

Review Article

Understanding the Socio-Economic and Legal Context of Prostitution and Sex Trafficking on Women in India

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Abstract

Prostitution is one of the major problems which beset the human societies the world over, from the very dawn of civilization. It is one of the kaleidoscopic images nurtured by social fabric, which wishes to perpetuate the status of women as sexual objects. Sometimes, prostitution can be viewed as a sociological phenomenon, an inevitable outcome of ignorance and misery, as a flesh trade in the society. A narrower view is that, yet equally valid concern, is that prostitution constitutes a health hazard, both directly in the spread of Sexually Transmitted Diseases, as well as indirectly, as a conduit for drug trafficking and abuse. Giving legal recognition to prostitution would enable the prostitutes to make some contribution towards the development of the nation, as they would have legal protection, their children can get education and would be entitled to participate in the main stream of the society. Recognizing prostitution as a profession will at least reduce the real illegalities that come with it, such as child prostitution, drug trafficking and other crimes. This article provides a comprehensive overview of the philosophical and socio-legal perspectives relating to sexual exploitation of women and girls. In India, one lakh minors are forced into prostitution every year. The menace of child trafficking in India has been growing at an alarming pace. According to United Nations Children's Fund, the state of the Worlds Children's Report, Indian country has been identified as the leading hot-spots of child sex trafficking in the world. Half of the missing girl children in India were sold into prostitution. Under this scenario, in this paper an attempt has been made to analyze the various deleterious effects of prostitution and its socio-economic and legal impact on the society.

Keyword: Prostitution; Sex work; Trafficking, Victimization, Legalized sex work; Sex trafficking policy.

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Introduction

Prostitution has been generally be defined as promiscuous intercourse for hire whether in money or in kind. According to Geoffrey May, prostitution may be defined as the practice of

habitual or intermittent sexual union, more or less promiscuous, for mercenary inducement'. Thus, there are three important constituents of Prostitution, viz. illicit and promiscuous sexual intercourse, mercenary basis whether in cash or in kind, and lack of affection or personal interest. It

refers to the sexual behaviour of a female, outside or without wedlock on a commercial basis. It is regarded as a vice, a sinful or degrading indulgence of a natural appetite for itself alone. It is forbidden by religious and civic groups, and also prohibited by law in some societies. Prostitution often results into drug addiction, scandal, venereal diseases, AIDS and deterioration of the neighbourhood in which it occurs. Prostitution itself is not punishable under law but activities related to it, such as running brothel, any act being taken out in public place, pimps etc. are punishable. There are three million sex workers presently working in India. As there is no proper law, the sex workers are exploited by the pimps and the owners because they have nowhere to go. Once a female is involved in such activities, she is not accepted back in the society or family, resulting in them continuing with same under social pressure.

There are references to prostitution even in the pre-historic days in the religious books and epics such as the Vedas, the Ramayana, the Mahabharatha and the Bible. It is to be noted that the ancient thinkers such as Koutilya, Manu, Brihaspati endeavoured to prohibit prostitution and looked upon it, as a social evil and tried to eradicate it. It is pertinent to mention that the Bible says emphatically that the Prostitution should be banned. When we look at history in India, it was much in vogue during Mohammadan period, and many kings used to keep prostitutes and dancing girls as courtiers. However, during the British period, the rapid urbanisation and industrialisation increased this evil. The origin of the prostitution is an earmarked in the history. The flesh trade or selling the body for money is perhaps as old as male-female relationship. It is pertinent to mention that a prostitute known as a glamour girl, as a devadasi set apart in the service of a God.

International perspective

According to the Report of Havoc-scope, the revenue for prostitution can be estimated around 190\$ billion per year worldwide. Even Amnesty International arguing that prostitution is a matter of free choice, a stance heavily promoted by the multi-billion-dollar commercial sex industry. International cooperation to end the traffic in women, for the purpose of prostitution began in 1899. In 1921, the League of Nations established the Committee on the Traffic in Women and Children, and in 1949, the United Nations General Assembly adopted a Convention for the Suppression of Prostitution and its Protocol.

Prostitution in United States of America is a booming billion dollar business and it has been seen as an organized institution, ever since colonial days. It was virtually uncontrolled till the Mann Act, was passed in 1910, famously known as White-Slave traffic Act, which prohibited inter-state transportation of women for immoral purposes. It primarily addresses about the prostitution, immorality and human trafficking. This is one of the several Acts of protective legislation aimed at moral reform during the progressive era. By 1915, nearly all States had passed the laws banning brothels. In most of the large Western cities, prostitution was tolerated, and the law enforcement agencies are more concerned with regulating the crimes associated with prostitution. A British Parliamentary Act of 1959 prohibits open solicitation by prostitutes, but permitted them to operate in their own homes and provided rehabilitative training to all, who wish to change their occupations. Regulations in the Scandinavian countries emphasized hygienic aspect. They made medical examination and hospitalization of the victims who are infected with venereal diseases compulsory. Prostitution is also rampant in Europe. There are many countries that have legalized the prostitution, such as New Zealand, Austria, Belgium, Bangladesh, Columbia, Denmark, Netherlands, and Germany. But the Soviet Union, prostitution has been officially outlawed. Interestingly, in Canada, which has limited legality, selling sex is legal, but buying sex has become illegal since December 6, 2014. Buyers face a minimum \$500 fine and up to five years' imprisonment, if caught, and similarly in Iceland, selling sexual services is legal but paying for sexual services is illegal.

Prostitution as a violation of a Human Right

International human rights law recognizes prostitution as a violation of human right and specifically prohibits exploitation of the prostitution of others, including pimping, procuring and the running of a brothel. States and United Nations agencies have a direct, binding obligation to oppose any trivialization of prostitution and to work towards the elimination of its exploitation. It is to be noted that one year after the adoption of the Universal Declaration of Human Rights in 1948, the General Assembly of the United Nations adopted the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 1949 and this Convention is part of the United Nations universal human rights instruments and

is a binding treaty. In fact, it is the only United Nations binding instrument focusing specifically on prostitution and its exploitation. The preamble of the Convention states that prostitution and traffic in persons are incompatible with the dignity and worth of the human person.

States Parties are under a binding obligation, to respect and to protect the dignity of the human person, which is a cornerstone of international human rights law. When defining and implementing policies with regards to prostitution and its exploitation, States must ensure that they work towards the elimination of prostitution and the protection of its victims. States are de facto prohibited from implementing policies that would encourage prostitution and thereby foster a violation of human dignity. All policies that justify, promote or trivialise prostitution as "sex work" are incompatible with established and binding UN human rights legislation. The Charter of the United Nations gives all United Nations bodies and agencies, the obligation to promote the respect of the "dignity and worth of the human person" and of the "equal rights of men and women". Given that prostitution is recognised as a violation of the dignity and worth of the human person by international human rights law, and all United Nations bodies and agencies are obliged to contribute to the elimination of prostitution and the protection of its victims. As a consequence, United Nations agencies and bodies are further obliged to oppose the use of the term "sex work", which aims at normalising, and sometimes promoting, what is considered a human rights violation. This specific obligation to contribute to the elimination of prostitution and to oppose any promotion or trivialisation of prostitution is further reinforced by the recognition by the United Nations of the purchase of sex acts as a "sexual abuse".

Causes of Prostitution

The extensive researches conducted by several eminent scholars that there are number of factors which lead into prostitution, such as poverty, illiteracy, backwardness, the lack of employment opportunities and of employment skills, together with the sexual inequality, goes to make a formidable combination that pushes women and girls into prostitution. It is a combination that also perpetuates hereditary prostitution, a tradition peculiar to certain communities in India.

Poverty: It seems to be the important factor because of young girls and women often resort to this

profession, and most of the prostitutes come from the under-privileged economic groups. The part-timers resort to prostitution because of high returns with little investment or effort and they consider it doubly profitable in that, they can derive sensuous enjoyment, in addition to the economic benefits. The concept of poverty however is relative, women may prostitute herself in order to live well, and give first-class education to her children. The general loosening and lowering the standards of conduct and sex exploitation in the movies, magazines, arts and above all, the vice rings operating the trade and the cabarets of big hotels have contributed to the modern toleration and proliferation of prostitution. The postponement of marriage by few women in the society also leads to this flesh trade, because of economic necessity of dowry system, further contributed to the prostitution. The living conditions in most of the industrial centers are barbarous in India. Those women who are working in industrial labour paid fewer wage, and they are easy prey to the lust of contractors and friends, which lead to prostitution.

Cultural Factors: In olden days, there was a customary practice of making the eldest girl child as devadasi, Joginis and Venkatasins in the States of Andhra Pradesh, Karnataka and Maharashtra. Although the girls on whom these customs were practiced known by different names, but basically their profession was directly or indirectly same as prostitution. The major reason behind these customs were religion, reluctance of family to upbringing girl child and sexual lust of people who can exploit these girls. Although, the girls' conditions in most cases remain pathetic but they were never regarded as victims.

Apart from that, the precocious development of sex often drives women to prostitution. The girl's desire for new experience, promiscuous social contacts, unhappy marital relationships, loose habits of the husbands, considered to be the other causes of prostitution. Many tender girls are kidnapped from their homes by unscrupulous gangsters, and they properly train them in the art of prostitution and when these girls mature, they are sold.

Socio-economic effects of Prostitution

No doubt, the prostitution cause personal, family, and social disorganization. The prostitutes suffer from deterioration. The prostitute and the person who approaches her, lead a sort of 'double life'.

They suffer from moral collapse and lose their status and position, which other respectable men and women enjoy in society.

Venereal Diseases: Venereal diseases are ordinarily acquired through sexual contact. Physicians estimate that 95% of Syphilis is so acquired, although killing and careless contact with the prostitute. The man who approaches a prostitute may be contaminated with venereal diseases. Syphilis and Gonorrhea said to be Venereal diseases causes inflammation and discharge from the genital passages, and possibly, leading to rheumatism, heart disease, one of its later results in the male is narrowing of the urinary passage in the penis with consequent difficulty or even stoppage of urination. They are of vital concern not only they are epidemic and devastating, but also lead to the other social problems. Prostitutes live in a small informal dwelling, under the rigorous control of 'madame' or brothel keeper and they are the chief sources for spreading venereal diseases. If married, he may communicate the disease to his wife and children. The children born to the parents having venereal diseases are likely to be maintained for life and many a time is born blind. One of the reason for the 'psychic-impotency' the hatred owned towards the prostitute's sex developed before, during or after the sex-union and fear of the contamination of venereal diseases from the prostitute at the time or after he had sexual relation with her. A prostitute performs two functions in the society viz., the commercial functions and health function. The brothels, call-flats and disorderly hotels where prostitution is permitted, become accessible places for the public to have free sex satisfaction. This brings money to those who conduct it, but, at the same time, it spreads venereal diseases. Besides this, the constant irritation caused by repeated intercourse with a variety of men contributes to a higher incidence of cancer of the uterus.

Social Effects: Mortality rate is very high because every cell of the body of the women is put to merciless high pressure by different types of Orgies and nobody bother about the difficulties of the prostitute including the procurer of the brothel keeper and they have got to die like a dog. Many prostitutes become addicted to alcohol and drugs because of the lack of true fulfilment in their life, and their lives become corroded and wasted. It is to be noted that like a Devadasi, once a woman enters the profession under any circumstances, she has to live in the clutches of the person, who has controlling handover her and all the children

of such a women are compelled to follow the same profession and further, they cannot go back to the society, and hence the life of the prostitute including her children ends in that career.

An Overview of Immoral Trafficking in India

The most basic fundamental law of the land under Article 23 prohibits trafficking in every form including commercial sexual exploitation of women and girls. In addition to the provisions of Indian Penal Code, as per such as Sec. 354 (use of Criminal Force on women) Sec. 366 (Kidnapping or abducting a women), Sec. 372 (Selling, Letting for hire or otherwise disposing of, or buying, hiring or other obtaining possession of any girl under 18 years of age for any unlawful or immoral purpose), and the above provisions did not make prostitution illegal, but an act of offence is accompanied by kidnapping or criminal intimidation, will be treated as an offence. There are certain legislations like The Suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter referred as SITA), for the suppression of immoral traffic in women and girls. An Advisory Committee was appointed by the Order of the Supreme Court in *Gaurav Jain versus Union of India 1997 (8) SCC 114*, identifies various kinds of prostitution, such as street walkers, religious prostitution, prostitution in brothels, singing and dancing girls, customary prostitution, caste based prostitution, child prostitution, forced prostitution, and voluntary prostitution. It is pertinent to mention that India being a signatory to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which is passed and signed at New York on 9-5-1950, and on the recommendation of the Committee headed by Dhanvanti Rama Rao as Chairman, to investigate the problems in all its aspects throughout the country, the Parliament passed the Act in 1956. Before the passing of the legislation, there were enactments in some of the States for suppression of immoral traffic, but they were neither uniform nor did they go far enough. The Act does not specifically make sex work/prostitution illegal but criminalizes a number of activities in the nature of running a brothel, living on earnings of prostitution, procuring a person for prostitution and prostitution in the vicinity of a public place. Till the recent amendment in 2009, soliciting for purpose of prostitution was an offence and the major provision invoked against sex workers.

It is also pertinent to mention that the word trafficking would be generally understood to

mean transporting a person by the means of the use of threats, force, coercion, abduction, fraud or deception. However, the legislation did not even have a definition of trafficking from the inception and for most of its existence, leave aside provisions to check it. Yet, so deep is the association of prostitution with trafficking, that the law with regard to sex work is called prevention of "immoral traffic". In a departure from criminal jurisprudence, indicative of stigmatization of sex workers, the Immoral Traffic Prevention Act has paradoxical offences like detaining a person "with or without his consent" in premises, where sex work is carried on or taking a person, "with or without his consent" for the purpose of prostitution.

What is a Brothel: In the present days, the sexual exploitation is legally forbidden, and the pronouncements have defined brothel as a place resorted to by persons of both sexes, for the purpose of prostitution, who are the strangers of occupancy, in the sense that both men and women have to go to this place as a brothel. The preamble of the legislation is to inhibit or abolish commercialized immoral traffic in women and girls for the purpose of prostitution as an organized means of living. It is proved by people of opposite sexes coming there and having illicit sexual intercourse, for some consideration on the premises, and a single instance coupled with the surrounding circumstances is insufficient to establish that the place is being used as a brothel, as is decided in case of *re, Mangil N. v. Rajendran*, (1972) L.W.(CrI.) at p. 185. The idea is not to render prostitution *per se* a criminal offence or to punish a woman merely because she prostitutes herself, as is clearly indicated by the last part of the definition of 'brothel', under Sec. 2(a) of Act, which implies that where a single woman practices prostitution for her own livelihood, without another prostitute or some other persons being involved in the maintenance of such premises, her residence will not amount to brothel. But the exceptions indicated by Sections 7 and 8 of the Prevention of Immoral Traffic Act, making punishable the practice of prostitution in or in the vicinity of certain public places, throws light upon the intention of the legislation inhibiting a woman herself from the practice of her profession in contravention of its terms and to that extent renders sexual exploitation a penal offence. Under Section 8, soliciting or seducing for the purpose of prostitution is punishable with six months in jail and a fine of five hundred rupees.

It is pertinent to mention that there is no provision in the Act to punish a woman carrying on prostitution for her own gain unaided by others

as the prostitute by her, prostitution cannot be said to be assisting in the keeping of the brothel. In the case of *Krishna Murthy alias Tailor Krishnan v. Public prosecutor* (1967) 2 M.L.J. (S.C.) 37, the Police Commissioner having information that the house occupied was being used as a brothel with three girls, has deputed a decoy giving three marked ten rupees note. When the decoy asked Krishnamurthy who is running the house for the availability of girls, he was shown three girls and he selected one of them and paid the said currency notes to him, within few minutes later, the police raided and found the decoy and the girl in a disheveled condition in a room. The marked currency notes is in possession of Krishnamurthy, the appellant. It was urged by the Appellant that a solitary instance that the house was used for the purpose of prostitution will not suffice for establishing that the house was being kept as a brothel'. It may be true that a place used once for the purpose of prostitution may not be a brothel, but for a reasonable and normal inference could be drawn that the girls were prostitutes within the meaning of section 2(a) of the Act. It is further mentioned that living on the earnings of a prostitute is also punishable. As far the importance attached to the phrase 'earnings of the prostitution of women' in Section 4(1) of the Act in proof of the offence, in *KambodhBeera v. Emperor* A.I.R. 1928 Cal. 381, the appellant had sublet his premises to certain prostitutes, and used to go there sit at the gate and collect his rent daily from the visitors. It was held by the Calcutta high Court that the appellant was in part, living on the earnings of prostitution.

Procurement of Girls for the Trade: Procuring, inducing or taking a woman or girl for the sake of prostitution is also severely punishable with rigorous imprisonment for a term of three to seven years, and also fine extended to two thousand rupees, under Section 5 of the Act. It is to be noted that the word procure may be taken to refer not only to persons who procure women for others but also to persons who procure women for themselves. The word 'take' in the section means to cause to go, to escort, or to get into possession; when the accused takes the minor with her, whether she is willing or not the act of taking is complete and the condition is satisfied. When the minor girl leaves her father's protection knowing and having the capacity to know, the full port of what she was doing and voluntarily joins the accused person it cannot be said that the accused had taken her away. Something more has to be shown such as some kind of inducement held out by the accused or an active participation by him in the formation of the intention of the minor to leave the house of the

guardian, as held in the case of *Varadarajan v. State of Madras* (1965) 2 M.L.J. (S.C) 40.

Prostitution in the public places: Section 7 of the Act provides that any woman or girl who carries on prostitution and the person, with whom it is carried on, in certain specified places or in their vicinity, that is, within a distance of 200 yards there of are liable to punishment with three months' imprisonment. The intention of the legislature is to punish the women or girls, who offer their body for promiscuous sexual intercourse for hire in the vicinity of the public place. It is submitted that in order to hold that a woman carries on prostitution, plural and indiscriminate sexuality on her part has got to be established, but that does not necessarily require that the evidence of more than one customer of the prostitute should be adduced and it would be if the facts established entitled the court to raise an inference that she carried no prostitution as contemplated under Sec. 7(1) of the Act, as decided in *Bai Shanta v. State of Gujarat A.I.R. 1967 Guj. 211*

Section 8 of the Act prescribes penalizes seduction, solicitation and molestation by words, gestures or willful exposure of person or by any other method in a public place. This provision is probably derived from the common law concept of soliciting. Section 9 prohibits the causing, aiding or abetting of section of a woman or girl in custody. Where a female offender is found guilty of an offence under Section 7 or Section 8, and the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instruction and discipline as are conducive to her correction, it shall be lawful for the court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years, as per Sec. 10A of the Act. A non-official advisory body may be associated with the police officer to advise him on questions of general importance regarding the working of the legislation. Any offence under the Act is declared cognizable by Section 14. In case of urgency, the special police officer is empowered to enter and search without warrant, the premises where he has reasonable grounds to believe that an under this Act has been or is being committed, as per Sec. 15 of the Act.

Powers of Magistrate: A magistrate may pass orders, directing the closure of brothels and eviction of occupiers of premises of brothels and Section 18(2) of the Act, operates not merely on places within the offending distance of 200 yards but on all places where the activity of prostitution has been conducted.

A woman or girl, who is carrying on or who is made to carry on prostitution, may make an application to a magistrate that she be kept in a protective home. It is pertinent to note that very wide powers are given by Section 20 of the Act, to a magistrate to remove any woman or girl, who is a prostitute from any place within the limits of his jurisdiction, if he considers it necessary to do so, in the interests of general public. The observation made by Justice Sahai by way of obiter dicta in the case of *Sharma bai v. State of Uttar Pradesh A.I.R. 1959 All. 57*, that Section 20 is hit by Articles 14 and 19 of the Constitution of India because there is no rational classification and it is left to the sweet will of the Magistrate to remove one prostitute and not to remove another though her case may be quite similar to the one who is being removed. Therefore, it would result in the denial of the rights that are guaranteed under Article 19(g) of the Constitution of India. It is to be noted that besides the power of removal or prohibit the re-entry has no reasonable relation to the object in view that is the suppression of traffic in persons and of the exploitation of the others.

Role of Judiciary in recognizing rights of Sex worker: It is to be noted that the Supreme Court of India has recognised the rights of sex workers in case of *Buddadev Karmaskar v. State of West Bengal* decided in Criminal Appeal No. 135/2010, Supreme Court of India decided on 14th February, 2011, wherein Justice Markandeya Katju holds that sex workers are also human beings and no one has a right to assault or murder them. A person becomes a prostitute not because she enjoys it but because of poverty. Society must have sympathy towards the sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21 of the Constitution. Lord Justice by observing that a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body. The court had not only by issuing the notice to the Central and the State Governments but also directed to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. Until the attitude changes and sex workers are given an unprejudiced access to the justice system, and safe working conditions, violent crimes against them will continue to go unreported, unaddressed and unpunished in the country. It is high time that the country recognizes rights of sex workers, and devises policies to systematically address the problem of growing sexual violence against them

instead of brushing the issue under the carpet.

Legalizing the prostitution: A step forward: In India, there is a growing concern in increasing the incidents of rape and legalizing the prostitution is a step forward towards combating rape. There are two things under which why the prostitution should be made legal. One is that if a woman or girl wants to enter into, a demeaning relationship with another person for monetary or other gains, there is not much the Government can do, to stop this, and the second one is that the women who take to this profession because they are extremely poor. It is to be noted that there are various pronouncements, the Supreme Court of India has expressed the view that the practice of prostitution should be legalized in India. The law does not protect the rights of the sex worker, but criminalizes the activities related to prostitution. It is pertinent to mention that giving legal recognition to prostitution would enable the prostitutes to make some contribution towards the development of the nation, as they would have legal protection and would be entitled to participate in the main stream of the society. It is a debatable point as to whether laws on prostitution should at all exist in the present social situation. Due to economic and social structures predominant, it appears to be the only avenue, for the survival or many unfortunate women. However, the structure of the current laws permits all the perpetrators, such as client and procurator to get off scot-free while the women, who are merely exploited for their benefit, carry the brunt of social and legal disapproval and penalties.

Trafficking of children: The fact is that despite the enactment of a legislation, children continue to be brutally victimised. It is to be noted that in developing countries, where children have been reduced to commodities in sex markets frequented by perverse people including foreigners. In the free democratic market, where a large number of children from poor families are being sold and purchased like animals. Therefore, the children are not only deprived of their basic right to education and normal upbringing, they are also denied the joys of their childhood and youth. An estimated 1.2 million children being bought and sold into sexual slavery every year. Out of 10 million sex workers in our country, three to five lakh under 18 years of age children are involved in sex trade. The children are exploited by underworld criminals, employers, and traders, drug peddlers because they are easy targets, and they cannot resist or fight back. Prostitution of children is illegal even under international law.

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Conclusion

The practice of prostitution requires a radical change in the society. In India, every forty girls under the age of fifteen are forced into prostitution. Sex workers should enjoy the same rights, protections, and benefits at par with all other citizens and workers. It is really important to understand the sex workers as persons endowed with rights in a meaningful fashion, and not merely as a rhetorical claim. Recognition of sex work as an occupation will be the first step in this direction. There is no stringent law combating human trafficking in India. Even though, India is signatory to the United Nations Protocol, there is no provision which completely prohibits the offence of human trafficking. For instance, the main purpose of trafficking woman and young girls is prostitution. Similarly, due to unemployment in India, many young people apply for jobs in foreign countries even for low salaries where their passports are seized and they can't go back to their native countries. Thus, in order to eradicate this kind of human trafficking, steps has to be taken to remove it, from the gross root level, by eradicating the root causes that paves way for the alarming increasing of crime.

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