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## ISSUE IN FOCUS: IS 'DHANDA' (SEX BUSINESS) WORK? – I

*April 5, 2016 · Meena Saraswathi Seshu and Aarthi Pai*

Sex work is adult consensual provision of sexual services for money. What part of this definition challenges the notion of work? A service provided for money? A service provided by adults for money? A service provided consensually by adults for money? None of the above. The minute the service is described as a sexual one, the understanding that it is work changes drastically. This article would like to explore the nature of work in *Dhanda* (sex business).

Sex work is also monogamous or polygamous sexual partnerships within a commercial context. These two constructions, one of provision of sexual services and the other of sexual partnerships, both for the exchange of money remain contentious mainly because of the perception of the 'easy availability' of women to cater to male lust. Arguments of the market controlling the sexual terrain and power equations that privilege men over poor women both as economic and social victims dominate the discourse.

Moralists are offended by the notion that casual sex with multiple partners could be a physical act stripped of emotion, could be initiated by women, used in a commercial context and even be pleasurable. The immoral whore image dogs women who are ostracised by a judgemental society that approves the criminalisation of sex work.

Within India, the Dalit movement has held that upper caste men 'use' women from lower castes to satisfy their carnal needs mainly as an expression of caste dominance. The caste-based Devadasi system in many parts of India, and the Bedia tribe are the examples used in this analysis. The forced rehabilitation of devadasis and the anti-devadasi law[1] in Karnataka has forced devadasis to leave their natal homes in Karnataka and migrate for work to Maharashtra in large numbers.

Another strand of thought, as Cheryl Overs explains, is expressed by conservative feminist attitudes which are arranged around a theory in which sex work is defined as both indivisible from slavery – inevitably involuntary and inherently violent – and as a driver of the objectification and oppression of women.[2] The idea that no woman can come into sex work on her own and that all women are forced, deceived, lured, bonded to loan sharks and trafficked into sex work for sexual and economic exploitation is also firmly held.

The advent of HIV/AIDS in the 1980's saw governments make great efforts to target sex workers in global and national responses to the HIV epidemic. Sex workers were considered vectors of the spread of HIV, and governments were determined to save the 'bridge population' of men, using sex work interventions only as a means of protecting 'respectable' women from HIV. In small pockets around the world, sex workers turned this around and made it an opportunity to mobilise attention to the health, safety and rights of sex workers. However, as Joanne Csete points out, this picture was complicated by politically

powerful faith-based constituencies, an anti-trafficking movement that denied the agency and rights of sex workers, and powerful funders. The United Nations positions demonstrated some leadership on sex worker rights early in the epidemic but later appeared to acquiesce to prohibitionist views.[3]

Anti-trafficking activists who have gained support from radical feminists have argued that sex work itself is violence mainly because the entry into sex work is involuntary, forced, and through deception women are lured and sexually exploited by unscrupulous traffickers. Their argument especially about minor girls is valid but the underpinning of abolitionism that governs their arguments takes the focus away from finding and punishing the traffickers to rescuing and rehabilitating sex workers without consent. The fracture in this method comes from the idea that all women are trafficked and thus consent is not necessary in such an indiscriminate rescue and rehabilitation plan. Needless to say, though sex workers are the best placed to fight traffickers there are no programmes to strengthen them by the anti-trafficking, anti-sex work organisations.

Most laws and policies on sex work reflect that though sex work is not illegal in India, there are laws such as the Immoral Traffic (Prevention) Act that continue to criminalise women in sex work and those who support her work such as third parties. The Immoral Traffic (Prevention) Act, enacted in 1956, was initially the Suppression of Immoral Traffic Act (SITA[4]), and in 1986, the name was changed to Immoral Traffic (Prevention) Act or ITPA[5]. The legislation (ITPA) penalises acts such as keeping a brothel[6], soliciting in a public place[7], living off the earnings of prostitution and living with or habitually being in the company of a prostitute[8].

In a departure from criminal jurisprudence, which clearly indicates the stigmatisation of sex workers, the ITPA has paradoxical offences like detaining a person[9] “with or without his consent” in premises where sex work is carried on[10] or taking a person, “with or without his consent” for the purpose of prostitution[11]. Again, the provisions dealing with raid and rescue make no distinction between “adults” and “minors”[12]. Ordinarily, in the case of adults, consent or the lack of it is a crucial factor in offences like abduction or illegal confinement which determines whether or not an act is to be dubbed criminal. The legislation gives power to a magistrate to order the removal of a

prostitute living within the local limits of his jurisdiction from the area[13].[14]

Abolitionists who hold dear some or all of the above positions on sex work argue that sex work is violence against all women and should be done away with altogether. The most powerful argument is the one that links poverty, caste, pure womanhood, sacredness, force of circumstances and unscrupulous traffickers to argue for the abolition of sex work and the rescue of the unfortunate victim from an uncaring state and an indifferent society.

*Editor's Note: This article will continue in our next issue on April 15th with lessons learned from the sex workers' rights movement.*

[1] Kamataka Devadasi (Prevention of Dedication) Act.

[2] Overs, C. Sex Workers and Feminists: Personal Reflections in *The Business of Sex*, ed. Laxmi Murthy and Meena Saraswathi Seshu, 2013, Zubaan Books.

[3] Csete, J. Victimhood and Vulnerability: Sex Work and the Rhetoric and the Reality of the Global Response to HIV/AIDS in *The Business of Sex*, ed. Laxmi Murthy and Meena Saraswathi Seshu, Zubaan Books, 2013.

[4] Alternatively, the icon of purity and virtue in Indian society.

[5]“It is proposed to change the name of the Act to “Immoral Traffic (Prevention) Act...”, Proposed amendment (a) in Act 44 of 1986 – Gazette of India, August 20, 1986, Pt II, S2, Ext, p 9 (No 38).

[6]Section 3 of [The] Immoral Traffic Prevention Act, 1956.

[7]Section 8 of [The] Immoral Traffic Prevention Act, 1956.

[8]Section 4 of [The] Immoral Traffic Prevention Act, 1956.

[9] ‘Person’ was substituted for the words ‘woman or girl’ and such other consequential amendments as the rules of grammar required also made in the Suppression of Immoral Traffic in Women and Girls (Amendment) Act (44 of 1986), Section 4(26-1-1987).

[10]Section 6 of [The] Immoral Traffic Prevention Act, 1956.

[11]Section 5 of [The] Immoral Traffic Prevention Act, 1956.

[12]Section 16 of [The] Immoral Traffic Prevention Act, 1956.

[13]Section 20 of [The] Immoral Traffic Prevention Act, 1956.

[14] A Walk Through the Labyrinths of Sex Work Law, The Business of Sex, ed. Laxmi Murthy and Meena Saraswathi Seshu.

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## Discussion

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