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A sociological perspective on India's journey of legalizing prostitution: An illicit to a lawful activity

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Abstract

Prostitution had a part of Indian civilization since its inception and marked as one of the oldest occupations in the world. In Indian society, prostitution is mostly regarded as taboo and often associated with violence, prejudice and exploitation. Hence the need of necessary attention has been given to its regulation. The issue of formalizing or legalizing this activity is coming up more and more as a result of the moral ambiguity that surrounds it. The post-independence and earlier governments have taken a number of measures regarding prostitution. This paper evaluates the technical flaws in India that are overlooked in the social discussion over the legalization of prostitution and lays forth a clear course for improved socio-economic growth. The article looks at that particular legislation and identifies that such steps are or aren't able to stop this threat. India has recently taken a position on the legality of prostitution. The issue about legalizing prostitution and the benefits and drawbacks of doing so are further discussed in the article. The conclusions are supported by statistical data from studies, publications and surveys from national registries.

Keywords: Prostitution; Legalization; Occupation; Benefits

1. Introduction

Prostitution is referred as non-selective sexual activity performed in exchange for cash or other material goods. In 21st century, women are not the only ones working in this field but also practiced by men and transgender people, though less frequently with women. Prostitution has a tremendous history in India. The Rig Veda makes reference to prostitution in the setting of India. The Tawaifs performed dances, songs and other entertainment for the elite in medieval India, devadasi system and many other forms of this activity exists in different time periods. These were the early stages of prostitution before it developed into sexual favors for the general populace and renowned as sex work. Despite the profession's longstanding popularity in India, its legal status has always been debatable and many had called for its legalization over the years. Prostitution is defined as-

"Prevention of Immoral Traffic Act, 1987" described prostitution as 'sexual exploitation or abuse of persons for commercial purpose.'

Acc. to the 'International Encyclopedia of the Social Sciences'; "Prostitution is granting of sexual access on a relatively indiscriminate basis for payment either in money or in goods, depending on the complexity of the local economic system".

U.S. Department of Justice, 2008 defines prostitution as, "A sexual act or contact with other person in return for giving or receiving a fee or a thing of value".

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Notwithstanding the profession, every individual in this country has a right to a dignified life under Article 21.” On May 19, 2022 the Supreme Court of India (SC) ordered that prostitution be recognized as a profession; and stressing that sex workers like any other professionals are entitled to dignity and constitutional rights. *The right to a dignified existence is guaranteed by Article 21 of the Constitution to every person in this country regardless of vocation. The three-judge panel made up of Justices L Nageswara Rao, B.R. Gavai, and A.S. Bopanna issued six directives to defend sex workers' rights and said that sex workers are entitled to equal protection of the law. The police shall not interfere or engage in any criminal activity when it is obvious that the sex worker is an adult and taking part with consent.* The Supreme Court ruled in its judgment that sex workers should not be detained, fined or subjected to harassment. Only operating a brothel is against the law, not engaging in voluntary sex acts. Additionally, it urged sensitivity training for sex workers and told the police not to discriminate against them. The three-bench of judges also emphasized the need for the media to exercise utmost caution to not reveal the identities of sex workers during arrest, raid and rescue operations whether as victims or accused; and to not publish or telecast any photo that would result in the disclosure of such identities.

Sex workers are more often perceived as criminals than as victims of crime due in part to the police, judicial system and legal employees. There has been a lack of attention paid to the risks of rape, violence and trauma that clients may inflict on sex workers. Additionally, since the work is viewed as ‘immoral’ or ‘dirty’, diseases brought on by bad menstruation and sexual hygiene, most notably cervical cancer and HIV-AIDS and do not receive the required medical attention. The main difficulties experienced by sex workers in India originate from the false impression that sex work is illegal. Building vocational hierarchies should not and cannot take the morality or immorality of any work into consideration. As a democratic country, India's constitution upholds justice, equality, and freedom for all members of society. Unfortunately, institutional barriers have prohibited sex workers from enjoying "equal opportunity" in all respects. It is time to put an end to this egregious disregard for human rights and dignity.

2. Scenario of sex work in India

Sex workers are not eager to be studied due to the illegality of their work; federal government does not compile statistics on their numbers as other legal occupations. India is a receiving, sending and transit country for sex work due to its geographical proximity to Nepal, Bangladesh and Pakistan which are economically less developed than India. CEDPA and PRIDE report (1997) mentioned that in India, every day about 200 girls and women enter into prostitution from 80% of them against their will. First survey on the sex workers in India conducted in 1997 by Ministry of Women and Child Development estimated 2 million sex workers which increased 50% by 1997-2014. According to the survey of 2014, approximately 1.2 million girls involved in this profession in which 35.47% girls involved before the age of 18. There are estimated 275,000 brothels in India and as per UNAIDS survey of 2016, there are 657,829 sex workers in India in which 20,000 women and girls are victim of sex trafficking. Approximately 2 million sex workers are in metropolitan's cities of India like Mumbai, Kolkata, Bangluru, Delhi etc. Sonagachi in Kolkata and Kamathipura in Mumbai is the largest red light area of Asia. In spite of that India has many other small red light areas. These red light areas are epicenter of sex industry with worst living conditions for people. Authentic data of a survey of Bombay city alone indicates an alarming figure of more than 0.1 million prostitutes in its 12,000 brothels. The Sonagachi, iconic red light district, of Kolkata is home of 10,000 sex workers and 20,000 male customers visit here daily (Dasgupta, 2018).

In 2007, the Department of Women and Child development (DWCD) estimates that 2.8 million people were trafficked for the purpose of sexual exploitation in India. The majority of them is under the age of 18; lured into sex work due to poverty. U.S. Department of State Report on Trafficking in Persons (2014) points out that 90% of human trafficking existed in India is internal. In 2007, Anti-Slavery International published a study on the practice of ritual sexual slavery or forced religious marriage. It found that 93% of devadasi were from Scheduled Caste and tribes. A survey of the Joint Women's Programme mention that 63.6% of young girls accept Devadasi system due to custom and 38% had their family history as Devadasi's (Varghese, 2010). Devadasi system was linked to the practice of trafficking girls for commercial exploitation. They are trafficked to the red light districts of Mumbai, Pune, Bangalore and other large cities along with other sex workers.

The women of minorities are stigmatized and rejected due to their caste have to turn to sex for survival. About 16% of victims of sexual exploitation were prostituted because of traditional practices i.e. Devadasi and Adivasi (International Journal for Equity in Health, Sept. 25th, 2008). A survey by the Ministry of Human Resources and Development reveal that only 4.9% of the sex workers in Calcutta are born within the city. More than 70 districts supply sex workers to Delhi. The survey also revealed that two third of the original families of the sex workers lived below the poverty line and 60% of the sex workers covered in the survey belonged to Scheduled Castes or Scheduled Tribes or Backward Classes. The study, made during health camps organized by the World Health Organization (WHO) in the Devadasi populated areas, revealed that the dedicated girls formed 15% of the total women involved in the sex workers in the country and as much as 70% to 80% of the sex workers in the border districts of Karnataka and Maharashtra.

The Nats, the Bedias, the Faasi, the Banjar and Demmuris are tribal communities whose business is to entertain the noble class. Nat community of Nat Purwa (Uttar Pradesh) village is publicized for practice of sex work. The village with 5000 inhabitants traditionally follows the prostitution since 400 years where 70% of women are prostituted (The Hindu, March 23rd, 2013). NGOs are trying to provide them better opportunities and changing their attitudes. But they regularly intimidated by villagers who do not want to lose their main source of income. In Dommuri community, eldest daughter financially helps her family through sex work, is a tradition. In April 2011, first major survey on sex work was performed by the Centre for Advocacy on Stigma and Marginalisation (CASAM) which also a part of NGO SANGRAM. Low levels of education are common among FSW with 50.2% of sex workers in a pan-India sample having had no schooling and the majority of respondents (65%) hailing from lower socioeconomic backgrounds (Sahni and Shankar 2011).

3. Factors leading to prostitution

Women's entry into the prostitution is spurred by social, economic and political factors as well as gender and cultural dynamics (Sen et al. 2014). The reasons of women entry into prostitution are categorized under five broad ways: force (as exploitation, deception by known and unknown people, false marriages and being sold into brothel); negative social circumstances (early marriage, lack of basic education, domestic violence, husbands alcoholism and extramarital affairs, worry about caring for children education); economic conditions (paying off debts and loans borne by family, wanting more money, inadequate household conditions, lack of employment and chronic illness of family members); traditional family activity and own choice. In a study of 37 prostitutes in Kolkata regarding reasons for entry included disempowerment, family poverty, loss of a male bread-winner, economic insecurity, constrained life choices, and occasionally, coercive or deceptive initiations into prostitution (Swendeman et al. 2015). The following factors contributing in motive of prostitution:

3.1. Economical Factors

The monetary needs are the fundamental and crucial factor leading to prostitution. The economic factors comprised of; poverty, underage employment, unhealthy working conditions, the pollution and corruption in industrial centers and immoral traffic in women and children leads to the prostitution. Operational economic factors are hard to meet the daily needs. There is scarcity of the jobs to generate enough money. Structural poverty is a key factor responsible for prostitution. The illiterate and semiliterate women could not get easily employed and turn into prostitutes to earn their livelihood. Women may have to adopt prostitution in order to live well and give first class education to her children. Unemployment and bad working conditions also compel women to flesh trade. The prostitution is not mostly chosen for sex. Money is the medium of force and provides the cover of consent. In the world, 3 billion people live on less than 2.50 US\$ a day and 80% of worldwide population lives in the countries where income gap is widening. Individuals make economic transactions for sexual relations that are not associated with direct coercion, but represent a reflection of limited options (Amnesty International, 2014). A research project in Kolkata concluded that limited work opportunities influence the entry into prostitution through migration or direct entry. Women living in rural areas has 30% chances to get employment whether they involved in informal sectors like agriculture and laborers but in urban areas females have only 20% chances of employment. The inefficiency of employment forces women to adopt prostitution for survival in life. Women in informal sectors become prey the lust of intermediaries and agents. They keep them on their mercy whenever opportunity offers itself; they exploit it fully and often succeed in receiving sexual bribes.

3.2. Social Factors

Societal disorganization is comprised to promote the entry of women in sex trade. Dysfunctional families are also a facet of this aspect. Some adolescent feel neglected due to misbehave of step-fathers or step-mothers and left at their own homes. As a result, they look for adoration outside the family and fell prey to the sex trade (Prakash, 2013). The attributes coupled with personal crisis e.g. incest or rape, serious deprivation, physical or sexual abuse, deprivation make some women vulnerable to prostitution. Sexual abuse within or outside the family is a factor commonly present among the prostitutes. Nadon, Koverala and schudermann (1998) found in their study that 68% female prostitutes experience sexual abuse in their childhood. Another study shows that the girls who were sexually abused as children were twice as likely to become prostitutes compared to whom who had not been sexually abused. Marital factors also encompass prostitution in India. Changing life style and family pattern are weakening the marital ties. The spouses don't have quality time to spare with each other. It strained the marital relations with results suspicion, disrespect, divorce and separation; both try to look comfortness outside their relationship. It is still common to marry persons very young in some places. If they become widows at early age; illicit relations are common. The widows unable to remarry due to social stigma may fulfill their physical needs by self – abuse. In some situations step-brothers and brother-in-laws have sex connections with their sisters and sister-in-laws respectively. These sex connections are temporary and do not meet

the sex needs of young women fully. Due to the irregular security and unable to satiate their desires; prostitution is last resort for them.

3.3. Personal Choice

“Pleasure Pathway” is a less known reason for entering in prostitution in India (Devine et al. 2010). It is mostly related to lifestyle that prostitution can provide women, particularly those with fewer educational or career opportunities. It provides economic independence, freedom from reliance on a male partner and the ability to reinvent the system of property ownership and inheritance to women (Chattopadhyay et al. 1994). A research in 14 states of India with 3000 prostitutes finds a substantial segment of women had prior experience of alternative work and opted for prostitution for better income and livelihood opportunities.

3.4. Religious or Cultural Factors

Religious prostitution has a significant place in Indian history. According to Times of India report (10-11-1987) Devadasi system set up as a result of a conspiracy between the feudal class and the priests. The latter, with their ideological and religious hold over the peasants and craftsmen, devised a means that gave prostitution their religious sanction. Report confirms that the practice of dedicating young dalit girls (Mahars, Mangs, Dowris and Chambhar) at childhood to a goddess and their initiation into prostitution when they attain puberty continues to thrive in Karnataka, Andhra Pradesh and other parts of South India. The Indian National Commission for Women mention that there are 44,000 active devadasis in which majority belongs to Karnataka (22,491), Andhra Pradesh (16,624) and Maharashtra (2,479) and their number could be high as 250,000 (The Hindu, 30-1-2006).

3.5. Coercion

Women and children are trafficked in India or across India by deception or coercion for commercial sex exploitation (Patel, 2013). They are kidnapped and are then forced to work as prostitutes. Of an estimated 20 million sex workers in India from which 16 million women and girls are considered as the victims of sex trafficking (Nagaraj, 2017).

4. Legal provisions on prostitution in India

The legal status of prostitution varies in different countries from punishable by death to complete legality. Globally, the countries are divided into three categories in the term of prostitution. The countries where sex work is totally illegal (Kenya, Morocco, Nepal, Sri Lanka, Afghanistan etc.); countries which legalized and regularized the proper laws for sex work (New Zealand, Australia, Austria, Netherlands etc.) and the countries where sex work is legal but with certain limitations and restrictions (India, Canada, France etc.). In Indian context, sex work is not explicitly illegal and punishable under The Suppression of Immoral Traffic in Women and Girls Act was passed in 1956 and enforced in 1958 as a result of the signing United Nations’ declaration in 1950 in New York on the suppression of trafficking. Some supporting activities like pimping, running brothels, soliciting and trafficking are punishable offense under SITA. This law penalized the women in prostitution under certain conditions:

- 7(1) Woman found to engage in prostitution near or in public place.
- 8(b) Woman found seducing or soliciting for the purpose of prostitution.
- Section 372 and 373 of IPC 1860 only restricted to the child prostitution. It deals with buying, selling and importing of minors for the purpose of prostitution.
- Acc. to IPC sections 366A, 366B and 370A, procreation of minor girl, importation of girls from foreign for sex and exploitation of a trafficked person are punishable offences.

SITA has undergone two amendments in the year 1978 and 1986. In 1986, India legislative passed The Immoral Traffic (Prevention) Act. The act penalizes trafficking for commercial sexual exploitation. This act provides marginal benefits to prostitutes. It prohibits the police to search the prostitutes unless accompanied by two female police officers. The Immoral Traffic (prevention) Act, 1986 is further revised in 2006 as Immoral Traffic (Prevention) Amendment Bill. The important amendments of the bill are:

- The bill deletes the provision of penalized prostitutes for soliciting clients. It penalizes the person visiting in brothels for the purpose of sexual exploitation of trafficked victims.
- Bill punishes trafficking for the purpose of prostitution. Trafficking for other purposes (such as bonded labour and domestic work) is not covered.

- The bill constitutes authorities at the centre and state level to combat trafficking.

The laws maintain ambiguity on prostitution. Prostitution is lawful in India only if soliciting is conducting in private spaces (Sagade and Forster, 2018). The laws allow prostitutes to flourish but on the other hand try to hide it from public as well. Under Suppression Immoral Traffic Act (1956), Prostitutes were given the right to be rescued and rehabilitate however prostitutes hardly use their rights as it is not easy to escape from brothels and prostitution. However under Immoral Traffic Prevention Act (1986), the Act does not distinguish between trafficking and prostitution. As trafficking is addressed as prostitution related activity and prostitutes are not considered as victims under the Act. The Act also punishes prostitutes not the client except when he is caught to be involved in sexual activities in a public place. Therefore it is important to make laws which understand the situation of prostitutes in a holistic manner (Fisk et. al. 2013).

5. Reasons why prostitution should be legalized

Legalizing prostitution will go for the better or worse is the biggest question that comes up in relation to it. Some scholar considered that the legalization of prostitution will guard against the sexual exploitation of children. Children who are forced into prostitution total roughly 10 million globally. Though it is a sad fact in practically all nations, the situation is worse in Asia and South America. Strict rules in the sector can guarantee the exclusion of minors from the system. Regular health examinations for sex workers can guarantee the reduction of sexually transmitted illnesses including AIDS which is incredibly prevalent among prostitutes. Unwanted pregnancies will be prevented by effective birth control and other health risks. Cleaner and more hygienic working conditions will be guaranteed by regular health examinations and stringent regulations. Condom distribution made mandatory would also benefit both clients and prostitutes.

The system will improve and advance if prostitution is legalized. The system will be freed from intermediaries and pimps. Prostitutes will be able to make more money and the criminal and exploitative elements will be almost non-existent. As people turn to a more convenient and legal option to satiate their sexual cravings, it will lessen sexual violence, rapes and other forms of sexual assault. The workers' rights will be upheld. Prostitutes should have all the rights of a citizen and a worker even though they are not covered by the standard labor regulations.

6. Legalization of prostitution- Pros and Cons

The oldest profession that has been practiced in society for a very long time is regarded to be prostitution. Most prostitutes work in this industry out of necessity for survival. While some women enter the prostitute industry voluntarily, others are trafficked and coerced to do so. Bachpan Bachao Andolan filed case regarding widespread child trafficking in the nation, a Supreme Court bench comprised of Justice Dalveer Bhandari and Justice AK Pattnaik asked the Solicitor General, "When you say it is the world's oldest profession and when you are unable to curb it by laws, why don't you legalize it?"

What does the word "legalize" mean exactly? It is not imply that a prostitute is free to set up shop anywhere and market her service. Society will never permit legalized prostitution. Their social lives will be hampered. It is inappropriate to treat prostitutes with the same respect as other professionals. The government has also been ordered by the Supreme Court to devise a scheme to allow prostitutes to have respectable lives. "Conditions conducive for sex workers who seek to continue as sex workers with dignity," they further stated. The market for commercial sex grows when prostitution is legalized, giving new opportunities for criminal enterprises and a shelter for those who traffic victims into prostitution. Legalization merely makes it simpler for them to blend in with a supposedly controlled sex industry and makes it more challenging for authorities to detect and prosecute people traffickers.

In fact, legalizing prostitution would encourage greater human trafficking. The license to traffic in women would be obtained in some form by the brothels and pimps. Prince Charles, Bill Gates, Hollywood celebrities, as well as some western governments and significant donor agencies, have all joined the campaign to legalize prostitution because they believe that this is the only way to encourage condom use and regular health checks, including HIV tests, among sex workers and their customers. However, these things could be done by proper rehabilitative measures. But society won't in a way to accept legalizing prostitution, hence it is not a workable option.

The foundation of the official sex industry, which is defined by a decline in sex trafficking, is socioeconomic progress. The behavior of supply and demand in relation to national policy was not taken into account. Due to a decrease in the risk (opportunity cost) compared to when it was illegal, the demand for the service increases quickly after the

profession becomes legal. As a result, owners and traffickers are compelled to boost supply to keep up with the rising demand, engaging in equal or greater levels of trafficking in the process to reach higher levels of equilibrium. The impact of the law is cancelled out by this upward change in the demand curve.

7. Global human rights organisation on sex work

Globally, sex workers face a constant risk of abuse in form of discrimination, beatings, rape and harassments and often denial from basic health or other services. Amnesty International (Global Human Rights Organisation) advocates for the decriminalization of all aspects of consensual adult sex. It considered trafficking is an abhorrent abuse of human rights and must be criminalized. A trafficked woman who is forced to sell sex is not considered as sex workers. She is trafficked woman and deserves protection (Amnesty International, 2015). International Sex Workers' Day is observed on 2nd of June to uncount the hardships, raise awareness and give voice to sex workers across the world. Criminalizing consensual sex is incompatible with the human rights to personal autonomy and privacy. Criminalization force sex workers to work in unsafe locations. Sex workers make more vulnerable to violence including rape, assault, murder and stigma under criminalized environment. It consistently undermines their ability to seek justice for crimes

8. Conclusion

There is a tendency to hide the true nature of unfair systems that privilege a select few and oppress marginalized and vulnerable groups in a social environment where market-driven and capitalistic systems of oppression, exploitation, and misogyny are prevalent. The current paper analyzes the unanticipated negative effects of legalization that will need to be averted or eradicated for legalization to be successfully implemented. In order to prevent them from being compelled to return to prostitution, the rehabilitation measures must give them with a sufficient quantity of money. Those who choose to continue should also be allowed to do so, and their working conditions should be improved. The problem of trafficking cannot be solved by legalizing prostitution. The need to legalize prostitution arises from the fact that it will continue to exist in society. Sex workers should be treated with some dignity, but prostitution cannot be handled on an equal footing with other vocations. Instead, sex workers should be treated as human beings. Supreme Court acknowledgement of prostitution as profession helps sex workers to access basic rights.

It would be stupid to turn a blind eye to it and deny the existence of the system and its problems in a culture where prostitution has been a long-standing profession and is still thriving as a commercial sector. Making sex work legal and decriminalizing it with appropriate rules and regulations will provide improved working conditions, health security, and protection for sex workers. Additionally, it will be a positive move for society as a whole, eradicating numerous societal ills like child prostitution, rape, etc. Sex trade is a very real phenomenon in our nation, and by accepting it as a genuine profession with a set of guidelines and protections, all parties involved can be assured of receiving advantages. The development of a fairer, more inclusive legal system and the application of all available safeguards can only benefit society.

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