



22 June 2006

Shri Janardhan Dwivedi  
Chairman, Parliamentary Standing Committee,  
Ministry of Human Resource Development  
AB – 89, Shahjahan Road, New Delhi 110001

Dear Mr. Dwivedi,

**Re: Submissions regarding the [Immoral Traffic \(Prevention\) Act \(ITPA\) Amendment Bill, 2006](#)**

The Global Alliance Against Traffic in Women (GAATW) is an international network of organisations committed to protecting the human rights of the victims of the criminal practice of traffic in persons and to challenging the persistence of trafficking in persons through a human rights based approach.

GAATW writes to the Parliamentary Standing Committee (the Committee) of the Ministry of Human Resource Development with submissions to assist the Committee in its consideration of the proposed Immoral Traffic (Prevention) Act (ITPA) Amendment Bill, 2006 (the Bill).

In short, GAATW commends the Government of India for reviewing the outdated Immoral Traffic Prevention Act 1956 and for its intention to protect the victims of the terrible crime of human trafficking through the proposed amendments. However, GAATW submits that this Bill does not go far enough to protect the rights of the victims of trafficking and will in fact have adverse consequences for such victims, as well as for the broader community. We submit that, for the following reasons, the Committee recommends that the Bill should be withdrawn in its entirety and a new draft prepared:

- The Bill is not in accordance with international law on trafficking, in particular the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (the Palermo Protocol). This will reduce India's standing in the international community as a leading democratic nation, and will also make international cooperation to combat trafficking more difficult.
- The draft amendments will result in violation of fundamental human rights and freedoms enshrined in international conventions to which India is a signatory, as well as in India's own Constitution, of a significant sector of the Indian population.

- The amendments are extremely unlikely to have the intended consequence of reducing trafficking or indeed reducing “exploitation of the prostitution of others”<sup>1</sup>. Rather, they will only further marginalize the already marginalized community of sexworkers.

### **International law against human trafficking**

Since the Palermo Protocol was prepared in 2000, trafficking in persons has become an issue of great international concern. Some 100 countries have signed and ratified the Protocol and even those who haven't are undertaking, like India, revision of their laws to criminalize trafficking and protect the victims of this transnational and national crime. In this process, trafficking has been recognized as a complex, multi-faceted issue which requires comprehensive international and national efforts to combat. As the world's largest democracy and a responsible international actor, it is important that India be seen to take the lead in its region by promoting international consistency, cooperation and adherence to international law.

This Bill, however, is inconsistent with the Palermo Protocol in a number of crucial respects:

- The definition of trafficking in proposed s. 5A limits the term to “the purpose of prostitution”. This limitation is outdated and redundant; it does not reflect present realities or current international thinking on the crime of trafficking. We urge India to conform to the Palermo Protocol and include purposes of other than forced prostitution, such as domestic work or forced labour.
- Proposed s. 5C penalizes those clients of victims of trafficking, revealing an intention to combat trafficking indirectly by suppressing prostitution. It thus confuses the international crime of trafficking with the national issue of prostitution. This is inconsistent with international law which does not outlaw prostitution but rather requires states to combat trafficking directly through criminalizing all forms and by protecting victims. Even the United States, which has similar views on prostitution to India, separates the issues in legislation and in practice.
- The Bill does not provide any of the protections to victims required by the Palermo Protocol, namely the right to social services, to health care and to access to justice. It therefore misses an opportunity to “protect victims” as it claims to do.
- The Bill does not include prevention strategies as set out in the Palermo Protocol. It therefore does not address key root causes of trafficking.

In short, the amendments have ignored the developments that have taken place in international policy and law in recent years, and the international efforts to harmonise laws and build cross-border cooperation. This does a disservice to India's reputation, as well as to the victims of trafficking, and places India behind even countries such as Ghana, Nigeria and Indonesia in adherence to international law in this area.

### **Human Rights**

India is a signatory to major human rights conventions and has enshrined an impressive number of rights in its own Constitution.<sup>2</sup> India has been a leader in the protection of the rights of its people in the region. Analysis of

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<sup>1</sup> Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Article 6, <[www.ohchr.org/english/law/cedaw.htm#art6](http://www.ohchr.org/english/law/cedaw.htm#art6)>

the Bill, however, reveals that the amendments will result in the violation of many of the rights to which India guarantees, including<sup>3</sup>:

1. The Right to Health: the current Bill will result in prostitutes having less access to health services and so increase vulnerability to illness, including sexually transmitted diseases. This will clearly result in increased community vulnerability.
2. The Right to Shelter: Many prostitutes live in their workplace, their brothel, out of practical necessity. Outlawing the rental of places for the purpose of prostitution will in effect force many women out on the street. This in turn will have an impact on women's health and their vulnerability to violence and exploitation.
3. The Right to Freedom from Discrimination: The amendments contained in the Bill will result in the significant portion of the community working as prostitutes suffering discrimination in access to housing, healthcare, vocational opportunity and income. This, again, is a clear derogation of human rights.

While the rights violated will be significant, GAATW cannot identify any human right which will be promoted or protected by the Bill. The Committee should consider if this is the most effective approach for the Government to take in this area.

### **Intended Consequences and Likely Outcomes**

Finally, GAATW notes that the Bill's intention of combating trafficking through the abolition of prostitution is highly contentious and research to date suggests that it is ineffective to combat the problem. In no case has it been shown that an abolitionist approach to prostitution has resulted in a decrease in the number of prostitutes, the use of prostitutes, or the trafficking of women into prostitution. GAATW highlights the case of Sweden and a recent study by independent researcher Petra Östergren who interviewed prostitutes about the effect of the law on their life.<sup>4</sup> She found that rather than decreasing prostitution, the law has merely increased the vulnerability of sex workers:

- Ability to assess and choose clients has decreased, thus prostitutes are more at risk of finding themselves in violent and exploitative situations.
- Ability and willingness to contact the police in such situations has decreased because it means having to report the client.
- Prostitutes now have an even lower status in society.
- The law against procurement which makes it illegal to work indoors or with others, has made sex workers lie in order to rent premises and has weakened informal support networks, thus again making women more vulnerable to exploitation by landlords and by clients.

The article reviews three Swedish government reports from the National Council for Crime Prevention, the National Board of Health and Welfare and The National Police Board.<sup>5</sup> Findings included:

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<sup>2</sup> In particular the Fundamental Rights including the right to equality and to freedom from exploitation, (Articles 14-18, 22-23), and the Directive Principles on State Policy including the principles of the Right to Work and for Just Conditions of Work (Articles 39, 41, 42).

<sup>3</sup> India acceded to the International Convention on Civil and Political Rights and the International Convention on Economic and Social Rights in 1979. It has also ratified the Convention on the Elimination of Discrimination Against Women and the Convention of the Rights of the Child.

<sup>4</sup> Petra Östergren, *Sexworkers Critique of Swedish Prostitution Policy*, 2001, available at <[www.petraostergren.com](http://www.petraostergren.com)>

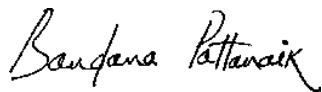
<sup>5</sup> RPS (Rikspolisstyrelsen) 2001. Rapport. "Lag (1998:408) om förbud mot köp av sexuella tjänster. Metodutveckling avseende åtgärder mot prostitution." Av Nord, Anders och Rosenberg, Tomas. Polismyndigheten i Skåne. ALM 429-14044/99. 2001. POB -429-4616/99; SoS (Socialstyrelsen) 2000. "Kännedom om prostitution 1998-1999." SoS rapport 2000:5; BRÅ (Brottsförebyggande Rådet) 2000. Brå rapport 2000:4. "Förbud mot köp av sexuella tjänster. Tillämpningen av lagen under första året." Brottsförebyggande rådet. Stockholm.

- There was no evidence that prostitution had decreased, it had just become more hidden.
- Customers became fewer and prices lower, which meant that prostitutes had to take on more clients and use fewer protections (like condoms) to be competitive.
- According to the National Police Board: "The buyers are "worse" and more dangerous, and the women who cannot stop or move their business are dependent on these more dangerous men, since they cannot afford to turn them down as before ... the healthcare system has worries about declining health among sex workers and spreading sexually transmitted disease."

## **Conclusion**

For the reasons enumerated above, GAATW submits that the Bill will not only fail to protect the rights of victims of trafficking, but will very likely further harm such victims and others in the community and further is inconsistent with international law. The Bill should be withdrawn and consultations with human rights groups working nationally and internationally should be held for a new legislation on trafficking. We understand that many civil society actors in India have already made similar requests to the Standing Committee. We urge the Committee to take action on these requests.

Yours sincerely,



GAATW International Secretariat