

## Sex-workers Defying Patriarchy and Challenging State Reform and Rehabilitation Projects in India: Voices from the Margins

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### ABSTRACT

Despite the prostitution industry being accorded a semi-legal status in India, the status of sex-workers remains abysmal with scarce provisions towards healthcare, education/literacy and/or labour rights. Consequently, the current approach to the rights of sex-workers is ridden with several structural barriers, as existing state reform projects often violate subjects' bodily autonomy and act as moral discipliners, leaving them vulnerable to forms of systemic and institutionalised violence. Notwithstanding such exclusions, there have been strong feminist undercurrents advocating for the inclusion of such marginalised actors. One such example is the *DURBAR* NGO in Kolkata comprising of many sex-workers, calling for the legalisation of the prostitution industry as its underground nature enhances networks of crime, and simultaneous workers' stigmatisation. *DURBAR* workers actively champion for their rights as equal citizens, and instead critique state regulation projects that seek to morally discipline them rather than providing concrete emancipation strategies or skill development. This article analyses such modalities of resistance through local channels of grassroots organisation, performative culture, and collective action. Reliant on such accounts from the margins, it elucidates how such bottom-up accounts of mobilisation, epitomise significant catalysts of agency and social change, which otherwise go missing from the dominant annals of policy and developmental discourses.

**Keywords:** South Asia, human rights, gender & sexuality, sex-worker rights, civil society movements

### INTRODUCTION

Despite irrefutable evidence emerging from government, non-government research and voices of numerous affected sex-workers, the Indian State has failed in its obligations to respect, protect and promote the rights of sex-workers who are arbitrarily arrested and evicted. State inaction to assess and amend punitive laws that impact sex-workers and their families has led to Indian sex-workers living in a criminal and stigmatised environment. By giving unviable and unworkable rehabilitation schemes as the only option to sex-workers, the State has failed in its duty to protect their freedoms.

*United Nations Human Rights Council, 2014 Report on India*<sup>1</sup>.

The policing of prostitution globally has been a hotbed of contestation, with a diverse range of positions ranging across moralistic condemnation, abolition, criminalisation, decriminalisation, legalisation, and community-level mobilisation. This article debunks certain myths surrounding the state-sponsored regulation of the sex industry in India, as well as drawing attention to a bottom-up approach that consider actors' socio-economic agency, bodily autonomy, vocational choices, and freedoms in the making of legislations. It further discourages over-sensationalised narratives that often accompany media stories about prostitution, as they detract from a comprehensive understanding of the issues and instead rest on ideologically charged interventions. The article engages with feminist, postcolonial and subaltern scholarship towards problematising the passage of prostitution and trafficking laws in postcolonial India alongside a bourgeoisie, respectable sensibility. It consequently incorporates oral testimonies from sex-worker rights' NGOs in India, namely *Durbar Mahila Samanwaya Committee*

<sup>1</sup> A/HRC/26/Addl.: *Human Rights Enquiry Commission Reports, 2010-2020* (UN Archives: Geneva).

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(DURBAR), *Sampada Grameen Mahila Sanstha (SANGRAM)* and *Veshya Anyay Mukti Parishad (VAMP)*, along with insights from the author's encounters with sex-workers and trafficked persons from Odisha and Kolkata. In its final section, in arguing for equitable and non-discriminatory emancipatory parameters, the article underscores a notable case-study of resistance and grassroots-level organisation through the DURBAR NGO. Such an inclusion of the occluded life-stories of marginalised subjects in India can inform a profound change of discourse that integrates the lived experiences of India's sex-workers. Finally, via unpacking women's experiential narratives, this article encapsulates the intersectional concerns of gendered activism from the Global South, informed by feminist epistemologies that incorporate such silenced histories.

A conceptual clarification needs making at the outset. Although the terms 'prostitute' and 'prostitution' have been historically invoked to refer to the sex industry and its affiliated actors, I am aware of their stigmatising connotations. The article instead uses the terms 'sex-worker' or 'sexual commerce' to avoid the epistemological violence inflicted by derogatory nomenclatures. However, for the purposes of historical consistency, these nomenclatures need to be used in certain places to refer to the evolution of the industry and the subsequent regulation policies in the domains of law and policy-making. Analogously, since male prostitution is unrecognised/disallowed in India, this article primarily deals with female perspectives.

## METHODOLOGY

The article's methodological approach is a combination of ethnographic insights based on NGO Annual Reports, collated testimonies from the *Davis Projects for Peace*<sup>2</sup> fieldwork the author conducted in Odisha (2016-2018), interactions with DURBAR workers in Kolkata during fieldtrips (2018-2019), along with archival research tracing India's ratification of protocols on trafficking and prostitution post-independence. Interviews were conducted in Hindi and Oriya and then translated into English. Focus group discussions and fieldwork revealed pivotal points from certain groups of interlocutors such as sex-workers, trafficked persons, and social workers, these were critically analysed to understand the approach of law enforcement agencies towards the stakeholders involved in sexual commerce. Additionally, this article relies extensively on case-studies from three consequential sex-worker rights organisations in India, namely DURBAR, VAMP, and its parent-body NGO SANGRAM. Finally, it collates data from the baseline surveys and records of the *National Network of Sex Workers (NNSW)* and *National Human Rights Commission of India*, which reveal important insights on the many predicaments afflicting sex-workers.

This leads me to my own positionality as a researcher, as an outsider to the sex industry as well as an activist and academic researching on this topic. While I had initially intended to prioritise an integrated, participatory approach, my *outsider* status soon became evident. As I am a privileged non-sex-worker, my research process involved carefully negotiating access and respecting and wholly incorporating the diverse range of subjectivities surrounding and including participants. In a departure from age-old regimes of non-participatory decision-making, understanding their circumstantial conditions in conjunction with taking into account their voices in the making of initiatives was integral to establishing trust in this research context.

From my previous experiences in working with NGOs, it also was crucial to recognise the role of sex-workers as legitimate stakeholders in the development of research projects. It became clear that interviewees from across Odisha and West Bengal did not perceive themselves as disempowered mute observers or passive beneficiaries of assistance, exercising little agency. They actively reminded the researcher of their resentments with previous interventions, whereby their viewpoints and grievances had not been sufficiently considered. Participants refuted the idea that sex-workers were just objects of charitable intervention; rather they were agents whose desires and perspectives constituted an active role in policies. The research process promoted dialogical participation and mutuality along with encouraging and enabling participants to mobilise as agents of social change. Such roles of sex-workers as equal stakeholders, whereby they are uniquely positioned to articulate and provide solutions to problems afflicting them, remains a central objective of this study. It also shapes the motivations behind responding to the Indian Supreme Court's recent judgement on the rights of sex-workers, which the article turns to in its penultimate section.

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<sup>2</sup> The *Davis Projects for Peace* is a global initiative for students to design their own grassroots-project addressing conflict-resolution, human rights, peace-building, minority development, and holistic growth. As its recipient in 2016, I worked on building a shelter-home for trafficked and homeless persons from the railway stations of Odisha, and some former-sex-workers. Collated interviews have shaped this article's many articulated concerns. Project findings can be found at: <https://www.middlebury.edu/office/projects-for-peace/projects/2016/resurrect-restore-and-revive-dignity-railway-station-children>; 'The Invisible Voices of India's Informal Sector Sex-Workers,' *LSE South Asia Centre* (2021): <https://blogs.lse.ac.uk/southasia/2021/03/22/the-invisible-voices-of-indias-informal-sector-sex-workers/>.

## PROBLEMATISING INDIAN PROSTITUTION LAWS

The legal statute governing the rights of sex-workers and trafficked persons in India is *The Suppression of Immoral Traffic in Women and Girls Act* (1956), amended in 1986 as *The Immoral Traffic Prevention Act* (ITPA). While this Act allows sex-workers to conduct their trade in private sites, they cannot legally seek customers in public spaces or engage in organised services. Although prostitution in India *per se* is permissible, a range of activities surrounding it like the operation of brothels, pimping, pandering, and street solicitation, are illegal. Despite the existence of red-light districts, the question of sex-workers' human rights remain ambiguous. They are not safeguarded by labour laws or trade unions but can seek rescue and rehabilitation in state-sanctioned shelters. Additionally, under the ITPA, as prostitution is predominantly categorised through the lens of trafficking/exploitation, it precludes an understanding of sex-work as a valid form of labour. There are several problems in this conflation of *trafficking* with *adult consensual prostitution*, thereby downsizing or negating the possibility of other forms of trafficking characterising the global regime like sweatshops or agricultural labour, debt bondage, and mechanisms of smuggling such as that of arms or drugs.

India's historical approach to prostitution has been shaped by international obligations, especially its fulfilment of the 1949 United Nations *Convention of the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* and being a signatory to the Palermo Protocol.<sup>3</sup> Although the Indian Supreme Court in May 2022 emphasised a radically different approach that promotes subjects' legal and healthcare rights, it nonetheless becomes consequential to analyse the skewed manner in which India's prostitution laws have historically perpetuated oppression against sex-workers.

From a human rights perspective, the implementation of the ITPA by law enforcement agencies has created a multitude of complexities. While its clauses allow the police to arrest prostitutes or pimps who work in brothels at close proximity to public places, the ITPA has enabled a criminalisation approach that impedes the application of rights-based parameters. Moreover, over-sensationalised representations have acted to dichotomise sex-workers in terms of victimised/deviant subjects, positioning the police as heroes, bolstering patriarchal power structures whilst aligning with the moralistic disciplining of the state. In my interviews with *DURBAR* workers, women described how brothel raids actioned under the guise of public protection and rooting out crime, constituted stigmatisation as their sex-work was now exposed to family, acquaintances, and wider society. Arbitrarily implemented measures like raids, forceful rehabilitation amidst other forms of societal othering, can lead even well-intentioned officials to continue with the objectification, essentialisation, reification, and traumatisation discourses of 'rescued' persons, culminating in questionable recovery practices achieved through close regulation and surveillance in governmental shelters. Additionally, the ITPA penalises family-members who live off of sex-workers' earnings, not taking into consideration any causal factors that propel a turn towards sexual labour. Aggravated by the clandestine nature of sex-work, an added conundrum arises with a lack of reliable data, valid numbers, or insider accounts. Sex-workers constitute a hidden population who are denied access to education, public health services, social security benefits, and/or labour rights, and all too often, a legitimate voice.

Therefore, according to the ITPA's clauses as well as Sections 370-374 of the Indian Penal Code, despite the conduct of sexual commerce not wholly decreed as illegal, the outlawing of related, subsidiary activities like soliciting/seducing in public places, persons living off the earnings of prostitution, or the maintenance of brothels that house a majority of sex-workers in India, has rendered onto the profession conditions of systemic violence. A reductionist albeit myopic understanding of the industry based simply on the 'sex-trafficking' discourse alone, closes down opportunities for agency. During our case-studies and interactions with trafficked persons in Odisha (2016), individuals opened up about their various circumstances that preceded sex-trafficking, like the smuggling of minors for coerced labour in factories, sweatshop labour, *begar* or bonded labour, indentured or agricultural work, and being led away from their hometowns/villages in deceit under pretences of work. In either case, subjects recalled the oppressive life alternatives that they had escaped from, be it domestic violence, patriarchal family structures, or lack of education and opportunity in impoverished homes. The over-representation of prostitution as being the sole, constitutive factor in trafficking discourses under the ITPA, does little to address such on the ground realities. Therefore, the complex origins of the profession have left India's population of sex-workers in a highly vulnerable stratum of society, who while participating in the trade due to a plethora of situational factors or limited volition, are relegated as outcasts in civil society and oppressed by the very agents of law enforcement, which are supposed to protect historically disenfranchised groups.

The state's criminalisation approach to sex-work has been buttressed by the public shame and humiliation associated with it historically. It is compounded by the public spectacle brought about by the infamous Rescue & Raid Operations in cities, under the guise of law-and-order management in order to protect 'respectable' residential

<sup>3</sup> F.No.83/18/47-Public 'India's Ratification of U.N. Draft Convention for the Suppression of the Traffic in Persons and of the exploitation of the Prostitution of others' (National Archives of India: New Delhi, 1949).

neighbourhoods in urban centers. While not negating the existence of human trafficking in South Asia, it is nonetheless critical to problematise official depictions that erroneously synonymise all forms of *trafficking* with *sexual commerce*, thereby negating aspects of individual choice or nuanced situational factors. Brothel raids have become so commonplace in order to combat this ostensible ‘social menace’ that they negate inclusive modes of integration, ergo failing to adequately address the problem (Weitzer, 2014: 7-8). This lack of recognition of sex-work as a legitimate form of labour is directly contradicted by demands for occupational freedom and representative standards of reform within the profession, as espoused by sex-work rights NGOs.

Svati Shah’s work (2014) on the Kamathipura region of Mumbai, helps us understand some of the circumstantial factors sustaining Indian sex markets. Shah foregrounds the nuanced subjectivities characterising sex-workers amidst their systemic conditions of unemployment, oppression, and inequality. In tracing the urban ‘pull-factor’ of cities that play a definitive role in attracting poor, rural populations, she underscores the spatial and geo-political factors shaping sexual commerce. She unpacks the violent politics of sexual regulation as the local police sporadically harasses sex-workers towards protecting elite localities, in tandem with real-estate agents who are sanctioned to arbitrarily check the residential quarters of suspects on behalf of the state. These structural barriers and institutional constraints explain how in controlling sex-workers’ bodily autonomy under the provisions of ITPA, governmental organisations seek to discipline gendered minorities and sex-workers in enforcing pedagogical norms for respectable citizenship.

Such arbitrary models of policing seek to penalise sex-workers rather than secure their freedoms, culminating in situations where they lack control over their lives, in a negation of agency. Such acts of systemic violence are mentioned in the OHCHR’s 2014 Report of the *Special Rapporteur on Violence Against Women*, which alludes to the problematic workings of the ITPA in enabling a penalising legislative framework:

Sex-workers in India are exposed to a range of abuse including physical attacks and harassment by clients, family members, the community and state authorities; they are forcibly detained and rehabilitated and consistently lack legal protection; and they face challenges in gaining access to essential health services, including for treatment of HIV/AIDS and sexually transmitted diseases. [...] The Special Rapporteur recommends that the Government review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes sex-work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex-workers.<sup>4</sup>

In light of such incarceration modalities that facilitate a punitive criminalisation framework instead of guaranteeing civil rights, the Report notes that rehabilitation programs for sex-workers should not be made contingent on their forcible detention in corrective homes ‘which they consider a virtual prison’. Despite these recommendations, coerced rehabilitation continues to remain the preferred official recourse for prostitution.

A few women’s rights organisations in India have gone a step further in advocating for a prohibition/abolition model towards prostitution. However, such societal attitudes further enable discrimination against sex-workers and their children, in negating their agency and culminating in a vicious cycle of deprivation, alongside erasure from public access (Sagade and Forster, 2018: 30). Ideologically motivated, abolitionist interventions have little grounding in empirical evidence or adherence to humanitarian rights. Their ‘Moral Crusades’ against prostitution are reflected in governmental websites/publications, and are strategically tailored to hyperbolically present a few, cherrypicked testimonials alongside stereotypes of sexual slavery, minor exploitation, human suffering, amidst heroic narratives of governmental rescue. While select imageries can elicit potent tools in dramatising suffering and evoking public support, they also negate a complex and more realistic understanding of India’s sex markets (Weitzer, 2007). State-sanctioned rescue and rehabilitation measures are largely non-participatory in nature, thereby reinforcing pluralistic forms of discrimination under the garb of public welfare. Ironically, what remains moot in arbitrary, top-down interventions of this kind as enacted in state operations are the voices from within the community or any addressal of their first-hand perspectives (Doezema, 1999).

## EXPERIENTIAL INSIGHTS ON THE PREDICAMENTS AFFLICING SEX-WORKERS IN INDIA

The article now turns to certain accounts by sex-workers and social workers from the research, which delineate many limits to the workings of the ITPA, alongside the denial of basic living conditions towards sex-workers. Names have been anonymised/altered to maintain persons’ confidentiality.

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<sup>4</sup> OHCHR’s Special Rapporteur’s Report (2014). Available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=3721&file=EnglishTranslation> (Accessed 15 October 2020).

### Testimonies of pervasive police brutalities from sex-workers themselves

- 1) Rekha (Sangli, 22 June 2016) says: 'In the police station, the police tried to frighten us with a big lathi [baton]. We thought that they would beat us. We were asked to stand in a line touching the wall.'
- 2) Seenath (Kozhikode, 20 January 2016) says: 'Police make the women to clean the police station and sometimes they also sexually harass women.'
- 3) Nirmala (Sangli, 13 January 2016) says: 'They used to round us up and take us to the police station. We were kept overnight and then the next day we were all told that we would be presented in court. They would register our names in the police books. It was a humiliating experience to be taken to court. The police would be on either side and we would be made to walk in between all the way to the court. When we were presented in the court they would tell us we are not to open our mouths and when the judge asked us, we must accept our guilt by nodding our heads.'
- 4) Seenath (Kozhikode, 20 January 2016) says: 'Police also create false witnesses to build up their case while they arrest women. I was a victim of a false case filed by the police.'
- 5) Anupama (Warangal, 9 February 2016) says: 'The police raided our house at 7 o'clock in the morning. They took us in a van to medical college and did many tests. The people at the hospital were talking badly about us. They joked and insulted us. It was like a hell to us, very painful and humiliating. We were then taken to a "home" in Hyderabad and put there for 23 days.'
- 6) Shakeela (Kozhikode, 20 January 2016) says: 'The police arrested me and forcibly took me to a mental hospital. I was ignorant and I had not made any mistake. There were many women like me and there was a separate place for mentally ill women. I was there for few days. The food was not good, the place was not proper, there was no proper place to sleep and the toilets were bad. They were providing skill development trainings. I was not interested and finally I managed to escape from there.'<sup>5</sup>

Such quotes from sex-workers elucidate the multitudinous oppressions that sex-workers face in their quotidian life circumstances. Under the rhetoric of law-and-order, while police forces continuously harass subjects, they also extract rewards for allowing them to conduct their trade. This culminates in situations where women are left with no safeguards to turn to, they become infantilised or shunned or made destitute by the very upholders of law, trapped amidst conditions of institutional violence and precariousness. Such comments also illustrate the coercive nature of raids where the visibility of red-light districts across cities like GB Road in New Delhi, Kamathipura in Mumbai, or Sonagachi in Kolkata are targeted especially as hubs for criminal activity, thereby resulting in the spatialisation of sexual commerce as well as a perpetuating cycle of impoverishment.

### Testimony on exclusions in access to social security or public services

- 7) Sex-worker Madhulika says: 'I have been trying unsuccessfully for years to get access to a Ration Card or some form of identification like Voter ID. Without this, neither can my daughter get admission into a school, nor can I get access to food items provided cheaply for groups below the poverty line under the Public Distribution System. My daughter, known as a sex-worker's child, is frequently teased and discriminated against by as "*dhanda karne waali ladki*" (girl who engages in sexual commerce) by her acquaintances, despite the fact that she is an innocent young girl and has ambitions to grow up and study. I have tried to reach out to my parents and relatives, but they have cut off all relations with me. In our village, I am ostracised as the "other" woman and frequently mentioned as an example of the one who has caused the family grave shame.'<sup>6</sup>

### Testimony on lack of inclusion/consultation in stakeholder processes

- 8) *SANGRAM* Activist Meena Seshu says: 'Time and again sex-worker collectives, organisations working with sex-workers have shown that they are natural allies and partners to root out exploitative practices and provide alerts on trafficking for sexual exploitation. Despite this, the proposed committee precludes their participation. It is proposed that any committee at the district level that seeks to fight human trafficking must have participation of and consultations with sex-worker groups and collectives. Additional members should include members of the Human Rights Commission at the district level. The social workers must have a proven track record of working on women's issues/empowerment and not limited to anti trafficking work in order to ensure a more holistic perspective. Lawyers with a track record of working with sex-workers, women in distress, violence against women should be included in the Committee.'<sup>7</sup>

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<sup>5</sup> *National Network of Sex Workers Report* (2016). Available at: <http://nnswindia.org/upload/News/Press-Release/UPR-Submission-Sex-Work-Final-Submission-22-Sep2016.pdf> (Accessed 6 January 2022).

<sup>6</sup> Interview with *DURBAR* worker, conducted by Shriya Patnaik (Kolkata: 7 January 2019).

<sup>7</sup> Interview with *SANGRAM* activist, conducted by Madhu Bhushan, a social worker (2016).

Such life-stories are not isolated accounts; they enumerate excesses of violence against sex-workers in India. They also delineate critical lessons. Firstly, the denial of a safe environment to life or dignity of labour. Upon 'rescue', women are denied recourse to legal counsel or rights to appeal, are at oftentimes left amidst deprived living conditions in detention centres. They also allude to the stigma confronting their children, who face acute discrimination in schools. Shunned by society at large, terms used to refer to the sex-workers like 'public nuisance', 'public immorality', 'loitering for shameful activities', or 'unchaste/undutiful women' are not uncommon.<sup>8</sup> Sex-workers' inclusion as equal stakeholders in social inclusion initiatives can help encapsulate a comprehensive, insider view of the problem at-hand, and also lead to the implementation of appropriate measures that can adequately address the many issues confronting those women working in the sex industry.

In the *Davis Projects*, interviews with anonymised sex-workers reverberated with certain concerns. Firstly, some participants remarked how their rehabilitation process was accompanied by moral policing paradigms that sought to correct their 'deviant' behaviours instead of examining the various socio-economic exigencies or situational factors impelling them into sex-work. Secondly, post-rescue, despite receiving some healthcare treatments, many objected to intrusive bodily examinations, or treatments for STIs/VDs that they were subjected to, oftentimes without consent. They further critiqued the protectionist parameters of state approaches which presented the women as helpless victims or vulnerable subjects devoid of any agency. They discussed paternalistic and moralistic encounters with the police, who constantly compelled them to return to their former families from whom they continued to face ignominy. Women also opened up to us about specific issues like menstrual hygiene, pregnancies, safe contraception, consensual intercourse, and the need for psychological counselling in cases of abuse or trauma. Finally, they posited their need for economic self-sufficiency, vocational training, and skill development programmes, leading towards integration into the market economy, instead of the compulsory institutional rehabilitation programs that merely relied on moralistic disciplining approaches. Additionally, the conversations with Sonagachi sex-workers underscored their predicaments in their popular depictions, as they recounted how oft-sensationalised representations as victims duped by traffickers, devoid of consent, while powerful metaphors towards spurring humanitarian support, ironically enables coercive law enforcement policies, which curtailed their freedom of movement or bodily autonomy.

### Testimonies on absences to legal justice frameworks

Some of the most flagrant abuses against sex-workers in India have historically stemmed from law enforcement agencies. Sex-worker rights NGOs like *DURBAR*, *SANGRAM* and *VAMP* frequently express how police operations are responsible for perpetrating numerous forms of violence toward sex-workers. Their viewpoints illuminate how in the event of raids, law enforcement bodies caused miscellaneous forms of infringement upon their rights, like a forceful evacuation from their homes and workplaces, societal shaming, physical or verbal abuse, or forceful detention in shelters/remand-homes, instead of offering rehabilitation such as in concrete skill developments tailored to job markets. Such acts of regulation extend to judicial bodies too.

Take another example from a *VAMP* social worker, who observes:

A sex-worker with speech and hearing impairment was detained in an observation home after a brothel raid and produced in court after four months. We were present at the court when she told the judge that she wished to return home and did not want to be kept in the observation home. To our shock the judge declared in an open court, '*She has come from the gutter and wants to return to the gutter. She will not listen.*' What justice can we expect from courts which treat us in such a demeaning manner?<sup>9</sup>

This quotation elucidates the intricate web of discrimination that ensures sex-workers find it hard to seek redressal via legal mechanisms, file their cases in courts, or have access to due process. A lack of access to legal services stems from bias against prostitution caricaturing sex-work as sexual deviance, moral depravity, or victimisation, which does little to gain a concrete understanding of conditions on the ground. It is indicative of a myopic understanding into the complex factors driving them away from the domestic constraints of the household and instead to seek socio-economic autonomy. Such gaps in availing themselves of justice are expressed by a *SANGRAM* worker who says:

Sex-workers approached the District Legal Services Authority to provide free legal aid during raided and 'rescue' operations. Legal aid officials told them that 'sex-work is illegal'. When sex-workers asked for assistance in setting up a legal aid cell to provide aid and advice for sex-workers, officials refused, saying that permission was needed from the national and state legal services authority. They refused to help

<sup>8</sup> Interview with former sex-worker, conducted by Shriya Patnaik (Bhubaneswar: 16 July 2016).

<sup>9</sup> OHCHR Case-studies (2009-2016). Available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=3721&file=Annexe1> (Accessed 9 February 2022).

sex-workers to put in a proposal to the national and state Legal Aid services. Disappointed, the women gave up contacting the legal aid services authority.<sup>10</sup>

The apathy of governmental bodies is further illustrated by a spatialisation of red-light districts as sites of crime. Elements of participatory reform are further negated when authorities determine unilateral and perhaps heteronormative solutions, like her release back to a family-member or custodial guardian. Such measures not only infantilise persons and disavow their volition, but open up grounds for patriarchal acts of surveillance by said guardians, under the semblance of benevolent protection.

Another point of pressing concern in the traumatisation of sex-workers lies in the conduct of brothel evacuations. The following testimony is from an adult sex-worker in Andhra Pradesh and fittingly contextualises this:

On December 24, 2011, I was in my room with my clients. In the evening around 6 pm, the Circle Inspector (CI) along with eight women constables pushed open my door and beat us severely without giving any reason. They searched my belongings in the room and found condoms and money. The CI said, 'You are doing sex-work.' They took my money and took me to the police station and beat me. They used my money to have their dinner, but they did not give me any food during the night. They booked a case against me under sections 377 and 3 & 4 of ITPA Act. On the next day, they took me to the hospital and asked me to sign on a blank piece of paper. When I asked why, they threatened me and told me to remain quiet and do as they say. Later they took me to the Judge. They informed me not to tell the Judge that they had beaten me. When the Judge asked, I said what the police told me to say under their threat. I was taken away and kept in jail. It has been two years, but I am still attending court to settle my case.<sup>11</sup>

These recollections of institutionalised prejudices and disregard for bodily autonomy, are not uncommon in the Indian context. The failure to receive legal redressal also epitomises a denial of the right to a free and fair trial, in what is often a blatant miscarriage of justice. Social workers enumerate such excesses in interventions, as law enforcement agents routinely humiliate and harass sex-workers. Derogatory terms like 'public nuisance', 'obscene conduct', and 'morally deviant' among others, are recurrently used to refer to them in official proceedings. Systemic biases like arbitrary confinement, public shaming, forceful medical testing, and intrusive genital check-ups, are commonplace. Moreover, in cases of women involuntarily sent to correction facilities, their life-choices are unacknowledged, and they are released onto the custodial guardianship of family members, are met out only upon a guarantee of relinquishing sex-work. Due processes like the right to life, dignity of labour, equal protection from violence, or legal assistance, are rarely delivered under the repressive apparatus that primarily views them as criminals over citizen-subjects with fundamental rights. Such excesses render the already stigmatised sex-worker population prone to a lack of legal recognition or inclusion into civil society, perpetuating a continuum of human rights violations and non-consensual modes of rehabilitation. Finally, demands for social security services like education or healthcare, remains conditional upon relinquishing sex-work, a clause resented by many.

## LITERATURE DEBUNKING PROSTITUTION PARADIGMS IN INDIA

This article now turns to relevant scholarship towards demystifying certain exclusionary modes of governance deployed towards disciplining sex-workers in India. The first of these is the 'Rescue-Myth', whereby the welfare paradigm is used to present the nation-state as the guardian of women's rights, in which the abduction of women becomes synonymous with a direct assault on state power. John Frederick (2015) evaluates such narratives intrinsically shaping legal, policy and developmental interventions across South Asia. Alluding to the large nexus of trafficking occurring across the Nepal-India border, here the victim is presented as a naive, vulnerable girl who is drugged, duped sold and raped against her will, subsequently rescued by governmental organisations who chart the course of her rehabilitation and reform. This assumes a highly gendered vision of sexuality in showcasing a passive female victim and masculinised male perpetrator, such a representation being accompanied by certain issues. It presupposes the discourse of the patriarchal state assuming the welfare function of rescuing the poor, hapless victim (inevitably a female) who is sold or trafficked against her will, which negates instances of willed cross-border migration out of socio-economic circumstances, alongside speciously equating all forms of cross-border trafficking with sex-trafficking alone. Such portrayals invoke notions of coercion and victimhood of women and children (synonymously equated as vulnerable groups devoid of agency) towards mobilising humanitarian

<sup>10</sup>National Alliance of Women's Organisation Report (2014). Available at: <https://www.sangram.org/upload/resources/status-of-women-in-sex-work-in-india-submission-to-CEDAW-committee.pdf> (Accessed 5 March 2022).

<sup>11</sup> OHCHR Case-studies (2009-2016).

support, alongside enabling law enforcement agencies who further restrict subjects' freedom of movement and bodily autonomy. This can also lead well-intentioned activists to continue this objectification, reification, and re-traumatisation of rescued persons, culminating in a dangerous precedent that it is only through close regulation and surveillance in state-sanctioned shelters that recovery can be achieved.

Furthermore, the role of media depictions in sensationalising the discourse of trafficking through the lens of 'Melodrama', becomes another challenge. The scholarship of Carole Vance (2012) and Dina Francesca Haynes (2014) critique such representations, even award-winning documentaries like *The Selling of Innocents* (Directed by William Cobban and Ruchira Gupta, 1996), which mobilise emotional support through their sensationalised, linear accounts. This genre of 'Melodrama' does have certain uses. Its urgency and emotive appeal can galvanise public support and fundraising endeavours. Nonetheless, it is misleading for a plethora of factors: an over-emphasis on sex-trafficking can exclude its multifaceted nature: *vis-à-vis* the complexities in coalescing *Trafficking* with *Prostitution*, women's volition in light of life-alternatives, and a simplistic 'good vs. evil' narrative strategy in polarising aspects of perpetrator-abuse vs. victim-suffering (Vance, 2012: 205). Besides, it disregards bottom-up modes of adaptation like Self-Help Groups, peer networks, and community-led collective action. Finally, it departs from a rights-enhancing approach and yields to protectionist interventions, whereby the contextual analysis of sex-work becomes restricted to individual villains and state saviours, rather than an assessment of the co-implicated structural conditions sustaining it. Moreover, narratives of suffering are exaggerated as means of stoking sympathy along lines of victimisation and female sexual innocence, which have little grounding in situational contexts, therein unleashing forms of propaganda and public misinformation. Their skewed causal evaluation of the issue alongside proffering rudimentary solutions to trafficking, which while leading to urgency of action, can distort a wholistic understanding of the problem, along with precluding the passage of effective legislations (Haynes, 2014).

At this stage, it is fitting to underscore how notions of 'respectable' society play a key role in the gentrification and spatialisation of sexual commerce, relegated to the red-light districts of urban centres. Spaces like Sonagachi, Kamathipura, and GB Road, among others, serve as examples of how the visibility of prostitution reinforces the politics of otherness and buttresses sex-workers' discrimination, who find it nearly impossible to integrate into other residential localities or escape from their identities, in a spatial distancing from the middle and upper-class society. While such red-light districts are frequently visited by their bourgeoisie elite clientele, sex-workers have to pay regular commissions to the police for their mere existence, their inclusion as legitimate workers remain a distant reality. In the interviews with women from the railway stations of Cuttack and Bhubaneswar, women who had at some stage of their lives been engaged in sexual commerce, articulated such concerns. Although they had been responsible for supporting their families back in villages through remittances or even single-handedly bringing up children without any support, the stigma of prostitution as a threat to societal honour, continued to scar their identities. Their complex subjectivities in being the economic familial breadwinners, underscores the layered stratifications surrounding sex-work in India. As established by Svati Shah (2006), notions of honour, chastity, stigma, and respectable femininity enable a set of discursive practices where even though the sexual labour of the sex-worker is readily available for consumption, its covertness and distancing from bourgeoisie society precludes her to ever escape from her former identity and integrate into the public sphere as a regular citizen.

Such discourses hyperbolically present the brothel as a pervasive site of crime instead of a workplace, which can present all sex-work as evil and prolong a cycle of subjugation by taking a criminal-based approach to rescue and rehabilitation. This could also prove to be counter-productive to the efforts of the NGO's, trade unions, and HIV support groups. Besides, it robs the woman of her agency or the desire to construct a happy future for herself, devoid of the patronising dependence on the state. Post rescue, the sex-worker has limited options. She has to fit into the typified account of the psychologically damaged figure whose identity is solely marked by her former occupational role. The patronising rhetoric of saving the victim becomes an oversimplification as it takes a homogenous approach to analysing the multiple operating forces at play. The articulation of the rescued survivor is therein inherently linked with the reappropriation of women's sexualities, which in turn ontologically determine the frontiers of respectable identities and legitimate subjecthood.

Partha Chatterjee (1989) sheds light on how the 'Devi' archetype of the India woman *vis-à-vis* the geo-politicisation of the female body relies solely in terms of a goddess-figure of Mother India, desexualising the Indian woman in the making of the independent nation. Such dialectical albeit hegemonic ideologies characterising postcolonial identity-building across the 20<sup>th</sup> century, were steeped in heteronormative sensibilities of a passive feminine sexuality and wifely duty as quintessential roles for women. Sumathi Ramaswamy (2010) concomitantly demonstrates how the cleansing of India's body-politic via a goddess-like figurehead became pivotal to the process of nation-building, *vis-à-vis* instituting a transcendental marker for feminine virtue in a symbolic appropriation of women's bodies. The expression of national identity in the years following independence, was thereby intrinsically linked with control over women's sexualities, which then constituted the epistemological and ontological principle against which gendered norms were constructed. This legitimisation and institutionalisation of pedagogical citizenship in the postcolonial nation-state, was complicit in the exclusion of non-conforming groups who were

situated outside the bounds of the patriarchal family structure like sex-workers, *devadasis* (temple-dancers) and *tawaijs* (courtesans).

The OHCHR's 2014 Report notes the presence of a penalising model across South Asia that treats sex-workers akin to criminals, in tandem with disciplinary paradigms that have consequently affected their rehabilitation. The Report offered recommendations to strengthen sex-workers' rights to justice. These include: firstly, the formation of community-based organisations and labour collectives aimed at awareness-building; secondly, encouraging the participation of sex-workers themselves in the formulation of policies pertaining to their lives, primarily in the public health domain of HIV/STI programmes; thirdly, the necessity of free legal aid services; fourthly, sensitisation toward their situational factors and offering adequate protection under National Human Rights Instruments. Subsequently, Anne Gallagher, as the UN Anti-Trafficking Program Director (2001), compellingly establishes how without a lack of assessment and acknowledgement of structural conditions, criminalisation parameters that have accompanied prostitution policies across nations, do more harm than good. Such benchmarks are useful to draw from in the Indian context.

## SUCCESS STORIES FROM THE INDIAN CONTEXT: SEX-WORKER RIGHTS NGOS EPITOMISING RESISTANCE AND CIVIL SOCIETY INTEGRATION

Owing to the underground nature of the prostitution industry in India, structural barriers like poverty, illiteracy, and societal marginalisation, have exacerbated the sex-worker community's state of impoverishment, in a cyclical inter-generational process. As a result, many face conditions of precariousness like scarce literacy levels, healthcare coverage and/or labour rights. Their children continue to face discrimination in schools and society at large. However, notwithstanding such systematic oppressive measures, there have been strong feminist undercurrents in the recent decades advocating for the dignity of such marginalised actors. NGOs like *DURBAR*, *SANGRAM* and *VAMP* have undertaken compelling measures towards reintegrating sex-workers into mainstream society through numerous modes of assistance. These comprise of: firstly, providing micro-credit systems and opportunities for skill development; secondly, forming Self-Help Groups towards community-building and a social support-system; thirdly, building awareness drives to prevent the rise of HIV and STIs in an unregulated, clandestine industry. Through using protest slogans, social media channels, crowdfunding, and awareness-building campaigns, social workers and feminist lobbyists have provided a vital platform to broadcast disenfranchised voices, through which subaltern women can participate in a transnational culture of feminist consciousness.

One such organisation working for sex-workers' solidarity and dignity is *DURBAR*, a West Bengal NGO. Based out of Sonagachi (one of the largest red-light districts in Asia), its social workers consist of several ex and working sex-workers as they believe that insider participation is crucial towards gaining a first-hand perspective into the diverse nature of problems afflicting the community. Belonging to a network of more than 60,000 activists, it follows a model of sex-workers being uniquely positioned to participate in peer outreach and advocacy networks, as well as including sex-worker stakeholders in developmental projects. It has emerged as an efficacious example of subaltern solidarity and intersectional grassroots-level mobilisation from South Asia, to which the article now turns.

One of *DURBAR*'s pressing demands is the legalisation of the prostitution industry in India as it believes that its informal nature has buttressed networks of crime, the entry of minors alongside trafficked persons into the trade, and simultaneous workers' stigmatisation. Along this vein, to prevent the entry of non-consensual participants and minors, it has established Self-Regulatory Boards (SRBs) as a means of eliminating oppressive labour conditions as well as trafficking. *DURBAR*'s SRBs include a diverse composition, sex-workers, non sex-worker members such as doctors, lawyers, counsellors, *Panchayat* and Municipal Corporation employees, representatives from state Social Welfare Department, the Labour Commission, Women's Commission and Human Rights Commission, and social activists. One task they perform is the screening of new entrants, with a view to identifying minors, or coerced persons. With sex-workers' localised networks of information dispersed across Kolkata, they are distinctively placed to intervene in the inclusion of unwilling or forced adults or minors. The triumph of their working model is reflected in numbers, from 1998-2007, *DURBAR* has rescued a total of 560 unwilling women and underage girls across Sonagachi. In its sites of operation, the proportion of underage girls below 18 years has dropped 25.3% in 1992 to 3.1% in 2001 (Bandyopadhyay, 2006). Its goals also lie in the assimilation of rescued girls into schools, providing access to modes of vocational training, and skill development programs tailored to job markets. It therefore seeks to foster a participatory culture rooted in sex-workers' choices. Where adults we interviewed choose to stay in the trade in search of better livelihoods, they are assisted by peer networks towards negotiating better terms with clients/patrons. In ascertaining a two-pronged mechanism for ground-level organisation through the presence of support networks, as well as the women confidently asserting their rights in public spaces, Sonagachi's sex-workers self-identified themselves as dynamic, resilient women with strong capacities for collective action, thereby debunking typical stereotypes of victimisation or crime.

The merits of DURBAR's approach also lie in a working model of training sex-workers into leadership positions. This, they believe, instils an organisational culture of equitable participation along with drawing expert-level officials into the leadership structure, a model reliant on diversity of opinions. Instead of victims in need of protection/saving, this also inculcates among sex-workers a sense of purpose through an incorporation of their expertise in everyday adaptation strategies. An avowed emphasis on this egalitarian organisational culture is substantiated by a lack of hierarchy, with sex-workers placed on an equal footing with other social workers in terms of decision-making processes. Accordingly, the institutionalisation of equality is done on the basis of skillsets, in tandem with reciprocity, dialogue and exchange of ideas between the two sub-groups. This structure was historically conceived along principles of sex-workers possessing expertise in dealing with the particular nature of issues confronting the community, and taking on roles as peer educators. Conversely, non-sex-worker staff's expertise in manoeuvring areas of administrative bureaucracy, local-level governance, and developmental networks, is valued. The merits of such an integrative approach have been hypothesised by Gooptu and Bandyopadhyay thus:

Importantly, this process of dialogue and mutuality ensured that the two spheres were not assumed to be static and exclusive of each other. This also ruled out the construction of a sense of enduring difference or otherness, and also avoided the possibility of essentializing or exoticizing sex-workers as the repository of some peculiar intrinsic and immutable traits and characteristics.' (Gooptu and Bandyopadhyay, 2007: 259)

DURBAR's organisational practices have in this manner, fostered principles of uniformity, leadership, and self-esteem in a renewed sense of self, both in symbolic and material terms. Cognisant of sex-workers' agency and abilities for capacity-building, such strategies potentially alleviate aspects of othering from civil society and enable them to navigate through legislative barriers as rights-bearing citizens.

The Sonagachi Project's endeavours have also developed educational and healthcare drives for inclusion. Towards the former, peer educators have promoted a robust pedagogical program towards enhancing workers' sense of self-confidence and critical thinking, as well as navigating through everyday situations. However, this curriculum doesn't merely involve literacy classes alone, but also includes a practical component in terms of applied learning, catering to real world needs. This entails facilitating information technology training alongside technical skillsets that aid them to navigate through life's functional aspects, as well as broadening their worldview on wider historical, political, and socio-cultural issues. This dialogic form of education through an inclusion of topics like consent, agency, and gender equality has been instrumental in the way sex-workers envisage their newly empowered subjectivities, along with providing them with vocational tools to promote socio-economic change.

A major arena of DURBAR's accomplishments has thereby been in its HIV prevention program, an area of significant concern in the prostitution industry. Although the Sonagachi district houses some of the largest population of sex-workers in Asia, its HIV incidence rates have been comparatively lower when compared to other red-light centres in India like Kamathipura Mumbai and/or GB Road, attributed to the work done by DURBAR. The Sonagachi AIDS Project initiative was conceptualised by Dr Smarajit Jana upon collaboration with the *All India Institute of Hygiene and Public Health*. It was fundamentally premised on the idea that sex-workers could notably assist as agents for change in the HIV epidemic. DURBAR's healthcare program provides specialised services like routine check-ups with in-clinic doctors, paediatric care, medications/antibiotics for STIs/VDs, free condom distribution, group trainings, midwives' support, counselling, and psychological services. It has opened open clinics for women in locations across Kolkata where outreach workers adhere to non-judgemental, confidential avenues for treatment. Another transformation was enabled through the popularisation of condom usage and distribution to those in need, along with normalising a community culture of rejecting clients who did not adhere to safe sex practices. It is today acknowledged by the WHO as a benchmark for comprehensive, bottom-up, community-led change (Jana, *et al.*, 2004). This emancipatory model towards collective action has heralded a perceptible reversal in societal attitudes of sex-workers as change-makers in development projects, therein challenging the pervasive othering they have historically encountered.

DURBAR workers believe that participation is incomplete without the socio-economic empowerment of sex-workers themselves. *Binodini Srameek Union* (a registered trade union) is responsible for securing sex-workers' labour rights and has organised protest movements across India to lobby for awareness-building and decriminalisation frameworks. The economic wing, *Usba Multipurpose Cooperative Society* runs a microcredit program of assistance alongside enables workers to obtain interest-free loans from banks, towards securing their financial autonomy.<sup>12</sup> Such grassroots movements of resistance exemplify key catalysts for community-driven change. The project's interactions with sex-workers helped me realise how in rehabilitation projects, efforts should be made to ensure

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<sup>12</sup> *Global Alliance Against Traffic in Women* E-Bulletin. Available at: <https://gaatw.org/members/asia/127-membership/asia/553-durbar-mahila-samanwaua-committee-dmsc> (Accessed 25 March 2022).

the freedom of movement, bodily autonomy, physical and mental health, confidentiality, and human rights benchmarks for sex-workers, against whom various forms of institutionalised violence are often perpetuated under the facade of law-and-order. Consequently, the focus of national law enforcement agencies should be to prevent the re-traumatisation of rescued persons, which also requires the collaboration of NGOs and social activists working together. Such measures can symbolise substantial transformations in sex-workers' self-identification, thereby affecting their newfound social imbrications as agents of change and in consequence demands for dignity. They have helped bring about a sense of a self as an entity with inalienable human rights; a self that can recast their positionality in resisting exploitation, together with altering India's sex industry towards becoming more participatory in accounting for the lived voices and experiences of subjects.

## 2022 SUPREME COURT JUDGEMENT

In 2022 a landmark decision by the Supreme Court of India recognised sex-worker rights. On 19 May 2022, the Supreme Court took this historic step in advocating for a rights-based approach along with issuing a set of directives that offered safeguards against age-old forms of oppression that workers had been subjected to. Firstly, sex-workers are entitled to equal protection under the law. The police must act in accordance with human rights principles and provide them with adequate legal courses for redressal, and more importantly, not be complicit in violating their fundamental rights, as done historically. Secondly, the issue of consent of women entering the profession is paramount, and consensual sexual commerce should not be conflated with trafficking. Accordingly, since adult, voluntary sex-work is not deemed as illegal, sex-workers cannot be harassed, arrested or penalised, as was previously routinely done in cases of raids. Thirdly, the Central Government and the State Governments must involve sex-worker representatives as participatory actors in decision-making processes, including planning or formulating interventions. This clause has been one of the most significant mechanisms of change in the recent legal regime in its cognisance of workers as stakeholders exercising knowledge and expertise on their vocation, and will hopefully inculcate inclusive paradigms for the future. Fourthly, adult sex-workers cannot be incarcerated against their will in correction facilities/detention homes, on grounds of rehabilitation. The possession of condoms, as has been previously penalised along moralistic measures, cannot be construed as evidence of soliciting or brothel-keeping, and is acknowledged to be along consensual, safe-sex parameters. Fifthly, national legal services should run sensitisation workshops to eradicate extreme forms of discrimination afflicting sex-workers, and enable awareness-building towards preventing punitive approaches against them. Finally, no child of a sex-worker can be separated from her mother on the ideological grounds of her trade, or presumed to be trafficked on grounds of living in a brothel.<sup>13</sup>

This decision marks a discernible shift from previous laws and policies in the perception of sex-workers as equal participants and stakeholders in society. The success of the Sonagachi Project has denoted the merits of such a dialogical and participatory approach to grassroots initiatives, in sex-workers emerging as effective peer-advocates, social workers, HIV/AIDS counsellors, and sectorial leaders. Their bottom-up modes of organisation can provide a case-in-point for feminist mobilisation, as well as enable marginalised actors to exercise effective bargaining capacities with the state. As stated by the *NNSW* President on the implications of this decision,

It is very important for us to know that we can access help if there are instances of sexual assault, and that medical services are available to us. We believe this will go very far for the protection of people in sex-work. Specially, the directive that women won't be forced into rescue homes makes us very happy and we are thankful.<sup>14</sup>

However, despite this revolutionary legal stance, one must be cautious of certain future challenges. For one, the Central Government's reservations in according equal rights to a section previously perceived as socially deviant, as well as backlashes from conservative groups that view all forms of sex-work as exploitative, cannot be underestimated. Bureaucratic hurdles, red tapism, alongside impediments towards the implementation of the law uniformly across states, should also be considered. In spite of its recommendations that have finally accorded some civil liberties to sex-workers, this decision has not completely legalised the trajectory of sex-work in India, as demanded by several feminist groups. However, in lieu of the shortcomings of decades of institutional and societal prejudices, this indicates a noteworthy shift.

<sup>13</sup> *Live-Law* India (2022). Available at: <https://www.livelaw.in/top-stories/criminal-action-against-voluntary-sex-work-adults-supreme-court-200084> (Accessed 25 May 2022).

<sup>14</sup> *Times of India* (2022). Why this is a big moment in Sex-worker Rights (editorial), *Times of India*, 30 May.

## CONCLUSION

This article has argued for a bottom-up model of community-driven change. It has advocated for a more participatory approach to the sex industry in India; one that is foregrounded in the rights of workers, public health efforts in acknowledging them as equal and legitimate participants in healthcare drives, and finally the prevention of a punitive framework of regulation. It has emphasised acceptance of the profession along a non-criminalising vein, the dignity of sex-work labour, and argued for adequate protection against police harassment, alongside equitable opportunities in the social order. Historically, the state-regulation of women's bodily agency, reproductive rights, or the right to sexual labour, has been a crucial tool of global governance, through which hegemonic forms of disciplining have been instituted. Despite this, if a group of marginalised actors located at the fringes of civil society, can stand shoulder-to-shoulder together to challenge the carceral forces of the state apparatus, and resist patriarchal structures in advocating steadfastly for their rights, it epitomises the formidable force of mobilisation sex-workers' coalitions can achieve, nationally and transnationally. This holds lessons for the policy arena, in that the participation of community-members in developmental initiatives can go a long way into making them effective. Above all, such moments necessitate a paradigm shift in the conceptualisation of sex-workers not as *objects* of sympathetic protection, but rather as *agents* determining their collective destinies.

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