

Rethinking trafficking

Last year, India protested against the release of a report, 'Global estimates of modern slavery: forced labour and forced marriage', a collaborative effort of the International Labour Organisation (ILO), the Walk Free Foundation, and the International Organisation for Migration. The report estimated that there were 40.3 million "modern slaves" worldwide in 2016, with 24.9 million in forced labour and 15.4 million in forced marriages. It did not name countries, but the writing on the wall was clear as 17,000 interviews had been conducted in India, and 61.78% of the "modern slaves" were in Asia and the Pacific. Registering its protest with the ILO, India vowed to undertake its own surveys. The Chairman of the Economic Advisory Council to the Prime Minister, and member of NITI Aayog, Bibek Debroy, was scathing in his critique. He called the estimates on forced marriage "confused and fuddled" and urged reliance on the government's reports on child marriage.

However, as the report forms the baseline for achieving Sustainable Development Goal 8.7 (eradicate forced labour, end modern slavery and human trafficking, and end child labour by 2025), and since NITI Aayog is the body entrusted with the task of overseeing implementation of the SDGs in the country, India's desire to protect its international image by measuring "more" and "better" is wholly inadequate. Rather than succumb to the numbers game played by international organisations and philanthropocapitalists, India could be more ambitious. It could assert a leadership role in the global fight against exploitation by countering the influence of neoabolitionism, a discourse that perpetuates sensationalist accounts of "modern slaves" as victims tricked by unscrupulous traffickers and whose only hope is to be rescued by law-enforcing heroes. After all, long before neoabolitionist groups and indeed Western countries set the global policy agenda on "trafficking", in the 1970s and 1980s India and Brazil had developed a rich, indigenous jurisprudence on exploitation. This had a structural understanding of coercion and exploitation in labour markets and was backed by a creative regulatory response. But sadly today, the Indian government is set to introduce the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016, which exemplifies neoabolitionism.

India has a complex patchwork of anti-trafficking laws, ranging from the Indian Penal Code and the Immoral Traffic Prevention Act (ITPA), 1986, to social welfare legislation on contract and bonded labour, and inter-state migrant work. While criminal laws like the ITPA target 'bad men' traffickers, labour laws presume endemic exploitation in labour markets. In India, a combination of penal, labour and contract laws are used to impose obligations for better working conditions. Unfortunately, as the topic of trafficking gained international prominence, the government understood trafficking to be equivalent to sex trafficking and sex work.

The current definition of trafficking in Section 370 of the IPC is not limited to sex work; yet, the Trafficking Bill is patently neoabolitionist. It pursues the classic raid-rescue-rehabilitation model, with stringent penalties for trafficking, including life imprisonment for its aggravated forms, reversals of burden of proof, and provisions for stripping traffickers of their assets. It creates a plethora of new institutions with unclear roles, capacious powers (including for surveillance) and no accountability, alongside a parallel adjudication machinery with special courts and special public prosecutors. There is no clarity on how the Bill relates to the ITPA and to labour laws.

In a recent statement, scholars, activists and workers' rights groups argued against extending a criminal law, raid-rescue-rehabilitation model beyond sex work to other labour sectors. They called instead for a multi-faceted legal and economic strategy; robust implementation of labour laws; a universal social protection floor; self-organisation of workers; improved labour inspection, including in the informal economy; and corporate accountability for decent work conditions. They also reiterated the need for systemic reforms to counter distress migration, end caste-based

discrimination, enforce the rural employment guarantee legislation, avoid the indiscriminate rescue of voluntary sex workers, and protect migrants' mobility and rights. As the introduction of the Trafficking Bill in Parliament appears imminent, only a bold, holistic response to what is a socioeconomic problem of labour exploitation can help India realise SDG 8.7.

Prabha Kotiswaran is Reader in Law and Social Justice, The Dickson Poon School of Law, King's College London

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