



LEGALISATION OF SEX-WORK IN INDIA

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ABSTRACT

India is known to have a growing services sector that includes doctors, engineers, advocates and others. All professions require some sort of licensing, permitting the people to carry on their activity. This is because their activities are of such nature that they should be provided some rights and protection in order to work in an efficient manner. But when it comes to “Sex-work” then there is no licensing, no protection. The practitioners here are deprived of legal status and hence any sort of rights. India, a country, where history is not just what we read in textbooks, but about the values that great kings, scholars and religious texts has taught us, but when it comes to “sex-work” then history is forgotten, humanity takes a back-seat and the sense of brotherhood hardly comes in limelight.

In this paper the focus is on the history of sex-work, conditions of sex-workers in India and further on how the legalization of sex work in India can change the status-quo and can improve the scenario.

INTRODUCTION

If we search for the meaning of prostitution, Google says ‘the practice or occupation of engaging in sexual activity with someone for payment’. At the same time it also says ‘the unworthy or corrupt use of one’s talents for personal or financial gain’. It is evident that prostitution can be perceived in either ways.

Sex-work is an occupation where an individual accept money in exchange of providing sexual services. It has existed from time immemorial. However, today sex-workers face social discrimination, violence, disrespect and many other atrocities. Until the 1960s, attitudes toward prostitution were based on Judeo-Christian views of immorality. Much of the violence associated with sex work is worsened by its illegality. Violent people are more likely to prey on sex workers.

In a country like India which is defamed for the ill treatment of women and where crime against women is rising day by day, the matter of legalization of prostitution is a hot topic for debate. The fact cannot be denied that the sex workers are physically and sexually abused and they face violence from the pimps and even from the clients.

Sex is a need like any other need of human beings, whether we accept it in that way or not. *Sex-work is not per se illegal in India. The Immoral Trafficking (Prevention) Act, 1956 (the principle statute governing activities involving sex-work.), instead of banning sex-work, indirectly discourages such activity by prohibiting sex-work in public places, in brothels and soliciting for sex in public places (Sections 7 and 8)*¹.

According to the latest data, there are about 2-3 million sex workers across India, where most of them have been forcefully abducted and thrown into this dark world, few came into it voluntarily, yet forcefully, taken up this because of poverty and other push factors. There are a lot of male sex-workers too, who are victims of the same fate. But as

¹ <http://lawreview.nmims.edu/licensing-of-sex-work/>



mentioned not every person 'chooses' to be a sex worker, most of them are forced into this business. They are sold to the middlemen, called "dalals", by their own family members or by some other people by giving lure to provide employment or education. These victims of human trafficking have no other option than to obey their masters, face violence, etc.

HISTORY OF SEX-WORKERS

Everything that are in society today has a history of its own. Some practices started in history and ended their only but some practices are prevailing even today in modern society.

Indra, the god of rains and also the king in gods, had beautiful dancers called Apsaras. They were the biggest assets of Indra's court; the Vedas do mention some of them, of which Urvasi and Menka are the most beautiful. Whenever his throne was in danger, he asked the Apsaras to seduce and distract his enemies with their beauty and dance. At times they lived together without any marriage ceremony. If we look closely, these Apsaras are the one which are called prostitutes in today's world. The Apsaras were among the courtesans and highly respected and even today their names are taken with due respect. Not just the Vedas but also the Bible has the mention of prostitute, where Jesus Christ welcomes a woman in his kingdom knowing that she is a prostitute².

It is our attitude which has made the prostitutes suffers. The concept of prostitution was even common in ancient times, from the Guptas till Aurangzeb. The

² <https://legaldesire.com/legalization-of-prostitution-in-india-need-of-the-hour/>

literature is also not untouched from this, in earlier days the practice of prostitution was codified. For instance the work of Vatsyayan's Kama sutra, etc. Even the historical caves of Ajanta Ellora and the temples of Khajuraho, have statues depicting various sex positions.

In earlier days sex-workers were respected but today they are treated not less than garbage and even in more harsh manner.

Is the Indian society is moving towards Modernization or Orthodization???

CONDITION OF SEX WORKERS IN INDIA

Poverty, discrimination, hopelessness, lack of knowledge, disrespect, and HIV- closely revolving around the life of a sex worker are some of the terms that clearly depict the condition of sex-workers in India.

Well, it is very rare to come across any woman who has taken up this profession by choice. Lack of employment, the realization of being not accepted at home, the hopelessness, false promises; often force them to accept the dark world of prostitution.

Most of these women neither have hope nor do they have any knowledge about their rights. Even if they try to come out of this, they do not have any other work to do or anyplace to live safely because of the non-acceptance in society. They struggle for their existence, sacrifice their dreams, self-respect, just for money. Majority of the sex workers are not aware about HIV. The workers represent a threat that cannot even be imagined. Mumbai and Kolkata are said to be the largest centres of this trade, over 50% of the sex workers in Mumbai have been found to be HIV positive. The sex



workers undergo the extremities, and they face brutal violence by the Police which is not known to all. Harassment and violence are common, if they are arrested by the Police. They are forced to fulfill the demands of Policemen, be it in monetary form or by sexual activity. Even after working to earn their living, just like any other citizen, and toiling their way through, why should they not get their basic rights and recognition in the country?

Certain organizations have come up with AIDS education programs and vocational training classes. One such project aimed at educating women about AIDS is the ASHA. Comprising of sex workers, who go into the brothels as peer educators, they strive to bring a change in the society. The model AIDS prevention group in the country is the Sonagachi Project. Working with males as well as females, this project has made a tremendous impact on the lives of thousands of sex workers, some of whom have been rescued, and given a new lease of life³. In southern India sex workers have responded to abuse and mistreatment by learning a new skill: karate.

BENEFITS OF LICENSING SEX-WORK

Licensing could give sex-workers legal rights as are provided in other services like advocates, doctors, etc. It could award benefits such as:

1. Legal Protection

The state will recognize sex-workers as a class of professionals, governed by a regulatory body, if the sex worker has

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<https://www.youthkiawaaz.com/2010/01/conditions-of-sex-workers-in-india/>

license to practice their activity. Whenever necessary sex workers can demand for resources or can be open without any type of social stigma.

E.g. a licensed sex-worker can access medical facilities with greater ease. They could maintain a record of their client and in case of any sort of issue, they can pursue legal action against the client.

2. Healthcare

Many a times, sex workers are denied the proper medical treatment. Healthcare is the most important aspect of sex worker's life as there can be a lot of health issues. By licensing the sex-work, practitioners will feel free to go for any sort of medical treatment. They can be in regular check-up under doctors.

3. Targeting Real Criminals

The actual criminals in this business are pimps, traffickers and brothel owners. They act as agents that regulate the supply in the sex "market". They force (mostly) women to be a part of the trade, restrict their movement, force clients upon them and even take their "fair share" from the sex-workers' earnings.

Licenses allow sex-workers to function independently of pimps. It will give them the freedom to choose the number of clients they can take on a given day (excess sexual activity could be fatal). With mandatory licencing, it becomes easier to contain child trafficking⁴.

4. Taxation

By licensing sex work, Sex-workers could be made responsible taxpayers. It will contribute to the revenue of the state, since the global value of sex-trade is around \$100

⁴ <http://lawreview.nmims.edu/licensing-of-sex-work/>



billion (according to the website www.havocscope.com which analyses the black economy) as in present scenario, their income is not counted in the revenue of the state.

LAWS AROUND THE WORLD

States like Canada, Argentina, Germany and Netherlands have taken steps to decriminalize the profession. The states have taken steps to guarantee the fundamental right to life, liberty and profession to the sex workers. The sex workers are registered in employment category and the local government is responsible for maintaining a proper working condition. The sex workers pay taxes and also charge tax on the services that they offer. The brothel owners are required to take license if they serve food and liquor.

In **Canada**, recently the three main laws regarding prohibition of the profession were struck down by the highest court by 9-0 ruling. It is a win for sex workers who were seeking for safer working environment. **U.K.** does not have the profession illegal per se, however, has made the acts related to it as illegal. Some of the illegal activities are kerb crawling, soliciting, pandering, etc.

INDIAN LAWS

Prostitution is not illegal in India. Nowhere it is written that prostitution itself is illegal, though the activities related to it are illegal. The basic law is The Immoral Traffic(Suppression)Act,1856, which is also said as SITA. This law allows the prostitutes to ply their trade in private. Indian laws do not regard sex in exchange of money as prostitution. Clients can be arrested if they indulge in sexual activity in public.

Prostitutes are called as “sex-workers” but they are not governed by labor laws.

SITA has been changed to PITA or The Immoral Traffic (Prevention) Act. This law does not protect the rights of sex workers. The demand for the legalization of prostitution in India is high. PITA serves to punish even the middlemen and brothel owners involved, but it is not satisfactory in nature. Lawmakers will have to reconsider the foundations on which laws are passed. The focus should be on protection of the rights of sex workers and improving the conditions in which they survive.

CONCLUSION

In the light of above facts, it can be said that criminalization of sex-work is not the real solution. Sex work is existing and will exist in society, and by legalizing it, all involved parties can be benefitted. It will reduce the burden of government of passing anti prostitution laws. It will also contribute in minimizing the illegal trafficking of girls. Country would increase its revenue as they will be taxed and their income will also come in limelight. Most importantly the rights of sex workers will be protected which will enable them to live their life as a normal human being.

Policy makers should make sure that policies must aim at increasing the safety of sex workers, improving the access to justice and promote free and non-judgmental mental health services and peer-to-peer support.

One thing needs to be understood by everyone that- Sex workers are the sole owners of their body and have right to decide what to do with their body, unless it is not causing harm to others. No one has



the authority to decide what someone does with his/her body. Everyone deserves to enjoy basic human rights, and the sole authority over themselves.

So, LIVE AND LET LIVE!!!

