

PROSTITUTION, LAW AND HUMAN RIGHTS IN THE ASIA-PACIFIC: A CRITICAL REVIEW OF THE LEGAL AND POLICY FRAMEWORKS WITH AN ILLUSTRATIVE CASE STUDY OF BANGLADESH

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ABSTRACT

The article fleshes out the distinct but inherently diverse policy-practice paradigms of the commercial sex industry in the Asia-Pacific region with an illustrative case study of Bangladesh. Highlighting the recent developments in the global policy and regulatory framework, the paper critically reviews the impact of widespread criminalisation of sex work, colloquially referred to as ‘prostitution’ in legal jargon, across the region. Accordingly, the article analyses the anomalous regulatory approaches and law enforcement praxes on sex workers’ socio-cultural and livelihood resilience including denial of their fundamental rights and human dignity. It is noted as an illustrative example that although the Constitution of Bangladesh adopts a preventive policy against prostitution, consensual sex in a brothel is not as such prohibited. The paper contends that this dichotomous legal and policy phenomena in many jurisdictions across the region further aggravate the vulnerability and abuse of sex workers. This process in turn invisibly enslave them in an ostracised cycle of stigma and exploitation, perpetuate the process of impoverishment, and further subject them to socio-economic deprivation resulting in indentured servitude and sexual slavery.

Keywords: Sex Work in the Asia-Pacific, Prostitution Law and Policy, Human Rights and Sex Work, Sex Work and Sexual Servitude, Prostitution in Bangladesh

INTRODUCTION

Prostitution or sex work, often termed as ‘world’s oldest profession’, is a phenomenon that has ‘manifested in almost every society throughout history and constitutes shared human experience’.ⁱ At the same time, due to the very nature of the profession itself, legality of prostitution frequently bears a muddled context in different jurisdictions and, therefore, remains surreptitious and mystified.ⁱⁱ Consequently, determining the precise existence, nature and dimensions of sex work remains an onerous task given the divergence of complex socio-legal and cultural perspectives that surround the sector.

However, despite the difficulties in quantifying involvement of workers in the sex industry, or to ascertain its pertinent features and attributes in the broader socio-legal fabrics, it is commonly acknowledged that the sector is in meteoric rise pacing with rapid globalization, patriarchal dominance and gender inequity, exuberant consumerism, aggravated poverty, political turmoil and armed conflicts with consequential population mobility, displacement, trafficking and illegal migration. The present paper, while being confined to the specific socio-legal milieu of the sex industry in the Asia-Pacific region tamping down to an illustrative example of Bangladesh, focuses particularly on the policy and regulatory incongruities and their consequential effects aggravating the continued misery and torment in the lives and livelihood of sex workers.

The paper begins with a brief reference to the historical backcloth for the usage of the terms ‘prostitute’ and ‘prostitution’. This etymological reference has relevance in both understanding the process which eventually staged the platform where other related terms gradually evolved (sex-work, sex industry, sex trade, etc.), as well as the cultural frameworks within which the prescriptive insinuation of people engaged in the profession have become an accepted socio-legal phenomenon. It is to be noted that the paper uses the term ‘prostitution’ and ‘sex work’ interchangeably depending on whether the reference is based in relation to legal and policy jargons, or in terms of rights based idiolects.

The next section highlights prevailing legal and regulatory trends in dealing with prostitution in the Asia Pacific countries. It has been pointed out that criminalization of sex-work, a policy trend in many parts of the region, particularly in the mainland Asia, is a fuelling factor that escalates sex workers’ vulnerability to stigma, abuse, violence and discrimination, thus limiting

access to livelihood options and services for themselves, their communities, families and children. It is also observed that the unique historical, social and cultural diversity of the region including in particular the impregnable influence of religious and community mind-sets have played a strong role in shaping the policy and legal approaches to prostitution. These trends operate diversely in terms of criminalising selling, buying and patronising prostitution, or a combination thereof.

However, notwithstanding its inherent heterogeneity, in most countries of the region there exists some common patterns of a gulf between the legal codes and their actual implementation as manifested in the criminalisation of sex trade, and the way sex workers are abused, exploited and manipulated-both in the hands of law enforcers themselves inasmuch as by other sectoral and social actors.

The paper then fleshes out the recent developments in international legal and policy frameworks addressing the issues of the status, rights and protection of sex workers. These global and regional normative standards have been seen as an increasing expression of consensus among states against indiscriminate criminalisation of sex work vis-à-vis protection of the fundamental human rights and freedoms of the workers involved. These contemporary rights and protection-based movements recognise the fact that the adverse effects of criminalization and total segregation from the mainstream diminish their self-esteem as a human person and their ability to make informed decisions about their own life.

As an illustrative case study delineating the regulatory and policy trends of the region, the paper refers to the existing laws and practices regarding commercial sex work in Bangladesh. This section particularly focuses on the status of sex workers in the profession itself as well as in the outside community, and their specific vulnerabilities to exploitation and violence that often follow.

The paper concludes with its core argument that the paradox in policy and practice with regard to the life and livelihood of sex workers in many parts of the world, as illustrated by the prevailing scenario in Bangladesh, results in a continued process of denial of their most fundamental human rights and freedoms, equity and social justice.

TERMINOLOGICAL MUDDLES

The expression ‘prostitute’ has a long evolutionary history. Prior to its establishment as the ‘official’ word for someone selling sex, several other words were in use, like ‘whore’, ‘strumpet’, ‘harlot’, ‘strumpet’ or ‘lewd/common woman’, etc.ⁱⁱⁱ However, according to the Oxford English Dictionary, the first formal use of the English term ‘prostitute’ as a verb can be traced back in the 1530s, deriving its origin from the classical Latin *prōstitūt*, meaning to offer for sale—‘to put to an unworthy use, to expose to public shame, dishonour.’^{iv} ‘Prostitution’ is thus defined as ‘the practice or occupation of engaging in sexual activity with someone for payment’ (Oxford Lexico). Similar definition is suggested by Merriam Webster: ‘the act or practice of engaging in promiscuous sexual relations especially for money’. In 1607, the term was used as a noun in Francis Beaumont’s comedy-play *Woman Hater* using the expression as an insult.^v

On the other hand, modern usage of the term ‘sex worker’ was first conceived in the late 80s by Carol Leigh, also known as ‘the Scarlet Harlot’, writing ‘the usage of the term ‘sex work’ marks the beginning of a movement... It acknowledges the work we do rather than defines us by our status.’^{vi} Earlier in 1979-80, Leigh suggested to change the phrase “Sex Use Industry” to “Sex Work Industry” ‘as that prioritised the work of the provider rather than the customer.’^{vii} However, the term “sex work” found a common use with the publication of *Sex Work: Writings by Women in the Industry* in 1987,^{viii} later popularly adopted by feminist groups, the academia, health agencies, media and sex workers’ organizations around the globe.

Sex industry, often termed as sex trade, is broadly used to refer to the business that directly or indirectly provides sexual services, products or other adult entertainment on commercial basis. Use of this terminology, especially in relation to recognising commercial sex works or services as an ‘industry’, is relatively a recent global phenomenon. In fact, there exists a wide range of disagreement as to the way this phenomenon has been interpreted and applied in different socio-cultural backdrops, where sex work signifies a sombre presage that lies ‘at the core of the ideological and behavioural configuration... thus becoming part of an “unspoken” set of sexual norms and values paralleling the “straight” set’.^{ix}

Accordingly, as noted, the term ‘prostitute’, or ‘prostitution’, is a ‘woefully inadequate term to describe the complexities of the modern sex industry’, which includes providers of a large

variety of sexual services and products such as ‘cam-girls, phone sex operators, glamour models, and porn stars.’^x ‘Sex worker’, on the other hand, is a broader term that comprises all these conventional and emerging sexual products and services recognising the labour involved in the trade with a sense of professionalism, choice and recognition. In other words, in contrast to the connotations of criminality, immorality and other stigma attached to prostitution, use of the term sex work recognises the labour involved as work and the trade as a profession. This latter approach is built upon human rights based considerations that in fact also incorporates factors inspiring use of the term prostitute, i.e. treating the workers as victims- the notions of ‘being prostituted’, maintenance of social order and rule of law.

The term ‘prostitution’, or ‘prostitutes’, traditionally used in national and international legal instruments, bears a negative undertone-a proscribed nuance echoing the stigma and blemish community mind-set that sex workers are subjected to. Apart from the strategic and political reluctance of states in recognizing sex work as ‘work’ within their respective legal and regulatory framework (and thus accepting it as part of the formal or even informal economic sector), it is apparent that the approach adopted by domestic and international legal instruments are inclined to the notion of ‘being prostituted’ (noted above).

Thus, for instance, the UN **Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949)** (Preamble) states that *‘Prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person’*. Later, the UN’s Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000) refers to ‘the exploitation of the prostitution of others or other forms of sexual exploitation’ in defining human trafficking. Also, Article 6 of the UN **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979** calls upon the States Parties to *‘take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women’*.

Similarly, the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002) defines ‘prostitution’ as ‘the sexual exploitation or abuse of persons for commercial purposes’ [Article 1(2)]. Similar instances may be found in relevant national legislations, referred to in the later

parts of the paper in the contexts of the Asia Pacific region and more specifically in the illustrative case study of Bangladesh. It may be noted that the International Committee for Prostitutes' Rights (ICPR), an offspring of the prostitutes' rights movement that started in the mid-1970s in Europe, used the term prostitute instead of sex worker. In 1985, the ICPR adopted the World Charter for Prostitutes' Rights based on the core premise that 'all prostitution is forced prostitution'.

To summarise, while prostitution is the dominant part of the broader sector providing commercial sexual services, the term sex-work extends further to encompass various primary, secondary and intermediary actors involved in providing, promoting and patronising the services or products provided by the trade. However, keeping up with the core focus of this article, namely-the policy and regulatory paradigms relating to the industry, the terms sex work and sex-workers are used narrowly to refer to all consenting adults (only adult women in the context of Bangladesh) who are not coerced or trafficked into the profession and 'sell or exchange sex for money, goods or services', whether or not they consider such activities as 'work', or perceive themselves as 'sex-workers'.^{xi}

To shed light on the terminologies associated with sex work, it is also desirable to refer to the expressions 'criminalization and 'decriminalization'. It is evident from a review of diverse country practices in this regard (see country practices in the Asia-Pacific in the next section), criminalization of various activities associated with the commercial sex industry has a multifaceted dimension. 'Criminalization' represents both policy consideration in a domestic jurisdiction rendering specified activities related to commercial sexual services or products as culpable offence, and imposing punitive or administrative sanctions for committing such offences. While some countries criminalize selling sex, some others do so for buying, managing or patronizing sex work. While some national jurisdictions follow policies of legalization with regulated/unregulated practices, some others opt for abolitionism (meaning that prostitution is legal, but organized activities such as brothels and pimping are illegal), prohibitionism, neo-abolitionism (where it is legal to sell sex but illegal to buy), and other diverse legal approaches.

'Decriminalization', on the other hand, should not be understood to signify a process of encouraging or promoting sex work. Instead, it needs to be treated as part of the initiatives that

aim at eliminating or minimizing violence, abuse and exploitation, reducing sex workers' going underground and carry on the trade from their hideouts that increases health risks, associated criminal acts and unregulated sectoral activities. Decriminalization removes criminal and punitive provisions for sex work in the legal and policy frameworks of a given jurisdiction. It is not to welcome the trade but to create a conducive, enabling environment within which the safety, health, labour and human rights, and access to public and private services are ensured.

SEX WORK POLICY FRAMEWORKS IN THE ASIA-PACIFIC

Owing to its distinct geo-political and historical traditions, diverse cultural and religious values, socio-economic phenomena, and the legacies of colonial rule for centuries, most countries in the Asia-Pacific adopt a prohibitive or punitive approach to sex-work or activities related to sex-work. In some instances, such approaches and strategies are embodied in the national constitutions as part of the state policy, such as in Pakistan or Bangladesh, thus criminalizing sex-work (or at least some forms of sex trade) in their respective penal legislation. However, while compared to its Asian counterparts, some countries in the Pacific adopt a relatively lenient policy in this regard, Australia and New Zealand for instance. At the same time, several other countries in the region, such as Samoa, Solomon Islands or Cook Islands, criminalize keeping brothels or other associated activities including living on the earnings of a sex-worker, 'despite the fact that most Pacific island countries have no history of brothel-based sex work.'^{xii}

A 2013 study conducted by the Pacific Islands Forum-SPC (The Pacific Community) noted that '[O]nly New Zealand and the state of New South Wales in Australia have models that come close to a full decriminalisation of sex work.'^{xiii} The study classified sex work legislation in the Pacific island countries into two broad categories: (i) countries where both sex work and related activities are illegal, such as American Samoa, Marshall Islands, Palau, Northern Mariana Islands, Chuuk, etc.; and (ii) countries (mostly former British colonies) where sex work itself is not illegal but the associated activities have been criminalised, such as Samoa, Solomon Islands, Cook Islands or Kiribati. It is thus apparent that the regulatory framework with regard to sex work in the Pacific Islands are historically influenced by two major policy paradigms, namely-the American and the British legal approaches.

The Asian countries also have a similarly varied feature of illegality and criminalization of sex work. What is even worse with regard to prostitution in Asia is the wide discrepancies that exist between policies and laws in theory, and their actual practice or enforcement in real life. In 2011, the Asian Commission on AIDS estimated that there were 10 million sex workers in Asia with an average of 7.5 male customers for each sex worker.

Despite a large contribution of the countries' GDP from their 'informal' sex industry (sex-tourism in particular), prostitution itself is illegal in most countries in East Asia (China, Hong Kong, Macau, Japan, Taiwan, South and North Korea, Mongolia). In most of the Central Asian countries, particularly the former Soviet Republics following their independence in the 1990s, prostitution has been made legal although certain associated activities (keeping a brothel, public soliciting, procuring or pimping) are kept under penal provisions.^{xiv} Since the collapse of the Soviet Union in December 1991, and with aggravating poverty and other socio-political factors, numbers of sex workers in the region have been in rapid rise. Similar legal provisions are made in some other countries in West Asia, such as Armenia and Azerbaijan, while the general trend of the region is to criminalise sex work (such as Egypt, Bahrain, Iran, Iraq, Jordan, Kuwait, Oman, Palestinian Territories, Qatar, Saudi Arabia, UAE, Syria, Yemen and Turkey).^{xv}

Despite the illegality of prostitution, sex trade including informal brothels (message parlour, karaoke bars and nightclubs, hotels, holiday resorts, etc.) are prevalent in these countries and generate substantive amount of revenue, particularly from sex-tourism. There are popular concepts in some countries known as 'tourist marriages',^{xvi} 'Tallaini Street' ('pick me up street'),^{xvii} etc. Also, caused by the widespread armed conflicts and political upheavals in the recent decades, sex work is in sharp increase in the region, particularly in and around the refugee camps and amongst internally displaced population. In many of the oil-rich West Asian and Middle Eastern countries, there is a large number of foreign girls engaged in sex-work, particularly those arriving from the post-Soviet states, Eastern Europe, Far East, Africa and South Asia.^{xviii} However, sex-work is legal and regulated in some West Asian countries, such as Lebanon, Turkey and Israel.

The South East Asia, particularly its Mekong sub-region, has been a popular destination for sex-tourism including for paedophiles. A UNICEF study revealed that up to 35 percent of all

prostitutes in the Mekong sub-region are young children aged between 12 and 17.^{xxix} In most countries of the region, prostitution is illegal (including Indonesia, Thailand, Brunei, Cambodia, Vietnam, Myanmar, Laos), ‘although it is widely practised, tolerated and even regulated’.^{xxx} However, in several South East Asian countries prostitution is legal, such as Malaysia, Singapore, Timor-Leste, etc. In some of the countries in the region, although prostitution has been made illegal, ‘buying sex’ is regarded as legal (such as Cambodia, Myanmar, Philippines and Thailand).^{xxxi}

Exploitative application and abuse of penal laws by law enforcers have been reported from countries across the Asia Pacific region, including torture, harassment, extortion and unlawful arrests and detention.^{xxxi} Such treatment of sex workers is often seen as ‘accepted’ and ‘deserving’ because of the nature of their work, which is perceived to be illicit, immoral and harmful to the society. It is due to the same reasons that sex workers are often reluctant to report incidents of violence and abuse to the authorities that only further aggravates their plight.

Denial of sex workers’ civil, political, economic, social and other rights are reflected in the national laws, policies and practices in the region. A total retraction of fundamental labour rights including the right to a safe and healthy workplace is a widespread phenomenon, while sex workers are denied their national identity documents resulting in deprivation from their inheritance rights, freedom of movement, voting, child birth registration, employment or accessing health, education and other services. Frequent occurrence of such discriminatory and exploitative practices are reported in Bangladesh, India, China, Malaysia, Myanmar and several other jurisdictions.^{xxxiii} It may be noted in this context that the apex courts of several of these countries (such as Bangladesh, India and Nepal, Taiwan) have recognized that sex workers are entitled to the fundamental human rights as guaranteed by their respective national constitutions (discussed further under the case study on Bangladesh).^{xxxiv}

SEX WORK LAW AND POLICY IN SOUTH ASIA

The geo-cultural diversity of the South Asian region is inevitably reflected in the heterogeneity of its sex industry. From brothel and other establishment-based sex work (hotels, resorts, bars, restaurants, massage parlours, etc.), the sex trade extends to the streets, parks, transport hubs, shopping malls and the recent spread of online chatting platforms. The types of workers

involved are also varied: from ‘licensed’, patent sex workers to clandestine, ‘flying’ or ‘floating’ part-timers, call-girls, escorts, street-walkers, and so forth. Besides, a number of distinct traditional and religious mores - now in gradual decline- relate to culturally-specific sex work in South Asia, such as the *badi* in Nepal (young girls being trained as sex workers to generate family income); or the *devadasis*, *jogins* and *bhavins* in parts of India.^{xxv}

From the policy and regulatory perspective, generally speaking, countries of the South Asian region adopt a punitive approach and enforcement practices. While some of the countries in the region, at least theoretically, adult consensual sex work is not by itself illegal if conducted in private (for instance, Bangladesh or India), most countries in the sub-region make prostitution illegal (such as Pakistan, Afghanistan, Maldives, Bhutan, Sri Lanka, Nepal). However, public soliciting, running a brothel or pimping are illegal across these countries. It may be noted that some of these countries made buying sex legal while selling is illegal (Afghanistan, Nepal, etc.). Also, In some countries (Pakistan, Maldives and Afghanistan, for instance), incorporating *sharia* (traditional Islamic law derived from the Quran) principles into criminal law have resulted in imposing harsh punishment for all extramarital sexual relations, thus including the sex workers.

In fact, none of the national jurisdictions in the region has demonstrated any effective interventions to decriminalize, or to formulate a coherent regulatory framework relating to its expanding sex industry. However, in some countries (such as Bangladesh, India, Nepal and Pakistan), scattered initiatives have been undertaken by implementing self-regulatory boards and community legal empowerment, apex court judgements recognizing the fundamental rights of sex workers, or executive directives to law enforcement agencies to refrain from exploitation or misuse of existing laws, harassment and manipulation by police.

In terms of law enforcement and social interactions, throughout the sub-region, sex work continues to be a tabooed phenomenon. Sex workers are frequently harassed, abused, arrested and detained in special ‘rehabilitation centres’ or vagrant homes, encounter difficulties in registering their children’s birth, school admission, alternative employment and many other community orientation.

Another technical problem arises with regard to the application of anti-trafficking laws in the countries of the sub-region that are often been conflated with voluntary sex work by an adult woman. Anti-trafficking drives by the law enforcement agencies frequently pick up sex workers as trafficked persons. Similarly, a girl who was forced into sex work at very young age but later continues in the trade by consent also create confusions in the interpretation of these laws. UNDP, in its 2012 report, opined that this technical dubiety is partly influenced by the United Nations 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others as well as the SAARC Convention on Preventing and Combating Trafficking in Women and Children, 2002.^{xxvi}

INTERNATIONAL POLICY AND NORMATIVE FRAMEWORK

Over the past decade, increasing number of policies, guidelines and recommendations at the international level have been developed addressing issues related to the status and protection of the rights of sex workers. These developments particularly focus on the indiscriminate criminalisation of sex work and deprivation of their fundamental human rights considering that most countries use their national legal provisions relating to labour law, immigration law, religious law, tax law, and various other policies to restrict the rights of sex workers in many ways.^{xxvii} The following section summarises the key policy guidelines and other regulatory instruments providing global normative standards with regard to sex work.

Amnesty International's 'Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers' (2016) advocates for complete decriminalisation of sex work as it believes that criminalisation poses 'foreseeable barriers...to the realization of the human rights of sex workers' and 'undermine a range of sex workers' human rights, including their rights to security of person, housing and health'.^{xxviii} Similarly, in its 24th Annual Review in 2014, Human Rights Watch (HRW) expressed its advocacy for the decriminalisation of sex work and preventing human rights abuses, such as exposure to abuse by private entities, police brutality, biased law enforcement and susceptibility to blackmail, oppression and exploitation by criminals.^{xxix}

Several women's rights groups around the world also support decriminalisation of sex work and the protection of human rights for sex workers. For instance, International Women's Rights

Action Watch Asia Pacific (IWRAW-AP) assists sex workers' groups to send Shadow Reports to the Committee on the Elimination of Discrimination against Women (CEDAW Committee), outlining the abuses of human rights suffered by sex workers and pressing for legislative and regulatory changes to resolve these violations. Association for Women's Rights in Development (AWID) seeks to ensure the decriminalization of sex work and facilitates groups working for protecting the rights of sex workers and their partners in advocating for the various interests and voices of sex workers to be essential to all legislative and regulatory reforms.^{xxx} The Global Network of Sex Work Projects noted in this regard:^{xxxii}

When sex work is criminalised sex workers face harassment from the authorities, arbitrary arrests, evictions, surveillance and persecution... They are unable to assert their rights or determine the conditions under which they work and are therefore significantly more vulnerable to violence, discrimination, and exploitation. The result of such regulatory frameworks is not gender equality, but rather the reinforcement of heteronormative, homophobic, transphobic and misogynistic patriarchy.

Several International LGBT (Lesbian, Gay, Bisexual and Transgender) groups have also raised their voice in favour of the decriminalisation of sex work and the implementation of rights-asserting strategies for regulating sex work. For example, ILGA-Europe's policy on sex work titled 'Empowering LGBTI sex workers towards the full respect of their human rights' supports decriminalisation of all aspects of sex work acknowledging that it is one of the foundations of protecting the human rights of sex workers and that criminalization accelerates stigma and susceptibility of sex workers by leading them to increased risk of violence.^{xxxii}

Again, several anti-trafficking organisations have extended complete encouragement for the rights-asserting approach to sex work, involving absolute decriminalisation. For example, the Global Alliance Against Traffic in Women (GAATW) in a report titled 'Moving Beyond 'Supply and Demand'' Catchphrases: Assessing the uses and limitations of demand-based approaches in anti-trafficking' noted that the 'end demand' strategy, through criminalising clients, does significant harm to sex workers by placing their lives and families at risk, raising the discrimination they experience, and expanding police authority over them without decreasing the occurrence of trafficking.

Noted earlier in this paper, the World Charter for Prostitutes' Rights (1985), adopted in Amsterdam by the International Committee for Prostitutes' Rights (ICPR), is based on the feminist arguments that all prostitutions are forced prostitution and hence, at least partially, align with the 'being prostituted' or the 'prostituted person' concept of sex work. The Charter prescribes standard provisions regarding legal and regulatory approaches to sex work that include, among others- decriminalizing all activities relating to adult prostitution by individual choice; guaranteeing their basic human rights and civil liberties; access to employment, counselling, legal, housing and shelter services for sex workers, runaway children and those willing to leave the trade; community level educational programs to change stigmatized and discriminatory social attitudes.

Numerous UN agencies and treaty bodies have also developed recommendations and policies relating to sex work. For example, the Global Commission on HIV and the Law's report of 2012 titled 'HIV and the Law: Risks, Rights and Health' made some important recommendations including abolishing laws banning adults from buying or selling sex. The Report emphasised on the obligation of states to take legislative actions ensuring that sex workers are working in a safe environment and to avoid police brutality and harassment against sex workers.

Many evidence-based recommendations have emerged over the past few years in the current context; these include, among others: 'Sex Work and the law in Asia and the Pacific (2012)'^{xxxiii}; 'Prevention and Treatment of HIV and other sexually transmitted infections for sex workers in low-and-middle income countries: Recommendations for a public health approach (2012)'^{xxxiv}; 'Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations (2014)'^{xxxv}. A 2012 joint UN report from the Asia Pacific region stated that criminalisation of sex work 'increases vulnerability to HIV by fuelling stigma and discrimination' and that 'removing legal penalties for sex work assists HIV prevention and treatment programmes to reach sex workers and their clients'.^{xxxvi} Also, the UN Women, UNICEF, and the Office of the High Commissioner for Human Rights (OHCHR) in association with nine other UN agencies recommended that encouragement must be given to the States in 'reviewing and repealing punitive laws that have been shown to have detrimental health effects and that contradict existing public health research which includes laws that criminalise or otherwise forbid... adult consensual sex work...'.^{xxxvii}

Several International Labour Organization (ILO) instruments and standards are also significant in the current context. Most importantly, ‘PR No. 13 Fifth item on the agenda: HIV/AIDS and the World of Work – Report of the Committee on HIV/AIDS’ coupled with ‘Recommendation 200: Recommendation concerning HIV and AIDS and the world of work’ categorically recognize sex workers as workers.

Article 6 of CEDAW is frequently quoted in discussions on sex work as it depicts the duty of States to eradicate all aspects of trafficking in women and the ‘exploitation of prostitution of women’.^{xxxviii} In absence of a clear explanation of this provision by the Committee, the general consensus is that it was never the intention of the convention to place a duty on the States to put an end to all prostitutions. Gender-based abuse has been described by the CEDAW Committee as a type of gender discrimination within CEDAW, which also renders violence towards sex workers as an infringement of the CEDAW rights.

The UN Committee on Economic, Social and Cultural Rights noted in its General Comment 22 that: ‘Member States should take steps to offer total protection to a person involved within the sex industry from all forms of “violence, coercion and discrimination” while also making sure that all “sexual and reproductive healthcare services” are fully accessible to them.’^{xxxix} Recommendations were also issued by them on the greater social and systemic reform needed to resolve human rights abuses experienced by sex workers.

Similarly, the UN Human Rights Committee has often referred to Article 9 (right to liberty and security of person); Article 17 (Right to privacy, family home and correspondence); and 22 (freedom of association) of the ICCPR as guarantees of fundamental rights of sex workers.

Article 16(2) of the Committee on Migrant Workers clearly opposes legal rules and policies adopted by member states that raise the possibility of migrant sex workers being subjected to exploitation, deprivation and violence.

Furthermore, at the regional level, human rights treaties such as the European Convention on Human Rights (ECHR), the Inter-American Convention on Human Rights (IACHR), and the African Charter on Human and People’s Rights (ACHPR) make provisions that advocate for the rights of sex workers. Thus, for instance, in a hearing in March 2017 pursued by a Latin

American sex worker organisation (RedTraSex), the Inter-American Commission on Human Rights urged States in the Americas to create laws and policies on sex work ‘that guarantee sex workers’ human rights, including ‘measures to protect their lives, their integrity, and their honour and dignity, as well as to put an end to the stigma and discrimination against them.’^{xl}

SEX WORK IN BANGLADESH: AN ILLUSTRATIVE CASE STUDY

An analysis of the prevailing legal and regulatory framework along with the widely diffused socio-cultural mind-set towards commercial sex work in Bangladesh reflect the dichotomous policy paradigm and treatment of the workers involved in the so-called ‘tabooed’ industry that characterise most of the Asia-Pacific region.^{xli}

The Constitution of the peoples’ Republic of Bangladesh provides that ‘the State shall adopt effective measures to prevent prostitution’ [Article 18(2)]. While this provision is part of the Constitutions’ ‘fundamental principles of State policy’, there is no law in the country that specifically prohibits or criminalise prostitution by a woman above the age of eighteen in her free choice. A 2012 UNDP report noted that in Bangladesh, ‘adult sex work is not illegal if it is conducted privately, by single workers and voluntarily.’^{xlii}

The issue of sex work in Bangladesh provoked national and international attention when in July 1999, 3,500 sex workers were evicted from the then largest brothel in the country (and the oldest-operating since 1888), named as the Tan Bazar brothel located in Narayanganj city-very close to the capital Dhaka. In this violent process, many sex workers were arrested while others with their families were forcibly taken to Vagrant Homes and subjected to sexual exploitation, violence and abuse. A negative impact of these practices eventually compelled the evicted sex workers to live and trade from underground hideaways that are more insecure and hazardous for themselves as well as inaccessible by health service providers and regulatory agencies.

In August 2000, ruling on a petition filed by 100 sex workers, the Bangladesh Supreme Court observed that the detention of the prostitutes arrested in that brothel raid was ‘unlawful’ and that prostitution was a ‘legal occupation’.^{xliii} The ruling concluded that there were no valid grounds on the part of the government to evict the brothel occupants ‘as prostitution formed the basis for the evicted women’s only means of livelihood, and, hence not illegal’.

In fact, shortly before the Tanbazar incidence, another violent eviction of brothel sex workers took place in Magura, southwest of Dhaka, ‘destroying homes, beating residents, auctioning off their belongings, and sending them running’.^{xliv} The massacre happened in the presence and participation of law enforcement agencies and local people. It may be noted that the incidence was in direct violation of a court order as only a few days before the event, an Assistant Judges Court of Magura issued a stay order, ruling that ‘no such eviction could take place until an adequate rehabilitation plan was developed.’^{xlv}

The Tan Bazar and Magura instances may thus be seen as a milestone in looking back to the legal and policy approach of the country to commercial sex work. It has been noted that this instance ‘illustrates that in organizing to protect the human rights of sex workers we should not limit our strategies to the perhaps more obvious realm of civil and political freedoms, but should also consider economic and social rights, including the right to work.’^{xlvi} More recently, in September 2020, the Indian Supreme Court has in a similar judgement acknowledged that ‘sex workers have the right to choose to work in the sex trade and it is legal to engage in sex work in private.’^{xlvii}

Despite legal and regulatory ambiguities regarding commercial sex work in Bangladesh, Brothel-based prostitutes (BBP) has been seen as ‘recognised’ by law, ‘as they can register for the so-called “license” with a first-class Magistrate or Notary Public’ under an affidavit that ‘they are working in a brothel of their own will and are over eighteen’.^{xlviii} Although this mysterious term “license” has been frequently used in relation to sex workers, the word cannot be found in any formal legal document in the country.

Activities associated with brothels in Bangladesh are specifically addressed by the Suppression of Immoral Traffic Act, 1933 (SITA) making it a culpable offence to keep or manage a brothel. Similar but harsher punitive sanctions have been provided for by the Prevention of Oppression Against Women and Children Act 2000 providing that ‘[W]hoever fetches from abroad or dispatches or sends abroad for prostitution... shall be punished with death or transportation for life or with rigorous imprisonment of either description.’ The wording of the statutes thus make it clear that while the Acts determine the criminal culpability of persons who live on, run or patronize prostitution, the Acts do not as such criminalise the prostitutes themselves.

From a quick analysis of the legal provisions relating to sex work in Bangladesh it appears that the penal law of the country treats selling sex as ‘offences affecting the public health, safety, convenience, decency and morals’ (Section 290 of the Penal Code). Apparently, this approach is particularly aimed at protecting public interest and social order. However, what is of relevance in the current context is the fact that the stated provision is reportedly abused to harass and exploit sex workers, especially the street-based or floating sex workers (FSW) sub-groups.

The Code of Criminal Procedure, 1898 (CrPC), under Chapter X, stipulates that ‘public nuisances occurs if anyone is engaged in a trade or profession that is harmful to public health or disturbs public life’. A paradox between law and practice also exists in this regard as the CrPC in section 132-A clearly states that ‘[T]he provisions of this Chapter shall not apply to a Metropolitan Area’, while most arrests of sex workers under the public nuisance provisions of Chapter X (CrPC) take place in the Metropolitan cities.

Similar misapplication of law can be seen with regard to arrests of sex workers without a warrant under Section 54 of the CrPC- a controversial ‘black law’ that empowers the police ‘to arrest a person without a warrant under some “suspicious” conditions.’^{xlix} Even two decades ago, the then Attorney General of Bangladesh noted that ‘section 54 of the CrPC is regularly abused by police’.^l

Also, the Metropolitan Police Acts/Ordinances (MPO) applicable in the metropolitan police areas including the capital city Dhaka (and other divisional towns) ‘prohibits soliciting another person in public for the purpose of prostitution, and therefore renders at least some forms of street-based prostitutions illegal’.^{li} The MPO, 1976 refers to ‘any person’ meaning that the punitive provisions apply to all concerned irrespective of gender or sexual identity. Consequently, these laws have been reported to be frequently abused by the law enforcement agencies for arresting and penalising prostitutes, especially street based SWs and *hijras* (transgender).^{lii} Similarly, the Penal Code, 1860 renders sexual intercourse between males as *sodomy* and makes it punishable with life imprisonment.

Similarly, vagrancy laws are often used against prostitutes detaining them in the so-called shelter homes and arbitrarily subjecting them to sexual abuse as well as physical and mental

torture. In this regard, a 2015 report published by the Government noted that prostitutes do not as such fall under the Vagrancy Act's definition of vagrancy.^{liii}

It may be noted that while Bangladesh's Penal Code makes it a culpable offence to buy or sell a minor, i.e. 'any person under the age of eighteen years' for the purpose of prostitution, the Code does not clarify what is meant by 'to prostitute' children.^{liv} Similarly, the Pornography Control Act, 2012 criminalises the production and selling of child pornography, but does not address, define or criminalise virtual child pornography, a gruesome problem that is in rapid increase around the world- including Bangladesh.

With regard to sex workers' entitlement to an official identification that is required for accessing basic public and private sector services, although in August 2010 the Bangladesh Election Commission (EC) recognized 'prostitution' as a 'job title' on the sex workers' new National Identity Cards (NID),^{lv} in the real life scenario, this document confers no real access to essential services for them or their children and other family members.

THE DARKSIDE OF THE SEX INDUSTRY

Due to the largely unregulated nature of the work, there is a scarcity of authentic data on the actual number of sex workers involved in the sex industry in Bangladesh. Although some earlier estimates indicated that there were in excess of 140,000 sex workers in Bangladesh,^{lvi} it is believed that the actual number, particularly for FSWs and HBSWs, is much higher in the country. Recently, an ethnographic study published in April 2020 noted that there are around 20,000 non-brothel sex workers (all being hotel, floating and residence/*ghar* based), of which almost 80% operate their trade from the hideouts of their *ghar* or streets.^{lvii} Besides, increasing numbers of sex-workers are engaged in the trade who can be categorized as private house sex workers, call-girls, escorts, etc.

Also, with the rapid expansion of information communication technology (ICT), there is an increasing number of sex workers who communicate with their clients on mobile phones and different online chatting platforms. These informal sex workers, many being part-timers, usually confine themselves within a known-circle of clients due to safety reason and either visit the client's chosen place or go to a third party family home where the residents use an extra

room for this purpose as an additional source of income. It is also reported that a large number of Bangladeshi girls and women are reportedly engaged in sex trade of the neighbouring countries, being sold to various brothels or pimps in India.^{lviii}

It may be noted that in Bangladesh, a large proportion of the children of sex workers enter the industry at a very early age, girl-children carrying forward their mothers' work while boys getting involved as intermediaries or other associated activities such as pimps, *mustans*, drug peddlers, running illegal errands for clients, etc. Also, the authorities generally ignore the minimum age of 18, often circumvented by false statements of age, for 'legal' female prostitution while it is alleged that the authorities rarely prosecutes procurers of minors.^{lix}

Bangladesh currently hosts nearly 1.1 million Rohingya refugees from its neighbouring State of Myanmar. As of February 2021, UNHCR tracked nearly 878,000 Rohingya in the Kutupalong (Cox's Bazaar) and Nayapara (Teknaf) refugee camps, more than half of the population being children (52%).^{lx} Several reports depict that many of the Rohingya women and girls are being lured to sex work as the last resort of their survival.^{lxi}

As noted earlier, while some kind of legitimacy has been extended to brothel based sex workers (albeit not for the landlords or the managers), belonging to a brothel literally signifies living in a mystery island in the middle of the mainstream, where the sex workers and their children continue to struggle against social rejection and taboos. They are frequently subjected to torture, oppression and exploitation by local hooligans as well as the law enforcement agencies themselves.^{lxii}

Another relevant aspect relates to the miseries caused to sex workers from the practice of so-called occupational debt-bondage. Many girls, especially those popularly called as *chukri* (younger SWs), work as prostitutes after being trafficked or sold into the trade by traffickers and pimps. *Mashi* or *sardarni*, almost all of who are ex-prostitutes themselves, 'buy' these girls to run their '*ghar*' (rooms in brothels), or to meet up the expenses relating to obtaining the so-called 'license' (such as securing a birth certificate as proof of age from the local Civil Surgeon through the informal brokers). Money paid for these purposes is presumed to be a debt on the girl that she will 'pay-back' from her income as a prostitute. In fact, in this vicious cycle, the girls working in the industry are put into a situation where they have no other choice but to

accept the *debt-bondage*. What is of greatest concern is the fact that this phenomenon stated above is an 'open secret' in the brothels and that the police and administration keep their eyes off from such practices branding them as '*their internal affairs*'.^{lxiii}

Again, the on-going COVID-19 pandemic has further aggravated the conditions of sex workers in all categories. Like other formal and informal sector workers, sex workers are also experiencing hardship and loss of income. These conditions are more acute for street-based sex workers, as most of them are homeless. While this aggravated state of vulnerability and helplessness is exposing them to even the worst forms of exploitation and health hazards (including spread of the Corona infection itself), the cycle of increased debts and consequential debt-bondage continues to exasperate.^{lxiv}

These situations of indebtedness both increase and perpetuate sex workers' vulnerability to exploitation as well as deprivation from fundamental human rights and the basic principles of decent work. Their movement (especially outside the brothel) even for ordinary livelihood necessities is strictly controlled. There is no freedom to choose if they decide to work in another brothel, leave the profession, or go back to their families. This is indeed a complex phenomenon as the SWs make a legal declaration (affidavit) as to their own choice and "free will" of the work, while many in reality live under a state of servitude and exploitation caused, for instance, by the existence of a debt to the virtual employer that they never received or may even be ignorant of its truth.

CONCLUSION

As observed in the preceding discussion, across many of the countries in the Asia-Pacific, like in Bangladesh, the widespread abuse and deprivation of sex workers including the vicious cycle of debt-bondage and sexual servitude are inextricably twined with the stigma, exclusion and exploitation. The prevailing ambiguities in legal, regulatory and policy frameworks, aggravated further by inappropriate law enforcement and adverse social mind-set, among others, only perpetuate the causes and concerns for the victims of this immanently exploitative sector.

This paper has contended that philosophical and realistic practical considerations of sex work stand on a crossroad with the advocates of abolitionist or prohibitionist approaches to the trade, or the sex industry as a whole. While it has been reemphasised throughout the article that sex workers have been subjected to random violation of their fundamental rights and freedoms, treating sex work itself as human right violation of the workers involved, including the position allegedly held by international law in this regard,^{lxv} bears inevitable risks and consequences in the adoption of consistent and coherent legal and policy frameworks at the national levels.

International instruments that favour prohibitionist approach to prostitution should be understood in the underlying objective of such provisions.^{lxvi} The key purpose is to protect and promote the rights, safety and wellbeing of the individuals involved in the trade and, hence, prostitution by a person becomes human rights violation only when such engagement is under coercion or any other lack of free consent, and involves exploitation. The propositions made in the foregoing discussion thus favours the opinion that defining prostitution as a human rights violation ‘open the way for governments to take action to abolish the sex industry and arrest those who work in it.’^{lxvii}

Again, policy experimentation in many parts of the world demonstrated that criminalization is not a viable answer to the complex socio-legal issues associated with sex work. To the contrary, indiscriminate criminalization, whether of selling or buying sex, ends up in taking the activities underground with adverse effects on sex workers’ health and safety, negotiating capacity, making informed choices, accessing various essential services including reporting violence and securing access to justice. Even in cases of partial criminalization (such as in Bangladesh), like the so-called Swedish or Nordic models targeting the demand side of sex trade (i.e. buying sex), the ultimate result is the same-aggravated and perpetuated stigma, exclusion, abuse and deprivation.^{lxviii}

While it is widely recognized that prostitution by its very nature is ‘violent and harmful’ that subjects sex workers to inhuman and degrading treatment, and that it is incompatible with the dignity of women as a human person and hence (allegedly) a violation of human rights itself,^{lxix} this paper has contended that criminalizing sex work at the policy level along with inconsistencies in regulatory provisions aggravated by abusive and exploitative enforcement of law further exasperate sex workers’ fundamental rights and liberties. To prevent this double-

violation continuum it is imperative that national policies adopt a human rights based approach in dealing with sex workers. From the perspective of the UN, it has been noted that ‘to protect women *‘from harm, violence, stigma and discrimination’*, States should refrain from criminalizing prostituted persons, offer them ‘protection, access to fundamental rights and exit options’, and put an end to ‘the impunity of those who economically and sexually exploit women, men and children (traffickers, pimps, sex buyers).’^{lxx}

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