

# Has the Dial Moved on the Indian Sex Work Debate?

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The politics of sex work has exercised civil society, feminists, governments and, of course, sex workers and the latter's organisations. This trajectory is examined in the context of the last two decades in India and taking into consideration the relevant laws.

Over the past 20 years, the politics of sex work has been shaped by the ascendance of the global anti-trafficking legal order. This order understands trafficking as a problem of organised crime whereby bad actors coerce and dupe innocent young women into highly exploitative labour, particularly sex work. Although trafficking is not restricted to the sex sector, in reality, anti-trafficking laws are routinely enforced disproportionately against the sex sector and therefore, sex workers. In effect, anti-trafficking discourse today drives how governments, civil society, feminists and sex workers approach sex work. Indeed, the recent passage of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 (the bill) by the 16th Lok Sabha, but which eventually lapsed, provides an occasion for evaluating the sex work debate in India.

Across the world, two distinct camps exist on sex work. Radical feminists view sex work as patriarchal violence and any claim to sexual agency as false consciousness. Sex workers, meanwhile, claim constrained economic and sexual agency under capitalist patriarchy. Over the past 20 years, both camps have been heavily invested in policy reform. Radical feminists are in governance mode (Halley et al 2018, 2019) pursuing "carceral" projects (Bernstein 2019) whereby governments adopt the Swedish model of criminalising customers to reduce demand and thereby eliminate sex work. They draw on the anti-slavery legacy and are modern-day abolitionists. They are joined by evangelical Christian non-governmental organisations (NGOs) (Bernstein 2019), and the international rescue industry (Agustín 2007) whose missions to save third world women are described as militarised humanitarianism (Bernstein 2019)

and sexual humanitarianism (Mai 2014). The international sex workers' movement has also gained strength. By consistently documenting the extraordinary harm caused by anti-sex work criminal laws, it has made inroads into the liberal human rights establishment whether in courts (for example, the Canadian case of Bedford) or in civil society (like Amnesty International's call for decriminalisation). Sex workers are at the forefront of protests against harmful anti-trafficking laws that are enacted in the guise of countering trafficking, but used against voluntary sex workers.

## Abolitionists Govern

The resilient pathways of global governmentality anchoring the sexual politics of anti-trafficking discourse internationally are mirrored in India. Feminist abolitionist NGOs (for example, Apne Aap) follow radical feminists to see all "prostitution" as sexual violence while non-feminist abolitionist NGOs (Shakti Vahini, Bachpan Bachao Andolan [BBA]) as socially conservative cultural nationalists want to protect the "dignity" of Indian women and children. They are heavily invested in raids, rescue, and rehabilitation. Since the 1990s, they have resorted to public interest litigation (PIL), assisted the executive in setting up specialist state agencies and drafted operating protocols. The governmentalised postcolonial state became an open site for these NGOs who were in turn appointed to key expert committees. They used the 2012 Delhi rape case to successfully lobby the Verma Committee for a stand-alone trafficking offence and to criminalise those engaging trafficked persons or minors for sexual exploitation. A 2004 PIL further gave these groups the opportunity to draft the 2016 and 2018 versions of the bill.

Indian sex workers' groups draw on materialist feminist thought and have long countered anti-sex work laws. Sex workers litigated against the Suppression of Immoral Traffic in Women and Girls Act, 1956 for violating their constitutionally protected right to occupation. In the 1990s, they used HIV prevention

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funding to mobilise sex workers. Thus Durbar Mahila Samanwaya Committee released the 1997 Sex Workers' Manifesto.

### Sex Workers Resist

The National Network of Sex Workers (NNSW) and the All-India Network of Sex Workers (AINSW) were established later. Viewing the law as a shield rather than as a sword, they did not jump headlong into lobbying for the repeal of the Immoral Traffic (Prevention) Act, 1986 (ITPA) or for decriminalisation, focusing instead on sex workers' immediate concerns around stigma, police harassment and access to welfare schemes. They leveraged their role in HIV prevention efforts to counter a Swedish-style amendment to the act in 2005. In 2013, the NNSW aligned with feminists from the Indian women's movement (IWM) to successfully pressure the Verma Committee to retract its trafficking offence that conflated trafficking and voluntary sex work.

Abolitionists and sex workers formed alliances, which shaped mainstream Indian feminist thinking on sex work. The IWM feminists historically had ignored the "prostitution question" and, consequently, trafficking. This arose from their deep ambivalence on sex work, informed by a radical feminist resistance to promoting sex workers' rights as well as a materialist feminist appreciation of their constrained livelihood options and a reluctance to use criminal law to abolish sex work through end-demand campaigns. Their empathetic support to sex workers' groups helped reverse the Verma Committee's proposal. Meanwhile, cracks in the abolitionist complex emerged. Where the BBA and Apne Aap had together welcomed the 2013 Criminal Law Ordinance which conflated trafficking and voluntary sex work, in 2018 Apne Aap protested the bill and distanced itself from BBA given the latter's close links with the Hindu nationalist regime.

The 2018 bill was a draconian legislation reliant on a classic raid-rescue-rehabilitation model for victims. It exemplified abolitionist thinking; every influential Indian abolitionist had the minister's ear. Importantly, it did not repeal the ITPA but channelled its letter and spirit

by extending the ITPA model to all forms of labour exploitation. A close read of the bill's passage however also reveals pragmatic concessions to sex workers in the interests of diffusing their objections to the bill. Introducing the bill in the Lok Sabha, Maneka Gandhi noted that the state was after the traffickers and clarified:

Absolutely, there is no question of harassing them [sex workers]. The Bill focuses on a victim. If a voluntary sex worker is not a victim, has not been trafficked, has no one to blame for his or her problem; or other ones like TGs [transgenders], then there is no question of my harassing them or the police having anything to do with them. The Bill is not intended to facilitate or to harass sex workers. (Lok Sabha Debates 2018: 529)

Member of Parliament (MP) Meenakshi Lekhi, speaking after the minister, was categorical that sex work could never be a profession (Lok Sabha Debates 2018: 469). Deriving support from Lekhi's comments, the minister claimed that only by confiscating traffickers' property could "the hell holes of Kamathipura and G B Road" become a thing of the past (Lok Sabha Debates 2018: 522). The government's position was to support the sex worker, but not the sex industry.

A few days later, Gandhi wrote an op-ed article to allay two primary objections to the bill: that it criminalised voluntary sex work, and was redundant given existing laws on trafficking. She elaborated:

First, there is an apprehension that the bill will criminalise voluntary sex work. This is completely false. On the contrary, the bill provides safeguards to voluntary sex workers against persecution and prosecution, while giving them the option to approach the magistrate for long term institutional, psychological, social and economic support if she wishes to discontinue. I urge those representing the rights of sex workers to recognize the value of this choice in the lives of the people they work so hard to defend. (Gandhi 2018)

As sex workers and transgender groups protested the bill into the winter session, Abza Bharadwaj, a proponent of the bill sought to bridge the two camps by problematising their fallacious "all or nothing" presumptions on the complete agency or complete coercion of sex workers (Bharadwaj 2018). Yet, she insisted that structural coercion was present upon entry into sex work and within it, rendering women victims of false

consciousness. Even the limited agency with the sex worker may not be credible. The bill was non-judgmental and empathetic, and respected the complexity of sex workers' agency by providing the victim the right to rehabilitation without forcing it. Gandhi had presented the bill as pioneering the right to rehabilitation over the previous welfare approach.

These clarifications by the government and abolitionists, where none were necessary, are remarkable. The repeated exhortations to sex workers' groups to withdraw their criticism of the bill and let it pass are testament to the power of the organisation of sex workers. Departing from decades of state feminist labelling of sex workers as victimised "prostituted women," the minister even used the term "sex worker," thus recognising her worker status. Substantively however, the minister's clarifications exemplified state feminist thinking on sex work from the mid-1950s. Nationalist women leaders who worked to pass SITA prioritised rehabilitation over penalisation as sex workers were viewed as victims of economic circumstances. This elite, paternalist feminism continued through the 1990s when the National Commission for Women called sex workers "prostituted women" and persists to do so till date as evident in Gandhi's statements.

The bill's proponents similarly acknowledge the existence of voluntary sex work, but believe that sex worker agency is rare and highly circumscribed. Structural constraint is overbearing so they admit the chimera of sex worker agency only for it to be contained by the so-called right to rehabilitation. Although presented as immunity for voluntary sex work and as support for sex workers' rights, in reality, the bill offered the right to rehabilitation which sex workers have repeatedly denounced as useless at best and abusive at worst.

Abolitionists even argued that the bill paved the way to decriminalisation. To be certain, the minister wanted to retain the ITPA, not repeal it. But for argument's sake, perhaps abolitionists viewed the ITPA as conflating sex work with trafficking while mandating rehabilitation whereas the bill did not reproduce this conflation and allowed the victims

to request release from rehabilitation. This tantalising take on the bill is unfortunately a red herring because no text in the bill exempted voluntary sex work from its provisions (we only had oral assurances from the minister). Further the proviso to Section 17(iv) specified that the magistrate could refuse the petition if he suspected that the victim was under pressure. Here, again, the bill presumed the victim's lack of agency.

### Middle Ground

In my view, state feminists and abolitionists presented the bill as staking the middle ground between abolitionists and sex work advocates. More progressive and sophisticated iterations of middle-ground feminism exist within the feminist canon. Feminists have called for supporting the rights of sex workers but not the right to sex work (D'Cunha 1997: 252), supporting empowering practices of individual sex workers while opposing the institution of prostitution (Rajan 2003: 146), and acknowledging sex workers' agency but interrogating its status as work (Rajan 2003: 138–40). Unfortunately, middle-ground feminist positions on sex work are impossible to operationalise in policy terms because choice and coercion are malleable concepts that straddle a vast continuum of empirical scenarios. One cannot detract from the commercial aspect of the sex

sector without hurting sex workers nor can one respect their rights without indirectly supporting the system of sex work. This impossibility means that any middle ground “breakthrough” regularly defaults to abolitionism. Thus, the seemingly differing statements of Gandhi and MP Lekhi in Parliament were both perfectly compatible in their denunciation of sex work. This is not to say that abolitionists and sex workers cannot find common ground. They may oppose forced rehabilitation (Sen 2018, Walters 2019). Yet, where the ITPA itself permits forced rehabilitation and the militarised humanitarian complex finds any notion of sex worker agency to be dubious, this zone of agreement is limited and fragile.

The dial on sex work has barely moved. Worse, every time that sex workers' groups have to counter yet another misguided anti-trafficking/anti-sex work law, we miss an opportunity to reimagine institutional and policy reform to improve sex workers' economic bargaining power. Redistribution within the sex sector is the surest way to prevent trafficking. However, the impulse to treat sex work as exceptional remains strong and only by foregrounding sex workers' struggles, particularly their incisive critique of marriage, can we turn the dial for all reproductive labourers. The National Democratic Alliance 2 will hopefully fundamentally rethink the bill.

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