that the female involved is under age appear less infused with righteous anger:

[...] for abducting a teenage girl and forcing her into sexual



submission with commercial object, a racket which has become an enormous national menace, notwithstanding the constitutional concern for the weaker sex.⁶²

The crime of abducting is heinous and one would expect the tone of moral indignation and outrage. And yet these are not commented on. The judge concludes,

"All we can do is reject the plea with indignation and follow it up with an appeal to the state Governments of Bihar and of Haryana to put a special squad on the trail and hound out every such offender so that the streets of our towns and cities may be sanitized and safe after sunset for Indian womanhood."⁶³

Why is the judge so centred on sexual exploitation? Do the other issues not merit any consideration? It seems not. The learned judge wants the state governments to set up squads to prevent trafficking in women. Surely, this is not the only kind of violence, whether in the home or on the streets, that Indian women face. There does not seem to be a concern to make the streets safe for working women, or homes safe and sanitized for all women. Does not the environment need to be made safer for complainants of other crimes too, such

⁶² In the Supreme Court of India, Smt Deviki alias Kala vs. State of Harayana, AIR1997SC1948[1980]1SCR91

⁶³ ibid

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as in cases of violent crimes like rape and domestic violence? Another question to ask here is would the judge have been equally severe if the girl was kidnapped as a domestic servant or for any other type of labour? Kidnapping of young girls is not to be condoned, but why is outrage expressed only for sex work and no other?

In another case the learned judge describes sex work as “a running sore in the body of civilization and destroys all moral values”.⁶⁴ This reflects the dominant, or rather common sense view that public morality is exclusively dependent on the sexuality of women. More of this later. Now we seek to emphasize the view of sex work that emerges through use of language.

In yet another case, the prejudice against sex work and women in prostitution is blatant. The judge argues that,

“[...] the crucial point that must not be lost sight of when considering this problem is that prostitution (like gambling, touting and other inherently immoral occupations) cannot be put on par with normal, respectable professions and trades which have no taint of immorality about them.”⁶⁵

By opining that sex work is not normal and is, in and of itself, immoral - and its unhealthy impact on society at large - the judiciary refuses to see sex work as a means to livelihood. Further, it is in complete denial of the fact that sex work itself is not criminal.

The next issue is the ways in which the judiciary denies the sex worker any agency or autonomy. The court is full of the victim rhetoric, which naturally assumes that there can be nothing empowering about doing sex work. In this example, the women are deemed in need of ‘rescue’ to save society,

“The Act (Suppression of Immoral Trafficking in Women and Girls Act) was conceived to serve a public social purpose, viz. to suppress immoral traffic in women and girls and to rescue fallen women and girls and prevent deterioration in public morals”.⁶⁶

In another case, this judge takes a somewhat liberal view to women, but by attributing poverty as ‘the cause’ of sex work he also renders them victims,

“Hence the approach of society towards prostitutes must change, and sympathy must be shown towards them as it must be realized that they are not necessarily women of bad character but have been driven to the profession due to acute poverty in the family.”⁶⁷

Thus the women are constructed by the judges either as victims of villainous trickery or of poverty. And the entire sex industry is understood as nothing but a place of misery as this quotation illustrates,

“Once these unfortunate victims are taken to the dens of prostitutes, and sold to brothel keepers, they are shocking and brutally treated”.⁶⁸

Victimising the sex worker leaves no room for her agency. While we do not discount that poverty is the reason why some women and men do sex work, we assert that not all people in sex work are victims. There are those who make a choice to do sex work. If we are talking human rights, the assumption is that there is agency. Constructing sex workers as having agency and being autonomous (albeit in many, if not all, cases) is a necessary, but not sufficient condition of invoking the human rights framework for sex workers. In the above examples of judgements there

⁶⁴ In the Supreme Court of India, Vishal Jeet vs. Union of India, AIR 1990SC1412,[1990]2SCR861

⁶⁵ In the High Court of Allahabad, the State vs Smt. Kaushaliya and others, AIR1963A1171,1963CriLJ138

⁶⁶ ibid

⁶⁷ In the High Court of Allahabad, Radha and Others vs. State of UP and Others, 2003(1) AWC455

⁶⁸ In the Supreme Court of India, Vishal Jeet vs. Union of India, AIR 1990SC1412,[1990]2SCR861

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seems to be sympathy operating, which is clearly not sufficient. Sympathy is necessary, but more importantly, there needs to be commitment to challenge and change unequal power structures and to social justice, before we invoke the human rights framework.

The victim image of sex workers has the additional impact of seeking rescue and rehabilitation for sex workers. This is framed in the human rights language of 'living with dignity'. We posit that this is not the route to dignity. As Kamala Bai⁶⁹ vehemently says

'Why do they want to rehabilitate us? Why not beggars on the road they need it. We don't. We earn our living and stand on our own feet.'

Life in the Protective Homes for the sex worker is far from a life with dignity or empowering. They are often abused, sexually exploited and looked down upon. Moreover, there are simply not enough resources and protective homes to deal with part time, full time, home based and street sex workers. Instead of Protective Homes, sex workers need to live a life free from violence. The violence is from various quarters. But most often the entire state and social machinery condones this violence because of the attitude that 'they get what they deserve as they are bad women'. Access to health, safe housing, to different kinds of resources, less stigma, a better self-image is some of the things that could lead to a life with dignity. However, these aspects of the lives of sex workers are largely ignored.

There are judgments that have a juridogenic effect and violate the fundamental rights of sex workers. In the case of *State of Uttar Pradesh vs. Kaushaliya and Others*, the Supreme Court of India ruled that since the women were doing sex work, they could be asked to leave their place of residence and entry to the area restricted. The women began by going to the City Magistrate of Kanpur, a lower court. The case went to the Supreme Court on appeal. It was argued in the Supreme Court that the rulings of the lower courts violated the women's right

to equality under the law (Article 14 of the Constitution). The Supreme Court ruled that restricting the women's entry to the area was 'reasonable' because of the work that they do. It was a 'reasonable restriction' imposed in the public's interest. This ruling completely ignores several other rights of the women. For instance it denies them their social capital that they have developed in the area. This in turn could affect their right to livelihood. It further violates their right to live in any part of the country. These are fundamental rights guaranteed by the Constitution of India.

In addition to victim rhetoric, the law further infantilizes women in sex work. This is evident in the law itself. The Suppression of Immoral Traffic in Women and Girls Act, clubs women and girls together and makes no difference between choices made by adult women and the lack of choice of children.

Admittedly the court is the arbiter of morals and the rightness of people's behaviour. On the other hand, the functions of courts is to redress injustices and dispense justice. Yet, the anti sex workers lobby and the judges seem to coalesce in upholding dominant morality rather than justice. However, the question is whose morals are being protected and at what cost? Are the morals of the 'public' being protected at the cost of the rights of the sex workers? It often seems this is the case. Further, the 'public' are constructed as having no agency at all. The 'wicked' sex workers seduce them from the path of righteousness and family values. The morality upheld by the courts is not to do with the issue of consensual sex or non-consensual sex. Rather it is to do with commerce and the economics of sex - in other words, sex for payment is wrong and sex for free is morally sound. The legal system, and indeed social norms, doesn't seem to be clear on whether sex workers are evil or victims. If they are victims they need to be rescued, if they are evil, they need to be stamped out. No other voice can be heard. In courts, which exist for the purpose of truth and justice, often the truth of lives of sex workers is silenced. As in the case of the tarts in Alice in Wonderland:

⁶⁹ A member of VAMP collective in a personal interview.

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"What are tarts made of?" Said the king.
"Pepper mostly," said the cook.
"Treachle," said a sleepy voice behind her.
"Collar that Dormouse!" the Queen shrieked out.
"Behhead that Dormouse! Turn that Dormouse out of court! Suppress him! Pinch him! Off with his Whiskers."

This silencing is ostensibly to protect the family values. A monogamous heterosexual marriage is the custodian of all sexual activity. But why do family values need 'protection'? The family in India is constructed as the bedrock of civilization. Moreover, as many women's organizations will testify, the family is often the site of violence against women be it domestic violence, coerced marriages, child sexual abuse etc. So what are we protecting against and at what cost? This 'protection' of the family is reflected in most of the judgments that we have quoted. This brings to fore the 'good' woman and the 'bad' woman, spoken about in the earlier chapter. The 'good' women are in the families and the 'bad' women are in the streets.

The sex worker being the bad woman is so often repeated that it becomes a 'truth'. Since they are bad women they are automatically bad mothers as well. In *Gaurav Jain vs. Union of India and Others*, filed in 7 July 1997, (No. 745-54 of 1990) the argument was that sex workers cannot take care of their children. In the name of 'protecting' these children from sex work it was prayed that the court take away the children of the sex workers. However, there is no evidence that children of sex workers are forced into sex work. Sex workers have the same dreams and aspirations for their children as the rest of society.⁷⁰

Now we move onto looking at what happens to sex workers when they appear before the court. They are arrested by the police under ITPA and are put in judicial custody. Very often they languish in prisons and it is years before their cases are heard.

However, the intention of the ITPA is not to punish prostitution at all. It seeks to punish the trafficking of women

for the purposes of prostitution under sections 3, 4 and 5. This primarily applies to traffickers and therefore the arresting and keeping of these women in prison is wrong and against the objectives of the ITPA.

For instance, in the Bangalore Jail, there are many cases where women are arrested under the ITPA. In such cases, the family does not even know about the arrest and where the women are. These women have migrated from rural areas of Maharashtra, West Bengal, Andhra Pradesh, Punjab, Rajasthan, and Karnataka to earn their living or because they are tricked by their boyfriends or family, or because of trafficking. Most of them have no or very little education. They are often without marketable skills. The women are required to produce huge sums as surety for bail. This amount far outstrips what they earn in their lifetime unless they sell sex to the person who provides surety. There is often a nexus between the police, the lawyers and those providing surety. The women are shorn of all their jewellery, cell phones and whatever money they have in their possession. Thus they are at the mercy of traffickers, pimps, and/or the jail wardens, the police and the lawyers.

It is actually the pimps and the brothel owners who are the criminals. They could have actually committed the crime. But because of the nexus they are seldom charged. This means that the women, who are picked up under ITPA and arrested, languish in jail with no hope of a trial because they have not committed a crime – as sex work in and of itself is not a crime. The only crime that women could be charged with is soliciting in public places. It is a kind of a Catch-22. The sex workers are not doing anything illegal, but are in jail, the brothel owners are pimps are doing something illegal but are seldom arrested and hardly ever brought to trial.⁷¹

Since these are the attitudes and the way the courts work, is there any hope of the sex workers accessing their rights? After all rights are necessarily asserted through the State systems. How do we go beyond rights and think outside of the box?

⁷⁰ Interviews with sex workers of VAMP and Sadhana Mahila Goompu

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V. Curiouser and curiouser

Over the past few years, sex workers' rights groups in India have gathered in collective strength to be recognized as legitimate workers, challenging the universalising tactics of the anti-trafficking movement. But, at this juncture, given the extent to which the ideology of the anti-trafficking movement has taken root as common sense, there is a greater need to turn the critical lens on ourselves. In our view all of us must do so because we are in a position to do so, independently of anyone else, and because it is our ethical obligation. And it is within our power to frame and alter the course of the debates.

We can see that the rights framework does not address the stigma and issues of violence in the lives of sex workers. Indeed it does not even attempt to represent the rights of sex workers. Rights either as rhetoric or discourse have not transformed their lives. It has not dealt with the systemic and structural ways that sex worker's rights are violated.

Since human rights do not live up to the promises made, what is the alternative? Do we then abandon the framework of rights all together?



The language of rights, with its emphasis on entitlement and duty bearers etc, is powerful one and could have backlashes that are unexpected and often violent. This could have an adverse impact on the lives of the sex workers as a group or individually. As Srilatha Batliwala says:

“They (the women) chose carefully when to use the language and strategies of ‘claiming’, ‘demanding’ and ‘asserting’ – often when they have achieved a critical mass of mobilization and politicization – because the terms themselves signal readiness for confrontation. Women always move very carefully from negotiation to confrontation, because they have to bear the cost of possible backlash from state and non-state actors in local power structures.”⁷²

A possible answer could be developing tools for negotiation. One of the most potent tools for negotiation is collectivization.

It is evident that rights can work when there is collectivization. The

⁷¹ This is drawn from Sheela Ramanathan's article “Worse Jail Jitters Women” in *Combat Law* Vol 7 Issue2 March - April 2008

⁷² Batliwala, Srilatha. “When Rights Go Wrong”.

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collective has the capacity to deal with the backlash if and when it happens. In addition the collective could strategize ways of using the rights framework for the betterment of their lives. However, the process of building the collective is a long and arduous one. Clearly then the rights frame work cannot be abandoned, but needs to be modified to fit the struggles and needs of different disadvantaged groups. The collective will be in the best position to decide how and when to engage with and deploy the rights framework.

All the tools of negotiation are strengthened by collectivization. The collective helps in myriad ways. It seems to be a pre-condition to negotiation and compromise. Firstly, it adds to collective bargaining power. This, as is well known, is a compelling force in negotiating for anything. Secondly, when the collective has evolved, it needs the vigour of politicization. It is only through this that workable and sustainable strategies can be worked out. The politicization makes it possible to frame the issues in political ways that are most beneficial to the group.

Thirdly, it is evident that the collective needs to have a mass base. It is only with the help of numbers that negotiation has the potential to be successful. It is obviously difficult to make a large impact with a small collective.

Further, the combination of collective strength and information and knowledge of the law is a forceful tool. For instance, women in the VAMP collective are able to negotiate with the police, who harass them and threaten arrest. The women are able to tell the policeman that they are not soliciting and therefore breaking no law, albeit the negotiation is in small ways and not at the level of policy change. However, it is in these small ways that women find answers to their practical concerns. This may not be the answer for their strategic interests i.e. long term and all encompassing needs. From these small ways, though it is a quantum leap, sex worker collectives could develop negotiating tools for policy change, changing attitudes, lessening stigma.

We now briefly focus on the case studies of two collectives –

VAMP a sex workers collective in Sangli, Maharashtra and the union of domestic workers organized by Stree Jagrati Samati, Bangalore – to see how they have comparatively worked with rights and how they have been empowered by the rights framework.

Till 1992, VAMP was a part of SANGRAM. Since then it has been an independent collective. As part of its mandate, VAMP runs and manages peer interventions in six districts. The members, all of whom are women in prostitution, felt comfortable managing the community on their own, but needed technical support. And this is how Sangram and VAMP work together. The collective has over 7000 women. The collective has helped women to:

- Learn collective negotiating skills. They are now able to use the fact that they are a collective in negotiating with power structures.
- Attain a legitimate voice and be heard. This is a stark contrast to earlier days when they were not heard at all.
- Individually become stronger. In their own heads, many women have worked out that they are neither bad nor evil. Despite the mainstream, there is a different truth that is more comfortable for them. Their self worth has strengthened and their lives are punctuated with many more moments of dignity.⁷³

Stree Jagrati Samati has been working with women in the unorganized sector, taking up both personal as well as community issues. Four years ago they started a domestic workers collective along the lines of a union. Slums are poor ghettos as well as labour colonies. Many of the women work as domestic labour in upper class homes. However, it is has been very difficult to unionize them because:

- They have no defined work place
- There is no single employer
- There is no government machinery in the picture
- They are very isolated as workers

⁷³ Of Veshyas, Vamps, Whores and Women, SANGRAM

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Therefore they are very different from any other work force. Moreover, the relationship with the employer is more based on status rather than contract. There are no laws to protect them, as they do not come under any labour laws. Nobody looks at them as workers, rather the 'domestic' is stressed. All the disadvantages of the domestic sphere are visited on them. They are an invisible part of the economy.

They needed to collectivize so that their worker identity is strengthened. Further, they need to be recognized as workers and given workers rights. There needs to be mechanisms of regulation, so that they are not dependent on the whim of the employer. Many of their violations are invisible. The collective has been able to:

- Improve their self-image. They are able to perceive themselves as workers and see the value of their work and their contribution to the economy.
- Enable the women to negotiate better with the employers so that they are humiliated less. And are able to get more respect and dignity.
- The domestic workers are able to see that they have rights and are able to negotiate to exercise them.
- They are able to lobby for legal mechanisms and try and get legislation passed.

- Lobby for a Domestic Workers Welfare Board, which is backed by legislation.
- Lobby for changes in the Karnataka Government minimum wages notification, which included domestic workers in the schedule of workers, but the stipulated wages are far too low.

We can see how these two collectives have articulated their grievances in a rights framework. Though the domestic worker is not seen as immoral like the sex worker, both are denied 'worker' status.

Therefore we see that a strong and vibrant collective could take the rights agenda where it should be going. We are convinced that the rights paradigm cannot be dismissed outright, but is far from the only one that can advance the rights of sex workers and their movements.

We end, yet again, with Alice's Adventures in Wonderland. This seems to apply to the rights framework as well:

"If there is no meaning in it," said the King, "that saves a world of trouble, you know, as we needn't try to find any. And yet I don't know," he went on, spreading out the verses on his knee, and looking at them with one eye; "I seem to see some meaning in them, after all."

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“Who Stole the Tarts” Roundtable Discussion, February 2009, Goa*

Cath Sluggett and Sandhya Rao, the authors, presented the highlights of their paper, beginning with the difficulty of critiquing the human rights framework after working as human rights activists for over a decade. At the outset, they clarified that they viewed rights as a necessary *but not sufficient* condition. They then went on to talk about the problems of articulating human rights as universal, without factoring the cultural context of its assertion. The importance of being ‘good women’ to access rights was spoken about. The speakers touched upon rights being individual, while in India the collective identity is very strong, thus many sex workers fall through this gap. Another point made by the speakers was the fact that supposed social morality is the framework to view sex workers, rather than the human rights framework.

Throwing open the discussion, Bebe Loff pointed out that Human Rights in UN-speak is a body of law that derives from conversations between representatives of sovereign States that won the Second World War and their friends. “They got together and worked out exactly how much they are prepared to tolerate in terms of accountability to their citizens and the occasional non-citizen. Luckily some of it isn’t bad given that the world had just gone on a killing spree. If you think of yourself as the President or Prime

Minister of a country, and figure out how much it is that you might be willing to give away, you will quickly see that it won’t really be very much. It certainly won’t be anything that might make them unpopular with electorates. This is why the UN tries not to deal with abortion as a human rights issue, and why it has taken so long to get matters like domestic violence or rape in conflict to be dealt with as human rights concerns. There is no right to be free from poverty and there is no right to re-distribution of wealth although people like to imagine that they can read these things into rights documents. The law, any law is an ass, and is greatly restricted by the fact that it must be expressed in a limited number of words and its enforcement mechanisms. This means that the law is able to regulate only a certain spectrum of human behaviour in a limited number of ways. The law tends to be interpreted by lawyers, which means two things - it will be interpreted conservatively and in favour of the most powerful and the wealthy.”

In the ensuing discussion, one of the main tensions was the human rights language and rhetoric and actual experience of human rights.

“The concept of human rights for sex workers and claiming rights for them makes for a larger argument for rights. There is a strong argument to maintain rights as

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a framework for addressing injustice against sex workers because sex workers challenge the moral framework.”

“As for the tension between individual and group rights, why do we feel there is something wrong with individual rights? Regarding individual versus collective rights, there is a distinct use for individual rights and there is no tension. For example, if we put a Muslim woman into ‘community’ rights, she will get no rights. If we put her in to the category of ‘women’, that also is an abstraction. Sometimes there are tensions between individual rights and collective rights, but not always.”

“Firstly, it is not the case that the rights framework cannot address collective rights. The mechanism of PIL is an example of how group rights can be addressed. Secondly, stigma is an issue of discrimination and there are countless examples of how discrimination is addressed through litigation. Thirdly, I don’t agree with the fundamental point that rights are only for ‘good’ women and that ‘bad’ women cannot access rights. If that were the case then how do we account for prisoners, who are by definition ‘bad’ people, accessing their rights? I would like more explanation about what kind of problems you see with the rights framework vis a vis Lesbian, Gay, Bisexual and Transgender people”.

“I would say that there is not ‘one’ notion of human rights. For nations where there are no state mechanisms, especially in conflict situations, human rights become the only tool to address violence”.

“We were faced in Sangli with the white man articulating rights to perfection. Why is his articulation of rights privileged over ours? We had no way of

responding using the current understanding of rights. On the ground we are dealing with a tension of human rights, and the way it is being used against sex workers by abolitionists in rescue and rehabilitation. We have used collective rights by protesting together, not on an individual case-by-case basis. This was the situation with the women’s movement too. The Mathura rape case is a good example of a larger collective action. At that time, the issue was framed in a language of justice not human rights. It started with the understanding that collective pressure on the state would work. In this sense, everything is State-centric. Just look at health. Societal violence against sex workers is not given due weight and on top of this the rights of the rescuer is being privileged, not the rights of the sex worker. It is the white, rich male (who is the rescuer) who takes precedence. This is a concrete example of how the rights framework empowers the already powerful at the cost of the less powerful”.

“There are things that we *think* of as rights but in actuality they don’t relate to constitutional or international human rights at all. In this sense, there is no ‘right’ to be a sex worker. It is most often illegal to be a sex worker. Secondly, we have to recognize the relationship between the law of the State and human rights. Laws can be consistent with human rights or inconsistent. We must realize there is no language of generation of rights. The ability to associate as a collective makes no sense within individual rights. Rights sit on one side and human experience on the other. The language of love has nothing to do with rights, and neither does the language of charity”.

“We need to acknowledge that sex workers couldn’t

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have achieved what they have without human rights as a tool. Morality hinges upon the issue of self-determination and the right to choose an occupation. Who decides that sex work is wrong? Also, what about the invisibility of sex workers? If you privilege collective rights over individual rights then there will be a problem for women doing sex work part time who are not part of a movement”.

“The paper seemed to limit human rights to the State. But international human rights such as the UDHR go beyond the limits of the State. UDHR was developed as a result of state violations in Europe. The strength of the human rights approach is that it stretches beyond the boundaries of the State, which is what we do not want to lose. It allows individuals and communities to redefine rights. Maybe the problem of human rights is in the over legalistic manner in which they are deployed. I would also like to add that many of us using human rights address the good/bad dichotomy as a rights violation itself. Any other model would have to address same concerns. Otherwise it will hit against the same challenges of good vs. bad woman”.

“We need to go deeper into humans to really understand them. We need to look at the problems of other communities too. For example, what are the difficulties of non-sex worker women? We also need to break the caste system and what people think about gender and sexuality, because it is not enough to look at sex workers in a vacuum. They are people with multiple identities”.

“People think they have the right to rescue sex workers. But why not people who are forced into child marriage? They need rescuing more. As human beings, we have the right to choose an occupation. We as sex workers,

have the right to work as sex workers. Trafficking and sex work are two separate things and yet there is a focus on sex work. Many times girls migrate and are brought as domestic workers and then forced into sex work. But women who work as domestics are also sexually abused. These are contextual realities. We all look forward to a better life. There is work in my village only 3 months of the year, so I *will* look at different options. Other jobs are seen as a legitimate choice. But, sex work isn't seen as a legitimate choice. We need to emphasize on advocacy.”

“There are three problems with rights. One is a problem of definition. There is no right to do sex work. This is a definitional issue. Secondly, human rights cannot solve the issue of whether sex work is OK or not. Whether you think it's an affront, whether bad or evil, this is a moral discussion. Thirdly, human rights are very violation oriented. Inherent in rights based language is the image of the victim. This is another inherent problem of drawing upon rights. This adds to the problem of definition. There are two versions of human rights for sex workers and one says that sex work itself is a human rights abuse. This tends to get mixed up when talking about violations”.

“Human rights are only useful if they better people's lives. If it doesn't improve things then there is no point in using them. Also it seems that human rights are being used as a battleground for dealing with the morality issue. Morality and justice are not well serviced by the human rights frame”.

“It seems that we are all using the same language of rights to address different issues. There is a need to get back to talking a language of justice. Human rights are supposedly universal but they don't actually apply to all”.

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“There are formal rights, rights rhetoric, law and moral distinctions. If you fight for sex worker rights, it doesn't exist in formal international law. Human rights as formal international law are nothing more than a bunch of people who represent countries who have agreed upon the use of the word ‘dignity’. Certain things, they are willing to agree, are rights. We need to understand that rights are important but they are not available to everyone. The State has the power to limit rights. The obvious example of this is the way prisoners are given limited access to rights. We think that people should have the ability to be a sex worker and the right to safe working conditions. But what we think has little to do with rights per se. This is the issue of rhetoric of rights versus rights that can be concretely operationalized. You cannot claim that human rights are for all because they are not. Some rights are important. But, they are not available for everyone to claim. In other words, we use the language of rights in a very different way than those who sit in Geneva or New York. If the police come to raid, you can only claim a fair and just process and claim to be heard before independent judge. You can't claim that the State can't prosecute you. There is a sense of arbitrariness about what is selected as rights.”

“Even with the most beautiful HR framework people are not equal at structural levels. There are groups of people whose rights are always being violated in structural way”.

“In the field, we use human rights, the concept of justice and constitutional rights interchangeably. People find human rights a useful concept at the local level. We need to look more into how sex workers can use existing democratic spaces”.

“The collective worked effectively in Sonagachi to stop

evictions. But in the Baina incident, women couldn't do the same. Was this because of a lack of a collective? We need to look at what is happening at the ground level and at how things are changing. Everyone uses the human rights framework but its efficacy is different depending on the conditions on the ground.”

“One of the things we are leaving out here is the use of quasi state organizations such as Amnesty International. Sex workers have got legitimacy as rights holders with these groups”.

“On the issue of identity associated with occupation, sex workers exist as collectives. But I'm a little uncomfortable with the point that collectives provide a better way to leverage. What about those who aren't in collectives? Without the collective it doesn't take away that I still have human rights”.

“When the women's movement took up violence against women we looked beyond the framework of human rights. It was about focusing on laws. We didn't need UDHR. Many women do sex work part-time and don't want to say they are in sex work. They do it for their livelihood and their lives have nothing to do with sex work. Universalising an identity of sex worker can be problematic for such people's lives. It takes a lot of courage to vocalise such an identity”.

“Human rights are broad, which allows expanding the meaning of them. This is the beauty of human rights. The notion of life and liberty and the right to life is one example. The anti-trafficking lobby has long appropriated human rights. We need to look at reclaiming human rights. We need to articulate sex worker rights in formal language. Rights language can be used to challenge authority: procedural

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aspects, due process, what is just and fair, restrictive measures. I feel we have failed in being creative with human rights. We need to challenge the white man and we need to use the human rights framework to challenge this more. Protecting sex workers rights is a way of protecting the rest of society. The IPTA amendment pushes everything underground and this makes others in society at risk, not just sex workers”.

“We could have had a different conversation discussing Human Rights and the Human Rights framework. The Human Rights framework is given too much importance; look at the struggle against 377. What we are doing is fighting against discrimination of sexual orientation. When the Indian Constitution speaks of discrimination, our struggle has been informed by that, but our concerns are with the day to day and what’s happening on ground”.

“When collectives used collective pressure I don’t think rights was used so much. Rights language was used to collectivise but the political pressure of the collective was far more effective than rights language. Whether you are addressing State or society, collective politics has more power than individual rights. Why has it been more difficult

for sex workers than for the women’s movement? The tension is in the fact that certain individuals have the ability to use the rights language more powerfully. It is because of the concept of good and bad women. This means there is something wrong with the framework.”

“We need to look at human rights as a concept and as a reality. The situation in Kyrgyzstan is that we cannot use human rights as a concept because at the ministry level they are not ready to recognize violations as human rights violations. There is a rejection of the framework because it is deemed ‘Western’. And yet, sex workers and lesbian groups are using human rights to frame violations. But in practice there are no concrete results; there is a gap between the reality and the use of the concept.”

“The very fact that rights and responsibility are clubbed together is troubling. This means you have to do something to *earn* rights”.

Bebe Loff concluded the session by saying that a far more sophisticated response is necessary, with the ultimate purpose being the welfare of sex workers that takes into account the key variables.

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Bibliography

Akula, Sree Lakshmi 'A Situational Analysis Report of Prostitution of Boys in India (Hyderabad)'. ECPAT International, Bangkok: 2006. Available at: http://www.humantrafficking.org/uploads/publications/India_Hyderabad.pdf

Agustin, Laura Maria. *Sex at the Margins: Migration, Labor Markets and the Rescue Industry*. Zed Books, London: 2007

Asthana, Sheena and Robert Oostvogels. 'The social construction of male 'homosexuality' in India: implications for HIV transmission and prevention.' *Social Science and Medicine* Vol 52, 2001: 707-721

Batliwala, Srilatha. 'When Rights Go Wrong'. *Seminar* Issue No. 569 January: 2007
Available at: http://www.india-seminar.com/2007/569/569_srilatha_batliwala.htm

_____. 'Sexuality and Women's Empowerment – The Fundamental Connection'. In *Plain Speak*. TARSHI New Delhi, 2006: 2

_____ & Deepa Dhanraj. 'Gender Myths that Instrumentalize Women: A view from the Indian frontline' in *'Feminisms in Development: Contradictions, Contestations and Challenges'* (ed.) Cornwall, Andrea, Elizabeth Harrison & Anne Whitehead. Zed Books, London: 2007

Brown, Wendy. *States of Injury: Power and Freedom in Late Modernity*: Princeton University Press. New Jersey: 1995

Brown, Wendy. *Suffering the Paradoxes of Rights* in *Left Legalism/Left Critique* (ed.) Wendy Brown and Janet Halley
Duke University Press. London: 2002

Carroll, Lewis. *Alice's Adventures in Wonderland*.
Wordsworth Classics, Hertfordshire:1995

Chambers, Robert. 'Participation, Pluralism and Perception of Poverty' in N. Kakwani and J. Silber, (eds.) *The Many Dimensions of Poverty*. Palgrave-Macmillan, London: 140-164

Charlesworth, H. Chinkin, C & Wright, S. 'Feminist Approaches to International Law', *American Journal of International Law* Vol 85. 1991: 613 - 644

Dandona, Lalit, et al. 'Sex Behavior of men who have sex with men and risk of HIV in Andhra Pradesh, India.' *AIDS* Vol 19. 2005: 611-619

Desouza, Shaila. 'Razing Baina, Goa: In Whose Interest?' *Economic and Political Weekly*, July 24, 2004

WHO STOLE THE TARTS? SEX WORK AND HUMAN RIGHTS



Doezema, Jo. 'Ouch! Western feminists' 'wounded attachment' to the 'third world prostitute' *Feminist Review*, No. 67, Spring 2001: 16-38

_____. "Forced To Choose: Beyond the Voluntary v Forced Prostitution Dichotomy" in *Global Sex Workers: Rights, Resistance and Redefinition* (eds) Kempadoo, Kamala & Jo Doezema. Routledge, London: 1998

Fudge, J & H Glasbeek. 'The Politics of Rights: A Politics with Little Class'. *Social and Legal Studies* Vol 1. 1992:45 -50

Harding, Sandra. Rethinking standpoint epistemologies. In L. Alcoff and E. Potter (ed.) *Feminist Epistemologies*. Routledge, New York: 1992

Herman, D. Beyond the Rights Debate, *Social and Legal Studies* Vol 2 1993: 25

Kapur, Ratna. 'Human Rights in the 21st Century: Taking a Walk on the Dark Side' *Sydney Law Review* Vol 28:4 2006: 665-687

_____. *Erotic Justice: Law and the New Politics of Postcolonialism Permanent Black*. New Delhi: 2005

Khan, Shivananda. 'Culture, Sexualities, and Identities: Men Who Have Sex with Men in India.' *Journal of Homosexuality*. Vol 40, 2001: 99-115

Lahiri & Kar, 'Dancing Boys: Traditional Prostitution of Young Boys in India'. A Study Report on Launda Dancers 2007. Available at: http://www.unodc.org/pdf/india/publications/htvs_miniweb/dancing_boys.pdf

Lin Lean Lim (ed). *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia*. International Labour Office, Geneva: 1995

Mohanty, Chandra Talpade. "Under Western Eyes: Feminist Scholarship and Colonial Discourse" *Feminist Review*, Vol 30. 1988:61

Murray, Alison. "Debt-Bondage and trafficking: Don't Believe the Hype" in *Global Sex Workers: Rights, Resistance and Redefinition* (eds) Kempadoo, Kamala & Jo Doezema. Routledge, London: 1998

Nussbaum, Martha. *Sex and Social Justice*. Oxford University Press, New York: 1999

Ramanathan, Sheela. 'Worst jail jitters trap women'. *Combat Law* Vol 7 Issue 2. March - April: 2002. Available at: http://www.combatlaw.org/information.php?article_id=1105&issue_id=39
Sahni, Rohini, V. Kalyan Shankar, Hemant Apte (ed.) *Prostitution and Beyond: An Analysis of Sex Work In India*. Sage, New Delhi: 2008

WHO STOLE THE TARTS? SEX WORK AND HUMAN RIGHTS



Sanghera, Jyoti and Ratna Kapur. 'An Assessment of Laws and Policies for the Prevention and Control of Trafficking in Nepal'. The Asia Foundation & The Population Council, 2000

Schreter, Lisa Diane & Mariellen Malloy Jewers. 'The danger of conflating trafficking and sex work: a position paper of the sex workers project at the urban justice center'. Sex Workers Project at the Urban Justice Center, New York: 2007

Sen, Amartya. *Development As Freedom*. Oxford University Press, Oxford: 1999

_____. *Identity and Violence: The Illusion of Destiny*. Penguin Books. London: 2006

Smart, Carol. *Feminism and the Power of Law*. Routledge, London: 1989

Wahab and Sloan, 'Ethical dilemmas in sex work research' in *Research for Sex work* Vol 7, June 2004

Weitzer, Ronald 'The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade'. *Politics & Society* Vol. 35 No. 3 September 2007: 447- 475

Other Resources:

"Beyond Vice and Victimhood: Content Analysis of Media Coverage on the Issues of Sex Workers." SANGRAM, 2008:9

The Struggle to be Human: A Training Manual. SANGRAM -VAMP and Point of View

Of Veshyas, Vamps, Whores and Women. SANGRAM. Sangli: 2006

<http://www.pdhre.org/rights/work.html>

Who Stole the Tarts? Sex work and Human Rights

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