

ILL-LEGAL TRADERS: PROSTITUTION AND ITS AFTERMATH

SHILPA RAO RASTOGI

Abstract: The term 'Prostitute' or 'Prostitution' is more like an abusive word in almost every society. And talking about legalization of prostitution in itself is a controversial and debatable topic. There is a dichotomy in views of the people regarding prostitution. On one hand there are sex workers and activists who relate it with stigmatization, agony, violence, coercion and torture. They also assert that legalization of prostitution leads to expansion of the prostitution market which may further increase human trafficking. On the other hand there are groups which suggest that prostitution should be seen as work. They assert that legalization of prostitution will improve working and safety conditions of sex workers allowing such businesses to recruit those women who choose prostitution as their free choice of occupation and eventually reducing human trafficking. In the prevailing circumstances it is pivotal to investigate whether legalization of prostitution will increase or decrease human trafficking. Especially in a country like India where talking about such issues is still a taboo and a very sensitive subject, it is necessary to examine the pros and cons of legalization of prostitution.

Key words: prostitution, trafficking, sex work, human rights, women rights

Introduction: Prostitution and stigma: Prostitution refers to the act or practice of engaging in promiscuous sexual relations especially for money. Black's Law dictionary defines 'Prostitution' as common lewdness; whoredom; the act or practice of a woman who permits any man who will pay her price to have sexual intercourse with her. In the case of *People v. Rice*, prostitution was defined as, the act or practice of a female of prostituting or offering her body to an indiscriminate intercourse with men for money or its equivalent. Prostitution is often thought of as a threat to the marriage-family institution; law-makers are often afraid that, the delicate threads which binds the society together will be broken if people are free to engage in coitus for pleasure; laws, it is stated, are often not enforced adequately because the police have too many other things to do; judges also know that incarceration will not rehabilitate a prostitute, nevertheless, laws exist to emphasise that prostitution is not a socially acceptable form of behaviour. Even if prostitution is legalized the stigma remains due to its unacceptability. Prostitution is considered as a sin from which there is no remission and no return in most of the societies. Women who choose or who are forced into sex work acquire a permanent identity. They might be able to escape physically from prostitution, but they cannot escape from being identified as a whore in the eyes of society. How the girls entered prostitution in the first place makes absolutely no difference to how she is welcomed back into the family and the village. Some sex workers are kicked out by their own family members when they go back to their families because of the stigma attached to their profession. The stigmatization makes them more vulnerable.

More so even if sex workers are rehabilitated and introduced to other forms of earning, stigmatization continues and many of them may show their

reluctance to adopt other forms of earning because of their habit of earning quick without much hard labour.

Sexual Harassment: where no is not an option: Since prostitutes are engaged into sex work, many times their consent for sexual intercourse is taken for granted. Unchastity is no ground for the denial of basic human rights including right to take decision with regard to one's own body. The same has been asserted by the Courts in India in various case laws. In **State Of Maharashtra And Another v. Madhukar Narayan Mardikar**, Supreme Court held that "the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard." In **State of Punjab v. Gurmit Singh**, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character. The apex Court expressed its strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix.

It was further observed that, "the observations of the trial court lack sobriety expected of a Judge. Such stigmas have the potential of not only discouraging the otherwise reluctant victim of sexual assault to bring forth complaint against criminals, thereby making the society to suffer by letting the criminal escape even a trial. The courts are expected to use self-restraint while recording such findings which have larger repercussions so far as the future of the victim of the sex crime is concerned and even wider implications on the society as a whole, where the victim of crime is discouraged and the criminal

encouraged and in turn crime gets rewarded. Even in cases where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of "loose moral character" is permissible to be drawn from that circumstance alone. Even if the prosecutrix has been promiscuous in her sexual behavior earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted".

Other issues unique to Prostitution includes human trafficking, physical and mental harassment and other health related concerns.

Indian experience: India has the largest market for prostitution in South Asia, with Mumbai alone being home to over 100,000 prostitutes. According to the Human Rights Watch report, 15 million prostitutes of varied age groups, live and work in India. Prostitution in India is estimated to be an \$8.4 billion industry. The largest red-light areas across India are: Sonagachi (Kolkata), inhabiting more than 11,000 sex-workers; Kamathipura (Mumbai); Budhwar Peth (Pune), inhabiting around 5,000 commercial sex-workers; Meerghunj (Allahabad); G.B. Road (Delhi); Chaturbhujasthan (Muzaffarpur); Itwari (Nagpur); and Shivdaspur (Varanasi). As per the National Crime Records Bureau (NCBR), the number of registered cases albeit human-trafficking in India has increased by 38.3% in last five years, that is, from 2848 in 2009 to 3940 in 2013. The conviction rate for such cases has declined by 45%, from 1279 in 2009 to 702 in 2013. A further analysis of the NCBR data reveals that in 2013, maximum crimes (around 65.5%) were registered under the Immoral Traffic Prevention Act, 1956; whereas procuring of minor girls (Section 366-A of the Indian Penal Code, 1860) accounted for 31.1% of the crimes. The State of West Bengal is the hub of human trafficking in India, with a registered human trafficking cases of 669 in the year 2013, followed by Tamil Nadu (549 cases), Andhra Pradesh (531 cases), Karnataka (412 cases) and Maharashtra (345 cases).

Legalization of Prostitution: alleviator or aggravator?: The Immoral Traffic (Prevention) Act, 1956, does not criminalize prostitution or prostitutes per se; but it does punish acts of third-party facilitation of prostitution, like brothel-keeping, living on the earnings of prostitutes or procuring a person for the sake of prostitution. Rooting out prostitution from India or any other country by the way of criminalizing the same is an impractical scheme. Since ages, authorities have tried to ban prostitution but it still thrives. If prostitution is treated just like another service industry, sex workers can come out of the shadows and start to shed the stigma of criminality. Legalization of prostitution may also aid in putting a check over trafficking gangs

and pimps as they thrive because the sex business is driven underground. The women engaged in sex work will be in better position to approach police if they no longer fear prosecution and gradually it will help police to crackdown the real criminals such as the criminal gangs who exploit sex workers and traffickers. Legalizing prostitution would mean that, brothel-owners would be held accountable/responsible for the treatment of "fallen women", and that, the abused/ill-treated sex-workers will have an option of turning to the law for their protection.

More so there is a thought which says that legalization may alleviate rape and other sexual offences against women if people have an option to pay and get their sexual desires fulfilled. And also it may result in reduction of sexually transmitted diseases, for sex-workers will be required to maintain health-cards; also, condom enabled sessions will result in safe-coitus. Prostitution has been legalized in: the Netherlands, New Zealand, Germany, Iceland, Switzerland, Austria, Denmark, Greece, Turkey, Senegal, Venezuela, the State of Nevada in the United States, and among the Australian States- in- Victoria, Queensland, Australian Capital Territory (ACT), and Northern Territory. The experience of places like Nevada, Switzerland and New Zealand show that legalised, regulated prostitution works. Legalization of prostitution may also result in economic growth of the country by generating a lot of tax revenue.

But on the other hand, legalization of prostitution can give a message to the new generation that women are mere sexual commodities. Not only does legalizing prostitution hurt women and children, but it also hurts families. What legalizing prostitution does is create an increase in infidelity, which, in turn, creates an increase in divorce. It is also asserted that legalization of prostitution is no solution to put an end to continuing exploitation, violence and other felonious offences against women. Germany's experience shows legalized prostitution doesn't work. Exploitation and human trafficking still remain a significant problem.

The reality is that prostitution cannot be made respectable. Legalisation does not make it so. Prostitution is an industry that arises from the historical subordination of women and the historical right of men to buy and exchange women simply as objects for sexual use. It thrives on poverty, drug abuse, the trafficking in vulnerable women and children. Prostitution teaches men how to mistreat women and damages the lives of both the women who are used, the women whose partners, sons, brothers and workmates are the abusers, and the status of all women in the state.

It is further debated that legalization of prostitution may encourages corruption, drugs and other crimes.

Those who are against legalization of prostitution further assert that making prostitution legal will further aggravate the situation. It may encourage men to solicit sex and have multiple partners, increasing STD risks. Men may force, or bribe prostitutes not to use condoms. A CATW study reported that 47% of women stated that men expected sex without a condom, 73% reported that men offered to pay more for sex without a condom, and 45% of women said they were abused if they insisted that the men use a condom. Health concerns related to prostitution are majorly designed for the clients. Being alone with strange men in a closed room will always leave women at risk from violence. The safety policies in many legal brothels simply do not protect women from harm. Women who work in these brothels have indicated that they were abused by buyers, brothel owners, and even their friends.

It is also advocated that legalizing of Prostitution may not enhance women's choice of work. Prostitution for most women is an involuntary way of earning. Most women in prostitution did not make a rational choice to enter prostitution. Rather, such choices are better termed survival strategies. Rather than agreeing to become a prostitute, a woman more accurately 'complies' with the only options available to her at that point in time. Most of the women interviewed in CATW studies reported that choice in entering the sex industry could only be discussed in the context of the lack of other options. Most emphasized that

women in prostitution had few other options. Many spoke about prostitution as the last option, or as an involuntary way of making ends meet. In one study, 67% of the law enforcement officials that CATW interviewed expressed the opinion that women did not enter prostitution voluntarily. 72% of the social service providers that CATW interviewed did not believe that women voluntarily choose to enter the sex industry. The ILO [International Labour Organization] also reported that most women 'choose' prostitution purely for economic reasons.

Conclusion: For every argument insisting that legalizing prostitution is the better choice, there is a stronger counter argument. But keeping in view the present legal scenario, ongoing system is nowhere near improving the status of women engaged in forced or voluntary prostitution. Authorities should adopt different models of legislation to improve the present situation. Legalizing prostitution may go a long way in improving the conditions of the sex workers in the country but such effects may not be observed immediately, but in the longer run, it may help in curbing the ill consequences of stigmatization and harassment of the women involved in flesh trade and may also provide for better health conditions and regulated working conditions of the sex workers, which would also be beneficial for the economy by way of generating taxes and may also lead to reduced sexual offences against women in the society.

References:

1. Merriam Webster Dictionary, Available at <https://www.merriam-webster.com/dictionary/prostitution> (Last accessed on 17.02.17)
2. Black's Law Dictionary 2nd Ed., Available at <http://thelawdictionary.org/prostitution/> (Last accessed on 17.02.17)
3. 277 Ill. 521, 115 N.E. 631, 632
4. Law Commission of India: Sixty Fourth Report, The Suppression of Immoral Traffic in Women and Girls Act, 1956, Chapter I: Introduction, March 1975
5. AIR 1991 SC 207
6. (1996) 2 SCC 384
7. Harshini Shankar, Prostitution in India, The Viewspaper, <http://theviewspaper.net/prostitution-in-india/> (Last accessed on 20.02.17)
8. Palash Krishna Mehrotra, Legalisation of prostitution will help protect vulnerable women in India, Daily Mail, 19 October 2014
9. Devanik Saha, The number story: A human trafficking cases rise, convictions come down, The Indian Express, 30 January 2015
10. Shivam Goel, Prostitution and the Law: Charting the Indian Course (June 10, 2016). Available at SSRN: <https://ssrn.com/abstract=2793718> or <http://dx.doi.org/10.2139/ssrn.2793718> (Last accessed on 20.02.17)
11. Id.
12. Mary Sullivan and Sheila Jeffreys, Legalising Prostitution is not the Answer: The example of Victoria, Australia Available at <http://www.catwinternational.org/content/images/article/95/attachment.pdf> (Last accessed on 20.02.17)
13. The Coalition Against Trafficking in Women (CATW) is a non-governmental organization that promotes women's human rights. It works internationally to combat sexual exploitation in all its forms, especially prostitution and trafficking in women and children, in particular girls.
14. Janice G. Raymond, 10 Reasons for not Legalizing Prostitution, 2 J. of Trauma Pract. 315-332 (March 25, 2003).
15. Janice G. Raymond, Guest Editor's Introduction, Violence Against Women. (2004).
16. 10 Reasons for not Legalizing Prostitution, op. cit.

17. To address the problems caused by the industrialization of Europe in the 19th century, Robert Owen of Wales, and Jerome Blanqui and Daniel Legrand of France, among others, brought the need for international cooperation in setting labor standards to international prominence. The reasons articulated for the necessity of cooperation were both benevolent and economic. Cooperation was necessary to eradicate poverty and injustice, not just to protect workers, but also to prevent the social unrest these conditions could engender. Furthermore, international cooperation was necessary because each nation would be at a competitive disadvantage if it imposed higher standards unilaterally. Ultimately, these concerns led to the formation of The International Labour Organization on April 11, 1919 as an affiliated agency of the League of Nations. The original ILO Constitution was drafted as Part XIII of the Treaty of Versailles. After the creation of the United Nations, the ILO became the first specialized agency to be affiliated with the UN in 1946. The ILO website states the organization's goal as "bringing decent work and livelihoods, job-related security and better living standards to the people of both poor and rich countries." From its inception, the ILO has recognized social justice as a prerequisite to world peace.
18. Diane Post. Legalizing Prostitution: A Systematic Rebuttal, (1999), Available at http://prostitution.procon.org/view_resource.php?resourceID=000115. (Last accessed on 23.02.17)

Shilpa Rao Rastogi
Assistant Professor, School Of Law, Manipal University Jaipur.