

Prostitution and Issues Surrounding It with Special Reference to the Debate of Criminalizing or Decriminalizing the Sex Trade

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INTRODUCTION

Prostitution in India is prevalent since years in India. Its traces are found in history back to 3rd Century A.D. Though in historic time, the situation and condition of life of these commercial sex workers was not what it exists today. They were not “prostitutes” per se. They were known as Devadasi that connotes as slaves of God. They were much more in respectful position and were considered with reverence after the priests. It was with the advent of British Colonies that the Devadasi systems started losing its place. The Devadasi system has reduced so low now to prostitution. Devadasis were treated after priests with respect and they were the affluent class of society. The scenario has changed now. The prostitutes or the commercial sex workers are considered as being loose women or their acts are considered to be social evil. They are thus not given recognition and are in a position that they are neither banned nor recognized. The question of legalizing prostitution stands in debate.

MYTH OF INDIAN HISTORY¹

“Prostitution” is a reduced concept of system of devadasi. Though there is vast demarcation in the form it used to be. The system has a cultural and sociological nexus with it. It is a form of divine following of Goddess Yellamma.

There was a sage named Jamadagni and his consort was Renuka, who was so pure that she even use to carry water every day in a new pot molded by her every day. One day she saw reflection of a male bathing in the river water and she was stuck by him. The sage caught her and asked his son to behead Renuka in anger. The son was obedient and beheaded his mother. The sage, being happy with the obedience of his son, asked the son to demand for anything he wanted in return of the act done by him. The son asked for his mother Renuka to be brought back to life. At the same time, a low caste woman, known as matangi passed by them. The sage asked to behead matangi and join her head to Renuka's body. This is how she was resurrected and the sage gave her a blessing that she will now be named as yellamma and she will be goddess for other harijan girls, who would marry her. Also the girls would have to satisfy all sexual demands made by her son parasuram, and they would not ask anything in return from him. The girls would also have to look at every other man as parasuram who would come to ask for sexual favours from them, and would not expect anything from them in return. Though this story sounds so weird but this is where the prostitution started from. These girls were considered as Devadasi i.e., Slave of God. Source of livelihood was to beg on every Friday for alms, from every house, in name of yellamma.

This trend of dedicating the girls to Yellamma and to the temples is traced back to 3rd century A.D. It is the period during Puranas. They worked as entertainers in the temples. They were dancers, singers and in return they use to get land, money, jewelery and other precious things from the royal men that came there. The Devadasi were very affluent. The temples had 400-500 Devadasi at that time.

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¹ Shoma A Chatterjee, The Genesis of Devadasi System in India, Women in White, Black and Technicolor(Published by Rupa. CO. Ed. 2004)

With advent of British, this system in 1818, reduced to Prostitution, wherein they asked for money in return of sexual favors, as the Britishers did not allow the practice in the temples. The advent of British colonies had led to decline, in the lives of Devadasi. Since, then they have turned into prostitutes or commercial sex workers.

The present scenario of the Red light areas, and the sex workers working there constitute of 30 percent (Indian Health Organization) of Devadasi, and the other being from the society that are dragged into the profession because of poverty and lack of any other means of livelihood.

LEGAL ASPECTS OF ABOLISHING DEVADASI

The suppression of Immoral Traffic Amendment Bill 1986 was brought out to abolish the practice of Devadasi that was based on irrational belief and blind trust and faith to Yellamma. The practice was continued by the devadasi, who use to bring 1000 girls into this profession on around 15th of February, which being a full moon day is known as Magha Purnima Night. But this did not bring any change in the practice that continued in Karnataka and Maharashtra.² The practice was sought to be abolished because all the children of the devadasi were considered to be legitimate, through the blessings of Yellamma and the woman were dedicated to be a devadasi on basis of such irrational belief. So this System was abolished.

REHABILITATION OF DEVADASI: A FAILURE

This system was not easy to be abolished, as the families were dependent on the economic gains which the devadasi earned from temples. Abolishing this system was a question on the survival of the family or it was against their spiritual or religious belief towards yellamma that they relatives did not allow to ban this system. The Trust named after Yellamma, Yellamma Devasthan trust earns a huge amount.

The touts and the landladies, while they visit the temple or trusts use to take away a lot of dedicated girls from the trust to their brothels to earn a huge amount through the commercial sex work. They are from the matang caste and they have no importance for education. Their parents are too so poor that they do not think for a moment before dedicating their girls to become a devadasi. So that she becomes a source of income from their family.

A STEP TOWARDS BRINGING SOCIAL CHANGE IN LIVES OF DEVADASI: A FAILURE

The change cannot be brought by law alone. There is need for NGO's to strive for the cause. They need to be trained in vocational areas like sewing, weaving and other such work so that after they attain a certain age and they are of no use in their profession they can have some means to live by their own. There are various trusts and organization in Pune, which are educating children of Devadasi and also training the devadasi to use sewing machines and other vocational education. But most of the efforts have turned futile as these Devadasis have been trapped in debts of pimps, or if they do not work their children may starve and the other set of women are to say that they find this profession easier to earn their living³.

Thus, the practice continued with a different way, known as prostitution, which asks for monetary gain in return of sexual favor.

² Supra Note 1

³ Shoma A Chatterjee, The Genesis of Devadasi System in India, Women in White, Black and Technicolor(Published by Rupa. CO. Ed. 2004)

CAUSES OF PROSTITUTION

Some of the causes were present in past and some exists in present. Some do continue due to the intergenerational practice and exploitation of female sex in low caste families. One of the causes is Devadasi. The others being – Traditional occupation of Naik girls in UP of Prostitution, Custom of reet-selling once wife due to indebtedness, Sex exploitation by Zamindars of the Harijan girls, Red light areas where women find means of earning when has no other alternative, trafficking her considering girls to be object of sex, Tradition of sending Dasis for sexual pleasure of bride groom⁴.

LEGAL PROVISIONS

The Immoral Trafficking Prevention Act, is the major law concerning the elimination of trafficking in persons, for Sexual exploitation or any other purpose such as selling of organs, etc but somehow the concern under the act is assumed to eliminate prostitution. Due to this misconception, the prostitution is considered as being criminalized and the repercussions are accordingly faced by the sex workers. Prostitution is not an offence when it is undertaken voluntarily. What is punished is trafficking of persons for this purpose⁵. But even after this, the rights of CSWs are not protected and they are tormented.

Objective of ITPA is to prevent and punish trafficking of persons, to punish those who live on earnings of prostitute and to provide rehabilitation to the victims. The objective is to punish the brothel owners and not the sex workers.⁶

Prostitution is punished in the public area, within 200 yards of public place such as near the temple, hospital, school, hotel, nursing home or other such area⁷. In *Gaurav Jain v. UOI*⁸, the court has held that a comprehensive scheme should be formulated for rescue and rehabilitation of victims who are sexually exploited. It is held in *Sushila v. State of Tamil Nadu*⁹, that where a single prostitute uses a house for her business, it is not a brothel and thus is allowed under law.

Section 8 of the act punishes the workers if they seduce anyone or solicit prostitution in public areas, through words, gestures, exposure or by loitering. This is considered against public morals. The workers if found doing so are arrested by the police.

Article 6 of CEDAW also talks about the protection to prostitute as their profession is not recognized; they are prone to violence and neglect. Thus, it calls for protection of prostitute before law as equal to other workers.

NON-DOCTRINAL STUDY CARRIED OUT BY MANAVADHIKAR NGO

Social Action Forum for Manav Adhikar(SAFMA) has conducted a research study by interviewing Sex workers in the well known G. B. Road, in old Delhi City. They basically do their business on streets, brothels, Escorts (at customer's place), massage parlors and in their own apartment.

⁴ Lalita Dhar Parihar, *Offences Against Women, Prostitution In India, Women and Law*(Eastern Book Publication, 1st Ed. 2011)

⁵ *Umedsingh v. State of Gujarat*, MANU/GJ/0367/2005

⁶ Section 3 – Punishment for keeping a Brothel, Section 4 – Punishment for living on earnings of prostitute, Section 5 – procuring inducing a girl for sake of prostitution, Section 6 – Detaining a girl in a place where prostitution takes place, Section 9 – Punishment for those who seduces or abets for prostitution

⁷ Section 7 – Prostitution in vicinity of Public areas.

⁸ AIR 1997 SC 3021

⁹ CRI LJ 1982 MAD 702, In RE Ratnamala, AIR 1962 MAD 31.

The working hours of these workers started from 4 pm in the noon till 3 am in the morning and the old lady work from morning 5 am as at that time the young ones have slept. For their security there are two lady police on duty all round the day.

The study states that a girl had been forcibly kept for 2 years in an isolated in a dark room and on being rescued by police, she was repatriated. But, she was back in G.B road within 2 months. One of the girl said that she was being raped, and she was no longer a virgin. Hence, she had to leave her place and join the profession. Another lady said that she was deserted by her husband with 5 children and she had no other way then to work at G B Road for the survival of her children. Next was a lady who said that she was lured by her neighbor who told her that they will provide her job in Delhi and she was trapped in a prostitution racket. On being asked, about 78% of the women said that they will want their profession to be recognized but they did not have any idea of the implications. They were neglected and they thought with this law, they might get recognition in the society. They said yes to the profession because they said that no where they were safe as they were alone. Even working as a factory worker, they had to be victim of the exploitation and violence of the factory owners, so they have known that every where the male part is going to look at them with Buri Nazar. A very small no. of girls said that they would like to leave. The women who said yes to the profession did not want their daughters to do this. They had high aspirations for their children. They did not even let their children know of what they were working as and how did they earn so much. They would say that they worked in the export house or as domestic servants. Sometimes, the mothers of such girls use to know the source of income. They shift their base from other states because they find that no one is going to find them out in Delhi. They find the city best to keep them anonymous. They migrate to Delhi to earn more than in their city.

The problem with the profession is that the girls are mostly trafficked by their own parents or the near relatives and thus as per police report about 60% of the cases goes unreported and the women tolerate for the sake of their family welfare. Even after this the girls cannot say this that she is the source of Income for the family because under ITPA, living on income of prostitute is an offence. Thus they are deprived of even living with their family.

Poverty, Social Rejections of a girl, insecurity, exclusion and failure to meet the basic needs of a family are the factors that have driven these women to such work. Most of the girls interviewed say that they of their own have joined this work for their family. They were not forced. But from those who were trafficked, the girl was punished when caught with sex work, and the relatives the transporters and the hotel staff that helped this process earn by them without any charges against them.

66% of the sex workers were satisfied with the police help because the Inspecting officers use to provide the sex workers and the pimps with the mobile number of their constables and whenever there was a violent customer, the police was always found at their rescue.

It is an offence to drag the minors in the profession. It is also punished as a crime under IPC Section 372 and 373. Thus, the police keep watch on the entry of new sex workers to ensure that they are not minors. Some active Inspector also keeps a register of the prostitute with all the details with them to ensure they are not minors. Years before, most of the workers had entered the profession when they were minor, but on being asked they use to say they were of 20 years. But there is no such protection in other areas, where there is no strict police watch.

They are now aware of the health problems and thus they insist on use of condoms to their customers. But sometimes they in garb of more money or violence by the pimps or customer have to manage without condoms. All these are gross violation of the rights of the prostitutes.

NON-DOCTRINAL STUDY CARRIED OUT BY WHO & NACO IN SONAGACHI AREA, CALCUTTA¹⁰

It was an intervention took up by World Health Organisation and National AIDS Control Society, in Sonagachi area of Calcutta. It was found that the sex workers and their clients have fallen prey to the sexually transmitted diseases. Sonagachi is the oldest red light area in Calcutta. The study in this area was carried out for three years between 1992-1995. The area is covered by about 370 brothels with around 4000 sex workers. The Income of these sex workers depend on 20,000 men that visit the brothel. Most of the girls that had come there were either from poor or backward family, they were either singers, dancers or junior artists who had failed to establish themselves in Industry. The study carried out, revealed that 84.9% of the workers were of age group of 15 to 29. The lowest recorded age of a sex worker was 13 and highest was 45. 84.4% were illiterate. 49.10% had come because of acute poverty and others either due to deprivation or penury. Only 8.67% had come there willingly. 15.56% were misguided. 4.67% were born into the trade, and 0.44% were kidnapped and sold here. 21.56% escaped from family discord. Willingly here meant that they entered into the trade to come out of poverty and for want of employment. Misguided meant that they were seduced or enticed and brought there. About 80-82% had some causative agents of STD's into them, and about 1%, i.e. 5 out of 442 samples of serum test had HIV infection.

All this study had revealed that there are grave problems of health and STD's among the sex workers. After this, need for health requirement was felt to the workers. They started bringing condoms and the local traders also use to buy from them. Daily they use to carry about 3000 condom in the area. The survey had revealed that only 2% clients use to have condoms with them. Others insisted to have sexual favors without condoms and also use to pay them a good fees for it, about Rs. 1000.

The survey revealed that there was no way out for these workers to move out of this trade. The problem was in the root of this profession. They were either from the Devadasi, or that they tried for alternative employment, either they did not earn well to fulfill needs of their children or were refused to be employed because of their background and illiteracy.

It was their misfortune that they had to do this. They were not happy but had to do this for their survival. Thus, it was necessary for the organization to help them have safer sex so as to ensure healthy life to the sex workers. Before hand they dint had courage to talk to outsiders, face media or any survey. But with such awareness, they gained confidence and they said that we are not sinners, but this also one form of employment for us. We cannot be said to be loose women. With the project clinic being set up in this area, the STD infection had gradually decreased.

But the project was not able to help with the kind of food the girls were given, the attitude of the brothel madam, the torture inflicted upon the girls by those madams. But with the health awareness and confidence that the project had brought to the sex workers they were now in a position to negotiate with the clients, and have self respect for themselves.

In 1995, Mahila Samanwaya Committee had formed, that educate the workers to fight against any kind of oppression. An organization called Interlink was formed, for their integration and solidarity. It was formed to bring social change in their lives. They carried out protest against the local dons who use to take a part of their money and use to assault the workers. Also some section from the society resisted these dons and the police had to then arrest them. The organizations provided free medicines for the STD's to the workers. A part of the clients also supported the cause for the improvement of health.

¹⁰ Shoma A Chatterjee, Sex Workers Of Sonagachi Find Their Identity, Women in White, Black and Technicolor(Published by Rupa. CO. Ed. 2004)

The problem was that the workers lacked social communication. They felt deprived. There was only one language they spoke, and that was their body language that they used to communicate with. The clients who use to visit also were illiterate, earned in between 1000-2500 and above. They had awareness of AIDS but most of them about 72.7% did not use condoms.

ANALYSIS

The result of such NGO's and the organizations working in the red light area is that the workers have now gained confidence, they are trying to fight against oppression by their own mandals, and they are also now well aware of their health requirements. They are confident enough to face interviews, media, and give an account of their lives and what they are going through. But the problem lies in India not accepting it or banning it in toto. They are not able to claim their rights because of such problem. These sex workers are looked after properly in their young age, when the brothel keepers want to earn through them, but they are in their later age, when they are of no use, are thrown away and are forced to beg. They are not literate and thus have no other employment. The people do not accept such ladies as domestic workers, if they come to know of their background. Thus, legalizing this profession may help them to save themselves from a bad old age.

The Answers to their questions lies in getting them employment. They should be rehabilitated. They must be trained in vocation works such as sewing, weaving and other such work so that on the basis of such certified vocational courses that they undergo they can have their means of livelihood when they grow old. And it is the government that has to make provisions for their jobs and safety, because in private work they fear that they will be exploited.

Right to work is an issue for these prostitutes. Their right is not recognized. It is a human right to have freedom to carry out any kind of trade or profession. It is a matter of their personal choice and thus should not be compared with trafficking and should not be thus condemned. Because of such criminalization, they are not able to live with their family. The survey reveals that they are not provided any work in private places, even of maid, due to their background. It was not their fault that they were illiterate, poor, they did not get any employment or that they were trafficked or were enticed. Thus, because of such reasons they in the sex trade profession. Even at a point of time in their life, they want to get them a new life; the society does not accept them considering them to be loose women. Thus, in such a crisis for employment, it is the government who has to take a stand for them, and provide them work to get them rehabilitated or to divert them from their profession.

Also where the staying of two or prostitutes living in an apartment is punished is also a problem for them, because living alone is not safe for them.

STATUS OF COMMERCIAL SEX WORKERS: HOW FAR SECURE AND RECOGNISED?

The life of commercial sex workers is no good than the slaves. They are diverted into the profession because of some or the other shortcomings, either they are trafficked and sold, misguided or they come here due to poverty. They are devoid of education and are poor. It is found through various reports by NGO and WHO and NACO that these workers are provided a clinic from where they get health awareness, free medicines. They also have their committees wherein they form like union and can fight against oppression. They are now because of literacy program and awareness gaining confidence. They have learnt to negotiate for themselves with their clients. But there are always question marks for the education of their children, for the means of livelihood in their old age and for the want of recognition in the society for such workers, because they are ever considered to be loose women.

SHOULD PROSTITUTION BE LEGALIZED?¹¹

There is debate going on that whether the trade in sex by the commercial sex workers should be legalized or not. India is in a position that neither accepts it as legal nor does it ban prostitution completely. It has allowed it with certain restriction. Shoma Chatterjee provides a great insight into this question of legalizing it or not. The problems that are tried to be curbed through legalizing it are those of AIDS, other STD's and that of use of condoms. But these are all patriarchal reflection of the society. The male part of the society wants to get it legalized so that the sex workers are protected against the diseases and in turn they do not get affected to such diseases. If really the society was concerned about the protection of these workers, they would have tried or the government would have tried to bring change to their lives by offering a separate industry to them to work in some alternative employment, where they would get enough to earn for their livelihood. There is a need that their children be educated by government grants. They ought to be rehabilitated by the training program. It is all this what is more necessary than to only talk about AIDS and sexual diseases only.

Even if government cannot do so much to completely divert the girls from such torture based profession, where they have almost no way to find happiness for them, then the government should legalize the trade. The prostitutes should be considered as Sex workers like any other workers engaged in some other employment. They should be given same benefits as other laborers or workers. They should be given benefits such as leave right, health benefits, right to fight against any oppression or exploitation against the madams that rule them in the brothels. Thus arguing for legalizing only for AIDS is an argument that seems to be patriarchal and it shows a health benefit to the clients. All these other aspects should be given recognition, then will the profession be said to be recognized in true sense, by giving recognition to the workers as well as by securing their old age or their life after 35-40 years of age.

REFLECTIONS OF SEX WORKERS¹²

The sex workers are of the say that, by conducting seminars all around India and by making deliberations on whether prostitution be made legal or not, the government or the private organizations are not doing any good to them. No one asks them about their woes and what actually the sex workers want them to be. They are of the perception that the authorities spend money on organizing seminars, in calling some chief guests from abroad, etc. If this money was spent after them to make their life secure, by providing them some loans to start some cottage industry or alternative job, they would have got an alternative to this profession.

They say that they are not empowered only with the fact that they have learnt to say no to some clients whom they don't want to entertain. Real empowerment would be at the time when they would be able to say no to their profession and the brothel madams. The argument made to use condoms by the male clients is to protect them and not the sex workers.

The day when a prostitute is said that she is of no use now, or is of no utility for the brothel madams, this statement sounds like a death knell to them. The reason is that they have no other means of survival and they are even not fit for the sex trade now. Their rehabilitation is not guaranteed, they are not provided training, and thus they fear their future. Rejection from the society of such workers does not even let them

¹¹ Shoma A Chatterjee, *The Politics Of Legalizing Prostitution, Women In White, Black And Technicolor*(Published By Rupa. CO. Ed. 2004), Shoma A Chatterjee, *Sex Workers Of Sonagachi Find Their Identity, Women in White, Black and Technicolor*(Published by Rupa. CO. Ed. 2004)

¹² Shoma A Chatterjee, *The Politics Of Legalizing Prostitution, Women In White, Black And Technicolor*(Published By Rupa. CO. Ed. 2004)

work like maid in the domestic work jobs. The workers want to save themselves in times when they are young and old. They don't want people to pity them.

SUGGESTIONS

Decriminalizing the sex work is not an option at all. After a deep study through various projects, I get an insight as to how cruel their life is. They are not allowed to move in public place, they have to stick to their area, they have no labour worker rights, they are not provided health benefits, they are tortured by dalals and the pimps and for the sake of money they have lost the feeling of being human. They do not expect any happiness. They have internalized the work with no hope. But they want their profession to be recognized.

1. "Prostitute should be considered as workers and must be provided rights of workers such as minimum wages, leave, education to their children, vocational training to them and some old age benefits.
2. Section 8 of ITPA should be repealed as the same can be punished under Section 268 of Indian Penal Code¹³.
3. Living on earnings of prostitute should be regulated in terms of traffickers because those who are willingly in this profession are deprived of being with their family.
4. Two or more girls should be allowed to live in an apartment, because living alone is also a threat to them.
5. There should be appointment of police personnel for these workers and the sex workers should not be treated as offenders as they are merely exercising their freedom to work.
6. Such workers should be issued licenses, and must be represented on a Board formed under law so that the workers are given official Acknowledgement.
7. The workers should be given all legal protection and other similar benefits as the women in other profession."

Thus, this group of women shall not be condemned. They have right to carry work of their wish. They should not be considered as immoral women or loose women, because they have chosen to sacrifice themselves for their family and are working for their survival. Not all can do so. The state does not have alternatives to provide them enough jobs with security. They lack education and are poor. Their family members also do not support them. Thus, it is the society who should respect them and acknowledge them.

CONCLUSION

Though the Indian society is ever guided by the patriarchal system, but a woman has right for her recognition, irrespective of what job she does. International women day is celebrated all around the world on 8th March. The reason behind it is that on 8th March, 1908, Women textile workers had carried out a demonstration in New York to fight for their rights. They asked for their right to leave, shorter working hours, right to vote and higher living wages. This protest led to the celebration of the cause of working women¹⁴. So similarly, the prostitutes are also women, they cannot be said to be loose because of their misfortune or because they wanted to sacrifice themselves for their family. Thus, they should be given due recognition to have a life with dignity. This trade is difficult to be curbed, but alternatives can definitely be brought by providing them rehabilitation and other fringe benefits. If they are considered CSW then

¹³ Research Study on HR violation of victims of Trafficking conducted by SAFMA

¹⁴ Shoma A Chatterjee, How "Equal" is Equal?, Women in White, Black and Technicolor(Published by Rupa. CO. Ed. 2004)

they should be equally recognized to be “workers” and should be given such rights. It is deeply rooted in the system since 2500 years. Thus, if not curb it, we can protect women, to the extent they are not exploited, against their will and are given due recognition once they leave the brothel.

The lack of protection of the social workers in the brothels and those working independently leads to violation of their rights. There are no national and international uniform standards that may protect their rights. They are deprived of their social status. They are thus due this rejection treated violently at the hands of the madams, some clients and at times police.
