Abstract

Although India is a signatory to numerous international agreements on the rights of women and has a constitution that prohibits discrimination and exploitation by gender, as well as a plethora of related legislation, it has failed to satisfactorily protect the human rights of women, particularly those of sex workers. This is manifested in high levels of violence in the sex industry, child sex workers, lack of access to health care, and high levels of HIV infection. Policies that revolve around rescue and rehabilitation, or are based on the premise that sex work is immoral, are unlikely to effectively promote the well-being of sex workers. An alternative paradigm, which revolves around an explicit recognition of the human rights of sex workers together with an activist approach to achieve them, involving a collaboration between NGOs and collectives of sex workers, has worked well to protect the human rights and health of sex workers in India.

Même si l'Inde est signataire d'un nombre important d'accords internationaux sur les droits des femmes et dispose d'une constitution interdisant la discrimination et l'exploitation des femmes, ainsi qu'une législation pléthorique sur ce sujet, le pays n'a pas réussi à protéger les droits des femmes, particulièrement celles qui sont des prostituées. Ceci se manifeste par de hauts niveaux de violence dans l'industrie du sexe, la prostitution des enfants, le manque d'accès aux soins médicaux et les niveaux élevés d'infection par le SIDA. Les politiques axées sur le secours et la réinsertion ou se basant sur l'idée que la prostitution est immorale, ne peuvent vraisemblablement pas promouvoir la santé des prostituées. Un paradigme alternatif, tournant autour d'une reconnaissance explicite des droits fondamentaux des prostituées, associé à une approche militante et une collaboration entre les ONG et les collectifs de prostituées, a fonctionné dans le sens de la protection des droits fondamentaux et de la santé des prostituées en Inde.

A pesar que la India ha firmado numerosos acuerdos internacionales para los derechos de la mujer, que su constitución que prohíbe la discriminación y la explotación sexual, y que posee numerosas leyes relacionadas, ha fallado en proteger satisfactoriamente los derechos humanos de las mujeres, especialmente las que son trabajadoras sexuales. Lo anterior se traduce en altos niveles de violencia en la industria del sexo, la existencia de niñas trabajadoras sexuales, la falta de acceso a los servicios de la salud y en altos niveles de infección con el VIH. Las políticas basadas en el rescate y rehabilitación y aquellas que aplican la premisa de que el trabajo sexual es inmoral, probablemente no podrán promover el bienestar de las trabajadoras sexuales. Un paradigma alternativo, que gira en torno al reconocimiento explícito de los derechos humanos de las trabajadoras sexuales, así como el respaldo de los grupos activistas para su logro, y la cooperacion entre las ONGs y los grupos de trabajadoras sexuales, han contribuido en la protección de los derechos humanos y la salud de las trabajadoras sexuales en la India.

The President and Fellows of Harvard College
is collaborating with JSTOR to digitize, preserve, and extend access to
Health and Human Rights
JSTOR®
www.jstor.org

Protecting the Rights of Sex Workers: The Indian Experience

Geetanjali Misra, Ajay Mahal, and Rima Shah

The period following World War II has been notable for the international consensus that has emerged on human rights. The idea that human beings have certain basic or inalienable rights is, of course, not unique to this period.[1] The distinguishing feature, however, is the much broader international consensus on these issues, as demonstrated by the near-unanimous passage of the Universal Declaration of Human Rights by the United Nations General Assembly in 1948, recognizing every human being's right to life, liberty, and security. More than 20 international human rights agreements have been forged since then, including the twin International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention).

The Indian government has ratified, signed, or acceded to 13 of these thus far, including the Women's Convention, albeit with reservations to many.[2] Moreover, the Preamble of the 1949 Constitution of India promises to the citizens of India justice, liberty, equality, and "the dignity of the individual."[3] These rights are made more concrete in Articles 12

Geetanjali Misra, MA, MIA, is a program officer for sexuality and reproductive health at the Ford Foundation. Ajay Mahal, MA, PhD, is a principal economist at the National Council for Applied Economic Research, New Delhi, India. Rima Shah, MA, is a program associate for sexuality and reproductive health at the Ford Foundation. Please address correspondence to the authors care of Geetanjali Misra, 55 Lodhi Estate, New Delhi 110003 India, or to g.misra@fordfound.org.

Copyright © 2000 by the President and Fellows of Harvard College.

through 32 of the Constitution, which comprise the main body of fundamental rights and are modeled on the Bill of Rights in the U.S. Constitution. Article 15 provides for nondiscriminatory treatment of all individuals irrespective of sex, religion, and other characteristics; Article 23 prohibits traffic in human beings and slavery; and Article 24 prohibits the employment of children in hazardous employment. The fundamental rights of the Indian Constitution are positive rights in that they are legally enforceable. The Constitution also lists a set of desirable objectives for the state. Although not legally enforceable, these objectives include the right to an adequate means of livelihood for all citizens; a clean environment; protection of citizens, including children, against abuse; the right to work; and just and humane conditions for work.[4] Recent court judgments suggest that the Indian legal system is becoming sympathetic to some of these objectives, primarily by means of a new element in the judicial process: *public interest litigation* (PIL). The PIL is a mechanism by which a person or groups of persons can directly move the Supreme Court of India on any matter of public interest, by filing a simple written application. PIL emerged in response to a need to make the Indian judicial process more accessible to the disadvantaged sections of society and to ensure adequate judicial protection of their human rights.[5]

Further protections related to human rights are available in the form of legislation that addresses issues facing religious and ethnic minorities, including slavery, livelihood, and discrimination; exploitation of children; and the rights of women. Such laws include the Protection of Civil Rights Act of 1955, the Protection of Human Rights Act of 1993, the National Commission for Women Act of 1990, sections of the Indian Penal Code of 1860, the Scheduled Castes and Scheduled Tribes Act of 1989, the Bonded Labour Abolition Act of 1976, the Child Labour Act of 1976, the Minimum Wages Act of 1948, and the Code of Criminal Procedure of 1973.[6] A number of semi-autonomous bodies, such as the Minorities Commission, the National Human Rights Commission (NHRC), and the National Commission

for Women, have also been set up to monitor various rights violations and to protect human rights in line with constitutional and international guidelines. State-level commissions are also being set up around the country with the goal of addressing human rights abuses in individual states, swiftly and inexpensively, and effectively reaching the grassroots level.[7]

Despite the numerous safeguards provided by India's constitution, laws, and numerous international agreements, the human rights of a large section of India's citizens have not been satisfactorily protected. Part of the problem is the general absence of strong international sanctions against violations.[8] These lacunae, however, pale in comparison to the failure of the Indian government to protect human rights. Indeed, rights violations have sometimes been committed by the very institutions assigned to protect them, as confirmed by a 1992 report by Amnesty International on human rights violations committed by the police and other state actors in India.[9] To this one must add the general lethargy that has become endemic to the functioning of the courts, the various human rights commissions, and women's commissions. The Indian legal system is plagued by a huge backlog of cases, so much so that according to one estimate, it would take 324 years for the backlog to be cleared![10] There are many reasons for this backlog, including problems with procedural law and an extreme shortage of judges—with a ratio of 10 judges per million population, India has among the lowest ratios of judges to population in the world.[11] Other institutions have fared no better. Only 10 of the 25 Indian states have set up state human rights commissions, in spite of the large number of cases registered from each state with the National Human Rights Commission.[12] The North Indian states of Uttar Pradesh and Bihar registered the largest number of cases of human rights abuses in the country, with 8497 and 2320 reported cases respectively during 1996–97. These two states have repeatedly been requested by the National Human Rights Commission to establish state commissions but have failed to do so due to a lack of political will.[13]

Human Rights, Health, and Sex Workers in India

The protection (or lack thereof) of human rights, which is a major element of the contract between individuals and states, can have quite significant outcomes for the well-being of the populations involved.[14] For instance, unequal access to education and information, or to health facilities; discrimination in work and salaries based on gender, ethnicity, or caste; and forcible appropriation of earnings are all violations of various types of human rights as currently defined.[15] These violations, in turn, can have negative implications for the health of affected populations, an important indicator of overall welfare. Low levels of respect for the human rights of marginalized groups can, for example, result in lowered incomes, which affect the affordability of care, as well as lowered levels of education/information, which influence healthy practices and the use of health care facilities by increasing the perceived benefits from such care. Ultimately, these factors may lead to a reduction in the use of health care facilities and to practices that result in poor health conditions. Again, discriminatory treatment of certain groups by the law enforcement machinery can lead these groups to "go underground," with obvious adverse impacts on their access to and use of public services such as health and education.

Despite the existence of a plethora of laws that seek to prevent human rights violations, the poor implementation of these laws in India has meant that several overlapping groups—women, lower castes, and tribal populations—have been unable to fully enjoy the gains in well-being realized by other groups, whether in the form of better education, health, or other indicators of freedom and happiness. Indian women in particular appear to suffer from a range of discrimination and violations of rights in the areas of health, education, and work. This fact is clearly reflected in aggregate province-level statistics, which show that, with few exceptions, women have significantly lower literacy rates and hourly earnings rates than the men.[16]

Within this vulnerable group, sex workers stand out as being particularly vulnerable. Many sex workers enter the profession when they are minors, often without their con-

sent, and thereby become vulnerable to sexual violence and economic exploitation.[17] A recent survey conducted by one of the authors among 300 brothel sex workers in Sangli district found that nearly half had entered the profession at an age of 16 years or less and about one-tenth had entered at 13 years or less.[18] Another study estimated that nearly 40% of sex workers of Nepali origin in Mumbai's brothels had been either abducted or sold by their own family members and or men from their village.[19] Moreover, even though child sex work is illegal in India, it clearly thrives; some studies estimate that child sex workers make up about one-third of all sex workers currently in India.[20]

During their working life, sex workers in India are subject to frequent harassment and detention by the police, even though, according to the Immoral Trafficking Prevention Act of 1986, sex work is in itself not illegal if it is practiced privately and independently.[21] In an intensive study on the implementation of the laws of sex work, Jean D'Cunha found that between 1980 and 1987, more than 9000 women in sex work were arrested in Mumbai alone.[22] Typically, arrested women and girls are released later in return for money. However, this type of transaction and other forms of police harassment are hardly ever revealed in statistics.

Sex workers also face discrimination and exploitation in areas of special concern to them such as health care, earnings for their services, and obtaining financial credit. This situation has only been exacerbated by the HIV/AIDS epidemic. For the general population, health care professionals recommend HIV tests whenever recurrent fever, symptoms of tuberculosis, diarrhea, or an STD is present. For sex workers, however, HIV tests are recommended even for a single episode of illness, making them feel stigmatized, further marginalized, and discriminated against on the basis of their health status. As one said, "Even before asking me what health problem I had, the doctor asked me, 'Do you have AIDS? Go for an HIV test first.'"[23] In a women's hospital frequented by sex workers in Mumbai, health workers take a blood sample from every woman seeking treatment without explaining to her the purpose and nature of the test, which

can be seen as a violation of her rights to information, to privacy, and to security of person. There is no post-test counseling, and the manner of revealing test results lacks discretion, which can be seen as a violation of the right to privacy. Doctors often tell women in sex work that they are the "scourge" of society. One woman doctor working in a hospital in a red light area said, "As more and more prostitutes are becoming HIV-positive, more and more men are getting infected and dying of AIDS."[24]

Sex workers (especially minors) typically find their earnings from sex work appropriated by brothel owners and traffickers, and what is left over is further reduced as a result of the extremely high rates of interest charged by money lenders. According to one report, the women in some of Mumbai's brothels are forced to turn over half their earnings to the brothel owners, a situation akin to that of slavery; estimates based on a study in Sangli are somewhat lower, at about 25 percent, although still significant.[25] The study in Sangli also found that in some cases, the interest rate charged to sex workers could exceed 100% per month![26] With little access to banks and other financial institutions—itself a consequence of a lack of education, lack of information about available options, and the social stigma associated with sex work—this ensures that a large number of sex workers find it almost impossible to get out of indebtedness during their working lives. Literacy levels among sex workers were less than 12% in Sangli, well below even that among rural Indian women.[27] A study of 450 sex workers in Calcutta's Sonagachi district found that nearly half cited acute poverty in their households as the reason for their entry into the sex trade, and 84 percent reported themselves to be illiterate.[28]

Taken together, the poor financial conditions, the high levels of illiteracy, slavery-type conditions of work (especially among child sex workers), discriminatory practices of medical professionals, and potential harassment by law enforcement agencies all suggest that sex workers will use lower levels of health care, both preventive and curative, than the rest of the population. A direct consequence is lower levels of health. A particularly striking example is the

extremely high rates of HIV infection observed among Indian sex workers, which has exceeded 50% in sentinel surveillance data in Mumbai, a much higher proportion than among the rest of the population.[29]

Policy Challenges

Because of the difficult circumstances for sex workers in India, even relative to that of other women, it is important to explore ways to improve their economic and social well-being. One popular method is to "rescue" sex workers by force, thus reducing the exploitation said to be characteristic of the sex industry, and then to offer the rescued workers alternative sources of employment or relocation to place of origin. Methods to restrict entry, such as a ban on trafficking women and girls, would be a natural accompaniment of this approach. In practice, groups that consider sex work as immoral are likely to favor both forcible removal of sex workers and restraints on entry into sex work, so that it is not always clear whether the policy stems from the desire to impose a particular moral perspective or to improve the well-being of sex workers. A second method is to reduce the level of exploitation in the sex industry itself—by legalizing sex work or by protecting the civil liberties and political rights of sex workers—and to place restrictions on trafficking and address exploitation by brothel owners.

The Indian policy approach, at least in the statutes, has been to try to achieve a mix of the different methods, with a careful balance between the views that sex work is immoral, that the sex trade is exploitative, and that sex worker rights need to be protected. As the very name of the major legislation relating to trafficking and sex work in India—the Immoral Trafficking (Prevention) Act of 1986—makes clear, social attitudes about sex work as immoral have influenced government policy towards sex work. The various provincial Devadasi Acts that seek to prevent the entry of women into sex work were, in part, the result of a backlash against what the mainstream society considered immoral practices, as shown below. Moreover, the Immoral Trafficking (Prevention) Act of 1986 is severe on trafficking and brothel owners, and it supports rescue and rehabilita-

tion schemes for sex workers. At the same time, it is silent about the legality of sex work itself, if not its outward manifestations such as soliciting and "public disturbance." Constitutional safeguards and other statutes that protect the civil liberties and political rights of *all* individuals ostensibly protect the rights of sex workers. The Contagious Diseases Act of 1864, which legislated mandatory testing of sex workers for venereal disease and restricted their movement and practice to specifically allocated areas, offers one example of conferring a "legal" status on sex work.[30]

As is clear from the circumstances of sex workers, as described in the previous section, the Indian government's approach has not been very successful in protecting the rights of sex workers or improving their well being. Yet ineffective policies of long standing, such as rehabilitation, and a legal framework that is ambiguous in its approach towards sex work but seeks to restrict entry into it, continue to remain popular. This is unfortunate because it means that decision-making with respect to sex workers in India is less than fully informed about competing intervention alternatives, particularly those that emphasize explicit social and legal recognition of sex workers and an activist stance toward enjoying their human rights. As used here, a human rights approach focuses on the legal rights of sex workers to address abuses that they face and emphasizes recognition of their civil liberties, such as custody of children, social security, minimum pay, and soliciting for clients. Its proponents include many nongovernmental organizations (NGOs), and its hallmark is the active participation of sex workers in the struggle for rights.

A key objective of this article is to address the information gap related to the human rights–focused approach to the sex trade highlighted in the previous paragraph. An assessment of this approach is useful, since the focus on human rights and public action to achieve them marks a significant departure from traditional policy positions in this area. Moreover, the recent experiences of two leading NGOs—the Durbar Mahila Samanwaya Committee (DMSC) in Calcutta, West Bengal (eastern India), and the Sampada Grameen Mahila Parishad (SANGRAM) in the Sangli district of

Southern Maharashtra (Southwest India)—have now made such an assessment possible in India. Both organizations have worked with sex workers since the early 1990s and offer a rich set of information available for analysis.

In the section below, we discuss the impacts of the dominant approach towards sex work in India, which primarily views sex work as either immoral or exploitative and focuses on legal tools and rehabilitation to address it. We illustrate these impacts with reference to the *devadasi* system found in parts of South and Southeast India, as well as rescue and rehabilitation schemes and the working of the Immoral Trafficking (Prevention) Act. In the next section of the article, we use the case studies of the DMSC and SANGRAM to assess the impacts of an approach that combines an activist approach towards securing the human rights of sex workers with a strict decriminalization/legalization approach. The final section observes that joining activism on securing rights with legalization/decriminalization of sex work offers a promising avenue for empowering and improving the circumstances of these women.

Devadasis, Rescue and Rehabilitation, and the Immoral Traffic (Prevention) Act

This section has two parts. The first describes the key features of the devadasi system in its pre-modern phase and discusses the main policy-related reasons for the declining status of devadasis during the 19th and 20th centuries, as well as the implications of this decline for the sex trade and for the social and economic position of sex workers. The second evaluates the Indian experience with rescue and rehabilitation centers and the Immoral Traffic (Prevention) Act.

The Devadasi System

Devadasis form only a small portion of all sex workers found in India today. Nevertheless, the changing nature of the devadasi system offers an interesting case study of the substantial protections offered to women providing sexual services to upper-income groups and members of ruling classes in a traditional setting, and their demise with the

introduction of modern law that supposedly protected their interests. The system appears to have originated with a great temple-building boom in South India in the 9th and 10th centuries A.D., and variants are found in many parts of East and South India.[31] There is little evidence of similar institutions in North India, although there are some common ritualistic elements in the way in which young women enter into sex work in certain North Indian communities.[32]

In their traditional form, the several variants of the devadasi system entailed the dedication of girls before puberty, some even before being born, to a deity. In different states and regions, the deity differed—being alternately known as Yellamma, Hanuman, Renuka Devi, or Hulganga Devi—but the underlying intention was the same. Upon the attainment of puberty, a dedication ceremony was held involving a "marriage" to the deity, the funds for the marriage being provided by the girl's family or a sponsor. This required the approval of a temple priest, but almost never of the individual herself. Once dedicated, the girl took up the functions of singing and dancing on various holy occasions or other work related to temple functioning. The importance of this function can be gauged from the extensive space devoted to dance teaching and singing in historical documents related to devadasis.[33] Presumably, over time their functions came to involve meeting the needs of "earthly gods" such as kings, powerful chieftains, and wealthy individuals. Thus, in its later versions, the dedication ceremony was followed by a "deflowering ceremony" in which the sponsor had the first right of sexual access to the girl.

The devadasis enjoyed access to a fairly elaborate social and economic support system linked to the temple. Available historical records document substantial gifts of land, food grains, and housing to devadasis. They also appear to have enjoyed a regular income in kind from the revenues of the temples with which they were associated. Some even enjoyed lifetime benefits from temples, although it is not clear if such "retirement" benefits were available to everyone. In any event, it is highly likely that they could probably have maintained a suitable standard of living from the

grants of land during their younger days. Girl children of devadasis enjoyed rights to land owned by their mothers and, if dedicated to the temple, enjoyed the economic and social rights that their mothers had. Male children appear to have had only rights to some form of financial support from their mothers.[34] The inheritance rules presumably provided a convenient means for an older devadasi to provide for retirement by dedicating a daughter, either biological or adopted, to the temple.

There is some evidence that in earlier days devadasis enjoyed a significantly higher social status than their counterparts in the sex industry today. They participated in the management of temple affairs, they had access to royal households, and they were often the object of worship by temple pilgrims. The presence of devadasis was a regular feature of major celebrations of wealthy men and kings, as they were considered auspicious. They were also able to avoid the problems of widowhood because of their relationship to the deity. These advantages were augmented by their relatively solid economic position and their role as a key repository of culture in the form of songs and dances. Indeed, even as late as the 19th century, devadasis and their children were better educated than the women belonging to "respectable" classes.[35]

Beginning in the 19th century or perhaps even earlier, however, the social and economic position of devadasis began to decline for two main reasons. The first reason was that temples were systematically destroyed under Mughal rule; the second reason was that the nationalist movement unleashed new definitions of social morality. An additional factor was that the middle-class elite of Madras, like their counterparts in the North, began to try to resurrect traditions of classical music and dance by making them more broad-based.[36] To make classical music and dance socially acceptable, it was imperative to strip them of their sensual connotations and instead emphasize their spiritual content. The devadasis' culture became identified with the obscene and the erotic, and they were condemned for their interpretation of dance along erotic lines. Such was the fervor that

there were protests against admitting children of devadasis to schools that were otherwise open to everyone.[37] As a consequence devadasis began to lose their dominant position as repositories of a dancing and singing tradition.

This process was accompanied by a series of efforts to bring about legislation to end the system altogether. In 1885, devadasis were brought to national and international attention when they were discussed in Great Britain's House of Commons. The system was cited as an example of the "debauched primitiveness" of India and to support the argument for the Empire to bring in its "civilising" influence. Within India, one letter to the Viceroy requested that the work of devadasis be discouraged since it "necessarily lowers the moral tone of society, but also that family life on which national soundness depends. . . ."[38] The Hindu Religious and Charitable Endowment Act of 1927 in the province of Mysore made the practice of dedicating girls to temples punishable; this was followed by similar legislation in Bombay in 1934, Madras in 1947, and, more recently, Andhra Pradesh in 1987. The Madras Devadasi Act of 1947 was particularly severe, as it prohibited women from dancing in temples or religious occasions. Some of this legislation also provided for rehabilitation of devadasis and allowed them to marry.[39]

The chief implication of these measures was that temples and patrons could no longer be considered a long-term source of support for the women, and they now had to find alternative means of economic support. Many women were turned out of the temples with which they had been associated. With little value attached to their skill in dancing and singing, given its links to obscenity, commercial sex work became an increasingly attractive option. Thus these legislative measures did little to address a key policy concern: reducing the number of women in "immoral" activities. If anything, the Devadasi system became a convenient religious cloak to avoid the social stigma attached with commercial sex work.[40] Brothel owners and traffickers increasingly became part of deflowering ceremonies for young women, and a number of case studies suggest that this change only promoted further sexual and economic

exploitation. A recent survey conducted by the authors among 300 brothel-based sex workers in Sangli found that more than one-half were devadasis.[41] Moreover, with little source of support upon retirement from sex work or in old age, many devadasis ended up either as beggars or as middle persons in trafficking.[42] In essence, the abolition of the devadasi system led to the further exploitation and stigmatization of the very women the new legislation hoped to protect. The social and economic rights that these women had previously enjoyed, coupled with the respect that they had held within the society at large, were lost under the new legislation.

The Immoral Trafficking (Prevention) Act, Rescue, and Rehabilitation

Unlike the Devadasi Acts, which sought to prohibit the dedication of girls and women to various deities, the Immoral Trafficking (Prevention) Act seeks to prevent trafficking for sex work and punishes various outward manifestations of sex work, such as brothel operation and public solicitation. It also allows for the eviction of sex workers from their residence in the "public interest." The Act also provides for the establishment or licensing of protective homes by various provincial governments. Such state-operated protective homes are common in India.[43] In addition, social welfare boards of state governments as well as NGOs provide for various forms of "rehabilitation" such as marriage and skill development.

The experience with these policies has not been very positive. Even though the Immoral Trafficking (Prevention) Act does not explicitly classify sex work as illegal, law enforcement authorities continuously use it to harass sex workers, as shown by the D'Cunha study in Bombay.[44] In the words of a Mumbai police official, "'by registering cases under [the Act] . . . the police cannot solve the problem. . . . [M]ost cases . . . penalise prostitutes who are the victims. . . . [F]ew cases are made out against brothel keepers and procurers . . . and less than ten [are] convicted each year.'"[45] There are examples of the police regularly collecting bribes from brothel sex workers, and there is little hope for relief from the

courts, since some members of the judiciary have been found to be biased against sex workers and their legal defenders.[46]

Protective homes operated by state governments suffer from serious lacunae as well. Respondents to one survey for the state of Uttar Pradesh referred to these homes as being "dens of vice" and "second brothels."[47] Even state government officials in Uttar Pradesh agreed that such homes were not functioning effectively. The same study states that "inmates live under pathetic conditions . . . like convicts, with the remotest possibility of being rehabilitated." The inmates also do not appear to have much access to quality medical services. Regular medical checkups are unavailable and cases such as childbirth are typically managed by the inmates themselves with little or no medical facilities.[48] A similar picture emerges of "homes" in Mumbai, where rescued women are often literally imprisoned, with little hope of medical care or any other support. Moreover, in at least one case, sex workers staying at a protective home were tested for HIV by government doctors without any sort of informed consent, and some of the results were even disclosed to others.[49]

Rehabilitation programs have typically proved to be ineffective, with little focus on development of marketable skills. One program in Karnataka distributed sewing machines to former sex workers with no knowledge of sewing. Schools for children of sex workers in Karnataka faced a peculiar problem in that the parents had to report to police stations prior to admission.[50] Most such schools suffer from severe staff shortages. Similar problems appear to have arisen in the case of schemes to promote marriages and loans for gainful employment. The head of one NGO working in Mumbai has put on record the poor rehabilitation efforts of the government and the fact that many of the women staying at these homes/institutions perceive themselves to be used as slave labor. She also confirmed the experience of Karnataka by noting that many of the skill development programs were plagued by bureaucratic teaching methods and a complete lack of interest on the part of trainers in identifying skills that the women already possessed. Indeed, the most senior official for women's and children's

welfare activities in the state of Maharashtra said in 1997: "'Apart from housing . . . the government has no other welfare measures for the rehabilitation of prostitutes.'"[51]

In light of these circumstances, it is hardly surprising that there are few takers for rescue and rehabilitation schemes and that these are largely ineffective in meeting their objectives. As one "rescued" sex worker reportedly said, "we don't trust the government to give us jobs or to look after us. . . ."[52]

Legalization, Decriminalization, and Empowerment

Without built-in safeguards for civil liberties and the rights of sex workers, narrowly defined legalization and decriminalization approaches are also unlikely to be effective. Although legalization implies the recognition of sex work as a lawful activity, the Indian experience has shown that this approach results in excessive state control and "ghettoization" of sex work, as in the case of "red light" areas that emerged with the Contagious Diseases Act of 1864.[53] Moreover, experience has shown that in India, where sex work is still stigmatized, such a policy merely pushes a large section of the sex trade underground, as women do not want to be known publicly as sex workers or compulsorily be made to undergo medical checkups. Once pushed underground, sex workers' rights can hardly be addressed, and they increasingly face abuse and violence.[54]

Fortunately, over the last decade, some outstanding examples of interventions have emerged that have adopted a human rights approach in working with sex workers. These programs have evolved after years of close association with and involvement of communities of sex workers. Two such examples are the DMSC and SANGRAM.

The DMSC, formed in July 1995, is a forum of nearly 40,000 sex workers based in the state of West Bengal. Its aim is to create solidarity and collective strength among a larger community of women in sex work. The DMSC grew out of an STD/HIV intervention program undertaken in 1992 in the Sonagachi red light district of Calcutta by the All India Institute of Hygiene and Public Health, a government health research and training institute, in collaboration with

several local NGOs. Objecting to the stereotyping of sex workers as either "immoral" women who threatened civil society or "fallen" women in need of rescue and rehabilitation, the DMSC emphasizes three significant points:

- Sex work and trafficking are not synonymous. Whereas trafficking is coercive and exploitative, sex work can be a conscious choice of a woman as a means of livelihood.
- Sex work should be decriminalized so that sex workers, like workers in other professions, have the right to demand better working conditions. The ambiguity of Indian laws denies sex workers their legal rights, making them vulnerable to extortion of all kinds and pushing them to the margins of society.
- In order to improve the lives of women in sex work, they must be organized and empowered enough to claim their basic human rights of life, liberty, and security, including their right to health care and freedom from violence and atrocities.

Building on these principles, the DMSC has sought: (1) to change the legal status of sex work in India, and (2) to protect the sex worker community against ill-health, violence, and exploitation through effective community mobilization and partnerships with the government and other groups. One of the milestones for the DMSC was the first national conference of sex workers in November 1997. Approximately 5000 sex workers attended the conference, which marked the first time a group of women in sex work had come together to speak of their profession at a public forum in India. The sex workers' manifesto discussed at the conference made a plea for seeing women in sex work as "complete persons with a range of emotional and material needs, living within a concrete and specific social, political and ideological context."[55] The members of the DMSC questioned a mindset that "cannot think beyond rehabilitating or abolishing prostitution."[56] They pointed out that women in sex work, like workers in other professions, had the right to demand better working conditions while remaining within

the profession, and that not all women in sex work are forced into the profession.

The DMSC has helped sex workers better negotiate condom use with clients, not only by educating them about HIV transmission but also by developing a comprehensive health awareness program that also includes brothel owners and pimps. The most significant of the many notable steps the DMSC has initiated thus far has been the formation of a credit cooperative society whose main aim is to help sex workers generate a sustainable economy for themselves. For sex workers, the cooperative society offers great economic relief by making credit available at much lower interest rates than money-lenders, some of whom have been known to charge as much as 600 percent annually.

In its brief period of existence, the DMSC and its partner organizations have achieved several notable successes. First, even by conservative accounts, there has been a tremendous increase in condom usage—15 to 20 times higher in 1998 than in 1995. Most sex workers are aware of the risks they face, even if economic compulsions prevent some from getting a client to use a condom. It is not uncommon to find sex workers insisting that medical personnel use disposable injecting equipment in health centers that they visit. Second, the DMSC has empowered women sex workers to take action against specific injustices that they face. Over the last few years, many have taken to the streets in protest against the many forms of injustice they face in their daily life or sought legal action against police violence or raids. In other cases, they have stood their ground against the local criminals who terrorized them in the past. The DMSC also took action against an NGO that was illegally and unethically testing an HIV vaccine among sex workers. Other actions have been undertaken to reduce the numbers of child sex workers and women joining the profession under coercion, and to demand workers' rights for women in sex work. The DMSC has formed a self-regulatory board, primarily composed of sex workers but also including members from the National Human Rights Commission, the National Commission for Women and the Bar Association of India.[57] It has also organized a Calcutta Sex Workers Union. These

efforts have had other beneficial effects. Realizing the importance of information as a powerful tool for action, sex workers have increasingly articulated a desire to become literate, and some programs have been initiated in this direction. The DMSC publication *The "Fallen" Learn to Rise*, which presents the DMSC experience, has been widely disseminated and is often used as an advocacy tool by sex workers in India.

Another important group is SANGRAM, founded in 1992, which has formed two large collectives of women in sex work, each comprising 2000 to 3000 members. As with the DMSC in West Bengal, SANGRAM's initial goal was primarily to create a sustainable response to the HIV pandemic by treating women in sex work as individuals who could be empowered to change their circumstances. SANGRAM believed that sex workers could become agents for change for both themselves and the community. SANGRAM embarked on a peer education program in which women in sex work acted as peer educators, disseminating information to women in sex work about HIV/AIDS, distributing condoms, training and counseling women who were unable to enforce condom use, and helping women with sexually transmitted diseases and other health problems to access medical care. As with the members of the Calcutta Sex Workers Union, these women think of themselves not as victims but rather as members of a community who believe in sharing available resources for the mutual benefit of all. Sangram organizes its work around the following three principles:

- There is a distinction between trafficking, which is a criminal issue, and adult sex work. Women in sex work choose to remain in this business for many reasons.
- Adult sex work should be decriminalized. Women in sex work should be entitled to the same legal rights as other people involved in other socially acceptable forms of labor, and their labor ought to be regarded as socially productive and useful.
- It is imperative for women in sex work to unite to be able to claim their rights to human dignity, liberty, security, fair administration of justice, respect, a life

free of discrimination, and freedom of expression and association.[58]

In 1996, the peer education program led to the formation of the first of two Veshya AIDS Muqabla Parishads (VAMPs), collectives of women in sex work in Maharashtra. Although VAMPs are closely linked with SANGRAM, they are separately registered as collectives and have their own board of members drawn from women in sex work. Apart from running the condom distribution program, VAMPs represent the interests of their constituencies in many ways. They arbitrate community disputes, lobby with the police, help women access government programs, and develop leadership potential. For example, VAMPs frequently address disputes between sex workers and the powerful owners of brothels. Through discussions with the crime investigation units of the state and local police, raids on sex worker establishments, which used to be quite common, have been reduced.

By slowly building a common identity with other women in sex work, VAMP members are beginning to place their own demands on policy platforms, both at the local and national levels. The decriminalization of sex work is one such demand, which it articulates, together with groups from other parts of India, at various national forums. Other demands include better medical care at public hospitals in the regions in which VAMP operates and ending police raids on brothels.[59] As in the case of DMSC, there have been significant incidental benefits. Sex workers have begun to develop broader self-identities as activists and members of VAMP. Moreover, VAMP has influenced power structures within the community itself. Many of the peer educators were among the meeker women in the community, but their work has made them powerful players.[60]

There are, however, numerous weaknesses in the programs discussed above. The cooperative credit society established by DMSC is still small in relation to the overall size of the sex worker community, with about 950 members thus far.[61] Both VAMP and DMSC have also faced difficulties related to organizational continuity. Yet there are clear

signs of sustainability. As one member of the Sholapur city VAMP said recently, "The organization is now strong enough to carry on its own . . . the work will not stop."[62] The very size of DMSC, which has more than 40,000 members, is likely to ensure its survival. It is quite obvious that both groups offer exciting new approaches to address key policy issues associated with sex workers, such as exploitation and HIV transmission.

It can hardly be a coincidence that both the DMSC and VAMP have their origin in their response to HIV/AIDS. From 1986, when the first HIV infection case of a sex worker was reported in Chennai in the state of Tamil Nadu, fears of the epidemic have gripped policy makers and government officials, who have dubbed women in sex, along with truck drivers, a "high-risk group." While commercial sex was seen as an important health issue throughout the 19th century, concern about it declined in the 20th century with the improved management of STDs. The HIV/AIDS epidemic refuelled the concern, which served to further stigmatize women in sex work. Already pushed to the margins of society because of their work, sex workers now had to bear the additional burden of being classified as high-risk and considered core transmitters of HIV infection.

Lessons Learned

As noted above, enhanced levels of protection of human rights form an important element in strategies to promote the well-being of individuals with regard to health, education, and other areas. Almost all segments of the Indian population can legitimately complain about the failure of the state to protect their rights, although some, such as sex workers, appear to be particularly badly off in this regard. Indeed, the sex industry in India is often characterized by a variety of features—the use of child-labor, low levels of education among sex workers, violence by criminals and the police, and a hostile society and police force—with obvious consequences for the health and well-being of sex workers. Protecting their rights is a difficult challenge. This article has presented the recent experience of two organizations that have adopted an activist approach, comparing this

approach to government strategies that rely upon legal systems and rescue and rehabilitation schemes, in a setting with imperfect law enforcement and social stigma attached to sex work.

Our analysis of the standard government policy approaches towards the sex industry has highlighted two key points that designers of interventions in this area need to consider. First, there is a need to understand the context in which women in sex work operate and the challenges they face. For instance, women in India often join the sex industry because of poverty and the continuing low status of women in India. Women are frequently forced into the trade to contribute to family earnings. Within the family and in society, women in India continue to be treated as second-class citizens and face a high risk of domestic or sexual abuse, underage marriages, and desertion. These factors, along with a well-developed market for sex workers, combine to push women into sex work, while also increasing the levels of exploitation and violence in the profession. Simply enacting laws restricting sex work or introducing health care interventions without taking these factors into consideration is unlikely to prove effective. Such measures will have little effect on the numbers of entrants into the sex trade, or—given low levels of earnings and information about good health practices—on the voluntary use of health care services.

Second, popular images of women in sex work need to be restructured. Society typically sees women in sex work through binary lenses: innocent or evil, victim or aggressor, oppressed or immoral. Politicians, law enforcement agencies, and the media reinforce these perceptions through their stereotypical representations of women in sex work, a fact clearly brought out by the debates on the bills seeking to curtail devadasi activity in pre-independence India.[63] For example, during the first national sex workers' conference held in India in 1997, some sections of the Indian media labeled participants' demands for workers' rights as subversive jargon or social subversion; one journalist wrote that giving in to these demands would provide ". . . a legitimacy . . . [the sex worker] does not deserve."[64] In such circum-

stances, sex workers are likely to be driven underground, away from support services provided by mainstream groups, because of a legal and social view that punishes rather than supports them.

As the experience of DMSC and SANGRAM illustrates, the most effective strategies are likely to be those that focus on a recognition of the human rights of sex workers, together with collective action to achieve them. By enhancing self-awareness, promoting the right to liberty and security of person, and providing sex workers with a voice, activist approaches more effectively address many of the challenges faced by women in sex work, including economic and sexual exploitation, health risks, and violations of their right to a life of dignity. One outcome of increased awareness and action about human rights has been that sex workers are demanding better behavior (and lowered violence) from law enforcement agencies, brothel owners, and criminal elements as a matter of right. Greater awareness about health has increased the use of condoms among sex workers. Sex worker groups, together with NGOs such as SANGRAM, have also begun to articulate demands for better access to public health facilities that, in principle, ought to be equally accessible to all Indian citizens, but are not in fact. Sex workers are also likely to demand education as they recognize the role of information as a tool for enhancing their rights, and indeed they have already done so in Sonagachi. This will have obvious positive consequences for the efficacy of STD/HIV interventions and other health programs as well. Finally, a forceful recognition of human rights by the community of sex workers may hold a solution to the problem of child sex workers, whose rights are protected under the Indian Constitution. The setting up of a self-regulatory board at Sonagachi consisting of sex workers, members of the National Human Rights Commission, the National Commission of Women, and the Bar Council of India is a key step in this direction.

The experience of these two NGO initiatives demonstrates that women in sex work are not a helpless community, even if they are one of the most marginalized sections of society. In fact, internal mechanisms for protection have

existed within the sex industry for a long time. The devadasi system offered one such mechanism—by protecting against social stigma, associating sex work with religion, and incorporating progressive inheritance laws. There are other documented examples of how sex workers have organized themselves into social action groups around a particular dispute or issue, even in the absence of outside help or advice. For instance, the authors' recent study among sex workers in Sangli identified several rotating credit schemes that these women had developed in secrecy to avoid paying high interest rates on loans from local money-lenders. As another example, even before the emergence of DMSC, Calcutta-based sex workers had sought to establish a *Mahila Sangha* (women's group) to fight against criminal elements in the 1980s.[65] In these settings, strategies that mobilize and empower women in sex work have the advantage of tapping into the resources of a community whose inherent power to protect their own interests has been hitherto unappreciated and underutilized.

NGOs are likely to play a key role in initiating and supporting incipient sex worker collectives, as suggested by the experience of both DMSC and SANGRAM. They are particularly effective as builders of bridges between mainstream society and women in sex work. Moreover, to the extent that their approach is non-judgmental, they are better able to access sex worker groups and provide them with information and other technical support. At the same time, they enjoy credibility in mainstream social institutions such as the police, the judiciary, academia, and political classes. It is important to keep in mind that in an Indian setting, evidence suggests that legislation alone is unlikely to help secure the human rights of sex workers. Rather, a change in society's perceptions towards women in sex work is necessary for any remedy to be effective.

Acknowledgements

The authors wish to thank Keertana Kumar, Bishakha Datta, Namita Bhandare, and Meena Seshu (SANGRAM) for their help at various stages during the writing of this paper. They are also very grateful to two anonymous reviewers of

this journal for their comments. The opinions expressed in this paper are solely those of the authors, and not of the institutions with which they are affiliated.

References

1. Much philosophical discourse in 17th-, 18th-, and 19th-century Europe was concerned with the idea of "natural rights" of individuals. The English Bill of Rights, the U.S. Declaration of Independence, the U.S. Constitution and the French Declaration offer outstanding examples of individual countries affirming the importance of life, liberty, equality, and a range of other moral rights of human beings. See K. Minogue, "The History of the Idea of Human Rights," in: W. Laqueur and B. Rubin (eds.), *The Human Rights Reader* (New York: Meridian, 1989), pp. 104–20.

2. See Ministry of Home Affairs, "Human Rights in India" (1999), available from the Ministry of Home Affairs at http://mha.nic.in/scena.htm, and I. Landsberg-Lewis (ed.), *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women* (New York: United Nations Development Fund for Women, 1998).

3. Constitution of India, Preamble.

4. Constitution of India, Articles 36–51.

5. See S. Ahuja, *People, Law and Justice: Casebook on Public Interest Litigation,* (New Delhi: Universal Law, 1997), Volume II, and Supreme Court of India, "Public Interest Litigation" (1999), at http://www.supremecourtofindia.nic.in/new_s/juris.htm.

6. Protection of Civil Rights Act, 1955; Protection of Human Rights Act, 1993; Indian Penal Code, 1860; Scheduled Castes and Scheduled Tribes Act, 1989; Bonded Labour Abolition Act, 1976; Child Labour Act, 1976; Minimum Wages Act, 1948; Code of Criminal Procedure, 1973; and Immoral Traffic (Prevention) Act, 1956. Published in *Bare Acts with Short Notes* (New Delhi: Universal Law, 1999).

7. See National Human Rights Commission, *Annual Report 1996–97* (New Delhi: NHRC, 1997).

8. In some cases, reservations attached to an international agreement by signatory countries dilute its overall impact. One particularly compelling example is the Convention on the Elimination of All Forms of Discrimination Against Women. In addition, Article 2(7) of the United Nations Charter allows matters that lie within the "domestic jurisdiction" of a country to be kept outside of the purview of the UN; see Lequeur and Rubin (note 1).

9. Amnesty International, *Rape and Sexual Abuse: Torture and Ill Treatment of Women in Detention* (New York: Amnesty International, 1992).

10. B. Debroy, Some Issues in Law Reform in India, presented at the Conference on Governance and Development, Bonn, Germany, May 1999.

11. Debroy (see note 10).

12. Ministry of Home Affairs (see note 2).

13. NHRC (see note 7).
14. Specifically, human rights are about what a state "can do . . . , cannot do . . . , and should do" to people. S. Gruskin and D. Tarantola, "HIV/AIDS, Health, and Human Rights," in: P. Lamptey, H. Gayle, and P. Mane (eds.), *HIV/AIDS Prevention and Care Programs in Resource-Constrained Settings: A Handbook for the Design and Management of Programs* (Washington, DC: Family Health International, forthcoming).
15. For illustrative examples, see Gruskin and Tarantola (note 14).
16. J. Dreze and A. Sen, *India: Economic Development and Social Opportunity* (New Delhi: Oxford University Press, 1995); authors' estimates using national-level rural survey data from the National Council of Applied Economic Research (NCAER).
17. See K. Mukherjee, *Flesh Trade: A Report* (Ghaziabad, India: Gram Niyojan Kendra, 1989), and Darbar Mahila Samanwaya Committee, *The "Fallen" Learn to Rise: The Social Impact of STD-HIV Intervention Programme* (Calcutta: DMSC, 1998).
18. A. Mahal and M. Seshu, "Social Security among Sex Workers in Sangli" (Sangli, India: SANGRAM, 2000). Similar patterns have been observed in studies conducted in other regions of India; see, for instance, Mukherjee (note 17) and DMSC (note 17).
19. R. Rajbhandari and K. Adhikari, "Rehabilitation of Victims of HIV/AIDS," in: Women's Rehabilitation Centre (WOREC), *AIDS Education* (Kathmandu: WOREC, 1993).
20. "The Fear of AIDS from Adult Sex Workers," *The Times of India*, 15 November 1998.
21. The outward manifestations of sex work—soliciting and brothel operations—are, however, illegal, and in the latter case it is the brothel owner who is held responsible by the Immoral Traffic (Prevention) Act.
22. J. D'Cunha, *The Legalization of Prostitution: A Sociological Inquiry into the Laws Relating to Prostitution in India and the West* (Bangalore, India: Wordmakers, 1991).
23. Quoted in S. Bharat, *HIV/AIDS Related Discrimination, Stigmatisation and Denial in India: A Study in Mumbai and Bangalore* (Mumbai: Tata Institute of Social Sciences, 1999), p. 89.
24. Quoted in Bharat (see note 23), p. 90.
25. "Nepal's Lost Daughters, 'India's Soiled Goods'," *Time Magazine*, 27 January 1997, and Mahal and Seshu (note 18).
26. Mahal and Seshu (note 18).
27. Mahal and Seshu (note 18) and A. Shariff, *India Human Development Report: A Profile of Indian States in the 1990s* (New Delhi: Oxford University Press, 1999).
28. DMSC (note 17), p. 8.
29. United States Bureau of the Census, *HIV/AIDS Surveillance Database* (Washington, DC: United States Bureau of the Census, 2000).
30. Center for Feminist Legal Research, *Memorandum on Reform of Laws Related to Prostitution in India* (New Delhi: CFLR, 1999).
31. See, for example, J. Shankar, *Devadasi Cult: A Sociological Analysis* (New Delhi: Ashish Publishing House, 1994), and A. Srinivasan, "Reform and Revival: The Devadasi and Her Dance," *Economic and Political*

Weekly 1985, 20: 1869–76.
32. Mukherjee (see note 17).
33. Shankar (see note 31).
34. Shankar (see note 31).
35. Shankar (see note 31) and Srinivasan (see note 31).
36. L. Subramaniam, *Disenfranchising the Devadasis* (Calcutta: University of Calcutta, 1998), and Shankar (see note 31).
37. Shankar (see note 31).
38. Shankar (see note 31).
39. Subramaniam (see note 36).
40. Shankar (see note 31), p. 116.
41. Mahal and Seshu (see note 18). This is not surprising, since Sangli lies close to the border of Karnataka, an area where the devadasi system once flourished in its traditional form.
42. Mahal and Seshu (see note 18).
43. See, for example, Mukherjee (note 17) and Shankar (note 31).
44. D'Cunha (see note 22).
45. Quoted in M. Dhaliwal, "'Rescued' Sex Workers: From Here to Nowhere" (Mumbai: Lawyer's Collective, 1997), p. 5.
46. Dhaliwal (see note 45).
47. Mukherjee (note 17), p. 160.
48. Mukherjee (note 17), p. 161.
49. See A. Bryant, "Child Sex-Workers: Rescuers Turn Captors" (Mumbai: Lawyer's Collective, 1996).
50. N. Singh, *Divine Prostitution* (New Delhi: APH Publishing Corporation, 1997), p. 218.
51. Quoted in Dhaliwal (see note 45), p. 5.
52. Quoted in Dhaliwal (see note 45), p. 5.
53. DMSC (see note 17), p. 6.
54. C. Sleightholme and I. Sinha, *Guilty Without Trial: Women in the Sex Trade in Calcutta*, (Calcutta: STREE, 1996, pp. 66–67).
55. S. Chowdhury, S. Jana, S. Gomathi, S. Das, S. Modok, A. Majumder, and M. Dutta, STD/HIV Intervention Programme, Calcutta, presented at the Third West Bengal Sexual Health Conference, Calcutta, February 2000.
56. G. Gangoli, "Prostitution, Legalization and Decriminalization," *Economic and Political Weekly* 1998, 33: 504.
57. DMSC (see note 17).
58. Sampada Grameen Mahila Sanstha, *Of Veshya, Whores, Vamps, and Women* (Sangli, India: SANGRAM, 1999).
59. For further details, see SANGRAM (note 58).
60. SANGRAM (see note 58).
61. S. Chowdhury, S. Jana, S. Gomathi, S. Das, S. Modok, A. Majumdar, and M. Dutta, "STD/HIV Intervention Programme Calcutta," in: *Folder of Technical Papers* [from Third West Bengal Sexual Health Conference, Calcutta, February 2000] (Department of International Development, 2000).
62. Quoted in SANGRAM (see note 58), p. 33.
63. Shankar (see note 31).

64. Durbar Mahila Samanwaya Committee, *We Demand Workers' Rights* (Calcutta: DMSC, 1997), pp. 74–76 and 85.
65. DMSC (see note 17).