

Position of Prostitution in India

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ABSTRACT

The practice of prostitution cannot be said to have any origin as it's impossible to trace its real existence. From the time immemorial, we have been witnessing this necessary evil in our society. From the times of civilization like ancient Greeks, Indus valley and Aryan periods, it has been part of the daily life. Chanakya in his great book "Arthashastra" has categorically defined and codified the entire practice of prostitution to be followed in those times. It was taken as the form of art, when we follow the tails of 'Kama sutra'.

Prostitution or Commercial Sex industry is not a new issue regarding its definition of morality and ethics. Marino(2013) defines prostitution as the act of appealing in sexual activities in substitute for money.

In relation of prostitution and politics, the debate on how to address the issue on either to legalize or criminalize prostitution is often being looked upon.

Keywords

Pimping, Pandering, Sex Worker, Sex Industry, Commercialization.

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Introduction

"The fact that an evil exists and has always existed has never been held by society to be a good reason for not combating it."

Josephine Butler, 1875

The practice of prostitution cannot be said to have any origin as it's impossible to trace its real existence. From the time immemorial, we have been witnessing this necessary evil in our society. From the times of civilization like ancient Greeks, Indus valley and Aryan periods, it has been part of the daily life. The world today operates on deeply drawn lines which separate the human from the subhuman world, in a such way that human principles are not threatened by inhuman practices. During the past decade the problem of Prostitution and although not new, has been the subject of reinforced legislation designed to combat it.

The UN Declaration of Human Rights 1948 at international level and the Constitution of India at national level safeguards the basic, fundamental and human rights of the person like right to live, right to privacy, right to work, right to freedom etc. but the immoral and illegal practices are increases day by day due to modern technology, urbanization, poverty and unemployment. The governments of respective nations try to curb these practices from the society through the effective legislation. First of all we try to know the meaning of this term that is Prostitution. There are various typologies of Prostitution prevailing in India. The basic difference among them largely depends upon the causes as well as sources of prostitution. Is prostitution a voluntary act or is there an element of coercion? What are those compulsions that lead a person into the profession? Delving into these important matters would help throw a lot of light on the subject. Once a woman enters the profession it is imperative to understand how it impacts upon her health, psychology and other aspects of life.

Meaning of Prostitution

Prostitution is the exchange of sexual pleasure for financial benefits or gains. In India, it is an illegal to practice prostitution. There are other related activities that are illegal such as:

- Soliciting in a public place
- Kerb Crawling
- Owning or managing a brothel
- Prostitution in a hotel
- Child prostitution
- Pimping and pandering

Global Sex trafficking:

Judith Mirkinson states: "The number of women trafficked is staggering. Its estimated that from one to two million women and children are trafficked each year. During a 1991 Conference of Southeast Asian Women's Organizations, it was estimated that 30 million women have been sold worldwide since the mid 70s and over 100,000 women are shipped each year to Japan to serve in indentured servitude in bars and brothels. Thousands of young women and girls are sent from to Nepal to India and Burma to Thailand. In the past year, 200,000 women have been sent from Bangladesh to Pakistan. Young women have been found in China on their way to the brothels of Bangkok. Women from Latin America and Africa are turning up in Thailand and Europe, just as those from Latin America and the Caribbean are shipped to the U.S., although a real study of the trafficking into the U.S. and Canada hasn't been done. These numbers mostly exclude the issue of internal trafficking for "domestic consumption..."

"The traffic is that of poor women to richer men. The flow of poor women from the South to North is the largest, although. Now there is also an increase of women from the former Eastern bloc. The most frequent destinations for the women are Europe, North America, Japan, Australia and the

Middle East. The women come from rural areas and city slums. They are either recruited as tourist workers or are often kidnapped and forced into sexual slavery. Others are simply sold outright. In some countries there are actual markets where women are sold in the streets.'

Problems With Catalogue:

The terms used to define women involved in prostitution are mostly derogatory in nature. Whore, prostitute, randi, tawaif, vesya, bogam, sani and the like are some of the base descriptions in use. The National Commission for Women (NCW) has observed: "the existing terms used in various languages and dialects for the women is passed down through tradition and evoke emotions and reactions that are derogatory, stigmatizing and to the women. These terms reflect the dehumanized social treatment of these women. Some alternative terms have been mooted that are intended to accord these women a sense of respectability and dignity, which they deserve like any other human being. Commercial sex worker is a term universalized by the World Health Organization. The use of the term 'sex worker' confers upon prostitution the status of an 'industry' and the women involved in it as rendering services on par with labour service. This term has wide currency among those who are protagonists of the legalization of prostitution.

In all these terms primacy is accorded to the institution of prostitution rather than the women concerned. Use of the term 'women in prostitution' might be appropriate. The NCW also concurs. It states: "Women in prostitution is a term possibly congruent with Indian realities and situations as it would indicate the primary focus on 'women' and also depict the institution of prostitution as a separate existence.

Forms of Prostitution:

Women in prostitution are not a homogenous group, as is generally believed except in so far as all of them offer their bodies in exchange of consideration. This heterogeneity depends upon, among other things, factors that have led women to enter into prostitution. It is also a pointer towards the causes, whether voluntary or involuntary. The study draws substantially on the book published by the Central Social Welfare Board on the topic of typologies. Some of the typologies are stated below:

Street Walkers

The streetwalkers may function independently or through pimps. Generally affiliated to brothels, hotels, cinema halls, etc. these women are vulnerable to attacks and pressures of both clients and the police, with little or no support to combat them. They have no security and are time and again exploited economically, emotionally and sexually either by the clients or others.' They avoid concentrating in particular areas in order to escape the eyes of the law enforcing authorities. They have their unique methods of soliciting clients.

Religious Prostitution

The terms commonly used for these prostitutes are 'Jogini' or

'Devadasi'. In general, they entertain customers according to the wishes of the priests or family head. In the event of men curtailing the relation, the priest or the head of the family attaches them to other men. Thus, these women are constantly under the threat of exploitation and lead a life of sexual slavery.⁶ It is a custom practiced in the Southern part of India by the Scheduled Castes among the Hindus that worship Goddess Yellamma. Dedication as a devadasi or the devadasi cult provides a license for prostitution with religious sanction.

The Cage Brothel Prostitutes

These women are attached to a brothel, which has a landlord who in turn rents the premises to a brothel keeper. The brothel keeper runs the brothel and appoints a manager who supervises and keeps a watch on all the women, pimps, procurers and henchmen. This is a unique practice reported in Bombay.⁷ The caged prostitutes are basically minors, below 18 years of age. All earnings go to the brothel keeper till such time that the brothel keeper's investment made in procuring her has been recovered. The brothel keepers do not release these girls as long as they get regular and rich clients. Young girls and virgins are much in demand and their earnings during the initial years are high.

Punekar and Kamala Rao identified 26 causes of prostitution classified into six groups, according to their nature and origin.' They are: Punekar and Rao state that Group IV causes form the largest group of contributory causes and as major predisposing causes, while Group I causes are the largest in number.

Reasons For Prostitution

There are several causative factors that lead a girl or woman into prostitution. The Central Social Welfare Board opines that more than one single factor contributes to their entry into prostitution. Some of these are stated below. They have been broadly classified into economic causes, socio-cultural causes, psychological causes and other causes.

Economic Causes

Economic distress and poverty are one of the major contributory factors for the growth of prostitution. Lin Lap Chew of the Foundation Against Trafficking in Women in her submission to the Global Alliance Against Traffic in Women (GAATW) observes that: "trafficking is an issue which conflates with a number of other issues: e.g. labour migration for domestic work and work in the sex industry, informal labour, commercial marriage brokerage.' Judith Markinson, member of the Editorial Board of Breakthrough, a political journal states: "Entertainment girls, hospitality girls, prostitutes, massage girls, it all means the same thing. They're part of the globalization of the world's economy. Goods to be shipped across borders, through one airport to another, sometimes overland. Commodities in a million dollar industry. Only the products are women and children 19 being sold for profit. We're talking here about international sex trafficking. Women are recruited on false pretences, coerced, transported, bought and sold for a range of

exploitative purposes. Among these are forced labour, including forced domestic labour, and sexual exploitation, including sex tourism and forced marriage. Some are completely duped about the nature of the work they will be doing; some are told half-truths about the work and are then forced to carry it out; some are aware of the nature of the work but not of the conditions in which they will perform it, and see no viable economic alternative. Tourism And Trafficking Tourism is another important economic factor. With the advent of tourism in the late 19th century, the trafficking in human beings became an international phenomenon.

The NCW observes: "Since the process of tourism is primarily economic in nature it provides developing countries the perfect opportunity to deal with the balance of payments issue. Statistics such as total tourist arrivals in India in 1995 at 12 million and foreign exchange earnings from tourism at Rs 6509 crores are hard to ignore. Inducements are abundant for promoting prostitution. Net effect of sex imbalances, therefore, created by migration of labour, traveling businessmen and tourists lead to an increase in the demand for women and children. This, in turn, drives the age of victims lower and along with girls; it pulls into the net male children as well."

A glimpse into the background of Thai sex tourism would be instructive. The growth and organization of prostitution in Thailand is directly linked to the presence of US troops whose soldiers came for rest and relaxation

(R&R) to places like Bangkok during the Vietnam War. Prostitution flourished along the perimeters of US bases.

Armed Conflicts And Prostitution

Women are apprehensive of changes in the political regimes, which are often accompanied by harsh and punitive actions against them. War, military operations or armed conflicts lead to the growth of trafficking and prostitution. The war in Vietnam is a recent example.

Judith states: "The war in Vietnam brought a military buildup in Asia that ironically proved fortuitous to many countries' economies. Korea, Vietnam, Thailand, the Philippines and Okinawa built up a burgeoning sex industry outside the bases. Rest and recreation actually created new cities and added much needed capital to the overall economy of each nation. It is estimated that by the mid 80's the sex industries around the bases in the Philippines had generated more than \$500 million. At the end of the war in Vietnam, Saigon had 500,000 prostituted women - this is equal to the total population of Saigon before the war." "Many of these countries developed policies and passed legislation to aid the sex business and "support the boys". Thailand, for example, passed the Entertainment Act, which included an incredible policy called "Hired Wife Services". By the mid 70's there were 800,000 prostituted Thai women. Men were convinced that practices that might be frowned upon or illegal in their own countries would be available in places like Bangkok and Manila. This has become true for both heterosexual and homosexual men, for the sale of young boys is also big business."

Socio-Cultural Causes:

The Central Social Welfare Board (hereafter referred as CSWB) has categorized socio-cultural causes in the following manner:

- i) Ill-treatment by parents.**
- ii) Social customs like devadasi system.**
- iii) Desertion by spouse.**
- iv) Family tradition or involvement of family members in prostitution.**
- v) Widowhood and restrictions on widow remarriage.**
- vi) Social or personal reasons, e.g., low position of women in society, inability to arrange marriage, violation by incest etc.**
- vii) Bad company and neighbourhood.**
- viii) Connivance of parents or husband.**
- ix) Lack of sex education and influence of media**
- x) Absence of recreational facilities.**

The CSWB observes: "The causes under the socio-cultural category are more in number than the others. It is fair to say that socio-cultural factors contribute in a major way in the population of prostitution vis-a-vis the other factors...Detailed analysis shows that desertion by spouse is a major cause in the socio-cultural ones as poverty is among economic causes.

The traditional cultural practice of dedication of girls to the goddesses in temples has been in existence for ages. As these norms gained the social sanction of feudal societies, prostitution as a system became institutionalised. Even though many states have banned this practice, various reports indicate that this dedication still continues on a diminished scale, such as the Jogini, Devadasi and Basavi systems in Orissa, Andhra Pradesh, Maharashtra and Karnataka. "The devadasi system does not only have religious significance but is also deeply entrenched in the caste system. Bedia, Dombra, Kalavanthu, Bogam, Mahar communities are considered as the lowest rung in the traditional caste layers in Indian society.

Psychological Causes:

Apart from economic and socio-cultural factors, observers have also identified psychological factors as contributing to sustenance of this institution. Even without compulsion some women join this course of life.

Conclusion

The social factors which lead to the sustenance of prostitution and trafficking in women clearly show that most of the reasons for the entry of women into this institution takes place involuntarily or forcefully. But they also indicate that there are women, however small that section might be, who are entering this institution voluntarily. The presence of force of circumstance cannot be denied even among this group. While discussing the psychological causes of prostitution we find that there are some exceptions to even

the force of circumstance explanation. Among the various types of women in prostitution call girls or hitch hiking prostitutes exercise relative freedom compared to the remaining women of the genre. The very presence of cage brothel prostitutes where women languish hoping to be released someday, and finally yield to the perpetrators realising that freedom from bondage is not going to arrive shows that the argument for legalization of prostitution may not be a panacea. But once these cage brothel prostitutes succumb to pressure and enter into this institution few options are left due to various taboos attached to these women. Finally they resign themselves to the situation and try to make the best of it. Does it therefore mean that after the acceptance of their current situation, the act has turned voluntary in nature? These are pertinent questions that do not brook any easy answers, much less certainty, particularly when we discuss the issue of prostitution's legalization.

The horrendous experiences which child prostitutes face also reveal the darker side of human nature and the sinister features of this institution. Any discussion on the desirability of legalization cannot simply ignore these realities. Prostitution and trafficking are indeed two different aspects and have to be dealt with at different planes. However, can trafficking be tackled without curbing child prostitution that is deeply entrenched in prostitution itself? At the same time can one totally ignore the voices of women in prostitution who are passionately seeking legalization of this institution? While according respectability to it by calling it an institution, legitimacy and dignity is denied to the very women upon whom this institution survives. Of relevance here is the discussion on nomenclature. The Durbar Mahila Samanwaya Committee's campaign for legalization cannot be brushed aside. It is an expression of anguish articulated by the women in prostitution seeking a better life. The causative factors for their entry may be different from those that make for their continuance in prostitution. It is not necessary for a woman who has entered into it because of coercion to continue in prostitution due to the same reasons. One cannot expect that a woman coming from a remote village of Bihar or Orissa to remain the same after spending many years in the streets of Kamatipura. Stating this does not mean that one is too judgmental either about the earlier woman or the transformed one. Economic causes that have led to the growth of prostitution have been discussed at length. Poverty, consumerism, tourism, inequitable distribution of material resources, armed conflicts, urbanisation, industrialisation, regional imbalances, denial of economic freedom to women, non-implementation of land reforms and other factors have been indicated to be the causes for the growth of this institution. Violence in general against women increases with economic distress in society. Their impoverishment intensifies with it. The correlation between economic imbalance and violence against women has a direct impact upon prostitution and trafficking. As trafficking is very lucrative every effort is made to keep this institutions going. It leads to the growth of child prostitution. Thailand, Vietnam and now East Europe are examples. The whole debate also throws up serious ethical issues. If the reasons for the sustenance and growth of this institution can be properly understood, it could be a step towards addressing the problem of trafficking and forced prostitution. Various studies have been conducted by

governmental and nongovernmental organisations about the sources of prostitution and the trafficking routes at the national and international level. This should help the law enforcement machinery to take action against traffickers. Much is yet to be done in this regard. There are circumstances where the line between forced and voluntary prostitution is rendered very thin. Thus the law has to be receptive to the needs of the women in prostitution and try to resolve various conflicting interests.

Reference

- [1] Josephine Elizabeth Butler (1828-1906) was a Victorian feminist and social reformer who campaigned for women's suffrage, the right of women to better education, the end of covertures in British law, the abolition of child prostitution, and an end to human trafficking of young women and children into prostitution.
- [2] 3. Judith Mirkinson, Red Light, Green Light: The Global Trafficking Of Women, www.penet. htmlpenet.html, p10. Ibid, pi 6.
- [3] 4. Societal Violence on Women and Children in Prostitution, A report by the National Commission for Women, 1995-1996, National Commission for women, 4, Deen Dayal Marg, New Delhi, p5.
- [4] 5. 2 Ibid, p5.
- [5] 6. Ibid, p5.
- [6] Prostitution in Metropolitan Cities of India, A Study by Central Social Welfare Board, compiled by K. K. Mukherjee & Deepa Das, Samaj Kalyan Bhavan, B-12 Tara Crescent, Institutional Area, South of IT, New Delhi-110016.
- [7] Puneekar S D & Kamala Rao, Supra Note 29, p85.
- [8] 8 Dr K.K.Mukherjee, Girl Child Prostitution in India (Policies and Programmes), Sponsored by: The National Commission for Women, New Delhi & Organised by: Gram Niyojan Kendra, Ghaziabad, July, 1997, p.21" Lin Lap Chew, Foundation Against Trafficking in Women, m.o. Global Alliance Against Traffic in Women (GAATW), www.penet. htmlpenet.html, p4.

- [9] Judith Mirkinson, Supra Note 8, p 10
"Broken bodies, shattered minds Torture
and ill treatment of Women, Amnesty
International Publications, Easton Street,
London WC1X 0DW, UK, 2001, pi 6. *ibid*,
pi 6
- [10] Judith Mirkinson, Supra Note 8, p 10 "
- [11] Societal Violence on Women & Children
in Prostitution, Supra Note 1, p 20.