

The Himalayan

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WHEN SEX BECOMES WORK: Under duress or by choice

On the occasion of International Sex Workers' Day that is observed on June 2, *Shaurya Kshatri* looks at one of the most disadvantaged groups of people, often forced to live outside the law and denied their most basic human rights — sex workers

In February 1996, the Maharashtra Police raided several brothels in Mumbai, then Bombay, rescuing about 500 girls, all under the age of 18. Among them over 200 were from Nepal. Sunita Danuwar was one of them. She was 14 when sold.

Danuwar was drugged and sold into a brothel, the details of which are in her autobiography *Aashu Ko Shakti (Power of Tears)*. For four years she was held captive in a brothel of Bombay; then on February 5, 1996 she along with 12 others in that brothel were released. She had been a prey of sex trafficking.

On the other side of the spectrum is Aasha (name changed on request), 46, a mother of two. Having lost her husband in an accident, she became a sex worker after struggling to raise her children on the meagre wages she earned working in a factory. For about eight years since, she led a double life. Her family believed she worked in an NGO while she was making her living as a sex worker in the Capital.

Misguided conflation: Sex work and trafficking

While Danuwar's case had been that of trafficking, Aasha's story can't be seen along that same vein. "Sex work is not sex trafficking — the two of which are often conflated with one another," explains Danuwar. "Sex work entails a willing engagement in commercial sex, while sex trafficking involves force, coercion, or deceit."

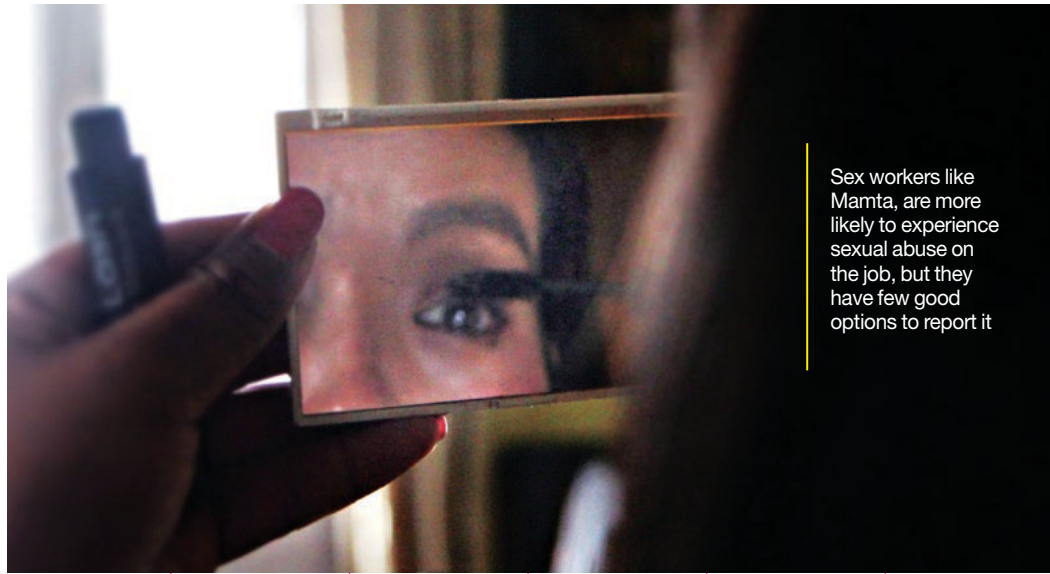
Treating the two as if they were the same, according to Aasha, both ignores the realities of sex work and endangers those engaged in it. Sex workers might engage in this for many reasons, but the key distinction here is that they do it of their own volition.

Brunt of social stigma

People involved in the business of sex, either forcefully or by their own accord, are often seen either as victim and pitied or as a sex worker and demeaned. Danuwar, seen as the former, for being forced into the business, didn't choose to remain one. Today, she is the Executive Director of Shakti Samuha, an NGO for, by, and of trafficking survivors, which she along with 14 other survivors started unofficially in 1996 until it was legally registered in 2000. Just recently she was listed on *Fortune* Magazine's list of World's 50 Greatest Leaders for her work against human trafficking.

Then there are the women who formed Jagriti Mahila Maha Sangh, a federation of female sex workers — of 27 associates spanning 23 districts. Founded by Aasha in 2006 along with six other women, the organisation of sex workers, the only one of its kind in Nepal, rejects the pigeonholing of sex workers in either of the two categories.

"Nobody wants to voluntarily get into this job. It only pans out of necessity," says Aasha, whose daughter is a nurse, while her son is pursu-



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ing his Bachelor's degree. "Regardless of the labels that society tries pinning on me, I am only glad that my children don't have to go down the same route as I. They are educated while I hadn't been."

Work safety

Jagriti has been advocating safe conditions for sex workers, raising awareness on condom usage and perils of HIV, as well as addressing the issues of violence and discrimination facing them. A key goal of sex worker activists, like Bijaya Dhakal, Director at Jagriti, also one of the seven founding members, is not to change the views of people regarding sex workers, but to rather make people aware that sex work continues to be highly prevalent and because it is, to just acknowledge those involved as individuals.

In a report of National Centre for AIDS and STD Control (NCASC), there were about 26,504 female sex workers estimated in 2010. In 2016, that number went up to female sex workers ranging from 43,829 to 54,204. "So, while we know that it's highly apparent, why not try to at least ensure safe conditions for the people in-

cluded?" remarks Dhakal.

But Mamta (name changed on request), a Kathmandu-based sex worker, considers the idea of safety as being far-fetched. "All our troubles are either portrayed in news articles and documentary films as 'sad', degrading consequences of our choices or are simply shrugged off as if to infer that 'we had it all coming,'" Mamta, who is in her early 30s, says. As a single mother, raising two children, Mamta was able to only recently complete her SEE examination — an opportunity she had long been denied by poverty. She is now awaiting her results.

Sex workers like Mamta, are more likely to experience sexual abuse on the job, but they have few good options to report it. If they do report it, they're not treated with the same empathy as other victims and run the risk of being arrested for prostitution.

According to Sujan Pant, Advocate and Assistant Professor of Law, Mid-Western University, those convicted for the rape of sex workers suffered lesser punishment than those charged upon rape of non-sex workers until the Supreme Court released orders to remove any such discrimi-



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natory rulings on May 2, 2002.

Laws that contradict

The question of whether sex work is illegal in Nepal cannot be answered with a simple 'yes' or 'no'. In 2008, the Human Trafficking and Transportation (Control) Act, criminalised prostitution and living off the earnings of prostitution by including it in the definition of human trafficking, "which means it is forbidden to trade brothels, to indulge in trade of humans for forced labour, sexual slavery, or commercial sexual exploitation for the trafficker or others" as per Pant. "However, it can't be inferred that those who have decided to participate in commercial exchange out of their own rational choice are working outside of the law."

Article 17 'Rights to Freedom' in the Constitution of Nepal 2015, states "Freedom to practise any profession, carry on any occupation". Likewise, under 'Rights against Exploitation' in Article 28, it is stated no one shall be subjected to

trafficking. Neither shall one be held in slavery or servitude nor shall anyone be forced to work against his or her will.

"In this regard, the law is silent on sexual exchange between any two consenting individuals, who are of legal age," interprets Pant. Danuwar agrees that those old enough to make decisions can't be wronged for choosing sex as a means to make ends meet, but strongly stresses, "Those below 18 do not have that particular right. They are not sex workers. They should be considered as trafficked."

According to Danuwar, although the law is unclear on those who consciously involve in commercial sexual exchange, running a brothel is and should be unlawful. Section 119 and 120 of the Criminal Code of August 13, 2018 forbids advertising for prostitution and restricts to offer house and premises intentionally for prostitution.

Yet prostitution is an open secret here, which is often turned a blind eye upon. The type of business can be found in many cabin restaurants and massage parlours. "Just a floor

above an unassuming local eatery at Gongabu, two women, one of them a 14-year-old were held captive against their will to work as sex slaves," reports Danuwar referring to an incident some three months ago. They were locked inside their rooms, forced to treat up to 30 clients a day. Somehow, the young girl informed the police of her whereabouts, after which the Metropolitan Police Sector of Gongabu and Shakti Samuha raided the place and rescued them.

In such 'brothels', maximum number of workers are below the age of 18, informs Danuwar. And Shakti Samuha till date has rescued about 1,027 individuals.

... and the problem that ensues

Authorities and laws trying to stop sex slavery and human trafficking often get misapplied to sex workers. "It [police raids] has led to little success identifying trafficked persons but instead have pushed voluntary sex workers more into the shadows," remarks Dhakal. "This has further exposed sex workers to an increased risk of violence and has denied them any protection from law against assault or access to medical and legal services."

Both former and current sex worker, Aasha and Mamta, confirm that sex workers are simply arrested on account of carrying condoms. "If the police find condoms in the hotel room or in the purse, they are simply arrested, no questions asked," claims Aasha.

Working to increase awareness among sex workers to practise safe sex and use condoms to prevent HIV, Family Planning Association of Nepal (FPAN), is also aware of the absurdity of such events where the use of condoms,

which state run organisation like NCASC themselves strongly encourage, are used against sex workers.

"In 2017 FPAN had invited the criminal department of police, policy makers and sex workers to come under one roof in a conference to address sexual rights and the basic health issues pertaining to them," explains Jamuna Sitaula (Parajuli), Senior Programme Officer, Advocacy and Gender Section at FPAN.

Such kind of discussions with the police department because of their highly risky nature have also been carried out by Jagriti, and the result as Dhakal puts it, has been mildly positive. "Many workers, fearing that they might be caught, don't even carry one (condom) making themselves even more prone to HIV and AIDS than they already are," adds Dhakal.

In an email conversation, Dr Tara Nath Pokhrel, Director at NCASC, informs that despite only 0.15 per cent prevalence of HIV in Nepal, combating the risk of HIV in key population or the high-risk demographic comprising of sex workers, their clients and people who inject drugs has been a great challenge.

"Sex workers are always at a higher risk for transmission because of their highly risky sexual behaviours, and they are hard to reach. Because of legal barriers, they do not identify themselves. It is our responsibility to take care of sex workers and their clients to prevent transmission of HIV from public health perspectives," writes Pokhrel.

While Jagriti is working to help the sex workers in Nepal, the organisation is neither looking for sympathy, nor pleading for legalisation. Their objective is simple — to be at least seen and be acknowledged as humans. "To those seeking to eradicate sex work, first you must eradicate poverty, destitution, hunger, inequality, and discrimination," concludes Dhakal.

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