



CONSENT AND PAID SEX

By *Aastha Jain*

From *Gauhati University (Dhubri Law College)*

Amongst the criminal set, one of the rising dangers in this arena is the concern related to paid sex. Paid sex which is also known as prostitution has gained importance in the last few decades having approximately 42 million engaged in its cobweb. It has extended its arms not only to the paid ones but also to the extent of forced sex. When sex is freely offered by one and the same is accepted by other against some monetary consideration, it gives rise to prostitution. Prostitution is now also recognized in the eyes of law. But as soon as the consent for having sex is obtained by a person through the manner of force or say it is not free at the end of another, such forced action paramount to sex without free consent, i.e. rape. Here, the question arises is – what is sex? Sex means any kind of sexual activity or any kind of sexual intercourse in which two persons or animals are engaged with their stimulated reproductive organs in order to satisfy their needs of pleasure.

However, when any such kind of sexual activity/ intercourse is undertaken in exchange of some payment, it gets wrapped in the plastic game of so called prostitution. It is not incorrect to name the business of prostitution as a plastic game because just like plastic, the prostitution is constantly degrading the human societal status and making it no less than difficult to stop such crime. In like manner to that of plastic, the business of prostitution is highly increasing

polluting the human environment as well as humanity. Often referred to as one of the oldest profession, around 42 million people are engaged in prostitution directly or indirectly generating revenue of over \$100 billion¹. However, there is a streamlined difference between prostitution and forced sex (sexual harassment, adultery, rape) and the thin line that separated the former and latter is consent. Now, the question arises is: what is consent? In literal terms, consent means permission for something to happen or agreement to do something². Consent, although not defined anywhere in the Indian Penal Code, section 90³ states the circumstances when consent is not free. The cases when consent is not said to be free is when it is given by a person under fear of injury, misconception of fact⁴, by a child under 12 years of age, person of unsound mind or by an intoxicated person. Precisely, it can be said that consent is free when the permission is given by person without any fear, of a legal age⁵ having appropriate thinking and acting capacity⁶ and when he/she is in natural state of mind⁷. This portrays a crystal clear image that when the consent is not free, sex business cannot be a legal⁸ which amounts to be sexual harassment, voyeurism or rape.

Sexual harassment⁹ is a situation where one person forcefully attempts to make physical contact, favors for it, shows pornography

¹ Wikipedia data

² wiki dictionary

³ Indian penal code, 1860

⁴ Fraud and misrepresentation

⁵ As per rules of different countries

⁶ Not n idiot or lunatic

⁷ Not intoxicated, drugs, alcohol or any such

⁸ Legality varies as per countries

⁹ Section 354, IPC



against the concern of the person or makes any kind of sexual colored remarks. Pornography (often abbreviated porn) is the portrayal of [sexual](#) subject matter for the exclusive purpose of [sexual arousal](#).¹⁰ it is the visual representation or presentation of process of sex through cyber means which includes various videos and photographs as well. The offence of Sexual harassment is punishable under law with or without fine.

Another prominent discussion which should not be left untouched in the matter of sex without consent is voyeurism¹¹. Voyeurism is a state of gaining happiness or deriving pleasure simply by seeing a scene of any kind of sexual activity. It means a situation where a person enjoys, watches or captures the image of another person engaged in any private act, the former is said to have committed an offence. The circulation of such images or any records also comes under severe crime and is punishable under law on first conviction. Here, private act includes “an act which is taking place in an area which is considered to be private and where victims’ genitals are exposed or covered only with not so sufficient clothing materials for a public appearance.”

The most dreading and alarming danger of present not-so-civilized world of inhumanity is rape¹². The fear of the word ‘rape’ is enough to tear ones’ soul apart. Rape includes any inhuman act by a person against another. It includes Penetration of a man’s sexual organ (penis) into a woman’s mouth, vagina, urethra or anus or making her do so with him or someone else or inserting any object, not the penis, into a

woman’s vagina, urethra or anus or making her do so with him or someone else or Manipulating any body part of the woman to cause penetration into her vagina, urethra, anus or any other body part or making her do so with him or someone else; or Applying his mouth to a woman’s vagina, urethra or anus or making her do so with him or someone else. Such inhuman act must take place against the will of the victim, her consent or if such consent is obtained by causing her fear of death or hurt for herself or for someone she knows or With her consent if she believes the man she is engaging with sexually is her husband Or With her consent, where due to unsoundness of mind or intoxication, the woman is not able to fully understand the nature and consequences of the act she consents to, With or without the consent of a woman who is below 18 years of age Or When the woman is unable to communicate consent. The punishment¹³ of such an offence, although never enough, is rigorous imprisonment of 7 years to life and the person shall also be liable to pay a monetary compensation.

All the above mentioned facts clearly proves that the whole round of sex goes around the tiny word ‘consent’. It is the word ‘consent; that differs voyeurism from pornography, differs sex from sexual harassment and rape from paid sex i.e. prostitution.

The whole plot gets twisted when consent is given to have sexual pleasure in exchange of money and gets packed in the name of prostitution. As described earlier, prostitution is a give and take business

¹⁰ wikipedia

¹¹ Section 354-c, IPC

¹² Section 375, IPC

¹³ Punishment for rape- Section 376, IPC



relationship, legal in some countries and illegal in few others. Prostitution is an activity where sex is freely offered by one person, accepted by another in lieu of some consideration giving rise to an agreement, An agreement not enforceable by law, but by lust. The person working in the field of prostitution is often referred to as prostitute, sex worker, harlot or whore. Prostitution and its akin pornography, sexual misleading is all part of one of the oldest and ever growing industry, the sex industry.

However prostitution is also associated with some common problems such as trafficking of minors, tax evasion and the wages of societal economic conditions along with health issues arising from it. When in some countries prostitution is considered to be an illegal activity, where in some boundaries it is still considered to be a legal one. But its legality varies according to the work. The prostitutes are considered to be legal whereas the clients who are availing this offer are considered to be illegal. It can be clearly mentioned about European countries namely Netherlands, Germany, Austria, Switzerland, Greece, Turkey, Hungary where the business of prostitution is considered to be legal and regulated.

Prostitution is considered to be one of the oldest and fastest growing businesses in the world where more than millions of people are getting engaged in it despite of all the Oceans and rules prohibiting it. The reasons of thriving of this business can be sorted out in various reasons which include immigration, human trafficking, child trafficking, survival sex, violence and others. Among these, one of the infamous reasons for prostitution is the survival sex

where one people get involved in the business of sex just to earn his or her living wage or sustain his or her daily livelihood. It is simply a form of aiding the survival needs, countering the problem of unemployment through the societal virus which after sometimes get turned into a cancer for the whole world of humanity and also for the person itself engaged in it. Human trafficking is defined as an action or practice of illegally transferring a person from one country to another or within the same political boundaries of selling them for the purpose of forced labor or commercial sexual exploitation. It is considered to be one of the foremost reasons of prostitution. It is the violation of human rights¹⁴ where people are not allowed to leave the place. According to the terms and condition, the forced sex workers cannot exercise their rights and duties and are forced into the work of prostitution or any other filed of legal sexual activities. Paid sex and human trafficking goes in round and round. Prostitution increases human trafficking human trafficking also aids prostitution. They are proportionally connected to each other.

Apart from all these, various social and health issues are also associated with the business of paid sex. Prostitution, one of the most disrespected and evil job is not accepted by the society in any end. The paid sex workers are not able to enjoy equal societal status as well as the needed freedom. They are seen as a curse to the society and one of the only reasons of crippling the society. Sexually transmitted diseases and various other diseases like

¹⁴ Basic and legal



bacterial infections, candidiasis, chancroid, skin lesions, vaginal bleeding¹⁵ are some of the common diseases which infects the paid workers as well as the customers. Unwanted pregnancies and the children born out of such are the worst sufferers of this scenario. The children born out of prostitution are in a way or other pushed into this disrespectful business.

It has become very essential to educate people about sex and forced sex, paid sex, rape, and pornography and clarify the clear cut distinction between them. Special Education to children and adequate information to the immigrants and all others can successfully prove to be a helping hand in combating the growing and unstoppable problem of prostitution. Another important and most effective means to stop and prevent the problem of paid sex is the involvement of social groups i.e. NGOs. These organizations can successfully come up with their innovative ideas in order to bring out the people indulged in the cobweb of this prostitution. Government should come forward with strict rules and legislation in order to gain control over it and prevent from spreading it further. Creating mass employment opportunities for the youth shall help the people to drift away from such immoral activity as most of the people indulge in the business of prostitution for earning their basic livelihood. In addition to it, a woman who is indulged in the business of prostitution for a longer period of time finds it difficult to come out of it. Hence, there should be proper arrangement for her rehab through rehabilitations centers. Guidance and psychological consultation

may also form an important part of measure of dealing with prostitution.

Considering all the above facts, the burning conclusion arises is that having bundles of defects and problems associated with it, is prostitution is still needed? Is there still a need for the developed countries to accept its legality? Bringing the workers offering such duty as well as the ones availing this are brought down to the lowest rank, is prostitution is still the need of hour? The straight answer is no. This evil, not only destroys a person or two, but slowly it shall the digest all the cells of this society. Strict Maws are needed to be framed as a protection against prostitution, rape, pornographies, to differentiate between consent and force.

¹⁵ www.rankers.com