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Decriminalization of Sex Work

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Abstract

Sex Work is considered as a highly disregarded, condemned, disapproved, debossed and humiliating work in the society. In the ancient time, those sex workers who were working in the temple used to be known as 'devadasi' or slaves of the divine god but what we see today is if someone chooses sex work as an occupation, the person is treated as impure sand on the shore. They are deprived of their basic needs, there is a lack of clean water, poor living space, rotten food and then reluctance to do work. Those who don't join the profession by their will live a life in hell. They suffer both physical and mental pain and then comes the demand for the criminalization of sex work. What needs to be understood is that human trafficking and voluntary sex work are two different things. Since a human being has not been able to control his desires yet which are limitless that has ripped off ethics with crimes like rape, cases of which are rising day by day and our government has barely been able to take any action to reduce crimes like this, decriminalization of sex work can be an option to give a thought on. The prostitute sells herself in every possible way; her body, her sexual skills, her self respect, only for the pleasure of the customer. She is objectified, treated not as a human being but as a means to the customer's sexual goals. Nothing can justify injustice and inhumane behaviour. The social structure of perception about sex workers gives no help, this also needs to be changed. No law can challenge the power of acceptance. A law made and not accepted is a law wasted.

Keywords: *Sex work, stigmatization, laws for sex work, sexual and reproductive health, SDG-8, decriminalization of sex work.*

1.0 Introduction

In India, the word, 'sex' comes with the notion of social stigma and taboo attached. Sex workers are often demeaned, neglected stigmatized both by society, and the clients they are dealing with. This profession is considered as derogating, problematic, disgraceful, and heinous which makes them a section of society that is less privileged and disadvantaged. The government policies for sex workers focus more on the laws that either regulate or prohibit the extent of sex work. This approach has many problems of its own as the laws fail to incorporate the reality of people involved in sex work. As a result of which, they are deprived of basic human rights, and also facilities like health care and safety are available to workers from other professions.

1.1 Objective

In this paper, we aim to analyze the current laws regarding sex work in India, and the situation in which sex workers are living. We will also examine why amendments need to be made to the laws and how decriminalization of sex work can help to secure the lives of sex workers and possible changes that can be made to improve the condition in which they live today.

1.2 Scope

This study uses a deductive approach to critically analyze the current laws regarding sex work in India and the quality of life of sex workers. It describes the relationship between SDG 8 (Decent work and economic growth) which is one of the 17 SDGs set by the United Nations targeted to be achieved by 2030 and sex work. It also analyzes the benefits seen in other countries where sex work has been decriminalized.

2.0 Important Terms

1. *Sex work*: When a person is involved in any form of sexual activity or erotic performance in exchange for goods, services, or money, it can be considered as sex work. Those who provide these services are sex workers.
2. *Clients*: People who pay for sexual services provided by sex workers are clients.
3. *Third-party*: Generally, the whole industry of sex work is not limited to sex workers and clients but also involves some third-party agents like pimps, brothel owners,

managers, etc, who fix appointments between sex workers and clients. Majorly, they regulate the industry.

3.0 Reasons for choosing Sex Work as an Occupation

Most people who choose sex work as their profession end up doing it because they have no other option due to poverty. They are, generally, illiterate and have very limited skills to be considered fit for any other job. Sex work requires negligible skills they enter into it at least to earn something to make ends meet. Sex work is also considered an easy way to make money for people who may not find decent-level paying jobs otherwise, as clients sometimes may be ready to pay any amount for a particular service. A survey of 200 sex workers in 2005 indicated that some earned a minimum of Rs 80 per day, while others earned a daily income of Rs 1700. (Pauw, 2007)

Children who went through child sexual abuse turn to prostitution because "it is no great leap to learn to make a living selling the only part of them which they have been taught to believe has no value." (Overall, 1992)

The profession does have some benefits which may encourage people to take them up. Sex workers, when they are independent, can also have a very flexible routine of work and leisure and have the freedom to choose their clients. People also choose sex work because it provides a sense of autonomy to the worker. But it doesn't necessarily imply to sex workers who are working under pimps or brothels due to absence of personal power and control and loss of independence on the part of the women who engage in it. Prostitutes often give up much of their income and autonomy to the pimps and panderers who control the sexual exchanges and make it violent, abusive, manipulative and tough to leave, denying basic human rights protections to the people in it. Working for long hours without any social or economic security leads to little or no time for their families, children, friendship, leisure, and physical or mental well being. (Overall, 1992)

4.0 Types of sex workers:

In India, the following types of sex workers constitute the majority of the industry:

4.1 Migrant Sex Workers

Sex workers who do not belong to the place where they work and have travelled from some other area or have been trafficked into it are migrant sex workers. At least hundreds of thousands, and probably more than a million women and children are employed by Indian brothels. Many are victims of the increasingly widespread practice of trafficking in persons across international borders. In India, a large percentage of the victims are women and girls from Nepal. (Human Rights Watch, 1995)

4.2 Male and Transgender Sex Workers in India

Though the sex work industry majorly consists of girls and women of different age groups, recently a surge in the number of transgender and male (gigolos, as they are called) sex workers have been seen. Studies show that they are subjected to violence 23.9% experienced sexual abuse, 12.3% were tortured, and 20.3% experienced a murder attempt. (Budhwani et. al. n.d)

4.3 Child Prostitutes

Though sex work by underage children is a serious criminal offence in India and elsewhere, still, there isn't any strong effective measure taken by the government to stop it, often people in the business always can find a loophole in the system to exploit it for their profit. Twenty per cent of Bombay's brothel population is thought to be girls under the age of eighteen, and half of that population may be infected with the human immunodeficiency virus (HIV). (Human Rights Watch, 1995)

5.0 Current Laws governing Sex Work in India

Currently, laws regarding sex work in India are governed by the Immoral Traffic (Prevention) Act, 1956. This law (in layman's terms) states that

1. owning or managing of brothel
2. letting a brothel run in an area while knowing it
3. procuring, inducing, or forcing someone into prostitution
4. living wholly or partly on the earnings of any prostitute after reaching working age

5.1 Demerits of Immoral Traffic (Prevention) Act

Though this act is for the prevention of trafficking, nowhere in the whole act is there a clear definition of 'Trafficking'. This act only focuses on trafficking for sex work and completely ignores the fact that trafficking in human beings is also done for other purposes example, as slaves, for marriage, etc. This act considers that every person who is a sex worker has been trafficked and does not differentiate between voluntary sex workers and victims of human trafficking. The act also assumes only the sex work done in the brothels to be a criminal offence and ignores the other methods of how it is functioning outside the brothels.

6.0 Review Analysis of the Correlation between SDG-8 and Sex Work

The Sustainable Development Goals (SDGs) promote sustained economic growth, higher levels of productivity, and technological innovation. Encouraging entrepreneurship and job creation are key to this, as are effective measures to eradicate forced labour, slavery, and human trafficking. With these targets in mind, the goal is to achieve full and productive employment, and decent work, for all women and men by 2030 (United Nations Development Programme, 2020). When women are also members of other marginalized and oppressed groups, they face additional forms of inequality as women of colour, as women with disabilities, as indigenous women, or as so-called "third-world" women (Watson & Flanigan, n.d.).

As most sex workers all over the world have always been economically stressed and many of them have been trafficked into this profession, focus on them is important to achieve decent work for all. A study by Joint United Nations Programme on HIV/AIDS (UNAIDS) states that sex workers are 13 times more at risk of HIV distinguished from the general population, due to a high possibility of being economically vulnerable, unable to intervene consistent condom use, and experiencing violence, criminalization, and marginalization. (UNAIDS Joint United Nations Programme on HIV/AIDS, 2018)

The existing laws governing are very unclear and vague and do not provide any financial securities to them. Often there is a competition to earn more revenue, and lack of literacy and/or regulation standards lead to unsafe practices like oral sex which involves using the mouth, lips, or tongue to gratify pleasure and if practised without a condom, a sex worker may get Sexually Transmitted Diseases (STDs). Anal sex can also prove to be

dangerous as the anus lacks sufficient lubrication and has thin tissues compared to the vagina. Again, if practised without a condom could lead to STDs like herpes, hepatitis, intestinal parasites, HIV, HPV, gonorrhoea, and syphilis. Also, economic instability forces them to work during the menstrual cycle and even in the last trimesters of pregnancy which may invite reproductive health problems.

According to a 2007 report from the United Nations Development Programme's Trafficking and HIV/AIDS project, almost “50 per cent of sex workers [surveyed across nine states] reported not seeking services like antenatal care and institutional delivery from the public health facilities.” (United Nations Development Programme, 2007)

International Labour Organization considers decent work is opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men. (International Labour Organisation, 1996-2018)

To provide sex workers with a decent work environment and economic growth a bottom to top approach should be followed which is conducive to their well-being. Laws must protect them from discrimination, stigmatization, abuse, and should recognize their human rights. Measures of safe sex and the regulation of sex work must be strictly enforced. Agenda of decent work and economic growth can only be achieved if the policies are made keeping in mind their needs and work environment.

7.0 Decriminalisation of Sex Work

7.1 Why the criminalization of Sex Work is problematic?

Any activity that is considered illegal by the law is considered to be criminalized. Sex workers aren't criminals, they are human beings and have the right to live with dignity in society. Melissa Farley's study into prostitution in 9 countries, with 854 participants, showcased that 63% of the sex workers were raped; 89% of these workers wanted to escape prostitution, but did not have other options for survival. A total of 75% had been homeless; 68% had PTSD; 71% were physically assaulted in prostitution. (Farley et al, 2008)

The criminalization of sex work deprives workers of basic human rights and turns sex work into a vulnerable and risky profession. Sex trafficking is a major concern that arises as a result of criminalization because it forces buyers and brothels to work in an underground and concealed manner. The criminalization of sex work leads to the exploitation of sex workers, violence, abuse, prevent them from seeking redressal or healthcare services.

Data from the Bureau of Justice Statistics from 2012, report a total of 56,575 arrests for “prostitution and commercialized vice.” Of the total number, 18,610 of those arrested were male, 37,965 female (Snyder et. al, n.d). Sex workers may not seek help from the authorities because of the stigmatization, exclusion, victim shaming, threat, fear of getting arrested, oppression, etc. It leaves them more prone to sexually transmitted diseases as usually they have to be submissive to the clients and many times are forced to practice unprotected sex because they cannot risk asking for help from the authority. Social circumstances of sex inequality encompasses structured discrimination against women including the control and use of women’s sexuality through the standard of masculinity that support practices (rape, sexual abuse, prostitution, pornography) in which women are made to be sexually available to men on their terms and conditions. (Watson & Flanigan, n.d.)

7.2 Why the Decriminalization of Sex Work is Needed

Sex trafficking and sex work are two different terms and shouldn't be confused as being the same. Sex trafficking is a crime and should be criminalized. Sex trafficking is a serious issue and strict measures and steps should be taken against this. As stated by United Nations Office on Drugs and Crime, trafficking is the act of hiring, transportation, transfer, harbouring, or receipt of persons by the means threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits control of the victim for exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs. (United Nations Office on Drugs and Crime, n.d.)

Sex trafficking is a violation of human rights and the physical and mental well-being of workers. Decriminalization of sex work leads to improved working conditions which may help to create an environment where workers can thrive equality and opportunities. They will have the right to practice work that is free of violence and discrimination. They may have better access to health care and public services, just like other people working in different

sectors. Decriminalization of sex work will also lead to an open and healthy conversation about the taboo sex and stigma attached to it. Now sex workers are more conscious & educated about their rights. Decriminalization can also help children of these workers to get an education regardless of their parents' profession.

Decriminalization of sex work as has been seen in many exemplar models of laws enacted in different countries like in New Zealand, The Prostitution Reform Act 2003 fully decriminalised sex work and includes:

- a) safeguarding the human rights of sex workers and protects them from exploitation;
- (b) promoting the welfare and occupational health and safety of sex workers;
- (c) is conducive to public health;
- (d) prohibits the use in prostitution of persons under 18 years of age;
- (e) implements certain other related reforms.

The same has been very much successful in uplifting the sex workers in the country. (Abel et. al, 2010) (New Zealand Legislation, 2003)

The main goal of SDG 8 (decent working conditions and economic growth) can also be achieved by decriminalizing the law. Sex workers should live with dignity and respect. They should be financially protected by getting access to financial credits, loans, perks, and government schemes benefits.

8.0 Stabilizing the lives of sex workers:

EXPERIENCE OF POLICE VIOLENCE (Pan India Survey of 3000 sex workers)

Abusive language	1431	50%
Beaten, hair pulled, beaten with belts	1011	35%
Threatened	1052	37%
Forced to bribe	569	20%

(Aarthi Pai et al., n.d)

EXPERIENCE OF PHYSICAL VIOLENCE (Pan India survey of 3000 sex workers)

Physical violence experienced	Sex workers responding to affirmative
Domestic violence	31.9%
From clients	55.9%
Violence from employers	8.5%
Third-party(agents)	14.1%
Brothel owners	5.9%
Shopkeepers, auto drivers, goons	24.7%
Neighbours	16.2%
Lovers and partners	40.2%
Husband	36.3%

(Aarthi Pai et al., n.d)

The current laws that govern sex work in India have many issues because of which sex workers are the ultimate losers at the end of the day. Increasing cases of violence against sex workers are being reported and the criminalization of sex work further increases the problems as now they fail to get the support and sympathy of the police. There is also the insecurity of jobs and during emergencies like a pandemic, they are unable to get even the basic amenities that are available to other sections of workers.

In India, The Sonagachi Project was initiated in 1992 in the Sonagachi red-light area of Kolkata (Calcutta) to provide a health education and condom usage during intercourse targeting sex workers. It aims at “3 R’s: Respect, Recognition and Reliance. The Sonagachi model is a perfect example of how Community mobilization education, capacity building organizing, advocacy, micro-credit, STI/HIV testing and treatment, anti-trafficking awareness could lead to betterment of sex workers. (Center for HIV Identification, Prevention and Treatment Services, n.d)

8.1 Possible steps that can be taken to stabilize the lives of sex workers:

1. The foremost step needed to be taken to stabilize the lives of sex workers is to adopt a bottoms-up planning ie. including them during the legislation of laws to have a better knowledge of all the problems faced by them in their everyday life, the root cause of these problems and the suggestions to improve their working conditions.
2. Organizations and NGOs working with sex workers at the grassroots level should also be part of policy planning, implementation and evaluation to advocate and giving voice to the voiceless.
3. Sex education, awareness, healthy conversation should be given more priority than it is given currently so that it does not remain a taboo, and the mindset of people towards sex work can be changed. The scope of sex education should also be broadened to include topics about LGBTQ+ community, their rights, the biological process of reproduction and creating awareness about safe sex. This will result in a significant drop in both prejudices and stereotyping against sex workers.
4. The criminalization of sex work has not helped in any way to improve the condition of sex workers, they continue to be suppressed and suffer. We suggest decriminalization of sex work because of already mentioned reasons. To improve the conditions, sex workers should be accessed to health care services regardless of job, sexual preferences, identity, etc.

9.0 Conclusion

Sex work is not something new in India. It has been continuing for centuries in different forms in different parts of the country. The condition of sex workers deteriorated so much that in the present day scenario, they have been degraded to the mere status of sex objects. They are sidelined, oppressed, excluded from social, political, health & legal spheres of society.

Recently, Maharashtra government announced to provide ₹5,000 per month to sex workers and ₹2,500 will be given to the school-going children of sex workers. A total of 30,901 women and 6,451 children will benefit from the scheme worth ₹51.18 crore, which will cover all 32 districts in the State. But due to the lack of information and awareness, this scheme couldn't be utilised by the target group. (The Hindu, 2020)

We still have a plethora of questions to be answered. Are the sex workers of our country safe and living a prosperous life with dignity? Surely this paper criticizes the current laws about sex work in India as they have failed to achieve what they targeted and what was expected from them. This country will only be really free when sex work will be considered as a profession, not as an oppression.

References

Abel, G., Healy, C., Bennachie, C., Reed, A., (May, 2010). " The Prostitution Reform Act." *Research Gate*.

https://www.researchgate.net/publication/300810100_The_Prostitution_Reform_Act [accessed Dec 26 2020].

Budhwani, H., Hearld, K.R., Milner, A.N., Charow, R., McGlanghlin, E., Mayra, R., Lauzurique, R., Rosario, S., Ramirez, R.P. (n.d). "Transgender Women's Experiences with Stigma, Trauma, and Attempted Suicide in the Dominican Republic." *Suicide life Threat Behav*, Vol. 48(6), 788-796. [10.1111/sltb.12400](https://doi.org/10.1111/sltb.12400)

Center for HIV Identification, Prevention and Treatment Services. (n.d). "Collaborative Evaluations with the Sonagachi/Durbar Community-Led Structural Intervention (CLSI) with Sex Workers in India." *Center for HIV Identification, Prevention and Treatment Services*.

<https://chipts.ucla.edu/research/india-hiv-prevention-with-commercial-sex-workers-in-three-communities-in-india/>

Farley, M., Cotton, A., Lynne, J., Zumbock, S., Spiwak, F., Reyes, M.E., Alvarez, D., Sezgin, U. (2004). "Prostitution and Trafficking in Nine Countries". *Journal of Trauma Practice*, Vol. 2 (3-4).

https://www.tandfonline.com/doi/abs/10.1300/J189v02n03_03

Human Rights Watch. (2017). "Rape for Profit: Trafficking of Nepali Girls and Women to India's Brothels." *Human Rights Watch* 12, no. 5(A) <https://www.hrw.org/reports/1995/India.htm>

International Labour Organisation. (1996-2018). "Decent Work." *International Labour Organisation*. <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>

New Zealand Legislation. (June, 2003). "Prostitution Reform Act". *New Zealand Legislation*.

<https://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>

Overall, C. (1992). "What's Wrong with Prostitution? Evaluating Sex Work." *Signs*, 17(4), 705-724.

<http://links.jstor.org/sici?sici=0097-9740%28199222%2917%3A4%3C705%3AWWWPE%3E2.0.CO%3B2-O>

Pai, A., Seshu, M., Gupte, M. & VAMP. (2014). "Status of Sex Workers in India". *Centre for Advocacy on Stigma and Marginalisation, (CASAM), India, Sampada Grameen Mahila Sanstha (SANGRAM), India, Mahila Sarvangeen Utkarsh Mandal (MASUM), India, Veshya Anyay Mukti Parishad (VAMP), Sex Workers Collective, India.*

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/Ind/INT_CEDAW_NGO_Ind_17395_E.pdf

Pauw, I. (2007). "Why Do People Become Sex Workers?". *Health24*.
<https://m.health24.com/Mental-Health/Living-with-mental-illness/Sex-workers-who-and-why-20120721>

Snyder, H.N., Cooper, A.D., Mulako-Wangota, J., (n.d). "Arrest Data Analysis Tool." *Bureau of Justice Statistics*.

<https://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm#>

The Hindu. (November,2020). "Maharashtra Government to provide ₹5,000 per month to Sex Workers". *The Hindu*.

<https://www.thehindu.com/news/cities/mumbai/maharashtra-government-to-provide-5000-per-month-to-sex-workers/article33188315.ece>

UNAIDS Joint United Nations Programme on HIV/AIDS. (2018). "Miles To Go: Closing Gaps Breaking Barriers Righting Injustices"*UNAIDS Joint United Nations Programme on HIV/AIDS*.

http://www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf

United Nations Development Programme. (2007). "Push to Open: An Appraisal of Sex Workers' Access to Basic Services." *United Nations Development Programme*.

https://www.in.undp.org/content/india/en/home/library/poverty/push_to_open_an_appraisal_of_sex_workers_access_to_basics_services.html

United Nations Development Programme. (2020). "Goal 8: Decent Work and Economic Growth". *United Nations Development Programme*. <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-8-decent-work-and-economic-growth.html>

United Nations Office on Drugs and Crime. (n.d.)."Human Trafficking". *United Nations Office on Drugs and Crime*. https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html#What_is_Human_Trafficking

Watson, L., & Flanigan, J. (n.d.). "Debating Sex Work." Oxford University Press [Debating Sex Work by LORI WATSON JESSICA FLANIGAN](#)