

REVIEW OF

# EXISTING LAWS AND POLICIES

RELATING TO SEX WORKERS  
IN BANGLADESH



European Union



**REVIEW OF**

# **EXISTING LAWS AND POLICIES**

**RELATING TO SEX WORKERS  
IN BANGLADESH**

# PREFACE

Solidarity and Empowerment through Education, Motivation and Awareness (SEEMA) is a project of CARE Bangladesh that aims to contribute to urban poverty reduction in Bangladesh through reducing the social and economic exclusion of the most marginalized women in urban communities and fostering their empowerment. NGOs, INGOs and many other actors including CARE have been working with sex worker to promote and protect their rights through improving their human condition and social position. However sex workers' rights is a delicate issue which is seen as dubious and that elicits multi-faceted debate among the social workers, feminists and human rights defenders.

This is a brief report of a large policy analysis document which evaluated the legal position of sex work and condition of sex workers under the law and policy of Bangladesh. This document provides strong arguments and rich references on the issues of sex workers rights and has explained present policy practice in a persuasive manner.

The original report has been prepared with the technical assistance of Ain O Shalish Kendra (ASK). My heartiest thanks to ASK. I would like to take the opportunity to also thank our local partner, concerned communities and the SEEMA team for their efforts and insightful inputs. Finally, our sincere gratitude to the EU for their generous support in conducting this study. I hope this will help clear any ambiguity and create the momentum to transform words into action towards the establishment of a just society.

Fatima Jahan Seema  
Team Leader  
SEEMA project  
CARE-Bangladesh)



“ ..to realise through the democratic process to socialist society, free from exploitation-a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens; ...

*(Preamble, Para: 3, Constitution of Bangladesh).*



# TABLE OF CONTENTS

## PART I

Introduction

1.1 Background ①

1.2 Sex Workers' Rights:  
Perspective of Bangladesh ②

## PART II

Rights of the Sex Workers: Bangladesh Perspective

2.1 Rights of the Sex Workers ③

2.2 Constitution of Bangladesh ④

2.3 Universal Declarations of  
Human Rights (UDHR) ⑥

2.4 International Covenant on  
Civil and Political Rights (ICCPR) ⑥

2.5 International Covenant on Economic,  
Social and Cultural Rights (ICESCR) ⑦

2.6 The Convention on the Elimination  
of All Forms of Discrimination against  
Women (CEDAW) ⑦

2.7 Judicial Decisions ⑧

## PART III

Review of Existing Laws and Policies ⑨

3.1 Laws and Policies Relating to Sex Work ⑩

3.2 Policies Relating to Sex Workers ⑩

3.3 Laws Relating to or Used against Sex Workers ⑪

## PART IV

Existing Situation of Sex Workers in Bangladesh

4.1 The Socio-Legal Context of Bangladesh ⑭

4.2 Findings from the Interviews and FGDs ⑮

## PART V

Recommendations and Conclusion

5. Conclusion ⑯

# INTRODUCTION

## 1.1 Background

CARE Bangladesh has been working towards the empowerment of women and girls in Bangladesh. In this effort, CARE Bangladesh emphasizes systematic empowerment, particularly of the women and girls who are socially and economically marginalized. Solidarity and Empowerment through Education, Motivation and Awareness (SEEMA) is a project of CARE Bangladesh. The Impact Group of the SEEMA Project has identified the structural constraints of social, political and economic marginalization and stigma associated with poverty and deprivation.

The overall objective of the action is to evaluate the legal position of sex work and condition of sex workers under the law and policy of Bangladesh.



## Sex Workers' Rights: Perspective of Bangladesh

Sex Workers' rights have been a delicate issue triggering multi-facade debate among the social workers, feminists and human rights defenders. Bangladesh is a densely populated country of South Asia, where conservative social and religious values and prostitution have been in coexistence for centuries. Like many other States, Bangladesh resorted to a dubious stand regarding sex work. Although the Constitution of Bangladesh entitles all citizens to all fundamental rights, marginalized people of society, particularly the sex workers, are always deprived of their rights.

Till date, there is no statute in Bangladesh that declares sex work as illegal. But in reality, the sex workers always complain of being harassed by the law enforcement agencies. Besides, they do not get any legal protection in case of violation of their fundamental rights.

The society also plays a deceitful role regarding prostitution/sex work. Without relying on any specific source, it can be easily understood that a large number of women are involved in sex work. However, they always remain marginalized and isolated from the mainstream and continue to live under the poverty line because of social discrimination.

Bangladesh does not legalize sex work as a profession. As a result, the sex workers and their children do not get the minimum social or legal protection. The problem becomes more difficult to address due to the ambiguous position of law and policy regarding sex work.

# THE RIGHTS OF SEX WORKERS: BANGLADESH PERSPECTIVE

## 2.1 The Rights of Sex Workers

Sex workers' rights have multiple aspects. Considering all the aspects, regardless of whether they are recognized by the legal regime of a particular State or territory, sex workers' rights include their fundamental human rights, right to health, labour rights and right to freely continue their profession as sex workers. Protection of the fundamental human rights of sex workers can ensure significant legal, social and economic protection of the sex workers and also uphold their human dignity. The Constitution of Bangladesh guarantees fundamental rights of all citizens without any discrimination.

Sex workers, as citizens of this country, are also entitled to all these rights. In addition to the Constitutional safeguards, Bangladesh is also committed to protect and promote the rights of its citizens as a member state of the core international human rights treaties.



## 2.2 Constitution of Bangladesh

The Constitution of the People's Republic of Bangladesh provides a strong mandate in favour of human rights and protecting human dignity. The preamble to the Constitution elucidates the core principles that would guide all the affairs of the State. The fundamental aim of the State as set by the preamble is:



"...to realise through the democratic process to socialist society, free from exploitation-a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens; ..." (Para: 3).

The Constitution emphasizes on rule of law and fundamental human rights to be secured in order to achieve the aspirations of a society free from exploitation.

Protection and promotion of human rights, as a core principle of the State, has been reiterated with great emphasis.

Article 18 of the Constitution which generally deals with public health and morality is one of particular significance. Article 18 (2) states:



" The State shall adopt effective measures to prevent prostitution and gambling."

The supporters of abolitionism or criminalization of sex work often refer to this Constitutional provision while arguing that sex workers can have no right or that sex workers should not have any formal or legal recognition as the Constitution, being the supreme law of the land, provides for prevention of prostitution.

The provision is rather intended to underscore the State's duty to adopt effective measures to prevent prostitution and gambling. It must be admitted that the said Constitutional provision is against sex work or prostitution, but at the same time, the practical implication of this provision is equally uncertain.

Article 27 declares every citizen to be equal before the law and entitles everyone to equal protection of law. Article 28 enshrines the principle of non-discrimination; but at the same time it specifies the areas of exception where desirable positive discrimination is expressly allowed. Clause (4) of the Article provides:



“(4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.”

Article 27 of the Constitution has a wide implication that incorporates the principle of equality before law. Article 31 further provides for protection of law, whereas Article 32 provides for the right to life and personal liberty.

## 2.3 Universal Declarations of Human Rights (UDHR)

Bangladesh is a party to the Universal Declaration of Human Rights. The Declaration sets the base line of human rights, stating: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

The right to work and free choice of employment has been recognized as human rights in the UDHR. It can, however, be argued that these rights are workers' rights in essence and were never meant to include prostitution or sex work. To the contrary, the Article does not indicate any classification of work. So, it applies to every work and profession, which is not legally restricted or declared unlawful.

## 2.4 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is another core human rights instrument to which Bangladesh is a party. The Covenant also requires the rights be recognised "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and to ensure that they are enjoyed equally by women. The rights can only be limited "in time of public emergency which threatens the life of the nation," and even then no derogation is permitted from the rights to life, freedom from torture and slavery, the freedom from retrospective law, the right to personhood, and freedom of thought, conscience and religion.

Sex workers as human beings are entitled to these rights and as a State party to the ICCPR, Bangladesh is also under an obligation to ensure that these rights are secured for all.

## 2.5 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR is one of the core human rights treaties that focus on economic, social and cultural rights. The covenant recognizes the rights of all people to pursue their economic, social and cultural goals, and manage and dispose of their own resources. It recognizes the right of people to not be deprived of their means of subsistence, and imposes an obligation on those parties still responsible for non-self governing and trust territories (colonies) to encourage and respect their self-determination.

Article 2 of the covenant establishes the principle of "progressive realization". It also requires the rights be recognized "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The rights can only be limited by law, in a manner compatible with the nature of the rights, and only for the purpose of promoting the general welfare in a democratic society.

## 2.6 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The CEDAW, adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Convention defines discrimination against women as:



"...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

The Committee on the Elimination of Discrimination against Women is the United Nations (UN) treaty body that monitors the implementation of the Convention. The CEDAW Convention permits the CEDAW Committee to make suggestions and general recommendations based on the examination of State reports. General Recommendation No.19 covers the issue of gender-based violence - a human rights violation not explicitly included in the CEDAW Convention.

The CEDAW Convention defines discrimination against women as follows:

“The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”

The CEDAW Committee is particularly concerned about trafficking of women. Prostitution or sex work is closely connected with trafficking. It has a direct impact on the push-pull factors. The rights embodied in the Convention that safeguards women from all kinds of discrimination, can be a general remedy to the deprivation of sex workers.

## 2.7 Judicial Decisions

There is a landmark judicial decision involving the issue of sex work and the rights of sex workers in Bangladesh. In this case, the fundamental rights of the sex workers have been affirmed by the apex court. In Writ Petition No. 2871/1999 challenging the forcible eviction of all brothels situated in Tanbazar area of Narayanganj district, the High Court Division of the Supreme Court observed: “Prostitutes initially get themselves enrolled with the local administration expressing the desire to be prostitutes and get themselves confined to the brothels and get the required protection to continue in profession by the local administration whereby they are maintaining their livelihood which the state in the absence of any prohibitory legislation has a duty to protect and a citizen has the right to enforce that right. Article 11, providing for dignity of human person, though not enforceable; but the sex workers as citizens have enforceable rights under Articles 31 and 32.” 53 DLR (2001) (HCD) 1.

This decision is a significant precedent in protecting the rights of sex workers. More importantly, it was based on the right to shelter and safe working conditions of the sex workers.

# REVIEW OF EXISTING LAWS AND POLICIES

## 3.1 Laws and Policies Relating to Sex Work

In Bangladesh, there is no statute that expressly prohibits sex work. Due to its informal nature, sex work is not covered by the labour law. However, it is a fact that a large number of people, mostly women are engaged in the sex profession. It is rare in rural areas but much more common in municipal towns and cities. Due to the rapid growth of urbanization, the situation in the towns and cities has different dimensions.

The internal migration within the country as well as overseas migration from other countries creates demand for the services of sex workers in Bangladesh. The floating sex workers are most disadvantaged among all the commercial sex workers in Bangladesh.



## 3.2 Policies Relating to Sex Workers

“Policies relating to sex workers” refers to the policies which have practical implications on issues relating to sex workers and protection of their human rights. In this regard the National Women Development Policy, HIV/AIDS Policy and National Health Policy are relevant.

The National Women Development Policy, 2011 provides its objectives to:

- Ensure security and safety of women in all areas of state,
- Social and family life; to ensure socio-economic, political, administrative and legal empowerment of women;
- To establish human rights of women;
- To ensure full and equal participation of women in mainstream socioeconomic development;
- To eliminate all forms of abuse of and discrimination to women and female children.

To ensure human rights and fundamental freedom of women the policy also undertakes to eliminate all forms of discriminations to women in recognition of the fact that men and women are all equal in all the areas of human rights and fundamental freedom.

The National Health Policy, 2011 considers the prevention and strengthening monitoring of HIV/AIDS among its major challenges. The policy's plan includes ensuring production, availability and supply of contraceptives and increasing the level of awareness among women regarding HIV/AIDS and STDs. The policy also provides for health check up at the landing ports for the persons returning from foreign countries.

The National Policy on HIV/AIDS and STD while setting its fundamental principle reiterates respect for the human rights norm that no one shall be subjected to arbitrary or unlawful interference with his or her privacy.

The policy admits that women's vulnerability to HIV infection is often related to their status in society, including social and cultural expectations about their sexuality. Many poorer women are forced into selling sex for survival, putting themselves at enormous risk of infection (Policy, p 52).

### 3.3 Laws Relating to or Used against Sex Workers

There is no specific law that regulates or prohibits sex work or prostitution in Bangladesh. However, there are some laws that are relevant for sex work or prostitution or have been used against sex workers for a long time.

## Section of Law

## Comments

Section 290 of the Penal Code, 1860

Whoever commits a public nuisance in any case not otherwise punishable by the code shall be punished with fine which may extend to two hundred taka.

According to the contents of this section, prostitution has not been defined as crime in the Penal Code. Under Section 268 of the same code public nuisance means any illegal act which causes common injury, danger or annoyance to the public which covers adulteration of food, drug, obstacle on way, rash driving, sale of obscene objects, keeping lottery office etc. but it does not refer to prostitution or sex work.

Section 74 of the Dhaka Metropolitan Police (DMP) Ordinance 1976

Any person who in any street or public place or within sight and in such manner as to be seen or heard from any street or public place whether from within any house or building or not

(a) by words, gesture or indecent personal exposure attracts or endeavors to attract attention for purposes of prostitution or

(b) Solicits or molests any person for the purposes of prostitution.

Note: This provision has been incorporated in CMP, RMP, KMP, BMP and SMP Ordinances/Acts

This section is conditional relating to offence for prostitution. If a person doesn't attract attention openly in public place or from houses or buildings for the purpose of prostitution it will not be treated as an offence under this Act. So in the eye of law prostitution is not an offence; it just has to maintain some conditions.

Section 7 of the Suppression of Immoral Traffic Act, 1933

Any person who in any street or public place or within sight and in such manner as to be seen or heard from any street or public place whether from within any house or building or not

(a) by words, gesture or indecent personal exposure attracts or endeavors to attract attention for purposes of prostitution or

(b) solicits or molests any person for the purposes of prostitution.

This law is now repealed by Section 47(1) of the Human Trafficking Deterrence and Suppression Act, 2012.

Section 11 of the Human Trafficking Deterrence and Suppression Act, 2012

This section provides punishment for the offence of trafficking for the purpose of prostitution etc. whether by force or fraud or allurement.

This provision sets punishment for the traffickers. Apparently there is no discriminatory element in this law; and so far, no abuse has been reported.

Except for six metropolitan areas police apply Section 290 of the Penal Code against prostitution, which contains “Whoever commits public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred taka.” From this section it is clear that prostitution has not been defined as an offence in the Penal Code.

On the other hand under Section 268 of the Penal Code public nuisance is explained as follows: “A person is guilty of public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction danger or annoyance to persons who may have occasion to use any public right” which includes spreading infection of diseases, sale of adulterated or noxious food and drug, fouling water of public reservoir, rash driving, obstruction in public way, sale of obscene object, keeping lottery office etc.

According to the Code of the Criminal Procedure (Cr.P.C) police cannot arrest any person for an offence under Section 290 of the Penal Code without the permission of a Magistrate. It is often alleged that the sex workers are kept in the court *hajat* and are not taken before the magistrate.

In practice, sex workers’ sworn affidavit regarding their involvement in profession of their choice sometimes mention prostitution also. It is not her professional license. This is only a declaration about her profession. However, this practice proves that women can choose prostitution as profession and the State has acknowledged that.

The Human Trafficking Deterrence and Suppression Act, 2012 has repealed the Suppression of Immoral Traffic Act, 1933. The Act also provides for punishment of persons involved in trafficking women for the purpose of prostitution; but it does not expressly or by necessary implication prohibit or criminalize sex work.

It is quite clear that the existing laws and policies in Bangladesh are not against sex work or sex workers. The problem lies with the abuse of power and misinterpretation or wrong use of legal provisions. To address this problem the law enforcement agencies should be the primary focus.

However, it is also true that there is no law in favour of sex workers or providing special protection to them. Nevertheless, the existing laws, if properly implemented and at the same time, if it is ensured that the members of law enforcement agencies will not abuse their power and harass or exploit sex workers, the sex workers will be in a much better situation.

# EXISTING SITUATION OF SEX WORKERS IN BANGLADESH

## 4.1 The Socio-Legal Context of Bangladesh

In Bangladesh the society, religion, culture and partially existing law do not allow sex work as profession. As a result, sex workers are excluded and marginalized in many ways in society. Apparently the society is very much intolerant toward prostitution and always considers it against morality and religion but paradoxically it exists in the country.



## 4.2 Findings from the Interviews and FGDs

- They are subjected to torture and harassment by the law enforcement agencies, mainly police;
- They have to share a portion of their income with police and local goons to carry on their work;
- They do not have the minimum security to keep their hard earned money;
- Many of the sex workers joined this profession due to extreme poverty.

Thus it is quite evident that there is a nexus between poverty and gender disparity, which is creating and maintaining such an oppressive condition for women.

Particularly for Bangladesh, it is not about individual choice of the persons involved in sex work; rather it is more about social and economic vulnerability of women that forces them sex work. Once they are involved in sex work, due to the prevailing culture of social stigmatization, they cannot leave the profession, even if they want and fall in an endless loop of exploitation.

## CONCLUSION

Protection of the rights of sex workers is always a delicate issue, considering the social perspective of Bangladesh. Social stigmatization of sex workers is extremely gender biased and in all circumstances, the existing patriarchal structure of the society pushes the sex workers to a more vulnerable situation. There is an invisible chain which pulls her back to the previous position. Therefore, it should be ensured that the sex workers are not abused or harassed by the law enforcement agencies and that they get legal protection and effective legal remedy in case of violation of their rights. The human rights and development organizations have a crucial role to play here. The economic condition of sex workers need to be improved. The human dignity of sex workers should get priority and it should be established that they are entitled to all the legal protections as any citizen of this country can deserve.





CARE Bangladesh

Pragati Insurance Bhaban  
(9th - 13th floor)  
20-21, Kawran Bazar, Dhaka - 1215,  
Bangladesh

MMO: +(880) 2 9140492  
PABX: +(880) 2 9112315, 9119294, 9111508  
Fax: +(880) 2 8114183

[www.carebangladesh.org](http://www.carebangladesh.org)

Email: [info@bd.care.org](mailto:info@bd.care.org)

Editing, Design, Layout & Printing  
[www.paperplanebd.com](http://www.paperplanebd.com)

#### Disclaimer

This publication has been produced with the assistance of the European Union. The contents of this publication are sole responsibility of CARE Bangladesh and can in no way be taken to reflect the views of the European Union.