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Separating consent from exploitation

The report of the Justice Verma Committee and the subsequent ordinance issued by the Centre contain important provisions relating to trafficking and sex work, which have, for the first time, been dealt with in a comprehensive manner. Human trafficking is a scourge that denies human rights to those who are trafficked, and needs to be countered with effective measures. While implementing such measures, however, it should be ensured that those who have been trafficked are protected from further violence, exclusion and isolation. They must be empowered and able to access health and other services. Evidence shows how such community-empowering approaches have helped in controlling the prevalence of sexually transmitted infections (STIs) including HIV/Aids among sex worker communities in Kolkata's Sonagachi, Ashodaya in Mysore and Kamatipura in Mumbai.

The current legal framework is punitive and does not make the subtle distinction between the trafficker and the trafficked. The anti-trafficking law has the brutal effect of punishing trafficked persons, notably persons engaged in sex work. The model of 'raid, rescue and rehabilitation' results in extreme forms of violence against sex workers and their families, violating their basic human rights.

An important dimension of this punitive legal framework is the conflation of all types of sex work with trafficking. The Immoral Trafficking Prevention Act (ITPA) by definition equates all prostitution with sexual exploitation. While it is true that a number of trafficked persons end up as sex workers, the opposite always isn't. Certainly, sex work is not the most preferred option of livelihood for unskilled adult women. But many of them choose sex work out of economic necessities caused by poverty, high rates of domestic violence including marital rape, suicides of the family's earning members, natural and manmade disasters. Even though the sex worker is not criminalised under the provisions of ITPA, its enforcement network makes no such distinction. The only option left to women in sex work is either to go underground or shift to less visible places like massage parlours and hotels. As a result, they are denied even the basic health and other services that governments provide.

There are apprehensions among sex worker communities that sections 370 and 370A of the ordinance which address trafficking and sex work will now be used by law enforcement agencies with regard to all sex workers, whether they are trafficked or not. The chairperson and a member of the Verma Committee did give an assurance that their intention was not to punish sex workers, but fears linger as the language leaves scope for misinterpretation.

Globally, there is recognition that adult consensual sex should be decriminalised and penal provisions in national laws should be repealed or amended. The UN secretary general has also called for a repeal of outdated provisions in national laws that stigmatise sex work. The Global Commission on HIV and

Law recommends that 'anti-human trafficking laws must be used to prohibit sexual exploitation and they must not be used against adults involved in consensual sex work'.

A new threat to sex worker rights is the attempt to criminalise the clients of sex workers as a means to stop organised sex work. This is based on the 'end demand' model first adopted by Sweden and now replicated in countries like Kenya, Cambodia and South Korea. The outcome of this model has been a lowering of sex workers' health status and an increase in the prevalence of STDs and HIV in Sweden. It will be a matter of serious concern if the Indian government also decides upon adopting this model by amending the ITPA. Such a measure is bound to increase the misery of sex workers and their vulnerability to HIV/Aids.

India, as the world's largest democracy, should be a model for showing compassion, understanding and inclusiveness, while dealing with issues like human trafficking and sex work. It should not be guided by an abolitionist model. Raid, rescue and rehabilitation of trafficked persons must not be used as a stand-alone model but should be carried out with strong community participation. Harsh punishments should be reserved for the traffickers and their agents. Victims should be spared from harassment and violence.

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The views expressed by the author are personal

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