

Critique of the Study Undertaken by the Government-Appointed Committee on the Issue of Sex Workers

Background

Sex work in India is located in multiple legal, social and cultural contexts. There is evidence that sex workers are a vulnerable community in terms of exposure to human rights abuses that range from discrimination, violence, rape, harassment and extortion by police/goondas, forced HIV testing, forced evictions, exclusion from health services, trafficking, extortion, denial of social entitlements, social exclusion etc. and discrimination against the children of sex workers in matters of education, health, nutrition etc.

Governments have not done enough to protect sex workers from violations and abuse. They provide few means of legal redress and do not address the needs of children of sex workers. Criminalising (most aspects of) sex work makes it difficult for sex workers to form unions and negotiate condom use (increasing their risk of HIV and STI). It also encourages police harassment, thereby creating a barrier to access to legal recourse and provides impunity to abusers of sex workers. Criminalisation creates barriers to accessing basic services entitled to them as citizens of India.

Decriminalisation of sex work means the removal of all laws criminalising consensual adult sex work. This includes the selling and buying or organising sexual services such as solicitation, renting premises, 'brothel keeping' and living off the proceeds of sex work. It does not mean removal of laws that criminalise exploitation, trafficking or violence against sex workers.¹ Someone who has not consented to sex work is a trafficked person. Consent refers to the voluntary and ongoing agreement to engage in a particular sexual activity. Under decriminalisation, the government should take several measures to tackle exploitation and protect sex workers from harm.

These include:

1. Ending conflation of sex work and trafficking in law. Dealing with all forms of trafficking under same laws, and removing laws to addressing

¹ Amnesty International Policy on Sex Work: <https://www.amnesty.org/en/qa-policy-to-protect-the-human-rights-of-sex-workers/>, <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

trafficking into sex work exclusively (E.g. ITPA - Immoral Traffic Prevention Act).

2. Implementing anti-trafficking laws to prevent, suppress and punish human trafficking properly, while respecting the human rights/agency of trafficked persons.
3. Social law and policy to address discrimination and the denial of economic, social and cultural rights which impact entry into or exit out of sex work.
4. Laws on access to health, employment and freedom from discrimination.
5. Implementing of laws for child protection, survival and development properly to end discrimination against children of sex workers.

Any intervention for this vulnerable community has to done with extreme care with regard to confidentiality, ethics and protection of their rights.

A 16-member committee was set up in May 2015² by the Government of Karnataka and chaired by a Member of the Legislative Council, Dr. Jayamala Ramachandra to study the 'conditions' of sex workers in the state. Dr. Jayamala Ramachandra is given minister-of-state rank for this committee. Other members of this committee include: Shanthamma Maddur of Sahabhagini Federation of Women Sex Workers Collectives³, Geetha of Sadhana Mahila Sangha⁴, Akkai Padmashali - transgender rights activist, Manjula Manasa - previous chairperson of Karnataka State Commission for Women, a representative of Karnataka Health Promotion Trust⁵, a representative from Odanadi Seva Samsthe⁶, BL Patil of Vimochana Devadasi Punarvasathi Sangha, Du. Saraswathi - writer and activist, Rupa Hassan - writer and activist, Dr. Meenakshi Bali of All India Democratic Women's Association⁷, KVR Tagore - retired IPS officer, Dr. Leela Sampige of Karnataka State AIDS Prevention Society, Vasantha Bannadi - writer and publisher, Dr. Sripad Shetty, Malamma of Karnataka Devadasi Mahileyara Vimochana Sangha, a representative of Karnataka State Legal Services Authority, a representative of Police Department. This committee is in the process of conducting a state-wide survey on sex workers. Specific objective of this survey is not clear.

2 <http://strive.lshtm.ac.uk/news/strive-partner-joins-expert-committee-sex-workers>

3 <http://sahabhaginiindia.blogspot.in/>

4 <http://www.vimochana.net.in/activities.html#02b>

5 <http://www.khpt.org/>

6 <http://www.odanadi.org/>

7 <http://aidwaonline.org/>

This survey was expected to be carried out by the functionaries of the Department of Women and Child Development (DWCD). The committee members have been asked to sign declarations that they will not in any way disclose or discuss the contents or the outputs of the survey, to the extent that any such disclosure would be 'a punishable offence'. While one can understand confidentiality clauses related to data gathered from the survey, it is undemocratic that a study of this magnitude that ought to have been developed through a larger consultative process was undertaken under so much secrecy. This perhaps has contributed to the various violations that one observes in the study which has rendered an already marginalised and vulnerable community open to multiple violations.

This document discusses the nature of violations in terms of the purported goals and objectives of the study, the research methodology, sampling method, survey tool, research ethics and violation of various national and international guidelines related to issues raised in the survey.

1. Goal and Purpose of the Study

The purported goal and purpose of setting up the committee was to provide inputs to the government for drafting a 'separate policy' for the 'upliftment' of sex workers (including sexual minorities and devadasis engaged in sex work) by undertaking a comprehensive study to understand the 'life and struggles' (*baduku mattu bhaavane*) of sex workers as also their access to various government welfare schemes and programs.

However, the title of the study which was subsequently undertaken reads, 'Study of the status of women who have suffered sexual violence'. Therefore, it is not clear from whom the data was collected: 'sex workers' or 'women who suffered sexual violence'. As one examines the survey tool, the Committee's assumption that all those engaging in sex work are 'victims of sexual violence' becomes explicit. This is a flawed and distorted understanding of the discourse around sex work. More importantly, it undermines and takes away the agency of sex workers. This premise in itself is a serious violation.

Secondly, the study had to assess sex workers' access to various government entitlements, causes for poor access and remedial measures to be undertaken. These data would have been valuable for the government's 'exclusive' policy for

sex workers. But there are no questions that assess sex workers' access to any of the basic entitlements such as safe drinking water, food, housing, land, electricity, sanitation, health, child care and education all of which are crucial for a life of dignity like any other citizen.

2. Research Methodology

In addition to the fact that the study was premised on flawed and distorted understanding of the term 'sex worker' and did not fulfil its primary goals and objectives, one also finds several flaws in the research methodology itself which renders the data collected unusable for drawing any inferences or conclusions for the purposes of formulating policies and programmes for the welfare of the sex workers. Given the sensitivity, complexity and diversity of contexts and experiences of sex workers, a single quantitative survey method is most unsuited for the purpose of the study. Typically, such a study warrants a mixed method design where a formative qualitative research phase informs the content and method of the quantitative phase. The Those who designed the present study clearly had demonstrates no research capacity, limited understanding of research ethics and methods, as well as relying on several misconceptions and stereotypes about sex work. It is clearly unethical that the Committee did not seek inputs and advice of qualified researchers, many of whom are available even within different government departments or did not involve reputed government research agencies in this exercise. The Committee has not engaged in a consultative process with civil society organisations working with sex workers on the ground to inform the development of domains and the questions. It is indeed unacceptable that public resources have been wasted on an unscientific study whose data and findings cannot be used for policy-making.

3. Sampling Methodology

The study has not followed any scientific method of sampling for the survey. As anyone working in this domain would know, there are several categories of sex workers: street-based, home-based, brothel-based; women, men, transgender; full-time, part-time, occasional, seasonal and so on, whose needs, contexts and experiences differ vastly. Similarly, age of a sex worker is an important element that influences several aspects of their life. A sampling method would need to factor in these variations to ensure that all such important categories are covered in the survey. However, the categories used in the survey do not reflect such variations.

Secondly there is no rationale for the sample size of 120 per taluk (it mentions 100 in another place, and the total come only to 110!) and the categories listed to draw this sample of 120 are not mutually exclusive.

Sample Category	No
Belonging to minority community	10
Living with HIV	10
Staying or having stayed in Ujwala or Swadhar shelters	20
Persons with Disability	5-10
Widows	10
Others	50
Total	105-110

Thirdly, the sampling method of selecting the 120 sex workers was neither random nor scientific which makes the data completely unrepresentative which defeats the very purpose of undertaking such a large survey. In addition, given this is a form of convenience sampling, as well as a self-selected sample, the information gathered cannot be generalised to the entire population of the sex worker community, given the people who came forward to participate in the survey are fundamentally different from those who refrained from it. So, as suggested earlier, a methodology that looks to a more stratified sampling technique and using mixed-methods will get to the depth and diversity of this population.

Fourthly, in all research people who gather data are intensively trained in data gathering procedures and about the data gathering tools such as survey questionnaires. In the present study, neither the CBO staff nor the other people who gathered data underwent any such training. In fact, there is information that data was gathered in whatever way which seemed to suit the convenience of people concerned. In some districts government officials in charge of data gathering spoke to the women on phone and filled in the questionnaire. In some other districts women were called to one central place and they were assigned to different persons who filled in the questionnaire in groups.

4. Research Ethics

Indian Council for Medical Research mandates that all behavioural research involving humans follow elaborate ethical protocols. The main principles of research ethics are internationally accepted. They hinge on minimizing or avoiding unnecessary risk, harm, or wrong; treating people with respect and dignity and ensuring that the procedures are reasonable, non-exploitative, carefully considered, and fairly administered. Above all, 'do no harm' is the core tenet of research ethics.

In practice:

- a. As per ICMR guidelines, all research should be supervised by a **multi-stakeholder ethics committee** which oversees adherence to ethics during the research process. However, this study had no such supervision by an ethics committee.
- b. All research should involve a process to seek **voluntary informed consent** where participants are given adequate information, who, based on this information, can choose to participate and who can choose to refuse or withdraw at any point during the study. Researchers must also explain that the survey will include personal questions and they are free to decline to answer any question for any reason, including reasons such as it makes them uncomfortable, puts them in danger, or triggers memories of trauma. Participants should be aware that they will face no consequences for declining to participate in the study and be aware of how the data will be used. They should be informed of confidentiality procedures in place and any potential risks of the failure of those procedures. However, the present study has violated informed consent in many ways. In addition, it does not contain trigger warnings, nor any information on how to deal with someone who has experienced flashbacks because of the triggers.

Using government officials in positions of power to gather data by itself amounts to coercion as there is no opportunity for the sex worker to refuse to participate. Frequently, these are authorities whom sex workers have to approach for support and help. Several CBOs (Community Based Organisations) reported to be under duress from the government and officials to provide data failing which there were implicit threats to withdraw funding

(grants for self-employment, HIV prevention programs). Therefore, this is not only unethical but clearly an abuse of power.

Given the duress and coercion under which this information has been elicited from the respondents, the veracity of information provided would be highly suspect since the respondent being unsure or suspicious of the purposes for which data will be used can very legitimately provide inaccurate information, especially when cornered in a position where the choice of refusing to provide the information has been taken away from them. Thus, validity of any data generated on the basis of responses to these questionnaires would be highly suspect at the least rendering the whole exercise futile from the point of view of programme design or policy formulation.

Point 4 in the introductory page instructs the interviewer to compulsorily collect this data from certain groups of women, which is a direct violation of voluntary participation. Further acquiring data on a person's HIV status as a compulsory disclosure goes against the rights of a person living with HIV.

- c. All research should put in place measures to **ensure confidentiality of data gathered**. While this study has made circulation of the survey questionnaire a punishable offence, it does not specify how it will ensure safety of data gathered through the survey nor does it specify what action it will take against those who breach confidentiality. For instance, the study does not indicate how the identifying information (names, address, phone numbers) will be stored; whether it will be stored separately from the survey data, in what form (hard copies/ soft copies) will it be stored, where it will be stored, who will have access to identifying information, whether the names of participants will be kept indefinitely or they will be destroyed at some point, and so on. In the 'special instructions' given in the questionnaire, point 2 states that extra caution should be taken so that this study/survey is never leaked to the media. This indicates that the Committee was interested only in maintaining secrecy but not in safety and protection of research participants. The discussion of confidentiality in the current study documents seems more like a vague promise than an actual commitment, and it seems the committee has no plan for follow up in the event that confidentiality is broken. Given that sex workers are highly vulnerable and loss of confidentiality could result in violence, intimidation, humiliation, and trauma, this lack of seriousness about confidentiality is of major concern.

- d. By gathering name, address and telephone number which is not only unnecessary but also increases the risk for participants, the study has violated the core tenet of research ethics: 'Do No Harm'. For instance, some of the women who participated in the study are already experiencing harassment by the local police station. When information of such sensitive and personal nature is collected, the state has not only failed to give women the right to choose to stay out of the study but also is complicit in allowing this information to be used to further discriminate against them and harass them.

5. Survey Tool

The present survey could have been conducted with minimal identifiers. Gathering name, address and telephone number is completely unnecessary. It is this which poses a serious threat to sex workers. In addition, the survey tool betrays deep prejudices and biases against sex workers. The language used in the survey tool is offensive, intrusive, voyeuristic, moralistic all of which ends up criminalising the community.

The questions throughout emphasize loss of family honour rather than abuse and violence experienced by sex workers themselves. For example, Question 24 asks questions about the sex worker's "burden on the family" but makes no mention of financial, psychological, physical or sexual abuse within the family. Similarly, very few of the questions actually document sexual violence against sex workers by police.

The questions on being sold, kidnapped, and forced into sex work, as well as the question on the "reasons for getting into sex work" (Question 59) are written in such a way as to limit the possible answers and conflate sex work with trafficking. Rather than capturing the complexity of entry into sex work, the questions are designed to provide a one-dimensional view of sex workers as victims.

Misogynist stance

The response options to the question are predominantly humiliating and demonstrate a prejudiced and patriarchal mind set leaving the sex workers to slot themselves into categories that they do not in reality view themselves in. Terms and phrases used make it clear that the study views the sex workers only in negative terms: either as potential criminals, 'immoral' women, 'spoilt

women', 'helpless victims' of sexual violence in need of rescue or as 'carriers' of HIV.

Women who were trafficked are referred to as 'sold women' which reduces one's personhood to being an object. An option in a question on reasons for getting into sex work reads: "Because I was spoilt once, everyone looks at me that way". Similarly, in a question on why one had become a devadasi, an option reads: Because I had an 'immoral' (*anaithika*) pre-marital affair. Referring to rape as 'being spoilt' and making moralistic judgements of women's sexual relationships outside of marriage is a misogynist narrative of chaste and impure women which exposes the premise of the Committee.

Voyeuristic questions

Questions like 'do customers force to record video of sex act?' serve no purpose, but to titillate and is an affront to the dignity of women in sex work. The Committee members have to pause for a moment to think how they would feel had they been posed such a question. Several women were shamed by being forced to answer such a question and it is no surprise that some women were already being harassed after the survey.

Blaming and criminalising women while ignoring the larger structural factors at play

- Question 168 asks "Do you feel you are violating laws?" is extremely dangerous and seems to be intended as a confession to crime. One is not sure anymore whether the Committee was just being thoughtless or has more sinister intentions.
- Question 64 asks "Did you introduce others to this work?" This question does not factor in the fact that this introduction is of a consenting adult or not. If a sex worker answers this question in the affirmative, there is a danger that she could be categorised as a 'pimp'/trafficker and be penalised for it.
- Question 79 asks intrusive, voyeuristic questions about sex workers' clients and why they visit sex workers. It is unclear why this information is necessary for policy formulation. Further, as sex workers can only speak second-hand about their clients' motivations, the answers to this question are highly unlikely to provide valid or reliable information.

- Questions 91 and 92 on whether she would continue work or would inform customers of her HIV status serve no purpose and breach all rights of the sex worker. The answer to these questions in no way contributes to any measurable outcome or output. In the event that she states that she would not disclose, she can be further targeted by the state/police.
- Question 114 states “Are you using condoms regularly to protect yourself from sexual transmitted diseases?” If the woman says no and also discloses that she has STI/HIV, the chances of her being penalised by the state are high. Health education by peer groups has brought about much change in high risk behaviour and delicate relationships between sex workers and peer group can be jeopardised by such insensitive data collection.
- Question 138 states “What kind of help do you need to get out of sex work and to build a new life?” This question is highly problematic as it makes ‘giving up sex work’ a pre-condition to accessing welfare schemes and seems to be judgmental about women who might not want to ‘get out of this work’.
- Serious concerns emerge about the safety of women who participated in the survey and their family members as there are very intrusive questions about who benefits from their income, who all has a share in her money, how they contact their customers and so on. There is grave danger of such information being used against the women themselves.
- Question 90 asks a direct question whether the person is HIV positive and leaves room only for Yes or No answers. There is no option for a person to say that they do not know the status or do not want to disclose their status. This violates the rights of a person living with HIV.
- The questions on Part 4 on Income details are a complete invasion of the privacy of a sex worker and would not be acceptable if asked of a middle-class person. This only displays the disrespectful attitude of the Committee.

Irrelevant questions

Question 101 “Is the income enough for your living?” It is not clear how information derived from this question will be useful in creating intervention strategies or policies by the State government.

Badly structured questions that do not elicit intended information

Questions that probe 'why' and 'how' should be open ended giving the opportunity to record whatever the persons says. This survey tool has no open-ended questions at all. Having close-ended questions to probe complex and sensitive issues such as why women did not return to their families after being rescued or how they entered into sex work will not elicit any worthwhile information. It could also lead to erroneous conclusions.

For example, Q59 attempts to understand women had entered sex work and the options are: a) Poverty b) Devadasi system c) Parents forced me into it d) Husband forced me into it e) Own choice f) Need of money g) Kidnapping h) Betrayed by partner i) Through women of the community j) Through peers k) Through pimps l) I know no other work m) As I was spoilt once, everyone looks at me in that way n) Other___ (Mark more than one if so). Sex workers may experience the pathways into sex work in complicated ways. For example, they may feel it was their "own choice" but they may also be part of the devadasi system. Similarly, they may feel it was their "own choice" but they may do it for money, or they may have begun "through women of the community" and feel it is their "own choice". The question in its present form will not capture any of these complexities and arrive at erroneous conclusions.

Similarly, the term 'samparka' is used in Q78 which seeks to know the number of sexual contacts on an average in a day. But the term 'samparka' means contact and it does not specify sexual contact.

There are also questions regarding the sex workers' feedback about the CBO they are of. The fact that it is the CBO heads who are administering the questionnaire means that one cannot get factual information on this question.

Missing key questions on health while spreading misinformation

The section on health assumes that once women become sex workers, they stop being women and they stop being citizens. It is therefore one sees only questions related to their 'occupational health' and the only questions asked are about HIV, TB and STI. The fact that there are many young sex workers who might be pregnant or have given birth recently is not something the Committee is interested in. The fact that most of the sex workers as other working class women suffer from malnutrition and anaemia is not a matter of importance to the Committee. As citizens belonging to the most marginalised sections of society, sex workers are denied various entitlements related to social

determinants of health such as access to housing, drinking water, sanitation, running water, child care and so on. But the questionnaire does not elicit any information on these crucial health issues.

Even though it is common knowledge that sex workers suffer serious violations within the health sector there are no questions regarding sex workers' experience of seeking care in government and private health sectors. Such data would have provided valuable inputs to policies and programs aimed at increasing access and effectiveness of welfare schemes for sex workers. There are no questions regarding their out of pocket expenses for health problems which is an important indicator of how health schemes are reaching the sex workers.

On the other hand, there are several questions that continue to call HIV a 'disease'. This is shocking given that several Committee members have several years of experience working in HIV prevention programs where HIV is never referred to as 'disease' but as an 'infection'.

Several questions spread misinformation. For instance, one of the options in Q74 about the 'inconveniences' of the female condom is "there are examples of it getting stuck to uterus and having to remove it through surgery". Similarly question Q94 about whether women think condom use is totally safe seems to lead women to think otherwise.

Questions that ask women if they have suffered from 'TB' or 'STI' assume that women are aware how to diagnose TB or STI. Typically, participants are asked whether they have been suffering from a set of symptoms related to a particular condition be it TB, anaemia or STI and then it is during the analyses that it is decided whether or not a person was seen to be suffering from any disease.

Importantly, the survey asks several intrusive questions about HIV but there are no questions about their access to ART, quality of ART care, challenges faced in seeking treatment, about OIs and their treatment, about psychological support or nutritional support.

6. Violation of Protocols

The study violates various national and international protocols and guidelines related to HIV status disclosure and the rights of sex workers.

Asking for HIV status breaches the right of the person living with HIV and amounts to serious violation by a state government body and within the gambit of legal recourse.

The HIV/AIDS Bill, 2007 specifically prohibits discrimination of people living with HIV in public as well in private spheres and in matters of employment, education, healthcare, travel, insurance, residence and property based on their HIV status, with a major focus on women and children. It takes within its ambit all acts and omissions whether actual or perceived which are discriminatory on the basis of HIV status. **The Bill provides that the consent for HIV testing and research must be specific, free and informed.** It further guarantees the confidentiality of HIV status of the person and also provides the exceptions under the information can be disclosed. The Bill specifically provides for protection of risk reduction strategies from civil and criminal liability and law enforcement harassment.

Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Bill, 2010 which is likely to be considered by the Cabinet, contains stringent provisions to check discrimination against persons living with HIV. The Act punishes the act of discriminating against any person living with HIV. It also makes punishable the dissemination of any such information which is likely to propagate hatred against the infected people. The Bill proposes that no person can be forced to take an HIV test. Informed consent of the person concerned is a must for conducting a test that too after due counselling on all pros and cons. A person cannot be compelled to disclose her/his HIV status except under the directions of the Court.

The National Policy on HIV/AIDS and the World of Work is a policy document formulated by the Ministry of Labour & Employment was launched at 43rd Session of the Standing Labour Committee. The Policy was developed by the Ministry of Labour & Employment after consultations with ILO (International Labour Organization), NACO (National Aids Control Organization) and Social partners. The policy says that HIV screening should not be required of job applicants or persons in employment or for purposes of exclusion from employment or worker benefits. In order to assess the impact of HIV, employers may wish to do anonymous, unlinked HIV prevalence studies in their workplace. These studies may occur provided it is undertaken in accordance with the ethical principles of scientific research, professional ethics and the protection of individual and confidentiality. Where such research is done, workers should be consulted and informed that it is occurring. Testing will not

be considered anonymous if there is a reasonable possibility that a person's HIV status can be deduced from the result. A person who has been diagnosed with HIV has the right to keep his/her HIV status confidential. Even the Courts have delivered judgements in their favour that if they do not want to disclose their identity they can use a pseudonym before the Courts to suppress their identity.

The research study also violates international protocols concerning the rights of sex workers and people living with HIV. For example, the UNAIDS Guidance Note on HIV and Sex Work (2012), produced through a series of consultations of experts from UN agencies and the WHO, recommends that states should move away from criminalizing sex work or activities associated with it and ensure that sex workers are not subjected to restrictions on their civil liberties. It also insists that the conflation of sex work and trafficking is counterproductive in making sex workers safer. The 2006 International Guidelines on HIV/AIDS and Human Rights also underscore an international commitment to informed consent in all research related to HIV/AIDS and consultation of people living with HIV in research and programs that affect them.

Regardless of HIV status, informed consent for those participating in research is an international ethical norm, codified in documents such as the 1947 Nuremberg Code, the 1964 Declaration of Helsinki, and the 2005 UN Declaration on Bioethics and Human Rights. It is the responsibility of researchers to ensure that data collection is ethical. This responsibility is all the more important when the study population is vulnerable and stigmatized, as are sex workers in India.

7. Conclusion

It is clear that the study has failed the standards of scientific research as also research ethics. The data thus gathered is neither valid nor representative to inform policy. But what makes it worse is that owing to the study, sex workers are facing increased risk of harm, violation, intimidation and humiliation as a direct result of their participation in the study. No amount of good intent expressed by the Committee will diminish this harm.