

Clarification sought from the Justice Verma Committee

By The National Network of Sex workers

This is to express our concern at the ambiguous manner in which the term “prostitution” has been used in Section 370 IPC of the Verma Committee Report. In this section, which deals with the offence of Trafficking of Persons, the term "**exploitation**" includes "prostitution" itself. This in essence means that "**prostitution**" **will now be interpreted as exploitation**. This problematic formulation has now been incorporated into the recently passed Ordinance.

Section 370 IPC criminalizes people in sex work since it does not differentiate between "coercive prostitution" and prostitution; nor does it talk about the "**exploitation of prostitution**".

Section 370 IPC was introduced to criminalize trafficking in persons and by and large uses the language of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000). However, comparing the language under both reveals a highly significant difference in the definition of “exploitation”.

- While The UN **Protocol** which India ratified in 2011 defines “exploitation: as: *“Exploitation shall include, at a minimum, the exploitation of the prostitution **of others** or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;...”*;

- Under **Section 370 IPC** “exploitation” is defined as: *“The expression “exploitation” shall include, prostitution **or** other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.”*

This significant difference potentially criminalizes the practices around sex work. By introducing the language of prostitution itself as exploitation, the amendment endangers sex workers instead of protecting them from sexual exploitation. To compound the problem, the consent of the victim has been treated as immaterial for the purpose of determining the offence of trafficking. In essence this will render any submission of a consenting sex worker [who is treated under S370, as a ‘victim’ of a person accused of harbouring and receiving] that she was practising sex work of her free will and volition, immaterial and void.

The learned members of the Verma Committee will concur that legislative framework that criminalizes prostitution as exploitation, drives the practice underground and renders the already vulnerable sex worker more vulnerable to violence, exposure to HIV and deepens the lack of legal remedy to redress violence. We also draw your attention to the decision of the Hon'ble Supreme Court (*Cr Ap. 135/ 2010, 14 February 2011*), where the right to dignity of women in prostitution was upheld.

The formulation in the Ordinance is a setback to sex workers who are fighting for legal and societal recognition of their fundamental rights to dignity and pursuit of a livelihood. Instead, criminalization, which is the fallout of the Ordinance, will create conditions for increased abuse of sex workers, especially by the police and others in positions of power and authority.

We request you to clarify that your intention was not to criminalize the lives of sex-workers but rather to criminalize only those who ‘exploit the prostitution of others’ i.e. traffickers in persons. We hope that this crucial clarification by the Committee will aid Parliament in bringing about the necessary changes in the provision so that the vulnerable sex worker is protected and not made the subject of criminal sanctions.

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