

Phoney Concern

Attack on *Tehelka* for Using Call Girls

Intervention Petition Submitted to the Chairman National Human Rights Commission

by
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Hon'ble Justice J. C. Varma,

It came as a shock that the National Human Rights Commission has admitted a petition against *Tehelka* for "using sex workers to entrap Army officers in the course of its sting operation" at the behest of Shakti Vahini, an organization very few people had heard of till they sought the intervention of the NHRC and the Delhi Police to take action against *Tehelka* under various draconian Sections of the Indian Penal Code.

I submit before the honourable Commission that the charges levelled by Shakti Vahini are frivolous, wrong, absurd and motivated. They are by no means inspired by a genuine desire to seek justice and rehabilitation for call girls. Their petition appears to be part of a blatant campaign to deflect attention from the very serious evidence of corruption against some of the top political leaders of the ruling party and power wielders in the Defence Ministry. It is very alarming that the NHRC has, by admitting this case, lent some credibility to the absurd and malafide charges levelled against *Tehelka* by Shakti Vahini.

The chargesheet prepared by Shakti Vahini alleges that the *Tehelka* team had attempted to "destabilize our country and with a view to overawe the government of our country, have indulged in various acts of criminal conspiracy, cheating, impersonation and above all sedition." The charge

of sedition is punishable with death or life imprisonment. *Tehelka* is also alleged to have "seduced various officials of the Indian defence establishment from their allegiance and their duties and encouraged them to be disloyal to the nation". Therefore, Shakti Vahini has sought action against *Tehelka* under Section 131 of the Indian Penal Code. This very stringent provision provides for life imprisonment for anybody who "attempts to seduce" an Army officer "from his allegiance or his duty".

Charge of Sedition

The complaint further states that *Tehelka* carried out its journalistic exposure "with the motive of shaking the confidence of the entire nation against the armed forces"; that it

attempted to "bring into hatred and contempt and excite disaffection against the Government of India and the armed forces". However, the main peg used by Shakti Vahini to hang all their wild and motivated allegations is the pious pretence of seeking to protect the rights and lives of the exploited prostitutes. To quote from their letter to the Deputy Commissioner of Police:

By their admitted acts of firstly procuring call girls/prostitutes and providing them to the said army officials for the purposes of prostitution and then by clandestinely filming the said officials committing sexual acts with the said women, they [*Tehelka* staffers] have clearly



committed acts, which not only have the effect of denigrating women, but are also grave offences punishable under the Indian Penal Code and the Immoral Traffic (Prevention) Act, 1956 (PITA).

Without any supporting evidence Shakti Vahini further alleges that *Tehelka* tapes have been used for subsequently blackmailing the officials concerned and make them “say or do things which jeopardize the security and integrity of our country”. The whole case rests on the unsubstantiated allegation that the entire Operation Westend was carried out “with ulterior motives to destabilize the polity and governance of our country”.

According to Shakti Vahini since it is “not ascertainable whether the call girls procured by *Tehelka.com* had attained the age of majority” they may well have used minors which would make the offence even graver. Also, since these acts of supplying call girls took place in a hotel located 200 meters from a place of public religious worship, educational institution and hostel, therefore, it is additionally an offence against “public decency, apart from being punishable under PITA” [Prevention of Immoral Traffic Act]. Furthermore, “since the said women have been filmed committing sexual acts with the said army officials, *Tehelka* has committed yet another cognizable offence under the Indecent Representation of Women (Prohibition) Act, 1986”.

It is unfortunate that army officials and top level politicians allowing their decisions regarding purchase of defence equipment to be influenced by lavish entertainment, cash and sex bribes does not bother Shakti Vahini and others targeting *Tehelka*. But *Tehelka* offering filmic proof of these

corrupt and antinational acts becomes suspect in the eyes of Shakti Vahini and others who have jumped in to defend those accused of corruption.

Guise of Rehabilitation

Apart from the arrest and prosecution of the *Tehelka* team, Shakti Vahini petition demands that *Tehelka* should be compelled to disclose the identity of call girls used in the sting operation so that government can “rehabilitate” them “in consonance with the provisions of the Immoral Traffic Act” and an antiquated provision of the International Convention for the Suppression of Traffic in Persons to which India is supposed to be a signatory. Article 16 of this outmoded convention of 1949 vintage stipulates that “the parties to the present Convention agree to take or encourage, through their public and private educational, health, social, economic and related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution...”

And what does this “rehabilitation” package involve for the women concerned? Here the Shakti Vahini enthusiasts take recourse to another antiquated law, namely the Immoral Traffic (Prevention) Act 1956 (PITA) which has been long condemned for being anti-women because it mandates the punishment of the victimised prostitutes. Shakti Vahini’s idea of “rehabilitation” of prostitutes is to have them imprisoned or detained in a “corrective” institution under Section 10 A of the PITA which provides for a detention of a minimum of two years which can even extend up to five years.

In government run *nari niketans* or “rehabilitation homes” women do

not have the rights that criminals in regular prisons have. Not only are the living conditions far more appalling than in prisons but these institutions are far more unsafe than ordinary jails. Let us not forget that Kamla, the young woman purchased from a flesh market of Madhya Pradesh by *The Indian Express* reporter Ashwini Sarin mysteriously disappeared from Delhi’s *nari niketan* despite having the entire national media’s gaze fixed on her fate—all because she was a living proof of the involvement and complicity of some power wielders in the Madhya Pradesh government.

If the treatment being meted out in government custody to a well off person like Shankar Sharma is any indication, these vulnerable women are bound to be under much greater threat if they come in the clutches of the police. They might just “disappear” as mysteriously and rapidly as did Kamla. By demanding that the call girls be taken into custody, shakti vahini seeks to endanger their lives even further. Therefore, it is not surprising that even after Shakti Vahini’s efforts on behalf of prostitutes were widely broadcast through the media, neither the two call girls nor any of their associates showed any inclination to take up Shakti Vahini’s offer of help and “rehabilitation”.

The ludicrousness of this petition to the NHRC and its real intent becomes evident from the following press release by Shakti Vahini:

If Tejpal is correct and no action is taken against him then the message will go across the country that it will be lawful to use sex workers, prostitutes and women to get a work done. Sex workers will be used for any thing. From procuring deals to getting big contracts everywhere people will use sex workers and will take refuge in the

fact that Tejpal was not arrested. Also if we don't arrest Tejpal we will give prostitution a licence....We are very concerned on the impact of the *Tehelka* fallout on the country women who will be used like this, as sex objects, as bribe, their bodies will be sold. Many women will join this as career because Tejpal has made it legal... Already sex industry and traffickers are increasing day by day and if no action is taken against Tejpal this industry will grow by leaps and bounds.

Reading this outburst, one would get the impression that Tarun Tejpal is the man who invented the practice of prostitution, that it was hitherto unknown to human society, at least in India! The petitioners labour hard to present the defence officials and others charged with gross impropriety and betrayal of the trust and responsibility that goes with their high offices as hapless victims who were trapped by some hostile forces out to subvert India. The truth is that the *Tehelka* team have merely lifted the curtain on a small part of the evil drama being enacted routinely by our defence establishment and that *Tehelka* is attempting to expose existing corruption rather than inventing it. They have laid bare before the nation concrete evidence of how senior army officials and politicians in-charge of defence purchases are risking the lives of our soldiers and making India vulnerable to external aggression and putting the lives of millions of Indians in danger by allowing cash, kind and sex bribes to determine key decisions regarding purchase of weapons and equipment required by our armed forces to provide for the security of the nation.

Sadly enough, the position taken by Shakti Vahini is very similar to the



smear campaign against *Tehelka* launched by an influential section of the media. Some of these papers have been dutifully reproducing every wild allegation levelled by government agencies and those accused of corruption without the slightest attempt to verify the veracity of the charges, including those that belong to the realm of the ridiculous.

Confident in Crookery

The most informative and frightening aspect of the *Tehelka* expose is *not* that military officers and Ministry of Defence officials as well as the Defence Minister's closest associate proved themselves to be such unashamed bribe seekers, but rather that they felt so safe from the risk of exposure that they did not take the simplest precautions government crooks take in most countries: they did not even bother to check on the antecedents of the imaginary "company". Nor did they seem concerned that they might have to justify the quality and appropriateness of the equipment being offered. They let themselves be conned by a mere "visiting card", accompanied by relatively small

bribes with a few routine inducements, including the services of a few call girls thrown in as extras to try to add a touch of authenticity to the fictitious company that *Tehelka's* reporters had invented.

It is also significant that not one of the officials or politicians caught taking bribes expresses apprehensions about being caught or thwarted by fellow officials with a reputation for probity. They talk disparagingly about those who do not deliver even after taking bribes but not once about fearing obstruction from any upright decision maker. This in itself shows how corruption and sleaze exposed by *Tehelka* are matters of daily routine and deeply entrenched in the functioning of the Ministry of Defence and our entire political establishment.

The core issue we need to keep in focus is that *Tehelka* has opened just one small window into the decision making process at the highest levels in the most sensitive and vital ministry entrusted with the security of India. The iron curtain of secrecy in matters pertaining to defence have made it the least

accountable part of government operations in India, and therefore encouraged gross forms of corruption in defence purchases. This expose should have triggered off many more follow up investigations and a concerted campaign by concerned citizens, including women's organizations, for greater transparency and exemplary punishment of the guilty as well as demanding that Official Secrets Act be replaced with a Right to Information Act.

Instead, we are witnessing the sad spectacle of vested interests jumping in to strengthen the hands of the culprits in government by putting the *Tehelka* team on trial, instead of trying to push the expose up to the levels required to stop the corruption.

Ethical Considerations

The two episodes involving the use of call girls form a relatively small part of the entire expose. And yet, the entire effort is sought to be trashed on account of those incidents. In matters of ethics, one of the considerations one needs to weigh carefully is the harm caused by a particular action against the good that might come out of it. If we accept this as one of our yardsticks, then it is imperative that we look at what *Tehelka* set out to do, including the potential benefits to our society from their endeavours to uncover the sleaze and corruption that characterises defence procurement deals.

In all, four women appear as actors in this drama. Two of them are professional sex workers who are clearly in it for the money, and are altogether unaware of the actual drama behind the scenes. In that sense they are the ones trapped unwittingly – not the defence officials who they “entertain.” Using them

without their informed consent is indeed morally wrong. However, when weighed against the public service performed by *Tehelka* investigators and the potential importance of the investigation, the unethical use of call girls becomes more comprehensible, if not completely justifiable. My rejection of the way the sex workers are treated relates primarily to the lack of any opportunity for them to decide for themselves if they were willing to participate in the sting. Participating in a sting is not the same as willingness to sell sex. Their activities were put on camera without their knowledge or consent, thus also violating their right to privacy. However, I believe the *Tehelka* investigators have a reasonable explanation for believing in the necessity of employing those women in the manner they chose.

Those sexual encounters provide deep insights into the crudity of mind and level of self-debasement of some of our top brass in charge of national security. Having people with such low self-esteem in key positions of power poses a great danger to our lives because such people cannot be adequate guardians of the national security and well-being of our citizens. It explains why our country has become so vulnerable that even a fourth rate military power such as Pakistan dares to attack us time and again and gets away with it while inflicting heavy damages and casualties on our armed forces, despite the fact that India possesses the largest standing army in the world. Our people, who are falling easy prey to the jingoism unleashed on us by the very people who are profiting from jeopardising our security, should better know all this. It is no coincidence that Defence Minister George Fernandes makes

the shrillest, loudest and most jingoistic noises about external threats to India in a clear attempt to create a siege mentality among our people so that they forget to ask pertinent questions about bringing our internal saboteurs to account before the law.

Ploy to Divert Attention

But even if we accept that *Tehelka* transgressed journalistic norms by using call girls to uncover the corrupt defence deals, it would be appropriate to hand over the matter to the Press Council, a statutory body to handle ethical violations by the press. The government has no business or the right to sit in judgement over this issue. The authorities are only using it as a ploy to divert attention from the core issues, harass the *Tehelka* team and to destroy Shankar Sharma in order to frighten the other media barons from investing in serious investigative journalism.

I believe *Tehelka* journalists tried to build in several important safeguards to ensure that these girls would not be identified in the versions available to the public or to those who might use it against them. They safeguarded the identities of the call girls they hired to protect them from harm by steadfastly refusing to give out the names of the women they used, despite great pressure on them to do so.

They did not make a sensational splash of the portions of their videotapes that show key defence officials being “entertained” by call girls and other women posing as call girls. Neither in the released transcripts nor in the tapes released to the media did *Tehelka* try to encash on the “sexy” part of the story.

At the same time, *Tehelka* did not hide the fact that it had used call girls for the sting operation. The

uncensored unedited tapes, that include those portions, were handed over to the army authorities way back in March 2001. The Commission of Inquiry was also given the unedited version of the 100-hour film. Both these authorities decided not to make them public. *Tehelka* also made sure that they were not accessible to public or the press. The army authorities carried out their own trials, court-martialed the accused officials, and even found them guilty. For months after the expose, the officials shown in the tapes as accepting sex bribes uttered not a word in their own defence. It was only after *The Indian Express* highlighted the call girl aspects of the expose on August 23, 2001, to the neglect of the main story that the accused army officials began their “offence is the best form of defence” strategy and tried to put *Tehelka* in the dock on this and a whole range of other more irrelevant and ridiculous charges. This also provided a handle to organisations like Shakti Vahini to jump in to the defence of the guilty.

Sex Bribes Routine Affair in Defence Deals

It is amply clear from the behaviour of the defence officials that they were used to demanding and getting sexual bribes along with cash bribes. One of the officials (Col. Sehgal) even went so far as to insist with the call girl “entertaining” him that she provide oral, anal and all manners of kinky sex because that is what excited him most. When she refused, he took pains to explain how call girls frequented by him elsewhere performed those acts and if she too learnt to do those things she would rise high in her profession. He kept goading her even after she made it firmly clear that she had set certain limits for



what she would or would not do while catering to her clients.

Of all the bribe takers filmed by *Tehelka*, Colonel Sehgal comes out as the most hardened and cynical. The gutter language he uses throughout his appearance, the vulgar jokes he cracks as a habit, the crudeness of his behaviour towards the women “entertaining” him, the brazenness with which he conducts these deals indicate that he is an active, key player in promoting sleaze and corruption in defence procurement, rather than someone reluctantly seduced into the act. His defense that he was drugged and seduced by *Tehelka* who then used that footage to blackmail him, is too gross to be lent any credence because his behaviour even in his own home where there are neither call girls nor any booze, comes out no different.

It is sad that even a man like Sehgal can martial the services of his wife and use her as a sword to fight his battle. She has chosen to go on the offensive and lodged a complaint against *Tehelka* with the President of India, the Prime Minister as well as the accused Defence Minister, alleging that the *Tehelka* team had “trapped” her husband and that her “husband has been living with a constant threat of exposure since [reporters] of *Tehelka.com* first told

him about the filming of his encounter with a prostitute which was thrust upon him by the website’s investigative reporters”. (*Pioneer*, 28.8.2001) She has also alleged that her husband “suspected his drinks were spiked” by *Tehelka* staffers since on the day of the filmed encounter with call girls “her husband had returned in a ‘never-seen-before’ drunken state”.

In this context, it is important to point out that both Col. Sehgal and Lt. Col. Sharma (who goes into a separate room with another call-girl) had spent a good deal of time with the two call-girls and a *Tehelka* reporter cracking and listening to what are described by them as “call-girl jokes”, drinking and ordering food. The tapes leaves one in doubt that both the men are in total command of the situation, which is also evident in the way Col. Sehgal attempts to bully the call-girl “servicing” him into providing nauseating and kinky forms of oral sex.

Even Brigadier Iqbal Singh, who failed to “go all the way” because he said “he was not prepared”, and shows some amount of reticence, did not express much surprise or moral disapproval when a young woman posing as a call girl was presented to him. She was made to wait in the hotel lobby while Singh carried on

the “business conversation” with the *Tehelka* reporter. The woman is asked to come up to the room only after *Tehelka* reporter has checked with Singh whether she should be invited to join him.

Holding a Mirror

Since the purpose of the *Tehelka* investigation was to show with irrefutable proof how those in charge of defence purchase deals have become habituated to demanding and accepting monetary and other bribes and how uncaring they are about the quality and appropriateness of the equipment being purchased thereby compromising national security, they understandably decided to enact the whole drama as per the rules set by those in charge of defence procurement decisions. Had these defence officials been in the habit of demanding trips to Appu Ghar, the *Tehelka* team is likely to have taken them to Appu Ghar. But since sexual bribes play an important role in many defence deals, the *Tehelka* team decided to include such bribes in accordance with the routine norms and traditions entrenched in the Ministry of Defence.

We would also do well to remember that the *Tehelka* team did not use the call-girls for any personal or commercial gain, as is proven by their later conduct in withholding access to these tapes for the public. *Tehelka* reporters were simply “acting out” a role. Seducing defence officials is not their profession or business. As is true for screen and stage actors, once a person gets to impersonate another role, there is an inevitable tendency to flow and mould oneself to the requirements of that particular role and character. Therefore, in offering sex bribes, the *Tehelka* team was, in my view, carried away by the understandable desire to appear fully credible in the eyes of the defence officials rather than seeking prurient satisfaction for themselves.

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Sex bribes are a routine part of corrupt deals all over India. Not to include such payoffs in the deals might have made the corrupt officials too wary to participate further. If the *Tehelka* team had been unwilling to include sex bribes, it would have been likely to have aroused the suspicions of the corrupt officials, just as the *Tehelka* journalists would have rung alarm bells among the corrupt officers if they had refused to offer them liquor or join in their drunken, abusive and obscene conversations.

The explanation offered by *Tehelka* as to why there was no filmic proof of the demands for call girls sounds credible: all conversations, especially between them and men like Sashi, who acted as a go-between, could not possibly be filmed because some of these conversation took place on the phone out of the reach of the cameras, others in open spaces where situating a camera unobtrusively at a strategic point that could record the event was not feasible.

Ethics of Kamla Case

The Indian Express has challenged the methods used by *Tehelka* team by drawing a comparison to their supposed professionally ethical track

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record citing the famous “Kamla case” whereby one of its staffers actually went and purchased a woman for Rs.2500 from one of the flesh markets in Madhya Pradesh. *The Indian Express* claim that they covered themselves ethically and professionally while performing this “illegal” act by taking five public figures into confidence before they undertook the sting operation.

However, the comparison if taken to its logical conclusion shows *The Indian Express* mode of journalism in a much poorer light. No public cause was served by it. They failed to make the slightest dent in the flesh trade, and chose to simply forget about the issues they had raised. They also took no responsibility to trace Kamla after she mysteriously disappeared from the government run *nari niketan*. They endangered her life by their expose and making a public spectacle of her miserable and vulnerable life. They did not express the slightest remorse over the matter even after it became clear that she was used and harmed, rather than helped by their sting operation. Some years later when a film was made on Kamla’s story, the *Indian Express* tried to get a stay order on the film’s release by claiming “copyright” on her story. This shows *The Indian Express* editors in a very poor light.

Need for Transparency

If we had a history of transparency in the defence procurement process, if it was not unnecessarily clouded in secrecy through the use of the Official Secrets Act, then there would be no need for *Tehelka* types of exposes. Such dramatic and risky operations only become essential when normal channels of seeking accurate information are totally blocked. Unfortunately, foreign defence experts and even our enemies seem to know more about our defence procurements than do the citizens of India.

Today, we face a situation whereby those in positions of power are playing an active role in criminalising our society. Corruption and bribery have become integral features of government functioning. Our power wielders appear altogether indifferent to how their actions are jeopardizing the security of the whole nation and endangering the lives of our jawans by denying them appropriate weapons and equipment. We are saddled with a political regime that does not believe in transparency and accountability even in day-to-day matters, not to speak of the harmful, deadly secrecy that surrounds matters related to defence.

The Official Secrets Act is being used no less vigorously today than during colonial times to cover up the crimes of our rulers. Citizens are not allowed access even to municipal accounts, leave alone purchases made for our armed forces. In such an atmosphere our nation is under far greater threat from internal corruption and saboteurs than any external enemy.

Since the criteria for most major government decisions, including military procurement, seems to be how to siphon off public funds into private accounts, and much of their time is spent on figuring out newer and newer ways of robbing the state exchequer, our rulers have not had time to learn and practice the art of good governance, nor cared to develop the required expertise for taking complex decisions for efficiently administering the security and economy of such a vast country.

The *Tehelka* revelation has shaken the confidence of our people because never before have we witnessed in such graphic detail and

vividness the factors that lead to malgovernance and India's poor performance.

Danger to Shankar's Life

The manner in which the government is witch hunting Shankar Sharma and Devina Mehra, violating their human and constitutional rights will have a chilling effect on the future of investigative journalism in India. This is what should be engaging the NHRC's attention.

The methods used to make "an example" of Shankar Sharma are openly fascistic. All manners of blackmail and pressure, including wrecking their business, are being put on him and his family with the clear purpose of making them break down and make them an object lesson for others in the corporate sector so that no media owner ever dares cross the line of "discretion" by financing such investigations, no editor will dare support enterprising journalists who want to take investigative reporting seriously. The entire business community seems so terrorised that they have not come out to defend one of their colleagues whose civil and constitutional rights are being violated.

The fear of his family and friends that Sharma's life is in danger at the hands of government agencies is not unfounded. It is he who deserves the protection of NHRC and not those caught red handed accepting cash and sex bribes to facilitate dubious Defence deals.

The main purpose of the sting operation undertaken by *Tehelka* was to lay bare before the nation concrete evidence of how senior army officials and politicians in-charge of defence purchases are jeopardising national security by allowing cash, kind and sex bribes to determine key decisions regarding purchase of weapons and equipment required by

our Armed forces to provide for the security of the nation. It is indeed distressing that *Tehelka* should be put in the dock for performing a valuable public service with courage, intelligence and at great personal risk. It is particularly outrageous that *Tehelka* should be harassed and attacked in the name of women's rights.

MANUSHI's Intervention

Women have a special stake in safety, security, probity in public life and a less violent society. History provides enough evidence that as the level of corruption and crime rises in any society it leads to increasing marginalisation of women. In such a scenario they either appear as victims of violence or used by men to settle scores with each other and become their instruments. Therefore, women's organisations owe it to themselves not to let the core issues (the need to combat corruption, lack of accountability of power wielders and consequent malgovernance) be lost sight of and to push for meaningful reforms in governance, and the enactment of a Right to Information Act.

Since our organisation is committed to strengthening democratic rights, rule of law and promoting accountability and transparency in governance, I on behalf of Manushi Nagarik Adhikar Manch, request you to admit our intervention petition in the case filed with the NHRC by Shakti Vahini against the *Tehelka* team. I also appeal to the NHRC to intervene to protect the constitutional and human rights of Shankar Sharma and his wife Devina Mehra whose right to life, right to livelihood and to fair trial are being systematically violated by unscrupulous government agencies acting at the behest of vindictive politicians. □