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A STIR IN LIFE ON BED

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ABSTRACT

The societal tendency of turning blind towards things that don't fit into pigeon holes has led to a profession being turned into a den of vices. This article aims to trace the history of erupting taboo regarding prostitution, which is surprisingly not old enough. Before the notions of purity emerged and its misuse increased, prostitution was yet another profession, at least in the Asian and Indian society. It then talks about irregularity and lawlessness in the world and in India. Further, rights of prostitutes are discussed. Most undermined issue brought to light is of male prostitutes and homosexual prostitution. Their rights and problem are touched upon further. The article proposes normality of prostitution as a profession and acceptance of its existence.

PROSTITUTION AS A PROFESSION

Prostitution refers to an act of promiscuous sexual intercourse under a monetary agreement or other contractual considerations.⁶⁸

Although it is the oldest profession of the world but its legality varies with context and nations. But the societal taboo regarding this has been persistent throughout.

Pornography or any other form of sexual entertainment is a component of the sex industry. Brothels are work ground of prostitutes.

⁶⁸ "Prostitution as a Profession."

Prostitution laws and conditions are generally changing globally, reflecting divergent judgements. Some people believe that prostitution contributes to the emerging crime of human trafficking by abusing or brutally treating women and children while others look it as a dump for human's intrinsic and animalistic desires that is essential to make a safer and cleaner society.

INTERNATIONALIZATION OF PROSTITUTION

The history of sex work needs to be seen from all angles, both geographically and temporally, so that it may be compared to other occupations that may be more usually thought of as influencing labor history, such as manufacturing or transportation industry.⁶⁹

Urbanization is believed to have fueled prostitution as a profession although it is believed to be prevalently practiced countryside.⁷⁰ This is resultant of both supply and demand of people and services which is visibly higher in the cities as compared to villages as cities attract mass migration of both men and women for jobs, services and money.⁷¹ These cities became concentration camp for bachelors and even married men who lived alone as migrant laborer, businessmen, sailors, seeking for sexual pleasures. Increasing industrialization and globalization made transportation cheaper and hence long distance migration and communication feasible. This further motivated paid sexual favors.

In most early modern European towns, the term "adultery" or "fornication" was frequently used to refer to extramarital sexual relationships rather than prostitution specifically. While high-level prostitutes may have attained significant social rank and been accepted to a large extent in

⁶⁹ Elise van Nederveen Meerkerk et al., "Selling Sex in the City: A Global History of Prostitution, 1600s-2000s" 861.

⁷⁰ Id, 862

⁷¹ Hilde Greefs and Anne Winter, "Alone and Far from Home: Gender and Migration Trajectories of Single Foreign Newcomers to Antwerp, 1850-1880" 61-80.



some environments, such as pre-industrial China, prostitution was typically viewed as “evil” which was necessary to protect “pure and good” women from rapes.

The major stigma regarding this emerged during the colonial wars when colonized women were “made available” to the troops, especially close to military barracks. For instance, controlled prostitution began in 1831 in the invaded country of Algeria with the establishment of a special status for prostitutes who were registered with the police as well as the establishment of specific venues, such as military campaign brothels (BMCs).⁷² A similar issue was evident in British India, where after passing the Cantonment Act in 1864, that organized prostitution through “brothels” or chaklas incorporated within British military barracks.⁷³ So cohabitation between white men and colonized women became prevalent and this is what is popularly known as the western forms of ‘sexual affective exchange’⁷⁴. Countering this the notion of blood purity also emerged against interracial sexual encounters that became an evolving concern for European nations. To redress this, the authorities started designing secluded urban spaces for “whites” to segregate them from native women.⁷⁵ For example, prostitution was made illegal in Eritrea by the Pisanelli code in 1865, just as it was in Italy. The regulatory tradition spread throughout the empires of the British and the French.⁷⁶ But all these was not very affective and further led to illegal prostitution and sex trafficking. Consequently, we see rise of Sexually transmitted diseases (STDs) and other venereal diseases. To curb this various step were taken by the authorities. In 1849, a public health dispensary was established in Saint-Louis, Senegal, and syphilis screening prophylactic visits were instituted in the Dutch East Indies in 1852. Between 1864 and 1867, a succession of Contagious Diseases Acts was passed in British

India, giving prostitutes a legal status, and allowing for their supervision and care in “closed hospitals” in an effort to stop the spread of venereal diseases.⁷⁷ The authorities have health as well as other concerns instigating them to take aforementioned steps. Ban on prostitution in colonies led to abduction and trafficking of girls and women from European nations which was not politically favorable for the colonizers. It became more politically sensitizing after the establishment of the League of Nations in 1910.⁷⁸ It was entrusted with “general control of agreements relating to the trafficking of women and children,”. Even after the 2nd world war, the United Nations declared trafficking of human beings for prostitution to be “incompatible with the dignity and value of the human person.”⁷⁹ After independence, different nations imbibed different means and ways to tackle this. Some accepted and regulated this whereas some disregarded and criminalized it. Prostitution was initially considered a symbol of colonial oppression, which was believed to end with decolonization. But, till now, it has endured and survived somewhere legally and elsewhere illegally. But, the stigma regarding this exists until now in almost every place only the degree of it varies.

CAN MEN BE PROSTITUTES?

The most budging questions of all is the can man also be made part of this “flesh trade” as service providers because the open world perceive them to be service takers. The industry of female prostitution is too advertised for males to even start with. Male prostitutes are called “gigolo”

Few taboos regarding male prostitution are-

- i. Men are not seen as victims of either prostitution or sexual abuse⁸⁰

⁷² “Prostitution (19th-21st Centuries).”

⁷³ Id

⁷⁴ Id

⁷⁵ “Of Prostitution and Port Cities.”

⁷⁶ Supra, “Prostitution (19th-21st Centuries).”

⁷⁷ Id

⁷⁸ Id

⁷⁹ “Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.”

⁸⁰ “Just Business?”



- ii. Homosexuality is still not well accepted and there is distinction between male prostitutes and gay prostitutes.⁸¹
- iii. Women desires and needs have always been undermined by the world and hence, them going, paying and asking for sexual services is far-sighted.
- iv. The world of bisexuality is still unexplored.

Hence, when there exists no such phenomenon in the popular whims, there are meagre laws that specially deal with or even separately mention male prostitutes. Even in India, this term fails to find place in any regulatory or preventive legislations. Although the number of these gigolos are increasing in India and the world in general.⁸² Along with providing sex services, cyber or phone sex and stripping have also been a means of their income. Due to absence of laws, they are easy prey of frauds, cheating and lower pays. Many gigolos are threatened to be charged for rape when they demand higher pay.⁸³ Meagre facilities and absence of separate and legal male brothels have made their jobs inconvenient.

INDIA AND PROSTITUTION

a. Laws in place

The Immoral Traffic (Prevention) Act, 1956 (ITPA) is the primary law governing sex work in India. Additionally, the Indian Criminal Code (IPC) and Juvenile Justice Act also contain sections addressing prostitution and trafficking in India.

The following is prohibited by IPC:

- Publicly soliciting sexual services
- Hotel prostitution
- Prostitution through the hire of a sex worker
- Planning a sexual encounter with a client

Hence, the laws in India legalize but also restrict prostitution as a profession.

The Supreme Court of India while examining the scope of Article 21 of the Indian Constitution which mandates right to live with dignity as fundamental for all, said that it applies to sex workers and their children just as they do to everyone else in business.⁸⁴ Sexual workers have right to equal protection. Criminal law must be applied uniformly in all circumstances, subjected to their age and consent. The police shall not interfere or engage in any criminal activity when it is obvious that the sex worker is an adult and taking part with consent as voluntary sex labor is legal and only running the brothel is prohibited, so they should not be arrested, penalized, harassed, or victimized whenever a brothel is raided.⁸⁵ The court laid down rights of children of sex workers. It held that they should never be separated by their mother on account that she is a sex worker and have full right to education and a dignified life. The authorities cannot act on presumption that the child was trafficked. A well updated, comprehensive code is still absent and all these are the directives given by the Supreme Court.

b. Rights of sex workers

- To live with dignity in society
- To live with their children
- To lodge criminal complaints against sexual assaults against them
- To access medico-legal care in case of any sexual assault
- To use condoms and other preventive methods to avoid pregnancies and STDs
- To not reveal their identities in case of arrest, raid or rescue operations.

All these rights are very broad and non-specific connotations granted to them. They have evolved with various cases and directives by the Supreme Court.

CRITICISMS OF PROSTITUTION

⁸¹ Id
⁸² "BBC NEWS | South Asia | Gigolos Speak out in Conservative India."
⁸³ Id

⁸⁴ "Supreme Court Recognises Sex Work as a 'Profession' - The Hindu."
⁸⁵ Id



Carrying out this profession in this patriarchal world is very difficult. So, prostitution is a more of a "profession of need rather than a profession of choice." "In patriarchy, feminists often point out, many women are just one man away from welfare. But it is also true that many women are one man away from prostitution."⁸⁶

Illegal brothels, sex trafficking, sexual harassments and rapes are the categorical emblems of what is popularly known as the "flesh trade." The profession has belittled the dignity and reputation of a woman to a mere object "sex doll" to be more particular.

Prostitutes have been primary vector of STDs and other venereal diseases since historic times.⁸⁷ Although educating them might help, but it seems impractical in the present condition to regulate and educate such an unorganized sector.

Also, the societal impact of prostitution has always been debatable. This is why, the issue of separating prostitutes from their children is often raised. The notion of a "good woman or a man" in a society does not go parallel with accepting prostitution as a profession and normalizing it.

PROSTITUTION AS A NECESSARY EVIL

Recognition of sex as intrinsic need of human body achieved. But as a society we fail to acknowledge that legitimate sexual encounters can happen without societal institutions (marriage). We here are not just talking about bachelors but also divorcees, widows or widowers.

If prostitution is normalized as mode of service, it will reduce number of sexual harassments and rapes against women. Recognition and normalization will more specific legislation in place and hence, better regulation. This will in

turn mitigate the chances of violation of rights of sex-workers address the criticisms as well.

Also, a matter of fact is that, what we see as an option is sole livelihood for many. And practically, we cannot accommodate these 42 million prostitutes (as of 2012 statistics) to the already rising unemployed population of the world.⁸⁸ Currently, the unemployment rates exceed by 5% in approximately 35 nations around the world (recorded data).⁸⁹

An undeniable reality is that even if we accept it or not, we can't undermine it. It is happening from antiquity and will keep happening. So the only way is to accept it in order to regulate and restrict it so that it solves the purpose that it seeks to.

Restriction is important to protect the social fabric and rights and dignity of sex-workers.

CONCLUSION

This brings us to bind all the information coated perspective that is discussed above. The only contention that I propose is that prostitution exists as a necessary evil in our society.

Even the Indian and Hindu mythology recognized its existence. "Apsaras" like Menaka are the celestial nymphs possessing feminine charms and perfect beauty standards were the then prostitutes who served in Court of Lord Indra.⁹⁰

Mahabharata mentions 42 apsaras in all. Few namely are Menaka, Rambha, Tilottama, Urvashi and Gritachee.⁹¹ Even the Vedas do not fail to mention them. The bronze figure of a dancing girl from Mohenjo-Daro, depicts a prostitute carrying out her duties. Although this is debatable amongst Historians.

⁸⁶ Christine Overall, "What's Wrong with Prostitution? Evaluating Sex Work," 722.

⁸⁷ Supra, "Prostitution (19th-21st Centuries)"

⁸⁸ "Unemployment Rates by Country."

⁸⁹ Lubin, "There Are 42 Million Prostitutes In The World, And Here's Where They Live."

⁹⁰ "Tradition of Devadasi - The Sacred Prostitute in India."

⁹¹ Id



Chanakya in Arthashastra mentioned that women who lived on their “roopvikas” (beauty) are “Ganikas” i.e., prostitutes who performed their duties in state owned establishments.⁹²

The “Charanya” or part 6 of Kamasutra (the ancient text on eroticism and sexuality) elaborates upon the characteristics, rights and responsibilities of “vishikas” or prostitutes. Unlike the western culture that look down upon them, the traditional Indian culture has always preached to treat them with respect.⁹³ Historically, then they have not only served men but paved fall of great empires as “vishkanyas” and sages.

By far, we cant undermine their existence and role in the society. Although I agree that this profession is highly prone to misuse, harassment and is irregular. But every law has a loophole. Even the best of ideas has problems. This calls for consecutive reformations and not disregarding a mouth gaping fact.

REFERENCES

- I. <https://thediomat.com/2022/06/indias-supreme-court-recognizes-sex-work-as-a-profession/>
- II. <https://www.legalserviceindia.com/legal/article-5186-prostitution-as-a-profession-is-that-a-crime-in-india.html>
- III. <https://www.firstpost.com/india/supreme-court-recognises-prostitution-as-profession-what-does-this-mean-for-sex-workers-10726011.html>
- IV. Selling Sex in the City: A Global History of Prostitution, 1600s-2000s
- V. “Alone and Far from Home: Gender and Migration Trajectories of Single Foreign Newcomers to Antwerp, 1850-1880
- VI. <https://ehne.fr/en/encyclopedia/themes/gender-and-europe/prostitution-1800-today/prostitution-19th-21st-centuries>
- VII. Of Prostitution and Port Cities: A Conversation with Liat Kozma
- VIII. https://humanityinaction.org/knowledge_detail/just-business-the-unknown-world-of-male-prostitution-in-the-netherlands/
- IX. <http://news.bbc.co.uk/1/hi/world/south-asia/7159759.stm>
- X. What's Wrong with Prostitution? Evaluating Sex Work
- XI. <https://www.worlddata.info/unemployment-rates.php>
- XII. <https://www.businessinsider.com/there-are-42-million-prostitutes-in-the-world-and-heres-where-they-live-2012-1?IR=T>
- XIII. <https://www.speakingtree.in/allslides/prostitution-in-ancient-india>
- XIV. <https://timesofindia.indiatimes.com/blogs/emphasis/should-prostitution-be-legalized/>
- XV. <https://edtimes.in/does-the-kamasutra-deal-with-other-aspects-of-a-healthy-life-beyond-sex-and-seduction/>

⁹² Kalappa, “An Argument for Legalizing Prostitution.”

⁹³ Sarkar, “ResearchED.”