



## PRESS RELEASE

# Ordinance criminalizes sex workers: Sex Workers Appeal to President to reject Ordinance

**2 FEBRUARY 2013**

We, Organisations working with sex workers across the country appeal to the President Of India to reject the Ordinance on the Criminal Law (Amendment) Bill 2012, cleared by the Union Cabinet in an act of haste.

Information in the public domain, through media sources, reveals that an Ordinance on amendments to sexual assault law was cleared by the Cabinet yesterday, on February 1, 2013 - about 20 days before the next parliamentary session.

The proposed Section 370 incorporated in the Ordinance cleared by the cabinet, conflates trafficking of persons and those who consent to sex work. At the heart of the problem is the newly worded Section 370 of the Verma Commission, which has been accepted in totality by the Ordinance. The Section deals with the offence of Trafficking of a Person<sup>i</sup>. The term "**exploitation**" includes "prostitution" itself. This in essence means that **all "prostitution"** will now be interpreted as exploitation.

The Ordinance if accepted would criminalize people in sex work since the section does not differentiate between "**coercive prostitution**" and prostitution; nor does it talk about the "**exploitation of prostitution**".

The Verma Commission has wrongly interpreted the internationally recognized and existing explanation of exploitation (under the UN Protocol, 2000), which states "Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation". If the section is accepted, it would go against the commitment made by India which is a signatory to the Protocol and has ratified the UN Protocol in 2011.

The inclusion of voluntary and consenting sex workers into the definition of exploitation puts back the struggle waged by sex worker communities across India to ensure dignity for people engaged in sex work.

We are deeply concerned that this interpretation if accepted by the President of India will contradict

- a. The Hon'ble Supreme Court of India which has upheld the rights of women in sex work observing that Article 21 grants them a right to *live with dignity*<sup>ii</sup>.
- b. If the section is accepted, it would go against the commitment made by India which is a signatory and has ratified the UN Protocol in 2011.



We further hold that Trafficking of persons was outside the purview of the specific terms of reference provided to the Justice Verma Commission in December 2012 and any recommendations relating to trafficking should not be included in the Ordinance.

The National Network of Sex Workers therefore appeals to the President to reject the Ordinance forthwith.

### **FOR FURTHER DETAILS CONTACT**

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#### **<sup>i</sup> S 370 - Trafficking of a person (reference - Verma Commission Report, Page 438)**

1. Whoever for the purposes of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers or (e) receives, a person or persons, by

Firstly, using threats or

Secondly, using force, or any other form of coercion or

Thirdly, by abduction, or

Fourthly, by practising fraud, or deception, or

Fifthly, by abuse of power, or

Sixthly, by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1: 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.

Explanation II: the consent of the victim is immaterial in a determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with RI for a term which shall not be less than 7 years, but which may extend to ten years, and also with fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with RI for a term which shall not be less than ten years but which may extend to imprisonment for life, but also with fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with RI for a term which shall not be less than 10 years but which may extend to imprisonment for life.

(5) Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with RI for a term which shall not be less than 14 years which may extend to imprisonment for life.

(6) When a public servant or a police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life which shall mean the rest of that person's natural life

(7) If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the rest of that person's natural life.

<sup>ii</sup> Budhadev Karmaskar v State of Bengal, Cr Ap No. 135 of 2012