

THE SEX BUSINESS

*ANUSHNA SATAPATHY

Prostitution is as old as time. It is present in almost all countries, and across cultures. Traditionally, prostitution is defined as ‘the practice or occupation of engaging in sexual activity with someone for payment’². Those who practice prostitution are called prostitutes. A very crude term, prostitution is generally considered as an immoral and depraved act carried out by men and women of questionable character. Consequently, there are a lot of negative stereotypes associated with the term.

In the late 1970s, the political landscape underwent a drastic change when the term ‘Prostitution’ was replaced by the term ‘Sex Work’. The term ‘Sex Work’ was coined in 1978 by sex worker/activist Carol Leigh³, an influential leader of The Sex Worker’s Movement in the United States of America. According to her, “Sex Work” was a term that could unite all those engaged in the sex industry including prostitutes, porn actresses, exotic dancers, and bring them under one umbrella of “Sex Work”. But the term did more than that. It removed the moral divide between prostitution and other forms of work. By calling ‘prostitution’ sex work, Carol Leigh essentially made it into any other commercial activity. It took away the implied immorality and insult attached with the term ‘prostitution’ and replaced it with a business – the business of sex. By the late 1990’s, the term ‘sex work’ had gained currency in academics⁴ and was recommended by the World Health

Organization⁵. Soon after, the Joint United Nations Programme on HIV/AIDS (UNAIDS), also advised the use of the term “Sex Work”⁶.

HUMAN RIGHTS OF SEX WORKERS

After World War II, the concept of human rights and violations of human rights assumed much greater political significance in the international political environment. There was a general consensus amongst world leaders that all people have certain intrinsic, inalienable rights that cannot be denied. To this effect, the United Nations adopted the Universal Declaration of Human Rights in 1948. It states that “all human beings are born free and equal in dignity and rights”⁷. India has also signed several international agreements and set up numerous committees, commissions and other related bodies in order to prevent human right violations. However, it has failed to do so.

Indian women in particular are regularly denied their rights with respect to education, health and work as evidenced by the lower literacy rates and lower wages compared to men⁸. Within this already vulnerable group, the sex workers are even more vulnerable. Most of the sex workers who join the trade, do so unwillingly and are forced into sex work in their childhood. Although the use of children for sex work is illegal, 40% of the sex workers are children⁹. Studies show that more than half of the sex workers begin working when they are less than 14 years old¹⁰.

Safeguarding the rights of the citizens is the duty of the State. But when law enforcement agencies themselves exploit and harass the sex workers, it forces them to go underground which makes them even more vulnerable to violence and abuse. The Immoral Trafficking Prevention Act, 1956 does not hold sex work per se illegal as long as it is conducted privately and independently. However, the police have been known to ignore this legislation and arrest sex workers not releasing them until they have extorted money from them¹¹. Thus, sex workers find themselves in a position extremely vulnerable to exploitation and abuse.

Sex workers also face discrimination so far as access to health care is concerned. For example,

people are prescribed an HIV test only under certain circumstances such as TB, STDs etc. But for sex workers, the test was made mandatory regardless of what ailment they were seeking treatment for. This discrimination leads to further marginalization of the sex workers¹².

Sex workers are also exploited with respect to their earnings. The brothel owners and pimps exploit the workers, more so in case of child sex workers, and force them to turn over a significant portion of their earnings, leaving the sex workers with barely enough to live on. This has tragic consequences for the sex workers. Since most of these sex workers are from extremely poor and impoverished backgrounds, they hardly ever have proper legal documentation to approach banks for credit when in need. When pimps and brothel owners squeeze them out of their hard earned money they have no option but to approach money lenders who lend them money at exorbitant interest rates forcing them into a debt trap.

Most sex workers are poor and illiterate. Access to education, however, is a far off dream for them. In the Sonagachi district in Kolkata, which is a famous red-light district, literacy levels of the sex workers are exceptionally low at 11% which is even lower than the literacy levels of women in rural India¹³.

Thus, it is evident that poverty, illiteracy, discriminatory treatment in terms of education and health care, lack of protection by law enforcement agencies, and constant exploitation and harassment characterize the sex industry and are a regular feature in the lives of the sex workers.

LAWS GOVERNING SEX WORK

India does not have any specific legislation in place in order to address issues arising out of sex work. However, India does have statutes in place to prevent and suppress trafficking of women and children for prostitution. They are:-

- The Immoral Traffic (Prevention) Act, 1956
- The Suppression of Immoral Traffic in Women and Girl Act. 1956

The ITPA defines prostitution as “the sexual exploitation or abuse of persons for commercial purposes or for consideration in money or in any other kind”¹⁴. The Suppression of Immoral Traffic in Women and Girl Act 1956 differs from the ITPA and defines prostitution as “the act of a female offering her body for promiscuous sexual intercourse for hires, whether in money or in kind”¹⁵.

The main statute dealing with prostitution or sex work is the ITPA. Neither of the two statutes declares sex work per se as illegal. But, they do declare activities related to sex work (keeping or running of brothels, soliciting in public places etc.) and third party facilitation of prostitution as illegal.

LEGALISATION AND WHAT FOLLOWS

There are two views commonly accepted about the rights of sex workers. The first view considers sex workers as victims who have been abused, exploited, and coerced into the business. The only way to give these sex workers their rights, is to unshackle them from the bondage of sex work which is carried out through ‘rescue and restore’ missions. This is a very narrow understanding of sex work, for it completely ignores the possibility of consenting sex workers who neither need to be ‘rescued’ nor to be ‘restored’. Thus, these missions, while appropriate for people who have been trafficked, are not the final solution.

The second approach views sex work as a legitimate business which needs to be regulated and

organized. It resolves many of the problems associated with the sex industry and the gross injustice suffered by the workers. It is undeniable that sex workers are discriminated against, exploited and abused, not only by the people involved, but also by the law enforcement agencies. However, viewing sex work as a legitimate business takes away the inherent stigma associated with this industry and enables the workers to demand their rights. Thus, this perspective calls for the legalization of the sex industry.

To begin with, the first thing that needs to be done in this process of legalization is to redefine prostitution as sex work. Sex work is an income-generating economic activity for men and women, and as such, social and psychological connotations must be kept separate. Secondly, activities related to sex work, such as running of brothels, must be decriminalized and regulated by the State. This will have social as well as economic benefits.

In 1996, the Global Alliance Against Trafficking in Women (GAATW) launched an investigation. The report submitted, addressed issues of lack of accountability in the sex industry which is one of the main reasons behind the high levels of violence and abuse prevailing in this industry¹⁶. Thus, regulation is necessary to provide a safety net for the workers and to recognize their rights.

Regulation will bring the industry into the tax net. The sex industry is a widespread, thriving industry which makes a lot of profit¹⁷. The State can add to its' revenue sources if it decriminalizes and regulates this industry and then, taxes it. According to estimates, the sex sector accounts for two to fourteen percent of the GDPs of South-East Asian countries such as Malaysia, Indonesia, Thailand and the Philippines¹⁸. Thus, regulation benefits both, the workers and the state.

Regulation would also improve the working conditions in the sex industry. It ensures the establishment of minimum standards of work which will make brothel owners, money lenders, etc., accountable to the law and reduce the exploitation prevalent in the sector. Regular earnings will improve quality of life and help mitigate the discrimination faced by the workers in areas of healthcare and education¹⁹.

Regulation will prevent trafficking of children and women and will ensure that only consenting and willing adults enter the industry²⁰. And most importantly, in an organized sector, the sex workers will have access to legal protection against exploitation²¹.

THE FUNDAMENTAL RIGHTS DEBATE

Each and every individual has certain rights that he cannot be deprived of. These have been enshrined as fundamental rights in the Constitution of India.

There is a third perspective regarding the rights of sex workers. This perspective, too, calls for legalization of the trade but for more specific reasons. It considers the laws restricting sex work as violative of the sex worker's fundamental rights.

- Right to practice any profession, or to carry on any occupation, trade or business²²

Article 19(g) of the Indian Constitution guarantees all its' citizens, the freedom to practice any profession in the territory of India. Sex workers, however, do not enjoy this freedom as the law has declared all corollary activities which facilitate sex work, to be illegal! Thus, making the entire business futile and forcing it to go underground.

- Right to assemble peaceably and without arms²³

A major corollary of the sex industry is brothels. Brothels are traditionally defined as a place

where people go and pay to have sexual intercourse with prostitutes²⁴. A brothel thus, is a place where many prostitutes assemble together and carry on their business. Article 19(b) of the Indian Constitution allows its' citizens the freedom to assemble peacefully and without arms. However, as per the ITPA, owning or using a brothel is illegal. This is clearly violative of the sex workers' right to assemble peacefully.

Thus, legalization is the most prudent and necessary step which will ensure to the sex workers, only that which has been ensured to all others in the country – the right to freely practice their profession in a safe and healthy environment.

Budhadev Karmaskar v. State of West Bengal²⁵

In 2011, a case against the brutal murder of a sex worker was presented before the Supreme Court of India. On 17th September, 1999, the appellant approached the deceased and beat her with his legs and fists. He then repeatedly banged her head against the wall and the floor. Due to the severity of her injuries, she died before ever reaching the hospital. The Court, presided over by Justice Katju, condemned the entire incident as a “murder in a brutal manner of a helpless woman”²⁶ and which “deserves no sympathy from this Court”²⁷

Justice Katju also raised the point of the Sex Worker's right to Article 21 of the Indian Constitution – right to a life of dignity²⁸. He says that prostitutes are also human and should be treated as such. Society should sympathize with them and their conditions in life as “a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty”²⁹. Thus, trying to initiate reforms in the treatment of sex workers, he directed the State and Central Govt. to start rehabilitation and vocational/skill training programs for sex workers.

In 2016, Maneka Gandhi introduced the draft of a new anti-trafficking bill³⁰. This bill, however, received a lot of opposition from the sex workers. One major contention of the sex workers was that the bill completely ignores consenting and voluntary sex work. It sees sex work as synonymous with trafficking. Another contention raised, was that this bill excludes the sex workers from the fight against trafficking. This exclusion goes against the spirit of inclusion that Justice Katju's recommendations had tried to bring about. In conclusion, it is evident that society is slowly becoming more accommodative of sex workers. However, there is still a long way to go and the only way to provide relief to the sex workers and uplift their standards of living is by recognizing sex work as a simple, legitimate business: the business of sex.

(Endnotes)

- 1 * Second Year, B.A. LL.B. National Law University Odisha,
- 2 *Prostitution Definition*, Oxford Dictionary, available at <https://en.oxforddictionaries.com/definition/prostitution>, last seen on 17/07/2017.
- 3 C. Leigh, *Inventing Sex Work*, 225, 230 in *Whores And Other Feminists* (J. Nagle, 1997).
- 4 M. Miller-Young, *Sex Worker-Only Communication Tool*, 433, in *Encyclopaedia of Prostitution and Sex Work* (M. H. Ditmore, 2006).
- 5 *Supra* 2.
- 6 *Terminology Guidelines*, UNAIDS, available at http://www.unaids.org/sites/default/files/media_asset/JC2118_terminology-guidelines_en_0.pdf, last seen on 17/07/2017.
- 7 UN General Assembly, *Universal Declaration of Human Rights*, Res. 217 A (III), Sess. 183, U.N. Document A/RES/217 (III), 2available at http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf last seen on 18/07/2017.
- 8 S. Gruskin, D. Tarantola, *HIV/AIDS, Health, and Human Rights*, 661, 674 in *HIV/AIDS Prevention and Care Programs in Resource- Constrained Settings* (P. Lamptey, H. Gayle, 1st ed., 2001).

- 9 J. D'Cunha, *The Legalization of Prostitution: A Sociological Inquiry into the Laws Relating to Prostitution in India and the West*, (1991). See K. Mukherjee, *Flesh Trade: A Report* (Ghaziabad, India: Gram Niyojan Kendra, 1989).
- 10 Ibid.
- 11 Supra 8.
- 12 S. Bharat, *HIV/AIDS Related Discrimination, Stigmatisation And Denial In India*, 89 (1999).
- 13 *Rape For Profit. Trafficking of Nepali girls and Women to India's Brothels*, Human Rights Watch, available at <https://www.hrw.org/legacy/reports/1995/India.htm>, last seen on 18/07/2017.
- 14 S. 2(f), The Immoral Traffick (Prevention) Act, 1956.
- 15 S. 2(f), The Suppression of Immoral Traffic in Women and Girl Act, 1956.
- 16 GAATW, *Handbook for Human Rights Action in the Context of Traffic in Women* (1996).
- 17 *The Legalization of Prostitution and its Impact on Trafficking in Women and Children*, Sisyph, available at <http://sisyphe.org/spip.php?article1596>, last seen on 18/07/2017.
- 18 *The Sex Sector*, 7 (L.L. Lim, 1st ed., 1998).
- 19 J. Bindman, J. Doezena, *Redefining Prostitution as Sex Work on the International Agenda* (1997).
- 20 E. Albright, K. D'Adamo, *Decreasing Human Trafficking through Sex Work Decriminalization*, 9 Journal of Ethics 122, 123 (2017), available at <http://journalofethics.ama-assn.org/2017/01/sect2-1701.html>, last seen on 18/07/2017.
- 21 Supra 18.
- 22 Art. 19(g), the Constitution of India.
- 23 Art. 19(b), the Constitution of India.
- 24 *Brothel Meaning*, Cambridge English Dictionary, available at <http://dictionary.cambridge.org/dictionary/english/brothel>, last seen on 20/07/2017.
- 25 *Budhadev Karmaskar v. State of West Bengal*, (2011) 10 S.C.R. 578.
- 26 Ibid.
- 27 Ibid.
- 28 Art.21, the Constitution of India.
- 29 Supra 24.
- 30 *Sex workers oppose anti-trafficking bill*, The Telegraph (28/01/2011), available at https://www.telegraphindia.com/1170128/jsp/nation/story_132745.jsp, last seen on 23/01/2017.