

Rethinking Prostitution: Sociological Perspectives and Legal Practices in India

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Abstract

Prostitution as an institution can only be understood by exploring the economic and ideological base on which it rests. In the last few decades not only has the phenomenon reached alarming proportions but the forms of operation have changed as well. Governments all over the world have used the instrument of law as a means to deal with prostitutes and prostitution. Where, complex combinations of law, policy, and enforcement practices determine sex workers vulnerability to HIV and rights abuses. We identify “lack of recognition as a person before the law” as an important but undocumented barrier to accessing services and conclude that multi-faceted, setting-specific reform is needed rather than a singular focus on decriminalization if the health and human rights of sex workers are to be realized. This paper attempts to examine the issues and legal protections underpinnings of the laws and their operation and how they affect sex workers in India.

Keywords: Prostitution, Sex-workers, Sex-trade, Health, Human Rights, Legal Practices.

I. Introduction

The term ‘prostitute’ has a Latin derivation from the word ‘prostibula’ or ‘proседа’ (Siddique, 1997, p.422). To define it in simplest way, prostitution is the exchange of a sexual act for money. Hence, a prostitute is a person of either sex who sell their sex in exchange for money (Bullough, Bullough, 1997, p.118). Typically, female prostitutes are referred to as ‘whores’ or ‘hookers’ and male prostitutes are called ‘hustlers’. Another term commonly used to describe prostitutes is ‘sex-traders’. However, this term is an umbrella term and is used to describe anyone who exchanges sex for money, drugs, or any other material incentive (Overs, Bebe, 2013, pp.86-196). The term ‘sex worker’ is also used to define a person indulged in sexual activities in exchange for money and other sort of material gain (Henriques, 1963, p.363). As far as the term ‘sex work’ is concerned, it was coined by Carol Leigh, a western sex worker in the year 1998 (Jo Doezema, 2001). Sex worker is the broadest term and includes not only sex traders but also phone sex operators, exotic dancers, people producing pornography, and other work in related fields (Mishra, 2000, pp.88-115). Since ancient times, women are considered as silent voices of history and age old traditions, where female prostitution in different traditional societies was closely associated with religious practices. However, in the modern times, prostitution tends to be linked with promiscuity, crime and social condemnation (Gagnon, 1972, p.4). The words prostitution and commercial sex work are used interchangeably by many scholars who could not tell the difference. However,

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there is a difference between the two words in terms of meaning. Prostitution is the practice or occupation of engaging in sexual activity with someone for payment such as money or gifts. Commercial sex work, on the other hand, is any professional occupation in the adult entertainment industry and is characterised by a varying degree of physical contact between the parties. From a linguistic approach, prostitution carries the burden of shame because the word is used to drive a certain social attitude rather than just expressing the act. The term Sex work is used in a human rights context just as the world has moved beyond using historical terms for people of colour, the lesbian, gay, bisexual, transsexual community and those living with disabilities. The confusion by a majority is a reflection of the thin line that exists.

Objective

The study aims to undertake the following objectives:

1. To have a better understanding of the factors that prostitutes carry on with their jobs despite societal labels and stigma.
2. To examine the current Indian legal laws of prostitution with special reference to Assam.

II. Methodology

In this study a combined methodology of both quantitative and qualitative will be used by random sampling surveys and focusing on group discussions, in-depth interviews, case study techniques and field research. Five districts of Assam will be selected namely, Kamrup (Metro), Silchar, Tinsukia, Golaghat and Dhubri. Secondary data shall comprise of both published and unpublished documents, various books, articles, seminar papers, journals, memorandums, newspapers and internet sources, etc. The data collected will be analysed both quantitative and qualitatively.

III. Discussion

In ancient times, female prostitution in several societies was closely linked to religious practices. By contrast, prostitution in modern times tends to be associated with promiscuity, crime and social condemnation. Prostitution as an institution therefore cannot be understood only with reference to certain culture-specific variables. It has a clear economic and ideological base and is intrinsically related to larger socio-economic and political processes. Rather than as a moral issue it can be usefully analysed as a crucial part of the labour transformation process.

IV. Sociological Perspectives

The Streetwalkers are at the bottom of the hierarchy in prostitution (Doezema, 2001, pp.16-38). They typically work independently and stand on corners or stroll the streets, approaching passing males. Most commonly they get picked up by clients, or they get picked up in bars that are located in "street walking" zones. Massage parlours typically only offer massages but a few of them also offer 'extras' (Miller, 2004, p.459). Strip

clubs are another place where one may find sexual services, which can range from simply rubbing against a client's genitals during a lap dance to having sex in a 'VIP room' or another off-site location after the show (Davis, 1937, pp.744-755). Brothels are houses where prostitutes work, and they are much more structured than massage parlours or strip clubs. In order for sex workers to work through brothels they pay part of their commission to the brothel (Raghuramiah, 1991, p.6). They were typically marked by having a red lantern in the doorway which gave rise to the name red-light areas.

In many developed nations, the most predominant kinds of sex workers are escorts, also known as call girls (Barry, 1996, p.40). Escorts are at the top of the hierarchy of prostitution and their clients pay high fees to take them on 'dates.' Gigolos are male prostitutes that provide sexual services for women, typically wealthy middle-aged women (Wall, 1979, p.262). Hustlers are male prostitutes who provide homosexual sexual services for men. Only a small portion of male sex workers are street workers and some work through brothels, but with the evolution of technology phenomenally they are now working more independently in a growing escort market demand (Gremore, 2016). Pimps are people who connect sex workers with clients. Essentially, the pimp manages the sex workers' business and acts like their boss. Thus the sex worker hands the pimp all or part of the money they earned from the client in exchange for concern, and living and working arrangements. A Madam is a woman who manages a brothel or an escort service (Devlin, 2015). Many madams have connections and access to more affluent parts of society and thus can connect escorts with higher paying clients. Madams have certain duties to fulfil as part of their job. For instance, they make sure that their escorts are STI (sexually transmitted infections) free, screen calls from clients, schedule meetings between escort and clients, match clients with the right escort, letting clients know what different services each escort provides, and take care of other administrative issues. Another important part of the job is making sure none of the escorts are underage.

Indian women in particular appear to suffer from a range of discrimination and violations of rights in the areas of health, education, and work. This fact is clearly reflected in aggregate province-level statistics, which show that, with few exceptions, women have significantly lower literacy rates and hourly earnings rates than the men." Within this vulnerable group, sex workers stand out as being particularly vulnerable. Many sex workers enter the profession when they are minors, often without their consent, and thereby become vulnerable to sexual violence and economic exploitation. A recent survey reported that several brothels with minimum of three to fifteen sex workers are actively working in many districts including Kamrup (M) and Silchar of the state of Assam are found that nearly half had entered the profession at an age of 16 years or less and about one-tenth had entered at 18 years or less. Another survey reported that nearly 30 per cent of sex workers belong to Nepali community who are based in Kamrup (M) who had been either abducted or sold by their own family members and or men from their village (Field Survey, 2019). Moreover, even though child sex work is illegal in India, it clearly thrives; some studies estimate that child sex workers make up about one-third of all sex workers currently in India. During their working life, sex workers in India are subject to frequent harassment and detention by the police, even though, according to the Immoral Trafficking Prevention Act of 1986, sex work is in itself not illegal if it is practiced privately and independently. Sex workers also face discrimination and exploitation in areas of special concern to them such as health care, earnings for their services, and obtaining financial credit. This situation has only been exacerbated by the HIV/AIDS epidemic. For the general population, health care professionals recommend HIV tests whenever recurrent fever, symptoms of tuberculosis, diarrhoea, or an STD is present. For sex workers, however, HIV tests are recommended even for a single

episode of illness, making them feel stigmatized, further marginalized, and discriminated against on the basis of their health status.

V. Legal System Defining and Governing Prostitution in India

The period following World War II has been notable for the international consensus that has emerged on human rights. The idea that human beings have certain basic or inalienable rights is, of course, not unique to this period. The distinguishing feature, however, is the much broader international consensus on these issues, as demonstrated by the near-unanimous passage of the Universal Declaration of Human Rights by the United Nations General Assembly in 1948, recognizing every human being's right to life, liberty, and security. More than twenty international human rights agreements have been forged since then, including the twin International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention).

Likewise, the United Nations' Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 which has been adopted in several countries such as Britain, India and France embodies this system. Though this system does not forbid the act of prostitution per se, countries adopting this system generally and surprisingly have other laws or insidious clauses within the dominant prostitution law, penalising soliciting or loitering by prostitutes. Thus, contrary to the declared objectives of the tolerationist tradition, these clauses effectively result in the criminalising of individual women in prostitution, while the client is not considered an offender. Many countries have adopted the system of legalised prostitution. Prostitution was a legal activity in 19th century England and India and presently in Germany, Nevada in the US, Vienna in Austria and Switzerland (Women's World, 1990-91).

The Indian government has ratified and signed Women's Convention, albeit with reservations to many. Moreover, the Preamble of the 1949 Constitution of India promises to the citizens of India justice, liberty, equality, and "the dignity of the individual". These rights are made more concrete in Articles 12 through 32 of the Constitution, which comprise the main body of fundamental rights and are modelled on the Bill of Rights in the U.S. Constitution. Article 15 provides for non-discriminatory treatment of all individuals irrespective of sex, religion, and other characteristics; Article 23 prohibits traffic in human beings and slavery; and Article 24 prohibits the employment of children in hazardous employment. The fundamental rights of the Indian Constitution are positive rights in that they are legally enforceable. The Constitution also lists a set of desirable objectives for the state. Although not legally enforceable, these objectives include the right to an adequate means of livelihood for all citizens; a clean environment; protection of citizens, including children, against abuse; the right to work; and just and humane conditions for work. Recent court judgments suggest that the Indian legal system is becoming sympathetic to some of these objectives, primarily by means of a new element in the judicial process: public interest litigation (PIL). The PIL is a mechanism by which a person or groups of persons can directly move the Supreme Court of India on any matter of public interest, by filing a simple written application. PIL emerged in response to a need to make the Indian judicial process more accessible to the disadvantaged sections of society and to ensure adequate judicial protection of their human rights. Despite the existence of a plethora of laws that seek to prevent human rights violations, the poor implementation of these

laws in India has meant that several overlapping groups-women, lower castes, and tribal populations-have been unable to fully enjoy the gains in well-being realized by other groups, whether in the form of better education, health, or other indicators of freedom and happiness.

Besides, the legal status and the social stigma on the sex workers or prostitutes bound to isolate them from the rest of the population which many-a-times becomes the reasons of their exposure to various forms of exploitation. Sex workers or the prostitutes are the most vulnerable minority communities which most of the times fail to secure equality and justice in a structured patriarchy. Successive Indian governments and international agencies over the years have used the instrument of law as a means to deal with prostitutes, prostitution and trafficking in sex. However, because of the complexity of the phenomenon, its internationalisation as an industry and the gaps in our information, these problems are still unsolved and demands unrelenting attention.

VI. Conclusion

Because of the difficult circumstances for sex workers in India, it is important to explore ways to improve their economic and social well-being. One popular method is to “rescue” sex workers, thus reducing the exploitation and then to offer the rescued workers alternative sources of employment or relocation to place of origin. Methods to restrict entry, such as a ban on trafficking women and girls, would be a natural accompaniment of this approach. In practice, groups that consider sex work as immoral are likely to favour both forcible removal of sex workers and restraints on entry into sex work, so that it is not always clear whether the policy stems from the desire to impose a particular moral perspective or to improve the well-being of sex workers. A second method is to reduce the level of exploitation in the sex industry itself-by legalizing sex work or by protecting the civil liberties and political rights of sex workers and to place restrictions on trafficking and address exploitation by brothel owners. The Indian policy approach, at least in the statutes, has been to try to achieve a mix of the different methods, with a careful balance between the views that sex work is immoral, that the sex trade is exploitative, and that sex worker rights need to be protected. As the very name of the major legislation relating to trafficking and sex work in India-the Immoral Trafficking (Prevention) Act of 1986 makes clear, social attitudes about sex work as immoral have influenced government policy towards sex work. The various provincial Devadasi Acts that seek to prevent the entry of women into sex work were, in part, the result of a backlash against what the mainstream society considered immoral practices, as shown below. Moreover, the Immoral Trafficking (Prevention) Act of 1986 is severe on trafficking and brothel owners, and it supports rescue and rehabilitation schemes for sex workers. At the same time, it is silent about the legality of sex work itself, if not its outward manifestations such as soliciting and “public disturbance.” Constitutional safeguards and other statutes that protect the civil liberties and political rights of all individuals ostensibly protect the rights of sex workers. The Contagious Diseases Act of 1864, which legislated mandatory testing of sex workers for venereal disease and restricted their movement and practice to specifically allocated areas, offers one example of conferring a ‘legal’ status on sex work. As is clear from the circumstances of sex workers, as described in the previous section, the Indian government's approach has not been very successful in protecting the rights of sex workers or improving their wellbeing. Yet ineffective policies of long standing, such as rehabilitation, and a legal framework that is ambiguous in its approach towards sex work but seeks to restrict entry into it, continue

to remain popular. This is unfortunate because it means that decision-making with respect to sex workers in India is less than fully informed about competing intervention alternatives, particularly those that emphasize explicit social and legal recognition of sex workers and an activist stance toward enjoying their human rights. As used here, a human rights approach focuses on the legal rights of sex workers to address abuses that they face and emphasizes recognition of their civil liberties, such as custody of children, social security, minimum pay, and soliciting for clients. Its proponents include many nongovernmental organizations (NGOs), and its hallmark is the active participation of sex workers in the struggle for rights.

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