



What's stopping India from making sex workers 'equal citizens'

Opinion

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There is global recognition for the need to separate the crime of trafficking from consenting adult sex work. India must join this march for change.

The Covid19 pandemic and the accompanying lockdown served to forefront historical social and economic marginalisation in unprecedented ways. Existing fissures were dramatically widened and deprived communities were pushed over the edge. For sex workers, the invisibilisation and criminalisation by the State and the troubled history of government assistance contingent on exiting sex work, was on sharp display during the pandemic.

While the government identified several categories of marginalised groups such as transgender people, disabled people, informal sector workers and migrants for immediate relief, sex workers were left out of all relief packages. After sustained lobbying, in July 2020 the Government of Maharashtra in a first, recognised sex work as work and sex workers as special category requiring assistance during the

pandemic. This good practice however was not replicated in other states.

Another step in the acknowledgement of sex workers as informal sector workers was the recognition by the National Human Rights Commission in its advisory on October 7, 2020, stating that sex workers must be “recognised as workers and be registered so that they are able to get worker benefits.” The advisory also recommended the issuance of temporary identity documents, especially for migrant sex workers, to enable them to access welfare benefits, healthcare and protection from domestic violence.

While the advisory was subsequently watered down, it retained the recognition of sex workers as informal workers for COVID relief on humanitarian grounds.

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COVID19 and HIV are pandemics that have forced countries to recognise that criminalisation of sex workers pushes the work underground and confounds all efforts to outreach workers to provide prevention, treatment, and care services. Organizations such as UNAIDS, WHO, Amnesty International, Human Rights Watch, UNFPA, and the medical journal The Lancet have all called on countries to decriminalize sex work in the global effort to ensure sex workers' access to health services, and safe working conditions.

Why Decriminalisation?

Providing sexual services for monetary benefit or kind is the sole means of livelihood for the sex workers' community. The primary bane of sex-

work, colloquially known as “dhanda” (business), is that many aspects of its practice are criminalised, often pushing the workers to work clandestinely.

As their work does not enjoy social sanction, sex workers are forced to struggle for their very existence. Most sex workers work through mobile phones or peer networks or on the streets, in lodges, or highways. Female, male and transgender sex workers - many of them migrants -- operate as independent workers or are attached to a system of third parties or client procurers.

Sex workers face prosecution and harassment because law enforcement routinely – but incorrectly -- conflates trafficking with sex work. In addition, many sex workers are also frequently penalised for non-criminal offenses such as loitering, vagrancy, and impeding the flow of traffic. By limiting sex workers' freedom to negotiate condom use with clients, access public services like health care, organise and advocate for their rights, criminalisation increases sex workers' vulnerability to violence, extortion, and health risks.

Any argument that seeks to define sex work as violence and exploitation forecloses discussion over the rights of people involved in sex work. The conflation of sex work and trafficking also severely undermines the human rights of sex

workers while failing to secure the rights of people who are actually trafficked; by misdirecting resources into policing sex work, rather than identifying people who are coerced and providing them 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.

Anti-trafficking groups globally and across India, have often muddled the waters on the issue of adult consenting sex work, by continuously stating without evidence that “efforts to decriminalise sex work will lead to increased demand for trafficked victims and fuel sexual exploitation”.

Sex workers across India have reported that fear of arrest, losing custody of children or being stigmatised for doing sex work prevents them from accessing justice for violence and denial of health and other services.

In fact, there is global recognition for the need to separate the crime of trafficking from consenting adult sex work. The UNDP Global Commission on HIV and the Law states, *“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.”*

Likewise, the India Report of the UN Special Rapporteur on Violence Against Women underscored the need to address the violence faced by sex workers and 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”. The Report also called for the separation of efforts to combat trafficking and reiterates that conflating sex work with trafficking has led to assistance [coercive raid and rehabilitation] that is not targeted for their specific needs.

Though sex work is not illegal in India, the Immoral Traffic Prevention Act continues to criminalise women in sex work and third parties who support her work. For instance, “prostitution



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in public spaces” and “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 and released only on condition that they will exit sex work.

Likewise, ITPA deems two consenting sex workers working together for their own mutual benefit as 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 act as instruments through which sex workers are harassed and their human rights violated by both law enforcement agencies and health authorities. 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 abuse. Sex workers across India have reported that fear of arrest, punishment, losing custody of children or being stigmatised or blamed for doing sex work prevents them from accessing justice for violence and denial of health and other services. Given the adverse impact of punitive laws on their lives and livelihoods, sex workers call for an end to the criminalised environment created by these laws.

This would involve repeal or amendment of laws or statutes which make certain acts criminal, so that those acts are no longer crimes or offenses.

Legalisation on the other hand requires sex workers to register with the government and obtain licenses. This would deter many who choose to work privately or in secret, due to the

social stigma attached to sex work. Until such stigma is dealt with — a long and arduous process — legalisation, even if implemented properly, would still keep some sex workers from registering with the government and working openly, which would then end up criminalising them. This criminalisation would prevent them from availing of benefits such as institutional help to combat violence, health issues and harassment.

There is ample evidence to prove that the current criminalised environment also results in unsafe working conditions for sex workers including

exploitative practices by third parties and lack of access to non-discriminatory 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.

The recognition by the NHRC and the Government of Maharashtra, of sex workers as workers during the COVID19 crisis while very welcome, spotlights the long journey to transform social perception and accept sex workers as equal citizens and an integral part of our society.

