



**EAST WEST UNIVERSITY**

**DISSERTATION**

**ON**

**An Unmet Need for Reproductive Rights for Female Sex  
Workers of Bangladesh: A Call for Action**

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## CONSENT FORM

The dissertation titled “**An Unmet Need for Reproductive Rights for Sex Workers of Bangladesh: A Call for Action**” prepared by: Anika Nawer Joha, ID: 2018-1-66-022 submitted to Nabila Farhin, Lecturer for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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## **DECLARATION**

I, Anika Nawer Joha, hereby declare that this research paper titled “**An Unmet Need for Reproductive Rights for Sex Workers of Bangladesh: A Call for Action**” is an original work and done solely by me and that it has not previously been submitted in a thesis or dissertation to this or any other institution for a degree, certificate, or any other academic credentials. I acknowledge and accept responsibility for adhering to the University's current research ethical standards and carrying out the processes in line with the University's rules and regulations.

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## **Abstract**

All persons, including sex workers, have the right to the entire range of sexual and reproductive health services (SRHR). Nonetheless, sex workers face major SRHR disparities and unmet demands for proper SRHR services at all stages of their sexual and reproductive life. This study highlights the present gaps in access to SRHR services encountered by sex workers in our nation, as well as regulations that potentially safeguard their reproductive rights, to show the complex and subtle barriers that now hamper sex workers' access to SRHR services. Experts advocated for better access to comprehensive, integrated services addressing sex workers' broader SRHR requirements, such as family planning, abortion and pregnancy needs, SRHR screening, hormone treatment, and other gender-affirming services, to support the SRH needs and rights of sex workers. Addressing stigma and discrimination within healthcare settings, removing coercive SRH policies and practices, and allocating appropriate resources to sex worker-led SRH models within the context of sex work decriminalization are all critical steps toward ensuring equitable SRH access for sex workers. Thus, proper legislation regarding SRHR is the main focus of this study. The report also attempts to identify potential improvements that the government may adopt in the future. Adherence to international legal regime rules To that goal, the study examined the efficacy of existing legal frameworks focusing on constitutional law, and concluded with

## Abbreviation

AIDS	Acquired Immunodeficiency Syndrome
AKA	Also Known As
AHRC	Asia Human Rights Commission
BSEHR	Bangladesh Society for Enforcement of human Rights
CEDAW	Convention to Eliminate All Forms of Discrimination Against Women
FSW	Female Sex Worker
HIV	Human Immunodeficiency Virus
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICPD	International Conference on Population and Development
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
LDC	Least Developed Countries
MDG	Millennium Development Goals
NEC	National Economic Council
SDG	Sustainable Development Goal
SRHR	Sexual and Reproductive Health Rights
STD	Sexually Transmitted Disease
SW	Sex Worker
SWN	Sex Workers Network
UFW	Unacceptable Forms of Work

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# **Chapter One**

## **Introduction**

### **1.1 Research Background**

There are no separate and distinct laws or any legislation on sexual and reproductive health rights (SRHRs) in Bangladesh, specifically for women from all sectors of the country, despite the fact that this is the most important of all basic human rights because the ability of women to reproduce infants, the most crucial process for any human's life known as reproduction, ensures the continuation of the human race. Through this statement, the author does not intend to mean that there are no SRHRs at all for any citizen of this state. Instead, the author wants to draw attention to the fact that laws are needed for more seamless enjoyment of the SRHRs, particularly by the marginalized group of women who are frequently ignored, stigmatized, subjected to discrimination, and whose rights have been violated for a long time. SRHRs for women are being ensured in a very brief manner under various existing legislations and so, the Female Sex Workers (FSWs) are clearly lagging behind. In the absence of proper laws, no woman can expect to receive the necessary legal assistance to obtain a fair judgment in the event that any of these rights are violated. Although it is crucial to discuss the adoption and implementation of particular SRHRs laws for all women in our country, with an emphasis on all the underprivileged groups of women, the scope of this study is constrained for institutional purposes.

The author's entire focus is on analyzing the necessity of adopting and implementing particular SRHRs laws for the country's FSWs, a group of women who are largely silenced, ignored, stigmatized, discriminated against, and treated like animals.

However, in a country where SRHRs of female citizens are not rightly protected, there how will anyone think about the most marginalized and most stigmatized section of women in the country- the Female Sex Workers of Bangladesh? In fact, the truth is that the FSWs are never even considered vulnerable or marginalized. Instead, they are considered to be nothing, non-existing, and as if they deserve all the wrongs, violations, and discrimination only because of their line of work, as most people think that the FSWs are involved in such work only for their

physical satisfaction and pleasure. People do not want to accept the fact that not all of them joined this line of work out of their own free will and are happy in this profession. However, those who argue that prostitution and sex work are immoral and should be declared illegal in the country are frequently the same people who visit brothels or hire FSWs for their personal satisfaction. God is the only one who has the authority to judge and condemn individuals for their deeds. As humans, we have no right to judge anyone for their choices in life. We do not have the right to discriminate against and violate the rights of other people solely because of our belief that what certain people do is immoral. However, this is not the reality. The sex workers (SWs), specifically, the FSWs, have to face innumerable and countless wrongs, violations, discrimination, insults, and injustices on a daily basis.

Extreme poverty and a conservative society with several conflicting ideals have created a deadly combination in our country. Since extreme poverty forces many women into sex work, the belief in religion and the criticism of society appear to be failing to compete with poverty. There are already 20 brothels in our nation where many FSWs work day and night.<sup>1</sup> The High Court ruled in favor of prostitution in the BSEHR v. Bangladesh case in 2001, holding that now sex work or prostitution has the legal status of a profession and that all SWs have equal human rights under the constitution and that there should be no discrimination against them.<sup>2</sup> However, yet, FSWs are unable to gain and exercise all of their rights, particularly reproductive rights, which they need the most to survive in their line of work.<sup>3</sup>

## 1.2 Understanding the Research Topic

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<sup>1</sup>QuaziZahangir Hossain, Qazi Azad-uz-zaman, Swapan Kumar Roy, “Lives of Brothel Based Sex Workers in Khulna, Bangladesh” (2015) <<https://www.hrpub.org/download/20151130/IJRH1-19203949.pdf>> accessed 15 July, 2022

<sup>2</sup>Bangladesh Society for the Enforcement of Human Rights (BSEHR) & others vs Government of Bangladesh & others, [2001], 53 DLR (HCD) pg- 1-19

<sup>3</sup> Tasnuva Wahed, Anadil Alam, Salima Sultana, Monjur Rahman, Nazmul Alam, Monika Martens, Ratana Somrongthong, ‘Barriers to sexual and reproductive healthcare services as experienced by female sex workers and service providers in Dhaka city, Bangladesh’ (PLOS ONE, July 10, 2017) <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0182249>> accessed 10 September 2022

Carol Leigh (AKA "the Scarlet Harlot") coined the phrase "sex worker" in the late 1980s.<sup>4</sup> The introduction of the word "sex worker" started a movement that recognizes the job they perform rather than defining them by their position in a negative way. The word "prostitute" was first used as a noun in English in Francis Beaumont's *Woman Hater* (1607), where it was intended as an insult.<sup>5</sup> Since then, various sex workers' rights organizations have fought to replace the term "prostitute" with "sex worker."

Reproductive rights are the most significant category of human rights since they include reproductive health and autonomy.<sup>6</sup> As the most intelligent living creatures on earth, we know what is best for us, and, so, every individual should have the freedom to decide whatever they want with their life and body. SRHRs mean that a person should be able to make their own independent decisions about their bodies and should have full rights in the reproductive healthcare system. The right to life, liberty, personal security, and privacy; the right to sex education and family planning; sexual and reproductive health (SRH) care and information; and nondiscrimination in the allocation of health-care resources, as well as their availability and accessibility, are all examples of SRHRs.<sup>7</sup> It also involves obtaining SRH treatments, including contraception and abortion; deciding if, when, and with whom to marry; and deciding if and how many children a person wants. SRHRs are important for everyone, but they are especially important for FSWs in any country.<sup>8</sup>

To understand the importance of SRHRs for FSWs, we must first understand what sex work is. "Sex work" is defined as "the trade of sexual services, performances, or a product for monetary remuneration, which includes activities involving direct physical contact between buyers and sellers", and a "sex worker" (SW) is someone who engages in sexually explicit behavior for

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<sup>4</sup>DR. Kate Lister, "Sex Worker or Prostitutes? Why Words Matter" (*inews*, October 5, 2017, Updated July 17, 2020) <<https://inews.co.uk/opinion/columnists/sex-workers-prostitutes-words-matter-95447>> accessed 22 July 2022

<sup>5</sup>Ibid

<sup>6</sup>Hootman, T., 'What are Reproductive Rights? - FindLaw.' (*FindLaw*, 10 July 2022) <<https://www.findlaw.com/family/reproductive-rights/what-are-reproductive-rights.html>> accessed 10 September 2022

<sup>7</sup> Dr. Carmel Shalev, "Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women" (1998) <<https://www.un.org/womenwatch/daw/csw/shalev.htm#:~:text=Reproductive%20rights%2C%20according%20to%20the%20ICPD%2C%20also%20include%20the%20right,derived%20from%20the%20Women's%20Convention>> accessed 16 July 2022

<sup>8</sup>'Sexual And Reproductive Health And Rights' (OHCHR, 2022) <<https://www.ohchr.org/en/node/3447/sexual-and-reproductive-health-and-rights>> accessed 11 September 2022.

monetary gain.<sup>9</sup> This is why SRHR matters the most for the FSWs compared to other basic rights.<sup>10</sup>

As previously stated, as Bangladesh lacks separate and distinct legislation concerning SRHRs and female citizens exercise their SRHRs under different provisions of existing laws, most of the time, it becomes difficult for the marginalized sections of women, specifically for the FSWs, to access and exercise their rights, and hence, the author of this study felt the necessity of talking about this issue.

### **1.3 Hypothesis**

It is hypothesized that the enactment and enforcement of rightful and specialized laws concerning SRHR specifically for the FSWs will not only make their lives better but will also keep them from being victimized by society's unfavorable ideas, discrimination, abuse, and violence. Ensuring equal opportunity for all shall pave the road for faster development of the country.

### **1.4 Literature Review**

The General Economics Division (GED) of the Bangladesh Planning Commission's 8th Five Year Plan (July 2020–June 2025), which was authorized by the Government of the People's Republic of Bangladesh, outlines a number of strategies for the growth of the SRHR sector and pertinent laws for women in our nation. The entire five-year plan makes general reference of a few groups of our nation's underprivileged women, but it says nothing in particular regarding FSWs and their rights to SRH. This is a matter of concern for a country whereby sex work as a work is legal but at the same time the SWs are unable to get their deserved rights.

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<sup>9</sup>QuaziZahangir Hossain, Qazi Azad-uz-zaman, Swapan Kumar Roy, “Lives of Brothel Based Sex Workers in Khulna, Bangladesh” (2015) <<https://www.hrpub.org/download/20151130/IJRH1-19203949.pdf>> accessed 15 July, 2022

<sup>10</sup>Sex Workers’ Access To Comprehensive Sexual And Reproductive Health Services' (nswp, 2022) <[https://www.nswp.org/sites/nswp.org/files/bp\\_sws\\_access\\_to\\_comp\\_srh\\_-\\_nswp\\_2018.pdf](https://www.nswp.org/sites/nswp.org/files/bp_sws_access_to_comp_srh_-_nswp_2018.pdf)> accessed 11 September 2022.

## **1.5 Research question**

How far do the laws of Bangladesh ensure the sexual and reproductive health rights of the female sex workers of the country?

## **1.6 Research Scope and Extent**

The FSWs of Bangladesh are the main group of people that have attracted the author's attention since their line of work prevents them from speaking about violence, immorality, and inequity. They suffer every day in front of the law due to their so-called immoral line of work. The study is primarily concerned with the question of enactment and enforcement of specialized laws concerning SRHR for them.

Even though abortion is one of the most significant rights in terms of SRHR, it is still illegal and penalized in our country unless absolutely essential for critical medical reasons, and even then, it can only be done at the doctor's discretion.<sup>11</sup> However, as the issue of abortion leads to a very broad discussion, for academic constraints, the author will not be discussing this issue in this paper.

## **1.7 Research Objectives**

This paper aims to achieve the following goals:

- To highlight that the FSWs of Bangladesh require special attention concerning SRHRs;
- To analyze the need for enactment and enforcement of specialized SRHRs laws for the FSWs;
- To discuss the importance of social recognition of the FSWs and that they have the same rights as any normal female citizen of the state and are fully qualified to receive adequate rights and respect;

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<sup>11</sup> The Penal Code 1860, s 312

- To demonstrate that for the improvement and development of their conditions, social acceptance, legal recognition, enactment and implementation of appropriate laws are a crying need;
- To highlight the need of their specific and emphasized mentions in governmental and non-governmental development projects, planning, commissions and policies.

## **1.8 Research Methodology**

By examining numerous national and international laws, rules, and regulations, ideas, and principles, as well as various internet resources, the information for this doctrinal study was compiled utilizing a qualitative research methodology. The paper has been written after a review of the existing norms and gaps in Bangladeshi law pertaining to the reproductive rights of FSWs. As for primary sources, the author has looked into domestic and international laws, case principles, conventions, and treaties; and as for secondary sources, information has been gathered from a variety of books, papers, journal articles, online journals, command papers, Law Commission Reports, websites, blogs, and newspaper articles.

## **1.9 Limitations**

As aforementioned, the focus of this research is primarily legal and doctrinal in character. The aim was to pinpoint every discrimination concerning SRHR faced by the FSWs of the country, for which a quantitative research approach would have been more feasible, but owing to the personal constraints of the author, this paper was completed using a qualitative research method. Moreover, it is difficult for a woman to enter brothels and conduct in-person interviews with the people who live there. Another drawback of this paper is the absence of relevant resources and a dearth of accurate information. Moreover, time constraints and limited word count have been other significant challenges in completing this paper.

## **1.10 Conclusion**

By underlining the discrimination, the FSWs have to face on a daily basis as well as the barriers in their way of accessing their rights, the author has made a concerted effort to examine the significance of enforcing legislation concerning SRHR for the FSWs of Bangladesh. Relevant international laws, conventions, and treaties have been analyzed, and also Bangladesh's adherence to those laws and the domestic laws, rules, regulations, and case principles has been examined. Also, specific mentions have been made to social activists, community workers and leaders; policy-makers; planning commissions; and NGOs for their noteworthy work in achieving this goal.

## **Chapter Two**

### **Sexual and Reproductive Health Rights of Female Sex**

#### **Workers under International Law**

### **2.1 Introduction**

This chapter's entire focus is to identify international laws; treaties, conventions, covenants, policies, resolutions; treaty bodies; and organizations including the national, international and regional non-governmental organizations (NGOs) that are directly or indirectly linked to establishing SWs rights globally. For the ease of understanding, the roles of the UN organizations, treaties, and bodies are discussed first; the policies adopted by the international NGOs are discussed next; and lastly, a few regional approaches to improving the SWs conditions have been elaborated on shortly.

### **2.2 International Approach to Protect Reproductive Rights**

#### **2.2.2 The Cairo Programme of Action**

The Cairo Programme of Action was the first international treaty to define reproductive rights as a condition of full physical, mental, and social well-being, rather than only the absence of

sickness or infirmity, in all aspects relevant to the reproductive system and its functions and processes.<sup>12</sup>

The International Conference on Population and Development (ICPD) recognized SRHR for women as significant to women's health<sup>13</sup> and SRHR are human right that is necessary for the continued growth and the attainment of the Millennium Development Goals (MDG). Death and disability due to pregnancy, abortion, and delivery, sexually transmitted illnesses, HIV and AIDS, and reproductive tract tumors are all included in the SRHR concerns.<sup>14</sup>

### **2.2.2 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

Apart from civil rights problems, the Convention focuses heavily on a critical concern for women which is reproductive rights. The process of human reproduction starts with marriage. Under the convention, women have the same rights as males in terms of choosing a partner and entering into marriage only with their free and complete permission.<sup>15</sup> The relationship between discrimination and women's reproductive rights is a constant motif throughout the Convention. In article 5, it advocates a proper understanding of maternity as a social function, requiring fully shared responsibility for child-rearing by both men and women.<sup>16</sup> As a result, provisions for maternity protection and child-care are proclaimed as essential rights and incorporated into all areas of the Convention, whether dealing with employment, family law, health care, or education.<sup>17</sup> The Convention also affirms women's right to reproductive choice, and is notable

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<sup>12</sup>Reproductive Rights, International Regulation, JuliaGebhard Diana Trimiño, <https://www.corteidh.or.cr/tablas/r16912.pdf> , accessed 28.06.2022

<sup>13</sup>Dr. Carmel Shalev, 'Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women' (1998)

1(1) EJLT

<<https://www.un.org/womenwatch/daw/csw/shalev.htm#:~:text=Reproductive%20rights%2C%20according%20to%20the%20ICPD%2C%20also%20include%20the%20right,derived%20from%20the%20Women's%20Convention.> > accessed 16 July 2022

<sup>14</sup> Kangas, A., Haider, H., and Fraser, E. (2012). Gender. [Online]. 2nd Ed. E. Browne [2014]. Available from: <https://gsdrc.org/wp-content/uploads/2015/07/gender.pdf>

<sup>15</sup>Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) article 16 (a), (b)

<sup>16</sup>Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) article 05

<sup>17</sup> Ibid



for being the only human rights treaty to mention family planning. States parties are required to include family planning advice in the process of education<sup>18</sup> and to develop family guidelines that guarantee women's rights to decide voluntarily and responsibly on the number and spacing of their children, and to have access to the information, education, and means to enable them to exercise these rigors.<sup>19</sup>

#### **2.2.4 International Covenant on Civil and Political Rights (ICCPR)**

Under the convention, no one shall be subjected to arbitrary or illegal intrusion into his or her private life, family, home, or communications, or to unlawful attacks on his or her honor or reputation.<sup>20</sup> Everyone has a legal right to be protected from such interference or attacks.<sup>21</sup> FSWs are protected under the convention to safely live in their brothels with dignity and no one has the rights to interfere in their private life as their rights are protected under ICCPR where Bangladesh has ratified in 1984.

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

CESCR monitors whether or not states implement the requirements of the ICESCR. The Committee stated in General Comment 22 that 'Member States should take steps to offer total protection to a person involved in that sex industry from all forms of violence, coercion, and discrimination, while also ensuring that all sexual and reproductive healthcare services are fully accessible to them. This suggests that the committee regards the SWs as having rights under the Covenant.<sup>22</sup> Bangladesh recognized that economic, social, and cultural rights could be attained gradually and with enough resources; as a developing economy, Bangladesh could not ensure the

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<sup>18</sup>Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) article 10 (h)

<sup>19</sup>Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) article 16 (e)

<sup>20</sup>International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) article 17 (1)

<sup>21</sup>International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) article 17 (2)

<sup>22</sup><https://www.ohchr.org/en/node/3447/sexual-and-reproductive-health-and-rights?fbclid=IwAR1vs-ZQpxF2ox2vGeKZhj4XC72SfuZXjWonr8VQ2FoEIm6aWp0iKLNxdOc>

effective exercise of such rights without ensuring the requisite long-term finance.<sup>23</sup> However, the delegation stated that specialized norms in many spheres of life, as well as sectoral legislation, ensured the enjoyment of the rights guaranteed by the Covenant.

### **2.2.6 International Labour Organization**

Reproductive rights of the FSWs are facing wide violations as the rights of such workers are not protected under any statutory laws. It is crucial to recognize "sex work" as "work" under the Labour Law of our nation.<sup>24</sup> The International Labour Organization (ILO) and its signatories have started to take "sex work" into account and identify it as "work" and are working to provide suitable working conditions.<sup>25</sup> This falls under the 'Unacceptable Forms of Work' Agenda recognized by ILO.<sup>26</sup> In order to achieve this, it adopted the Fundamental Principles and Rights at Work in 1988,<sup>27</sup> which are based on four universal fundamental principles and rights to work, including the freedom of association and the creation of employment, the right to social security, the freedom from forced labor and child labor, and the freedom from exploitation and discrimination of all forms. These are known as the pillars of 'Decent Work Agenda' adopted by the ILO which are working to achieve the 2030 Agenda of the Sustainable Development Goal.<sup>28</sup>

### **2.2.7 Sustainable Development Goal (SDG)**

Target 3.7 of SDG is about SRHR and it says by 2030 it will try to ensure that all people have access to sexual and reproductive health-care services, including family planning, information, and education, and that reproductive health is integrated into national policies.

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<sup>23</sup>OHCHR. 2022. 'Committee on Economic, Social and Cultural Rights reviews the initial report of Bangladesh'. [online] Available at: <<https://www.ohchr.org/en/press-releases/2018/03/committee-economic-social-and-cultural-rights-reviews-initial-report?LangID=E&NewsID=22840>> [Accessed 11 September 2022].

<sup>24</sup> Jane Pitcher, "Sex work and modes of self-employment in the informal economy: diverse business practices and constraints to effective working", *Social policy and society* 14.1 (2015): 113–123

<sup>25</sup>International Labour Organization, 2015, "Unacceptable forms of work: a global and comparative study" <[https://www.ilo.org/global/publications/WCMS\\_436165/lang--en/index.htm](https://www.ilo.org/global/publications/WCMS_436165/lang--en/index.htm)> accessed 25 July 2022

<sup>26</sup> Ibid

<sup>27</sup> International Labour Organization, "ILO Declaration on Fundamental Principles and Rights at Work" <<https://www.ilo.org/declaration/lang--en/index.htm>> accessed 25 July 2022

<sup>28</sup> International Labour Organization, "Decent Work and the 2030 agenda for sustainable development" <<http://ilo.org/global/topics/sdg-2030/lang--en/index.htm>> accessed 25 July 2022

The Sustainable Development Goals (SDG) Framework is a significant step forward in promoting women's reproductive rights. Under SDG target 5.6, an international development proposal for the first time contains not just objectives on sexual and reproductive health (SRH) services, but also targets on the obstacles and human rights-based components of sexual and reproductive health and reproductive rights.

The Medical Education and Family Welfare Division (MEFWD) leads two indicators linked to universal access to family planning, reproductive and adolescent health, which has significant implications for reaching other indicators such as maternal and child mortality. According to BBS (MICS 2019), the number of women of reproductive age (aged 15-49 years) who have their demand for family planning addressed with modern methods is now 77.4%; MEFWD is working hard to expand to 100% by 2030 to fulfil the criteria of SDG. According to SVRS 2018, the teenage birth rate (aged 10-19 years) per 1,000 mothers in that age range is 74, however MEFWD has taken significant steps to lower it to 50 per 1000 adolescents by 2030.

### **2.2.8 Millennium Development Goal (MDG)**

The story of how the Millennium Development Goals (MDGs) reduced the broad sexual and reproductive health and rights agenda established at the International Conference on Population and Development (ICPD) and the Fourth World Conference on Women (Beijing) to the relatively un-politicized domain of maternal health is now fairly well known. Following breakthroughs made in Vienna in 1993, when women's rights were designated human rights, the women's movement gained tremendous success in promoting a progressive agenda at the ICPD, and then expanded on that wide agenda in Beijing. Despite being largely considered as a "people-centered" document that tried to address issues related to human development and was adopted by 189 UN Member States, the Millennium Declaration made no mention of sexual and reproductive health or rights. The Millennium Development Goals (MDGs), which were developed via a technocratic, top-down method as a guide for implementing the Millennium Declaration, only had one Goal pertaining to sexual and reproductive health and rights, MDG 5, which called for improvement in maternal health.

### **International NGOS**

### **2.2.3 Amnesty International**

Amnesty International's Policy on States' Obligations to Respect, Protect, and Fulfill the Human Rights of SWs was ratified in 2016. The Policy supports for the complete legalization of sex work because it believes that criminalization of the same, presents foreseeable barriers to the realization of the SWs' human rights and undermines their human rights, including their rights to person security, housing, and health.<sup>29</sup> Amnesty International investigated a number of issues that contributed to SWs' human rights violations, including stigma, discrimination, and abusive behavior. It provides numerous significant recommendations for states to guarantee that the rights of SWs are adequately protected. Proposals include forbidding persons from doing sex work solely for financial gain; eliminating abuse towards them; combating stigma and injustices; and protecting sex workers from exploitation, and enabling them to cease sex work when they want to.<sup>30</sup>

### **2.3 Conclusion**

Upholding the SWs' human rights is not as easy as it looks like. A group of people thinks that sex work is a choice and the SWs' human rights should not be violated or they should never be deprived of any of their rights only because of their choice of profession while another group thinks that sex work itself is a violation of human rights.<sup>31</sup> However, international laws do not discriminate any human based on their gender, rather it protects people even from facing discrimination in their own nation. Therefore, international convention and laws are essential for ensuring better SRHR for female sex workers on our county.

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<sup>29</sup>Amnesty International policy on state obligations to respect, protect and fulfill the human rights of sex workers <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

<sup>30</sup> ibid

<sup>31</sup>Cheryl Overs & Kate Hawkins, Can rights stop the wrongs? Exploring the connections between framings of sex workers' rights and sexual and reproductive health, <https://bmcinthealthhumrights.biomedcentral.com/articles/10.1186/1472-698X-11-S3-S6>, accessed 28. 06.2022

## **Chapter 03**

# **The Legal Status of Female sex Workers' Reproductive Health Rights in Bangladesh**

### **3.1 Introduction**

FSWs line of work strongly requires special sexual and reproductive health rights along with laws to ensure those rights as prostitution is a physically demanding job and they are more likely to catch major illnesses like STD, HIV, AIDS as well as gynecological issues, physical injuries, depression, posttraumatic stress disorder and many more. Many FSWs even attempt suicide because of their incurable illnesses and depression. One of the most significant fundamental rights protected by our constitution is the right to health and it is also among the primary duties of the government.<sup>32</sup> More than any other group of women, FSWs need specific and special legislation on SRHR to protect their lives and assure their survival in the line of prostitution work. As worker and as rightful citizen of this country, FSWs basic fundamental rights are yet to be ensured under various laws including our Constitution.

### **3.2 The Constitution of the People's Republic of Bangladesh 1972**

Firstly, Bangladesh is a democratic nation where the Constitution itself guarantees basic human rights, freedoms, and respect for one's own value and dignity.<sup>33</sup> Secondly, FSWs have the right to legal protection under the constitution<sup>34</sup> because every citizen is considered equal before the law<sup>35</sup> and it also declares that no one shall be deprived of life or personal liberty unless in conformity with the law<sup>36</sup> which clearly declares that, FSWs, as citizens, have no less right than any other citizen under the constitution. They cannot be denied their fundamental rights solely because of their controversial profession.<sup>37</sup> Prostitution is a legal profession in our country, and every person has the right to engage in any legitimate occupation, which is a fundamental right

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<sup>32</sup>The Constitution of the People's Republic of Bangladesh 1972, a 18(a)

<sup>33</sup>The Constitution of the People's Republic of Bangladesh 1972, a 11

<sup>34</sup>The Constitution of the People's Republic of Bangladesh 1972, a 31

<sup>35</sup>The Constitution of the People's Republic of Bangladesh 1972, a 27

<sup>36</sup>The Constitution of the People's Republic of Bangladesh 1972, a 32

<sup>37</sup>The Constitution of the People's Republic of Bangladesh, a 40

as well.<sup>38</sup> On the other side, it is the government's primary responsibility to provide employment at a reasonable wage, shelter and medical care to its citizen which the FSWs was not provided with.

In our country where there exists a big group of educated unemployed persons, there what will be the state of the uneducated people? Obviously, they will be suffering a lot due to lack of education and poverty without a question. As a result, FSWs chose prostitution as a source of income as one of the last alternatives. A FSW require competent medical care and reproductive health rights to continue their profession without any hindrance, which they do not have either.

Its proven that, there are no restrictions that can prevent FSWs from claiming and obtaining specific reproductive rights under the constitution that will be reserved for them. It means that the government is obligated to provide every right guaranteed to FSWs as citizens by the constitution, more specifically, medical care and reproductive health rights.<sup>39</sup>

Furthermore, SWs community is an underprivileged sector of our society, to make sure that every backward community get their rights, under the constitution it is stated that, "nothing shall prevent the State from making special provision in favor and for the progress of any backward section of people."<sup>40</sup> So, even if no single basic legislation is made to ensure reproductive rights for the FSWs, it is very much reasonable and possible within the power of the constitution to make special provisions ensuring reproductive rights solely for FSWs to preserve their right to health and right to life so that no one can deny or overlook it. Through this the government can ensure reproductive rights along with other sexual health rights of FSWs.

From the above discussion, it is evident that our Constitution has clearly tried to demotivate and discourage prostitution and sex work and has also directed the government to take appropriate measures in order to prevent prostitution within the state. However, it has never clearly or distinctly declared prostitution and sex work to be illegal or banned.

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<sup>38</sup> Ibid

<sup>39</sup>The Constitution of the People's Republic of Bangladesh 1972, a 18(1)

<sup>40</sup>The Constitution of the People's Republic of Bangladesh, a 28(4)

### **3.2.1 Declaration of Sex Work or Prostitution as Legal: BSEHR VS Bangladesh (2001)**

Based on the above discussion, it is very much reasonable to conclude that the Bangladesh Constitution neither prohibits nor supports or encourages prostitution and sex work. Keeping this in mind and also the status and blight of the SWs of Bangladesh, in the year 2001, the High Court Division declared prostitution to be a legal profession in the state through the judgment of this case.<sup>41</sup> Though the ruling did not clearly and distinctly make the aforesaid declaration, but through interpretation, this became clear to all. This was one step towards the elimination of existing discriminations towards the SWs; their emancipation from all odds and ensuring their basic human and legal rights. However, not all forms of prostitution and sex work got the legality through this ruling. The decision of this case came with directives and guidelines towards the SWs and also towards the local and central administration.

#### **Summary of the Case:**

This case was filed by the Bangladesh Society for Enforcement of human Rights (BSEHR) alongside many other non-profit voluntary organizations including the Bangladesh National Women's Lawyers Association, Bangladesh Manobadhikar Shangbadik Forum, Ain-O-Shalish Kendra as per the regulations of UN ECOSOC which are known to represent 54 other such organizations which are working in the state to develop the condition and fate and to ensure the human and legal rights of the vulnerable class of people in protest of the unlawful and unconstitutional raid, arrest, eviction and abuse of the rightful residents of Nimtali and Tanbazar brothels of Naryangonj in the early hours of 23<sup>rd</sup> July, 1999 by the District Administration and the police of Naryangonj together and their forced transfer to Vagrant Home, Kashimpur.<sup>42</sup> The petitioner's claim was that the act done by the local administration in the name of rehabilitation had occurred without due process of law and thus should be declared unconstitutional, illegal and thus void.<sup>43</sup> The High Court Division decided the case in their favor upholding the rights of all the SWs within the state through the following directives-

#### **Directives of the case:**

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<sup>41</sup> Bangladesh Society for the Enforcement of Human Rights (BSEHR) & others vs Government of Bangladesh & others, [2001], 53 DLR (HCD) pg- 1-19

<sup>42</sup> Ibid

<sup>43</sup> Ibid

- A person who voluntarily wishes to work as a sex worker must be above the age of 18 and register his or her name with the local administration and provide an affidavit confirming his or her free consent and commitment to work within the brothel under which he or she is about to be registered.<sup>44</sup>
- This way, the local administration under which a prostitute or a SW is registered is now obligated to provide every type of protection to that prostitute in the absence of any prohibitory rule.<sup>45</sup>
- In addition, registered SWs have the right to sue if their rights are violated by any sector of the administration.<sup>46</sup>
- In accordance with Constitution Articles 11, 31, and 32, it was strictly observed that no one has the right to violate the rightful rights of the SWs because they are citizens of this very state like any other normal citizen and thus stand on the same footing as everyone else and are entitled to all their rights and to be treated with respect and dignity.<sup>47</sup>
- They have the right to life, livelihood, work, residence, health, equality, and equal protection of the law; right to privacy, safety and security; freedom of movement, choice, speech, and the right to be treated with respect and dignity like every other normal citizen of the country protected under the Constitution.<sup>48</sup>
- They cannot be evicted from their rightful residence, even for the sake of rehabilitation. Furthermore, the rehabilitation scheme must not violate any of their legal rights, human respect, or dignity, and work prospects must be offered for them prior to rehabilitation.<sup>49</sup>
- They cannot be arrested illegally and without any strong evidence for human trafficking or for any other frivolous case or they cannot be forcedly declared to be vagrants if they are only seen to be roaming around in the streets.<sup>50</sup>

Under the above-mentioned rules, prostitution and sex work got the legal status as a profession in our state. That is, not all forms of sex work have been declared to be legal. Street and hotel-based sex work, unregistered brothels, child prostitution are totally illegal in the state and are

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<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Ibid



criminalized and penalized under different statutory laws. However, this is a landmark case for the beginning of a revolution. With this the SWs of Bangladesh also became much more aware about their rights and started to talk and work towards them. It is worth mentioning here that despite the fact that sex work is now legal as a work yet than the SWs' rights are not ensured and they are still not protected. They have to face discrimination in every sector of life owing to their profession. As the focus of this paper is only on reproductive rights of the FSWs, so, let us just stick to this sector. With regard to FSWs SRHR in Bangladesh, it is notable here that there are no separate and distinctive laws to this end and the existing laws are incomplete, unworthy and incapable of ensuring SRHR specifically. Even in the development projects, planning and policies of governmental, non-governmental and private sectors, there are neither any specific mentions of them nor are their rights or the need for realizing their rights is highlighted anywhere.

### **3.3 The Bangladesh Labour Act 2006**

The FSWs are not included as any form of worker or laborer under Bangladesh's sole law, the Bangladesh Labour Act 2006, which aims to safeguard all employees, workers, laborers and works to uphold all of their rights. Consequently, they are not given any benefits under the statutory law. Female employees who are recognized under the Act are entitled to a "maternity benefit," which is money granted to a female worker who is on leave due to pregnancy. On the other hand, FSWs work in a brothel under the control of a sardarni, rather than in a commercial or industrial business, for which they receive no maternity benefits or leave. They only get leave when she cannot get laid with any customer due of her delivery. However, a pregnant FSW has to bear her own expenses to deliver her child. The sardarni does not pay the cost of her delivery or medication.

### **3.4 8<sup>th</sup> Five Year Plan (8FYP)**

The Bangladesh Planning Commission's General Economics Division (GED) prepared the Eighth Five Year Plan (July 2020-June 2025) as the first in a series of 04 Five Year Plans to complete the agenda of achieving the social and economic transformation visualized in the

second "Perspective Plan of Bangladesh 2021-2041." The eighth Five Year Plan would also be useful in achieving the Sustainable Development Goals (SDGs), as well as fulfilling the Bangladesh Delta Plan (BDP)-2100 for a smooth transition following Least Developed Countries (LDC) graduation. The National Economic Council (NEC) approved the eighth Five Year Plan (July 2020-June 2025) on December 29, 2020, which will aid in the execution of the current government's political, social, and economic objectives. The plan emphasized appropriate policies and institutions, as well as development measures for increasing prosperity, encouraging inclusion, and eliminating poverty and inequality.<sup>51</sup>

To develop the health sector of the country and to achieve the goals, sector wide approaches (SWAp) has been taken by the govt. and currently the 4th SWAp broadly known as Health, Population and Nutrition Sector Program (4th HPNSP) is working and has achieved significant success in ensuring development of the health sector of the country. Its mission is to create conditions that allow the people of Bangladesh to achieve and maintain the best possible level of health. Under two key components, the purpose is to promote quality and equitable health care and nutrition services for all citizens of this state by enhancing access to and utilization of health rights and health care services. The first component is to improve health services such as maternity and child health and nutrition, family planning, reproductive health, adolescent health, non-communicable diseases, tuberculosis (TB), and so on, as well as to support the service delivery system, which includes basic health care. The second component focuses on health system strengthening, such as governance and human resources.<sup>52</sup>

Therefore, it is now very clear that the govt. of our country has plans and policies for ensuring female reproductive rights and in all these, the SWs of this region are absolutely included as they are the rightful citizens of the state. Only due to a profession which is considered to be a disgrace to the society and state, the SWs cannot be said to non-citizens.<sup>53</sup>

Overall, progress toward better health outcomes has been made. Some landmark achievements in enhancing HPN service delivery in Bangladesh include the formulation and implementation of national health, nutrition, and population policies, as well as maternity, neonatal, and child health

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<sup>51</sup> 8<sup>th</sup> 5YP [July 2020-June 2025] (GED), Bangladesh Planning Commission, Government of the People's Republic of Bangladesh

<sup>52</sup> Ibid

<sup>53</sup> Ibid

plans. The provision of community-based health care services aided in expanding disadvantaged women's access to health care. It is significant that the Ministry of Health and Family Welfare (MoHFW) has strengthened health Management Information System (MIS) through digitalization and has fiduciary capacity. Furthermore, improvements in procurement, budget planning, sector coordination and management, fund absorption capacity, monitoring, and supportive development of overall socio-economic conditions have contributed to reductions in neonatal mortality rate, fertility rate, malnutrition, stunting, under-weight, and so on, and have resulted in an increase in life expectancy at birth, laying the groundwork for a population with better health and a longer life expectancy in a developed society. There has also been significant recruitment of doctors, nurses, midwives, field level health and family planning workers, and other professionals, with vacancy rates falling to below 15% in 2018 from above 20% in 2011.<sup>54</sup>

In March 2017, the government approved the 4th Health, Population, and Nutrition Sector Programme (4th HPNSP) for implementation from January 2017 to June 2022 at a cost of USD 14.7 billion, 84% of which will be funded by the government's own resources. 19 of the 29 Operational Plans (OP) under the current 4th HPNSP fall under the HSD in the areas of hospital services management; community-based health and nutrition services; maternal, neonatal, child, and adolescent health care; nutrition service delivery; communicable and non-communicable disease control; HR development; planning, monitoring, and sector management; HIS and e-Health; health education and promotion of lifestyle changes; procurement, storage, and supply. In addition, 38 distinct initiatives are being executed.<sup>55</sup>

So, on one hand, where there are no specific and separate statutory provisions for ensuring reproductive rights of the citizens of Bangladesh, there it is now evident from the above discussions that the govt. of Bangladesh is working hard to ensure those rights for all through this five-year plan. Although the whole plan does not specifically and distinctly mention about the FSWs, they are rightly included as they are the rightful citizens of our country. However, steps should have been taken to distinctly mention them.

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<sup>54</sup> Ibid

<sup>55</sup> Ibid

### 3.5 Birth Control

Contraceptive pills are the most convenient and cost-effective strategy for poor FSWs to avoid pregnancy thus it falls under the reproductive rights. It is used almost regularly by FSWs of all ages. As reproductive right, women must have the freedom to choose whether or not she will use contraceptive tablets to prevent conception but for FSWs it is more than a right because they use it without a choice for their profession. FSWs our country primarily uses the oral contraceptive pill, a hormonal method of avoiding pregnancy. Contraceptive pills have many side effects that vary from person to person. Some major side effects are vaginal bleeding between menstrual cycles, missed period, strong headaches, nausea, breast tenderness, decreased libido, vaginal discharge and severe abdominal pain, etc.<sup>56</sup> It is available in every pharmacy and even in the normal shop inside the brothels. It is legal for anyone to use contraceptive pills but not without direction of a professional doctor.

### 3.6 Abortion and Pregnancy

Due to their reproductive age, lack of bargaining power for condom usage, and the large number of customers they entertain on a regular basis, FSWs are at significant risk of becoming pregnant more than once a year.<sup>57</sup> For FSWs, abortion is one of the most crucial reproductive rights. Even if they use birth control pills and emergency contraception tablets, when they conceive a child, abortion is the final alternative for getting rid of the child. When I need and when I do not need a child of my own is the most essential reproductive right a woman has, and it is also a question of life and liberty. Usually, FSWs conceive a illegitimate child and chooses abortion to continue their line of work without interruption willingly, but if she wishes to become a mother of that illegitimate child which is her reproductive right, the sardarni under whom the FSWs work refuses to allow them to have that child for business reasons. A child is a responsibility, and the mother stays in a vulnerable physical state for an extended period of time due to the pregnancy, which hinders the business and costs a lot of money to the sardarni. Many FSWs face the sad

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<sup>56</sup>Lori Smith, 'Birth Control Pill: Side Effects, Risks, Alternatives, And the Shot' (*Medicalnewstoday.com*, 2022) <<https://www.medicalnewstoday.com/articles/290196#risks>> accessed 25 August 2022.

<sup>57</sup>Tasnuva Wahed and others, 'Sexual and Reproductive Health Behaviors of Female Sex Workers in Dhaka, Bangladesh' (National Library of Medicine, 2022) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5378344/#pone.0174540.ref007>> accessed 25 August 2022.

repercussions of maternal mortality, and the rate and danger increase when multiple abortions are done.

Abortion should be made 100 percent safe, easy, free of charge, and a freedom of choice for FSWs without any conditions. However, reproductive rights like abortion is unlawful in Bangladesh under the Penal Code 1860, and only permitted when abortion is needed to save a woman's life.<sup>58</sup> Although, menstrual regulation (MR) is permitted. Therefore, the legislation of abortion should change if not for all the women than only for FSW alone as they need it most to live.

**3.7 Family Planning:** While abortion is the final resort for avoiding motherhood, the ideal option is to undergo family planning. Family planning is defined as "individuals' and couples' capacity to predict and achieve their desired number of children, as well as the spacing and timing of their births." Simply said, family planning is managing pregnancy and it is an important reproductive right for both women and men. Many FSWs use this operation as a permanent safety net if they never wish to marry or have any more children. Long-term temporary family planning is also available, allowing a woman to avoid pregnancy for a period of 12 months.

### 3.8 Loopholes

Activists, advocating for FSWs' rights in Bangladesh, claim that the FSWs are the most marginalized population, with no access to fundamental human rights.<sup>59</sup> "The public's bad perception of SWs grievously humiliates them and makes medical care impossible for them,"

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<sup>58</sup>Crouthamel, B., Pearson, E., Tilford, S., Hurst, S., Paul, D., Aqtar, F., Silverman, J. and Averbach, S., 2021. Out-of-clinic and self-managed abortion in Bangladesh: menstrual regulation provider perspectives. *Reproductive Health*, [online] 18(1). Available at: < <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01123-w#citeas> > accessed 14 September 2022

<sup>59</sup>Md. Kamrul Hasan , Afrose Jahan Chaity, "Still no rights for sex workers", DhakaTribune (Dhaka, 02.03.2017, updated: 04.03.2017) <<https://archive.dhakatribune.com/bangladesh/law-rights/2017/03/02/np-rights-sex-workers>> accessed 30 July 2022

stated SWN Secretary.<sup>60</sup>"And the worst thing is that there is no designated individual or government official in charge of ensuring that SWs are given their basic rights," she continued.<sup>61</sup>

### 3.9 Conclusion

We should first treat FSWs as regular human beings, because we see them as SWs and not as normal human beings. 'Prostitute' is an occupational term similar to doctor, whereas we use the term 'prostitute' as slang. In fact, now 'prostitute' can be written as an occupation in a voter identity card in Bangladesh.<sup>62</sup> However, we, the inhabitants of contemporary civilization, are unconcerned with their survival because they are still frequently viewed as filth in our culture. Even a Rickshaw Puller, who receives no respect from anyone in society, disrespects prostitutes. So, if we cannot regard FSWs to be humans, how can we assure any rights for them? So, they need proper respect at first from the society and then all the rights as well as normal citizen.

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<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup>'Sex Workers' Access To Comprehensive Sexual And Reproductive Health Services' (*nswp*, 2022) < [https://www.nswp.org/sites/nswp.org/files/bp\\_sws\\_access\\_to\\_comp\\_srh\\_-\\_nswp\\_2018.pdf](https://www.nswp.org/sites/nswp.org/files/bp_sws_access_to_comp_srh_-_nswp_2018.pdf) > accessed 11 September 2022

## Chapter 04

### Challenges faced in Bangladesh by the Sex Workers in accessing their Right to Reproduction

#### 4.1 Introduction

Most people consider prostitution to be an unethical work, and some people don't even think of them as normal human beings. They are given very minimal rights because of society's conservative perspective. They are so disregarded that it is possible to say they do not exist. They live in the brothel and avoid going out in public because of the hatred. To live within the brothel and continue their line of work, they need sexual health rights, particularly reproductive rights to survive in prostitution work. Every day, FSWs encounter several problems. For example, they live in an unsanitary atmosphere where a normal person cannot live a healthy life. They are not welcome in public places or gatherings because of their line of work. They are treated as if they are some kind of social disease which must stay confined within a brothel. As a result, they are stuck in one place for all eternity. The brothel is so cramped that almost five girls aged 12 to 14 share a room that is only divided by old tattered drapes.<sup>63</sup> There are many challenges and sufferings of FSWs in our country that are yet to be solved.

#### 4.2 Challenges in safeguarding reproductive rights

**4.2.1 Lack of Law Enforcement:** Ironically, all the wonderful rules which were enacted to protect and uphold the rights of the FSWs as normal human beings are only found to be lying in written documents. No one respects the law, and no one upholds the law. The health of those who engage in sexual work is seriously threatened. Many SWs are affected by HIV. According to the national SWs program, 60% of the female SWs who engaged in prostitution were HIV positive. Compared to women who are not prostitutes, SWs have a four times higher risk of HIV infection. They are more prone to use addictive drugs and engage in unprotected intercourse to

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<sup>63</sup>Corinne Redfern, 'The Living Hell Of Young Girls Enslaved In Bangladesh's Brothels' (*the Guardian*, 2022) <<https://www.theguardian.com/global-development/2019/jul/06/living-hell-of-bangladesh-brothels-sex-trafficking>> accessed 25 August 2022.

satisfy their clients. Ultimately the risk of infected with HIV increases. SWs use or are forced to use the steroid medication dexamethasone to acquire weight and improve their appearance. Sexually transmitted infections had been reported by 46% of the SWs. The continuation of providing sexual services makes SWs physiologically vulnerable, and almost all of them have or had miscarriages. Sex industry also contributes to increased societal violence against women. Physical assault, verbal abuse, murder, forced abortion, rape, humiliation, and social rejection are all significant dangers for SWs. According to a report on the health of child SWs, 57% of SWs had faced violence or abuse from their clients. A study of violence against prostitute women discovered that 68% had been raped. According to a research, SWs are 60 to 120 times more likely to be murdered or murdered after rape compared to the other normal girls and women.<sup>64</sup> Human trafficking is also an outcome of sex work. It is easier for traffickers to recruit SWs for trafficking. We have a plethora of laws. What is required is the proper implementation of these laws.<sup>65</sup>

**4.2.2 Lack of law Enforcing Authority:** According to the President of the Sex Workers Network (SWN), the majority of government officials are unwilling to cooperate with sex workers to protect their rights because of the stigma that society has placed on them.<sup>66</sup> Even the National Human Rights Commission (NHRC) lacks a subcommittee that can keep track on sex workers' rights.<sup>67</sup> The absence of rights, security, and access to justice, according to a number of brothel owners, forces sex workers to live in constant fear of being attacked. Hashi Begum, general secretary of the Nari Mukti Sangha, stated: "Brothel sex workers occasionally leave the premises with clients. When clients' requests were turned down, these individuals assaulted the workers severely. Often, sex workers have also been raped without getting payment."<sup>68</sup> The sex workers are made fun of when they ask the police for help. How a sex worker could be raped is

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<sup>64</sup>C Gabrielle Salfati and Marina Sorochinski, 'A New Approach For Different & Linking Series Of Sex Worker Homicide And Sexual Assaults' (SageJournals, 2022)  
<<https://journals.sagepub.com/doi/abs/10.1177/0306624X19839279>> accessed 25 August 2022.

<sup>65</sup> ibid

<sup>66</sup>MD. Kamrul Hasan, Afrose Jahan Chaity, 'Still no rights for sex workers' (*DhakaTribune*, 2<sup>nd</sup>Mrch 2017)  
<<https://archive.dhakatribune.com/bangladesh/law-rights/2017/03/02/np-rights-sex-workers>> accessed 03 September 2022

<sup>67</sup> Ibid

<sup>68</sup> ibid



the question to most people”.<sup>69</sup>It is an open fact, that the competent authority who has the ability to significantly improve the lives of FSWs does little to almost nothing to help them.

**4.2.3 Negative outlook of the Society:** There are a lot of female FSWs; they are not a small group of people. They must be treated like regular people, not like the animals that society treats them. It is only because they get sexually involved with anyone for money.

**4.2.4 Lack of Sex Education and Awareness:** Most FSWs are illiterate and even lack the most basic knowledge of their own human rights and how to claim and defend those rights if they are violated. To exercise reproductive right, FSWs must become educated and aware of what the right entails, what they can do with it, and what they can do if that right is violated. Sex education is the best preferable approach to make people aware of their reproductive rights. Since reproductive rights are linked to sexual intercourse, they are considered private, and no one teaches a teenager about his or her reproductive rights in our conservative society. Many teenage girls have no understanding how to use protection during sexual intercourse, how to avoid being pregnant, or what to do after becoming pregnant. When a young girl with no understanding of reproductive rights or sexual issues becomes pregnant, she goes insane as she has no idea what to do and makes terrible decisions with her life without knowing the implications. As a result, free sex education for adult and teenage FSWs should be guaranteed because it would be a naive move to ensure reproductive rights for FSWs without first explaining what they are and what they can do with them.<sup>70</sup>

**4.2.5 Insufficient Earnings:** The FSWs get as low as \$2 (190 Taka) each from the 3,000 male clients that visits Daulatdia frequently. The majority of these regular clients are truck drivers from all across the country who stop at the Daulatdia ferry-ghat for rest. As a result, even the customers of the Daulatdia brothel come from the underdeveloped and destitute neighborhood. That is why FSWs must share beds with as many customers as possible in order to make ends meet with their minimal salaries. After paying the madam's salary, housing rent, electricity bill, and cosmetics costs, they left her with such little money that she sometimes cannot eat three times a day.

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<sup>69</sup> Ibid

<sup>70</sup>Sex Workers' Access To Comprehensive Sexual And Reproductive Health Services' (*nswp*, 2022) <[https://www.nswp.org/sites/nswp.org/files/bp\\_sws\\_access\\_to\\_comp\\_srh\\_-\\_nswp\\_2018.pdf](https://www.nswp.org/sites/nswp.org/files/bp_sws_access_to_comp_srh_-_nswp_2018.pdf)> accessed 11 September 2022.

**4.2.6 Bribe and Commission:** FSWs across the world confront a variety of impediments to justice, both as victims of crime and as suspects. In our society majority SWs are denied the privileges and protections that is granted to other employees of different sectors. Brothels are not maintained by the government and thus are controlled by powerful persons with the assistance and protection of local political leaders. The owner of the brothel and the madams who employ minor and bonded FSWs receive the majority of their earnings. Furthermore, police frequently violate SWs' rights to equal protection under the law and collect commission from FSWs and madams in order to allow them to work in brothels though they need no permission from the police. It is a shame that, poor FSWs' wages are being drained by those who were meant to safeguard them from exploitation.

**4.2.7 Increasing Newborns in the Brothel:** According to experts, there are approximately 500 children within the brothel, 300 of them are under the age of six. Many of Daulatdia's FSWs have given birth there because they lack basic reproductive rights that they have the free will to decide whether they want the child or not. More than 20,000 children are born and reared in Bangladesh's brothel districts, according to an Asia Human Rights Commission (AHRC) study, with the bulk of these children entering the prostitution business before the age of 12. Authorities frequently disregard the minimum age of 18; most of the time, the age of these adolescent ladies is concealed by false age reports. As a result, they give birth while not knowing what their reproductive rights are.

**4.2.8 Unhygienic and Congested Environment:** Even the largest brothel in the world, Pascha in Germany, does not have as many FSWs as the Daulatdia brothel. The 12-acre region, which resembles an overcrowded ghetto with densely packed walkways lined with corrugated iron shacks, small shops, and exposed sewers, is home to almost 2,000 FSWs and is the largest brothel in our country even after that.

### 4.3 Conclusion

FSWs can make responsible decisions about their lives only when they have effective SRHR which includes access to safe, hygienic, reasonably priced, and effective birth control options.<sup>71</sup>

Family planning information and services can help women avoid unwanted or closely spaced deliveries, which can enhance mother and newborn health.<sup>72</sup>

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<sup>71</sup> Dr. Carmel Shalev, “Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women” (1998)

<https://www.un.org/womenwatch/daw/csw/shalev.htm#:~:text=Reproductive%20rights%2C%20according%20to%20the%20ICPD%2C%20also%20include%20the%20right,derived%20from%20the%20Women's%20Convention>  
accessed 16 July 2022

<sup>72</sup> Ibid

# **Chapter Five**

## **Conclusion**

### **5.1 Introduction**

We must understand, a woman in our country never chooses prostitution as a career by free will. Almost all of them turn to SWs as a result of their poverty, and a large number of girls from different village were tricked into being sold to brothels by promising them work. Prostitution, however, is a one-way street; therefore, even if a sex worker wants to live a regular life and give up prostitution forever, she cannot do so because once a woman becomes a prostitute, she is forever stigmatized by our society as a terrible, characterless woman.

### **5.2 Findings**

FSWs are solely at risk as a result of their work. Prostitution is not even a recognized legal profession under the statutory law of Bangladesh as it is not mentioned in anywhere. Due to the lack of standards or norms under which their work should be maintained and what reproductive rights they can exercise, it makes the FSWs' work more vulnerable to exploitation. A woman can enter prostitution if she is above the age of 18 by signing an affidavit concerning her free consent with the local administration whereby, she becomes registered as a SW under a registered brothel. The local authority, thereby, becomes obligated to protect that SW. This rule got established through the case- BSEHR VS Bangladesh. Although her work entirely depends on her body, no mention has been made of the subsequent legal procedures, including her minimum wage or labor rates or, more significantly, her right to reproductive health. If there is no baseline or initial requirement for a right, it is impossible to demonstrate a violation of that right.

Adolescent female for their age and female SWs for their profession are more vulnerable to difficulties during pregnancies. Since FSWs must have sexual encounters everyday—and we don't just mean once with the same person, but multiple times daily with various people, therefore, there is no doubt that they are most at risk of getting HIV, STDs, and AIDS. SRHR can significantly lower their chances of contracting HIV, STDs, and AIDS. Although these can

be easily avoided by using a condom during sexual activity, however, this is not always the case for the FSWs because many clients refuse to use them despite the fact that condoms are reasonably priced and can be purchased from any pharmacy for a reasonable price, endangering not only the sex worker's life but also his own. The majority of these clients eventually coerces or entices the ladies to have unprotected intercourse and also offer them more money than usual for not using condoms. As a result, the FSWs must regularly use contraceptive pills or injections, endangering their own lives. However, contraceptive pills are 99 percent successful when used accurately, which entails taking the pill at roughly the same time each day and without missing a dose. Most women take the pill in this manner, and it is 91 percent successful. Furthermore, in order to maintain proper time and dosage, as well as to receive proper response from taking the medicine, a woman should consult with an expert gynecologist prior to actually taking any contraceptive pills/injections. However, in reality as the majority of FSWs in our country are uneducated, they do not consult with any doctor before taking the pills, and also do not understand the importance of taking the pills properly. Therefore, the failure rate for both combination of oral contraceptives and progestin-only tablets (commonly known as the mini pill) is somewhere around 9 percent. Many FSWs forget to start a fresh box of contraceptives or accidentally skip a dosage. When this occurs, the likelihood of an unintended pregnancy increases. This is how the number of newborns is increasing year after year because of unprotected sexual intercourse. When an FSW becomes pregnant, she is left with two options: abortion or adding to the burden by carrying a child without a father.

The Constitution of the People's Republic of Bangladesh has instructed the government to take all necessary steps to prevent prostitution in the state<sup>73</sup> but, despite having full authority, has never declared it to be illegal or banned, and so, no other legislation has also banned or criminalized prostitution. The Bangladesh Labour Act, 2006 does not define sex work and has not included the SWs under the definition of worker stated in the Act.<sup>74</sup> Although hotel and street-based sex work and child prostitution are banned and penalized under different provisions of existing laws for valid reasons, sex work is now a legal profession within the territory as per

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<sup>73</sup> The Constitution of the People's Republic of Bangladesh 1972, a 18(2)

<sup>74</sup> The Bangladesh Labour Act 2006, s 2(Lxv)

the rulings and directives of the High Court Division passed in the year 2001<sup>75</sup>. That is, upon the fulfillment of certain conditions, prostitution or sex work is permitted in our country.<sup>76</sup> However, despite having full capacity, why our constitution has not banned it in the first place is a legitimate question to ask. There must have been some vital reasons behind it. Clearly, our Constitution has established that what the SWs do for a living is not legally a crime and has expressed that all the SWs have the right to respect, dignity, recognition, security, privacy, life, livelihood, health, and every other basic right like all other normal citizens of the country. So, as prostitution now has legality as a work, it is the duty of the government to ensure all of their rights.

### **5. 3 Recommendation**

- 1.The government should develop an online database to compile exact listings of all registered SWs, and each SW should be issued a special "Professional Identity Card."
- 2.. Contraceptive pills, condoms, and other birth control medicine components should be made as cheap as possible.
3. In every brothel, there should be a medical clinic with at least one certified female gynecologist and one certified female nurse.
4. Abortion should be legalized without any restrictions for FSWs, but only after consultation with a gynecologist.
5. Necessary steps should be taken by the government to make all the brothel registered to continue their prostitution business.
6. There should a government official whose duty shall be;
  - To supervise the activity of the brothel and so-called madams under whom the prostitution work

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<sup>75</sup>Bangladesh Society for the Enforcement of Human Rights (BSEHR) & others vs Government of Bangladesh & others [2001] 53 DLR (HCD) 1-19

<sup>76</sup> Ibid

- To supervise human trafficking activity
- to supervise the activity of the Police force
- To supervise political or criminal exploitation and take necessary legal steps.

6. A full-fledged free medical camp should be held twice a year in each brothel.

7. Necessary steps should be taken to turn all the street-based SWs into registered SWs and put them into brothels.

8. Government should initiate technical training program for Adolescent FSWs so that they can learn and move on from prostitution to something that is beneficial for them as well for the nation.

9. Adolescent FSWs and minor children of FSWs living in brothels should be educated for free so that their offspring do not have to join the prostitution business like their mother when they grow up.

10. Regular health checkups to detect HIV and AIDS as this disease are incurable. Prevention is only option against HIV and AIDS.

#### **5.4 Conclusion**

There is no legislation that provides reproductive rights to FSWS in our country. Though, there are some provisions that provides few SRHR to FSWs but that is not sufficient for them because all the policy makers and planning commission in there FYP stated a numerous number of schemes about SRHR but as marginalized group there are no special or distinct plan for FSWs. All the plans are generalized for all women. Though, it is a better approach to not discriminate between prostitutes and other group of women.

It is obvious that FSWs are not only selling their physiques and modesty to earn a living, but they are also putting their lives in danger. We can only give FSWs hope of staying safe and making their own reproductive health decisions if we provide proper reproductive health rights and make them legally protected under the statutory law. At the end, we must respect them and look at them as humans and not prostitutes.

## **Bibliography**

### **Primary Source**

#### **Legislation**

1. Constitution of the People's Republic of Bangladesh, 1972
2. Bangladesh Labour Act 2006
3. The Penal Code 1860

### **Secondary Source**

#### **International Treaties**

1. Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) article 16 (a), (b)
2. Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) article 05
3. Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) article 10 (h)
4. Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) article 16 (e)
5. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) article 17 (1)
6. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) article 17 (2)

#### **Case Law**

1. *Bangladesh Society for the Enforcement of Human Rights (BSEHR) & others vs Government of Bangladesh & others*, [2001], 53 DLR (HCD) pg- 1-19

#### **Newspaper Article:**

1. DR. Kate Lister, "Sex Worker or Prostitutes? Why Words Matter" (*inews*, October 5, 2017, Updated July 17, 2020) < <https://inews.co.uk/opinion/columnists/sex-workers-prostitutes-words-matter-95447> > accessed 22 July 2022
2. Cheryl Overs & Kate Hawkins, Can rights stop the wrongs? Exploring the connections



between framings of sex workers' rights and sexual and reproductive health <  
<https://bmcinthealthhumrights.biomedcentral.com/articles/10.1186/1472-698X-11-S3-S6> >  
accessed 28. 06.2022

3. MD. Kamrul Hasan, Afrose Jahan Chaity, 'Still no rights for sex workers' (*DhakaTribune*,  
2<sup>nd</sup>Mrch 2017) < <https://archive.dhakatribune.com/bangladesh/law-rights/2017/03/02/np-rights-sex-workers> > accessed 03 September 2022

4. Corinne Redfern, 'The Living Hell Of Young Girls Enslaved In Bangladesh's Brothels' (*the Guardian*, 2022) < <https://www.theguardian.com/global-development/2019/jul/06/living-hell-of-bangladesh-brothels-sex-trafficking> > accessed 25 August 2022.

### **Journal Article/Online Journal**

1. Quazi Zahangir Hossain, Qazi Azad-uz-zaman, Swapan Kumar Roy, "Lives of Brothel Based Sex Workers in Khulna, Bangladesh" (2015) <

<https://www.hrpub.org/download/20151130/IJRH1-19203949.pdf> > accessed 15 July, 2022

2. Tasnuva Wahed, Anadil Alam, Salima Sultana, Monjur Rahman, Nazmul Alam, Monika Martens, Ratana Somrongthong, 'Barriers to sexual and reproductive healthcare services as experienced by female sex workers and service providers in Dhaka city, Bangladesh' (PLOS ONE, July 10, 2017) <

<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0182249> > accessed 10 September 2022

3. Carmel Shalev, "Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women" (1998) <

<https://www.un.org/womenwatch/daw/csw/shalev.htm#:~:text=Reproductive%20rights%2C%20according%20to%20the%20ICPD%2C%20also%20include%20the%20right,derived%20from%20the%20Women's%20Convention> > accessed 16 July 2022

4. Kangas, A., Haider, H., and Fraser, E. (2012). Gender. [Online]. 2nd Ed. E. Browne [2014]. Available from: < <https://gsdrc.org/wp-content/uploads/2015/07/gender.pdf> >

5. International Labour Organization, 2015, "Unacceptable forms of work: a global and comparative study" < [https://www.ilo.org/global/publications/WCMS\\_436165/lang--en/index.htm](https://www.ilo.org/global/publications/WCMS_436165/lang--en/index.htm) > accessed 25 July 2022

6. C Gabrielle Salfati and Marina Sorochinski, 'A New Approach For Different & Linking Series

Of Sex Worker Homicide And Sexual Assaults' (SageJournals, 2022) <  
<https://journals.sagepub.com/doi/abs/10.1177/0306624X19839279> > accessed 25 August 2022

7. Crouthamel, B., Pearson, E., Tilford, S., Hurst, S., Paul, D., Aqtar, F., Silverman, J. and Averbach, S., 2021. Out-of-clinic and self-managed abortion in Bangladesh: menstrual regulation provider perspectives. *Reproductive Health*, [online] 18(1). Available at: <  
<https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01123-w#citeas> > accessed 14 September 2022

### **Article**

1. Bangladesh Society for the Enforcement of Human Rights (BSEHR) & others vs Government of Bangladesh & others, [2001], 53 DLR (HCD) pg- 1-19

2. Cheryl Overs & Kate Hawkins, Can rights stop the wrongs? Exploring the connections between framings of sex workers' rights and sexual and reproductive health, <  
<https://bmcinthealthhumrights.biomedcentral.com/articles/10.1186/1472-698X-11-S3-S6> >  
accessed 28. 06.2022

3. International Labour Organization, "ILO Declaration on Fundamental Principles and Rights at Work" < <https://www.ilo.org/declaration/lang--en/index.htm> > accessed 25 July 2022

4. Tasnuva Wahed and others, 'Sexual and Reproductive Health Behaviors of Female Sex Workers in Dhaka, Bangladesh' (National Library of Medicine, 2022) <  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5378344/#pone.0174540.ref007> > accessed 25 August 2022.

5. Lori Smith, 'Birth Control Pill: Side Effects, Risks, Alternatives, And the Shot' (*Medicalnewstoday.com*, 2022) < <https://www.medicalnewstoday.com/articles/290196#risks> > accessed 25 August 2022.

### **Website**

1. Hootman, T., 'What are Reproductive Rights? - FindLaw.' (*Findlaw*, 10 July 2022) <  
<https://www.findlaw.com/family/reproductive-rights/what-are-reproductive-rights-.html> >  
accessed 10 September 2022

2. 'Sexual And Reproductive Health And Rights' (OHCHR, 2022) <  
<https://www.ohchr.org/en/node/3447/sexual-and-reproductive-health-and-rights> > accessed 11 September 2022

3. OHCHR. 2022. 'Committee on Economic, Social and Cultural Rights reviews the initial report of Bangladesh'. [online] Available at: < <https://www.ohchr.org/en/press-releases/2018/03/committee-economic-social-and-cultural-rights-reviews-initial-report?LangID=E&NewsID=22840> > accessed 11 September 2022
4. International Labour Organization, "Decent Work and the 2030 agenda for sustainable development" < <http://ilo.org/global/topics/sdg-2030/lang-en/index.htm> > accessed 25 July 2022

### **Report**

'Sex Workers' Access To Comprehensive Sexual And Reproductive Health Services' (nswp, 2022) < [https://www.nswp.org/sites/nswp.org/files/bp\\_sws\\_access\\_to\\_comp\\_srh\\_-\\_nswp\\_2018.pdf](https://www.nswp.org/sites/nswp.org/files/bp_sws_access_to_comp_srh_-_nswp_2018.pdf) > accessed 11 September 2022.

### **Policy Paper**

1. 8<sup>th</sup> 5YP [July 2020-June 2025] (GED), Bangladesh Planning Commission, Government of the People's Republic of Bangladesh

### **Encyclopedia**

1. Reproductive Rights, International Regulation, Julia Gebhard Diana Trimiño, < <https://www.corteidh.or.cr/tablas/r16912.pdf> > accessed 28.06.2022