



Section -

Approaches to Sex Work

Understanding various
approaches to sex work

SECTION: Approaches to Sex Worker Rights

Time : 1 hour 30 minutes

Objective : Participants will understand various approaches to sex work.
Target audience for this session is CBO members/workers
This will help participants to understand decriminalisation of sex work
[SLIDE#1]

Material : I. **Powerpoint presentation** Legal Approaches to Sex Work
with notes for the facilitator (With an
Audio Visual or as a Flip Chart) with

I. **Annexures- Fact Sheets**
a. Legal Approaches – for group discussion
b. Understanding the De-criminalisation Demand – Fact Sheet
c. Powerpoint – Legal Approaches to sex work

Method : Presentation and Group Discussions

Topics for guided discussions have been provided for the participants to further develop their understanding and perspective on the issue. These include questions or case studies that can be done in small groups.

Frequently Asked Questions may be used by the Facilitator to explain any questions raised by the audience. In the event there are questions asked outside this set of questions, the facilitator can contact the SANGRAM team. Details of the contact person are provided in the opening page.

Presentation can be done with help of projectors and is advisable to procure one for the training session. In the event a projector is not available, the training can be conducted with flip charts/ flip books.

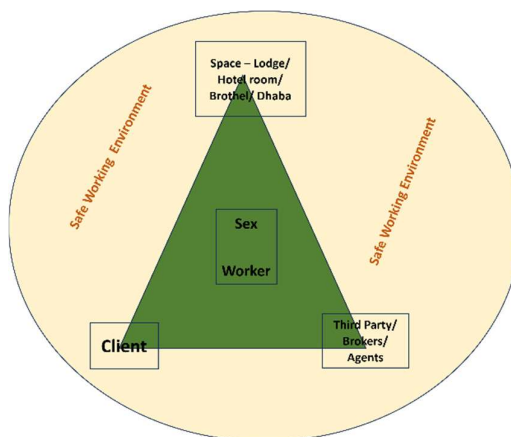
Flow :

SLIDE#2 Part 1. of this session is to make participants understand, how the sex worker rights movement perceive sex work.

Group Exercise Ask participants the following questions What are the components of sex work? Write down on a flip chart the responses provided by the participants. From the list isolate the following words

1. Workers or Sex workers
2. Client
3. Agent/ Brothel Owner
4. Space

SLIDE #3 Four Important components of sex work



These are the four most important components of sex work and inter dependent on each other.

SLIDE #4 Components of Sex Work

- A. Sex worker is an adult female, trans or male who **provides sexual services** in return for money or other benefits.
 - I. Adult
 - II. Sex workers do not sell their bodies/sex. They provide a service like other service providers.
 - III. They have the right to enter and exit this work with dignity.
- B. Client is an adult female, male or trans who receives sexual services.
- C. Agent/ Third Party includes auto rickshaw drivers, cigarette and pan vendors, brothel madams, sex workers themselves who provide reference to other workers or give rooms on rent to other workers, out of work or older sex workers who give their rooms to earn additional income.
- D. Brothel is any room or space given out for sex workers to work.

All these components need to operate within **safe working environment**. This is an environment where sex workers can negotiate safety and protect themselves from sexually transmitted infections, violence, abuse, harassment, stigma and discrimination by law enforcement, societal interventions and paying and non – paying clients.

The safe working environment includes availability of free life saving commodities such as condoms, lubes; access to health services; freedom to access justice, complain against violence by clients or other goons.

Facilitator points

1. *Sex workers are adults who consent to providing sexual services. Sex workers are female, trans and male.*

Please note that sex workers do not sell their bodies. This language has been given by the abolitionist movement that a woman sells her body. The facilitator must explain that the sale of any product means that full control of that product or thing is handed over to the purchaser, once and for all. That is the entire understanding in Trafficking. Once sold the person has no control over any aspect of his/ her/ their life and its decisions.

Is that the case with sex workers?

When a client pays for our service, do we retain the ability to say no to providing certain forms of service?

Once the service is given is the sex worker forced to remain or does she have the freedom to leave?

If the client pays for one service, can he demand more than one service for the same amount? Do we have the right to refuse?

These factors decide whether sex workers sell their bodies or provide a sexual service.

Take the example of a lawyer or surgeon – do they sell their brain or their hand, or do they provide a service? If the answer to this question is that lawyers and doctors provide a service, why does it change when it comes to a sex work? Why are sex workers told that they sell their bodies?

There is a sizeable population of male and trans sex workers. Please remember the motto of NNSW and its members is that any individual who does not consent to sex work must be empowered to exit this work with dignity. She/ He/ They have full right to enter and full right to exit with dignity. At no point should a sex worker be conflated with victims of trafficking. There are often questions about people under 18. Please note any individual under 18 years is a minor and it is illegal in India for any minor to be engaged in work. In the sex worker rights movement, we strongly oppose the entry of any minors.

Our partners work to ensure that any minors found in sex work are counselled by NNSW workers, removed to safety, sent back to their parents or sent to CWC.

2. *Clients are adult male, trans and female. While most clients are male, it is possible to see trans and female clients also. Clients are a key part of our work.*
3. *Agents and Third parties could also be sex workers themselves.*
4. *Brothel spaces are used by sex workers to work together safely. Sex workers state that the risk to their safety increases when they work alone. Under ITPA brothels are equated with spaces of trafficking.*

Inform all participants that all these elements need to be safely available for sex workers if they need to work safely, free of violence and fear. If condoms are used as evidence of sex work and used to arrest workers, it impacts the health and safety of all workers.

Part 2. Identify the different legal approaches to sex work and the situation in India.

SLIDE #5 APPROACH OF THE LAW

Based on the above four components of sex work, we are now in a better position to understand the approaches in law. Laws are aimed at each of these categories:

1. Laws aimed against the sex worker.
2. Laws aimed against the third parties involved in management and organisation of sex work.
3. Laws aimed at those who purchase sexual services.
4. Laws against the use of spaces for sex work.

SLIDE #6 LAWS AIMED AT THE SEX WORKER

Let's understand each of these categories with examples.

1. Laws aimed against the sex worker.

- a. The act of sex work (Provision of sexual services).
- b. Soliciting (loitering for the purposes of prostitution/ sex work).
- c. Type of work engaged in. For instance, laws can make the act of sex work illegal dependent on where or how it occurs: in a brothel; outdoors in public places (i.e. street work); as escort work (i.e. where a sex worker is dropped off / goes to the client); or as an independent sex worker working from a private residence. Further distinctions can sometimes be made by whether a sex worker is working alone or with others.
- d. Eviction, rehabilitation on arrest

- e. Nuisance and Public Order

SLIDE #7 LAWS AIMED AT THIRD PARTIES

2. Laws aimed at third parties include.

- a. Living off the earnings of a sex worker – those who depend wholly or in part on the income of a sex worker (e.g. a partner, adults in a family).
- b. Brothel keeping – i.e. those owning or managing and, sometimes those assisting with, operating a brothel.
- c. Procuring – arranging or making someone available for prostitution

SLIDE #8 LAWS AIMED AT THOSE WHO USE SEXUAL SERVICES/ AIMED AT SPACES

3. Laws aimed at those who use sexual services.

- a. Clients

4. Laws aimed at spaces.

- a. Brothel (where two or more people engage in sex work)

SLIDE #9 LEGAL APPROACHES

The Legal approaches can be broadly classified as the following:-

A. Criminalisation / Prohibition

- a. Total criminalisation / Prohibition / Abolition
- b. Regulation- Partial criminalisation / Prohibition

B. Legalisation

C. Decriminalisation

SLIDE #10 LEGAL APPROACHES

Let us understand each of these approaches:

- A. **Total Criminalisation / Prohibition / Abolition** – Under this approach all forms of sex work are unacceptable and therefore illegal. The provision, demand, space, third party – all are illegal. Examples of this form of regulation can be found in Middle Eastern countries, the USA.
- B. **Regulation** – is a form of partial criminalisation or a modified form of prohibition. The provision of sexual services is permitted. However, activities related to it such as soliciting, brothel, brothel keeping, demand, procuring and living off earnings of sex work may be illegal. This approach is currently prevalent in India.

SLIDE #11 LEGAL APPROACHES- LEGALISATION

- C. **Legalisation** – Sex work controlled by government and is legal only under certain state-specified conditions. The premise is sex work / prostitution is necessary for stable social order, but it should be subject to controls to protect public order and health. There are specific controls and conditions specified by the state. These can include licensing, registration, and mandatory health checks. Licenses can be managed by police and the judiciary, elected municipal authorities, or independent specialist boards. Businesses or workers without the necessary permits are subject to criminal penalties. Sex work has been legalised in countries such as the Netherlands, Germany, Iceland, Switzerland, Austria, Denmark, Greece, Turkey, Senegal, the USA state of Nevada, and many Australian states (Victoria, Queensland, ACT and Northern Territory)

SLIDE #12 LEGAL APPROACHES- DECRIMINALISATION

- D. **Decriminalisation** – It means the repeal of all laws on sex work or the removal of provisions that criminalises all aspects of sex work. distinction is made between (i) voluntary prostitution and (ii) that involving either force and coercion or child prostitution – the latter remaining criminal. No sex work-specific regulations imposed by the state. Regulation of the work is predominantly through existing statutes and regulations. It is recognised as a legitimate business and, as such, it comes under conventional employment and health regulations and is subject to standard local council business and planning controls. Those engaged in sex work have the same rights and responsibilities as other workers (e.g. paying taxes). The main objective of legalisation is to protect social order whereas the main emphasis in De-criminalisation is on the sex worker – respecting their human rights, and improving their health, safety and working environment.

SLIDE#13

Part 3. What is the demand of the sex worker rights movement?

Sex workers demand a decriminalised set up

When sex workers come together without fear of persecution they are able to fight exploitative practices

Removing the criminalized environment

Though sex work is not illegal in India, there are laws such as the Immoral Traffic Prevention Act that continue to criminalize women in sex work and those who support her work such as third parties.

Unsafe Working Conditions

Criminalized environment results in unsafe working conditions for sex workers including exploitative practices by third parties and lack of access to nondiscriminatory health services.



Decriminalisation helps sex workers organise and address all forms of exploitation, including abusive, sub-standard or unfair working conditions instituted both within and outside sex work

ANNEXURE 1. FREQUENTLY ASKED QUESTIONS

1. Why are sex workers rights movement and activists opposed to the criminalisation of clients?

Demand criminalisation or client criminalisation is the approach where clients of sex workers are seen as the cause of trafficking and hence criminalising them would end trafficking.

2. Why are sex workers rights movements and activists opposed to criminalisation of brothels?

Many sex workers find it safer to work from spaces where they can work with other workers. Often sex workers rent or hire spaces together. This reduces the burden of rent, while at the same affording them protection from violent and unruly clients; shared rent. The brothel owner ensures the safety of the sex worker from all forms of harassment which is a huge plus point for them.

The definition of brothel is provided under ITPA as a space where two or more sex workers work for their benefit or the benefit of others. The Supreme Court Panel in its 15th Interim Report recommended that spaces where sex workers, work for their own benefit should not be criminalised.

However, under the ITPA Act, brothel spaces are illegal and the trafficking bills sought to identify brothels as spaces of exploitation. While there is no doubt that there are exploitative practices in sex work; identifying a space itself as being exploitative is very problematic for sex workers. It means that **any space they work** in is per se exploitative. It forces sex workers to work under very precarious conditions by working alone or in places where they have no support structures. Secondly, it prevents sex workers from coming together to root out exploitative practices.

We in the sex worker rights movement state, that spaces per se are not exploitative. When you delegitimize the struggles of sex workers and deny a decriminalized environment, then the possibility of exploitative practices are very high.

ANNEXURE 2. Understanding the De- Criminalisation Demand, VAMP, SANGRAM

STOP Panic around Sex Work; by conflating it with Trafficking

Anti- trafficking groups globally and across India, have often muddied the waters on the issue of adult consenting sex work, by continuously stating that "efforts to decriminalise sex work will lead to increased demand for trafficked victims and fuel sexual exploitation". Decriminalisation is the repeal or amendment of laws or statutes which made certain acts criminal, so that those acts are no longer crimes or offenses. Sex work is adult consensual provision of sexual services and must not be equated with sexual exploitation or sex trafficking.

As noted by the UNDP Global Commission on HIV and the Law, *"Sex work and sex trafficking are not the same. The difference is that the former is consensual whereas the latter coercive. Any point of view that casts "voluntary prostitution" as an oxymoron erases the dignity and autonomy of the sex worker in myriad ways. It turns self- directed actors into victims in need of rescue."*¹Secondly, there is no evidence to show that ensuring rights of sex workers by de- criminalizing sex work will increase trafficking.

Recently the India Report of the Special Rapporteur on Violence Against Women, has underscored the need to address the **violence faced within sex work from state and non- state actors and the lack of avenues for legal redress**. It notes that sex workers in India are *"exposed to a range of abuse including physical attacks, and harassment by clients, family members, the community and State authorities"*. It further states that *"sex workers are forcibly detained and rehabilitated and consistently lack legal protection"*; and that they *"face challenges in gaining access to essential health services, including for treatment for HIV/AIDS and sexually transmitted diseases"*.²

The Report has also called for the *separation of efforts to combat trafficking from sex work* and reiterates that *conflating sex work with trafficking has led to assistance that is not targeted for their specific needs*. It has also led to coercive rehabilitation measures by the State.

Any argument that seeks to define sex work as violence and exploitation forecloses discussion over the rights of people involved in sex work to pursue it as a livelihood. The relentless conflation of sex work and trafficking also severely undermines the human rights of sex workers while failing to secure rights of people who are trafficked; by misdirecting resources into policing sex work, rather than identifying people who are coerced and providing appropriate support. It exacerbates the lack of legal remedies to redress violence and erodes the efforts of sex workers fighting for legal and social recognition of their rights to dignity and livelihood.

We Call for Decriminalisation

In New Zealand, a Committee established under the Prostitution Reform Act concluded that decriminalization "had a marked effect in safeguarding the right of sex workers to refuse particular clients and practices, chiefly by empowering sex workers through removing the illegality of their work." Studies conducted in New Zealand after decriminalization concluded that sex workers have better working conditions, receive improved access to health services, take precautions to stop the spread of STIs, and enjoy better relations with police, increased access to justice when they are victims of crime,

¹<http://www.hivlawcommission.org/index.php/report>

²Para 20, page 6

and increased confidence and well-being. Additionally, there was no evidence that decriminalization led to an increase in trafficking into prostitution, youth in the sex trade, or the number of sex workers.³ In India, there is abundant evidence from sex worker collectives such as VAMP in Maharashtra and DMSC in West Bengal showing that when sex workers collectivise and come together without fear of persecution they are able to fight exploitation and abuse within sex work. **This itself is a strong argument in favour of de- criminalisation.**

Removing the criminalized environment

Though sex work is not illegal in India, there are laws such as the Immoral Traffic Prevention Act that continue to criminalize women in sex work and those who support her work such as third parties. For instance, "prostitution in public spaces", "soliciting" are punishable offenses and sex workers are sent to correction facilities when arrested for these offences.

Similarly, when raids are conducted on brothels or lodges, even adult consenting sex workers are picked up and sent to "corrective institutions" under the law. For example, the most recent incident in a long list of forced rehabilitation happened in Kolhapur in 2013, when a brothel was raided and ten adult consenting sex workers were picked up and sent to corrective institutions. They were remanded to corrective facilities or asked to produce legal guardians or parents who would take custody of them!! The women almost all of them over the age of 40, languished in these institutions for over 2-3 months, before they agreed not to do sex work as a pre- condition for their release.

ITPA finds two consenting sex workers working together for their own mutual benefit an offence, by labelling it as a brothel deemed illegal under law. More importantly, these provisions have no reasonable link to the objective of ending trafficking for commercial sexual exploitation.

Such punitive laws that criminalise and punish act as instruments through which sex workers are harassed, their human rights violated by law enforcement agencies, health authorities and non- paying clients. Sex workers are a primary means by which the police meet arrest quotas, extort money, and extract information. ***A Pan India Study with 3000 sex workers found that over 37% reported experiencing physical police violence and over 51% reported verbal abuse⁴. Sex Workers across India have reported that fear of arrest, punishment, losing custody of children or being stigmatized or blamed for doing sex work prevents them from accessing justice for violence and denial of health and other services⁵.***

International agencies such as The Global Commission on HIV and the Law⁶, UNAIDS⁷, the World Health Organization⁸, the Global Alliance Against the Trafficking in Women (GAATW)⁹ and Human Rights Watch¹⁰ have also called for or support the de-criminalisation of sex work.

³N.Z. Ministry of justice, report of the prostitution law review committee on the operation of the prostitution reform act 2003 13 (2008), available at <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-Committee/publications/plrc-report/documents/report.pdf>.

⁴Of the Voices that Matter, SANGRAM website

⁵Status of Sex Workers in India, Submitted to CEDAW Committee, 2014

⁶<http://www.hivlawcommission.org/index.php/report>

⁷http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2009/JC2306_UNAIDS-guidance-note-HIV-sex-work_en.pdf

⁸http://www.who.int/hiv/pub/guidelines/sex_worker/en/

⁹http://www.gaatw.org/statements/GAATWStatement_05.2013.pdf

¹⁰<http://www.hrw.org/world-report/2014>

Sex Workers call for an end to the criminalized environment created by these laws - They state that the removal / amendment / reading down of specific punitive laws and policies targeting sex workers are imperative.

Unsafe Working Conditions

It is a known fact that the current criminalized environment also results in unsafe working conditions for sex workers including exploitative practices by third parties and lack of access to nondiscriminatory health services. Decriminalisation will help sex workers organise and address all forms of exploitation, including abusive, sub-standard or unfair working conditions instituted both within and outside the sex trade.

According to the UNAIDS Guidance Note on HIV and Sex Work, *“even where services are theoretically available, sex workers and their clients face substantial obstacles to accessing HIV prevention, treatment care and support, particularly where sex work is criminalized.”*

In countries where sex work is decriminalized, there is evidence that violence directed at sex workers is reduced, relations between sex workers and the police are improved, and access to health services has increased. The criminalisation of sex workers’ personal relationships amounts to the criminalisation of sex workers themselves, while the criminalisation of workplaces mitigates against sex workers ability to protect themselves from HIV and other STIs, and gain labour rights. In a de-criminalized set up, sex workers are able to negotiate sex with clients, reduce conflict, negotiate safer sex practices, thereby reducing risk of HIV and STI transmission.

Sex work is work, and sex workers should not be defined as either criminals or victims, such an analysis harms not only sex workers but all women. Sex work needs to be decriminalised in order for the rights of sex workers to be protected.

We oppose Regulation

A regulated framework permits some forms of sex work, but not necessarily all forms of sex work. It requires sex ***workers to register with the government and have licenses to do sex work***, but many sex workers choose to work privately instead of registering because of the social stigma attached to sex work. This will result in a separate class of sex workers who continue to work without licenses and thus denied access to redress when faced with violence, abuse and rights violations. ***India has a vast number of home-based, part time and hidden sex workers who will become criminalized in such a regulatory regime.***

Only certain forms of sex work will be permissible under the law. *For instance, street based work in New South Wales, Victoria, the Australian Capital Territory and Northern territory is prohibited. In some territories, brothels are also prohibited.*

Law enforcement will be tasked with the process of licensing and monitoring of sex work practices. For instance, a study on the legalisation of prostitution in Netherlands concluded that the police play the most important role in monitoring the licensed sector and in carrying out inspections. In the context of India, such a regime can only lead to further rights violations for sex workers especially those who wish to work in private without the license.

A licensing system will also result in curbing the right of sex workers to move freely for their work within the country. Since licenses will be issued only for a specific area or zone, any sex worker working outside the **designated zones** will be liable to prosecution.

Mandatory health checks required in a regulatory framework, further perpetuate the stigma against sex workers, while failing to address the HIV epidemic in a meaningful manner. Singling sex workers for compulsory HIV testing or health check-ups will perpetuate the stigmatizing notion that sex workers are vectors of disease. Mandatory health check-ups have been recognized by UNAIDS, and the Office of the High Commissioner for Human Rights as a bad public health practice and a rights violation. It is well settled that such coercive practices alienates vulnerable populations and drives them away from the resources that they need to safeguard their health and the health of their partners.¹¹

In conclusion

Sex workers need a supportive legal framework that removes or does not have criminal sanctions against sex workers, clients and third parties. Have appropriate anti- discrimination legislation that enables sex workers to address discrimination.

Sex workers should be supported to have a meaningful dialogue with policy makers regarding their work and livelihood, to collectivise, participate freely and represent sex workers who are unable to participate in such consultative processes.

¹¹Office of the High Comm'r for Human Rights and Joint U.N. Programme on HIV/AIDS (UNAIDS), *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated version*, at 86-87, HR/PUB/06/9 (2006).

ANNEXURE 3. Policies and Positions

1. CRIMINALISATION

Total criminalisation

All aspects of sex work are illegal (or de facto illegal, and therefore criminalised) and carry criminal penalties. It therefore means that the sex worker, the client and a third party such a brothel-owner could be prosecuted. South Africa and some Muslim countries are examples of this model.

Partial criminalisation

This means that certain aspects of sex work are illegal, while others are not. In this model, sex workers are generally viewed as 'victims'; they are generally not criminalised under partial criminalisation laws. For example, in Sweden the buying of sexual services is criminalised, while the selling of sexual services is not. In this case, while the sex worker is not criminalised, the client, brothel-keeper or sex worker manager could be prosecuted. Sex workers maintain that this model renders them unsafe as they have to protect their clients from being prosecuted. They are also reluctant to report crimes against them, as it can lead to police surveillance to catch their clients.

2. LEGALISATION / REGULATION

This means that the state regulates the sex industry and can declare certain kinds of sex work to be legal, under strict conditions. The Netherlands is an example of a country in which sex work is legal under certain circumstances, including location and licensing of individual sex workers. In other countries where sex work is regulated, some of the following conditions have been imposed on sex workers: some sex workers have to carry cards to show that they are sex workers; sex workers have to go for compulsory health checks and are issued with health status cards; the registration of sex workers are registered with the authorities and, in very few jurisdictions, specific areas are designated as sex worker business areas – so-called 'street-walker zones' – also known sometimes as 'tolerance zones' or 'red light districts'. Under this approach street work is often illegal, i.e. Victoria and Queensland in Australia, Nevada in the US.

Legalization often includes special taxes for sex workers, restricting sex workers to working in brothels or in certain zones, licenses, registration of sex workers and government records of individual sex workers and health checks which often mean punitive quarantines.

Legalization usually refers to a system of criminal regulation and government control of sex workers wherein certain sex workers are given licenses which permit them to work in specific and usually limited ways. Although legalisation can also imply a decriminalised, autonomous system of sex workers, in reality, in most legalised systems the police are relegated the job of controlling sex work through criminal codes. Laws regulate business of and lives of sex workers, prescribing health checks and registration of health status (enforced by police and often corrupt medical agencies), telling sex workers where they may or may not reside, prescribing full time employment for their lovers etc.

3. DECRIMINALISATION

This means that all laws that criminalise sex work in a country are removed, and sex work is governed through the same laws that affect other employment, such as health & safety and employment legislation. In this model, sex workers are able to work as independent contractors, or as employees. Sex workers are able to unionise, mostly regulate the industry themselves, and can expect protection

from the police. Brothel operators and management are expected to comply with existing employment and health and safety legislation.

In this model, sex workers have a range of options in terms of places to work. They can work in managed brothels, be street based, online, or from their own home, or any combination of these. They may choose to work in small collectives with other sex workers, or by themselves. There is a balance of power as managed brothels do not hold a monopoly and sex workers can find a situation that suits their personal circumstances, and ensure they are not in a position where they may be coerced or exploited.

CONCLUSION

There have been numerous efforts and movements concerning the sex work movement since the early sixties. The global sex work rights movement as we know it today, began in the late 60s and early 70s. The difference between the contemporary sex work movement and previous efforts is that the current movement has been defined largely by sex workers themselves. Sex work activists have defined the legal status of sex workers in specific ways since the beginning of the sex work rights movement. The current movement includes a recognition of the rights of sex workers to autonomy and self-regulation.

Sex workers rights advocate call for the decriminalisation of all aspects of sex work resulting from individual decision. Asserting the right to work as sex work, many claim their right to freedom of choice of management. They state that laws against pimping (living off the earnings) are often used against domestic partners and children, and these laws serve to prevent sex workers from organising their businesses and working together for mutual protection. They call for the repeal of current laws that interfere with their rights of freedom of travel and freedom of association, civil rights and human rights advocates from a variety of perspectives call for enforcement of laws against fraud, abuse, violence and coercion to protect sex workers from abusive, exploitative partners and management.