

SEXUAL VIOLENCE AGAINST WOMEN: PROSTITUTION AS CRIME

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ABSTRACT

Prostitution is commercialized sex and as such it involves two parties' buyers and sellers. It can be described as indiscriminate sexual activity without the normal motives that is procreation and pleasure. It is promiscuous sexual intercourse by a woman for hire –for money or kind. The seller generally is the women and the man is the buyer; the reverse roles are however not unknown. Also there is though much rarer male prostitution in which gratification is provided by one male to another.

There are different schools of thought on prostitution from which emerge different legal paradigms. One school of thought considers prostitution to be the most brutal violation of human rights of the women victims, who are coerced and enslaved into the flesh trade, whereas the other school of thought considers prostitution to be a kind of profession and the sex workers as professionals, who exert physical labor and, therefore, are entitled to all rights as any other laborer/ employee.

According to UN report- 'Prostitutes are a heterogeneous group and prostitution is the aggregate of social and sexual relations, which are historically, culturally and personally specific'.¹ Whereas majority of prostitutes are victims of coercion, deception or economic enslavement, a few could have taken up the profession through the exercise of 'rational choice'.

The classical approach has always perceived as a 'necessary evil' or 'an obnoxious features' of every society,² but the passage of time has led to a realization that prostitutes as a group of individuals are in a dire need of protection of their human rights, immaterial of the fact which particular school of thought is being preferred /adopted.

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¹ Dr. Vandana, Sexual Violence Of Women, Lexis Nexis Butterworths Wadhwa, Nagpur 2009,

² Law Commission Of India, 64th Report On The Suppression of Immoral Traffic in Women and Girls Act 1956, Ministry Of Law & Justice And Company Affairs, Government Of India, 1975, Pg1

The article deals with the matter concerning commercialized heterosexual practices, causes of prostitution like economic, socio-cultural, psychological, etc. its harm, combating prostitution and enforcement of laws relating to the same and the consequent harms. Then the researcher would deal with the perpetuation and condonation of sexual violence by the state. Then through this article the researcher would try to justify the fact that the prostitutes are rather the victims of the society not the criminals of the society.

PROSTITUTION IN INDIA

Prostitution is promiscuous sexual intercourse by a woman for hire -for money or kind .there are different school of thought on prostitution from which emerge different legal paradigms. one school of thought considers it to be the most brutal violation of human rights of the women victims, who are coerced and enslaved into the flesh trade, whereas the other school of thought considers prostitution to be a kind of profession and the 'sex workers' as professionals, who exert physical labour and, therefore, are entitled to all rights as any other labourer/employee.

In words of UN special reporter on violence against women – 'prostitutes are a heterogeneous group and prostitution is the aggregate of social and sexual relation, which are historically, culturally and personally specific.'³ Whereas majority of prostitutes are victims of coercion, deception or economic enslavement, a few could have taken up the profession through the exercise of 'rational choice'.

The classical approach has always perceived 'prostitution' as a 'necessary evil' or an obnoxious feature of every society⁴, but the passage of time has led to a realisation that prostitutes as a group of individuals are in dire need of protection of their human rights, immaterial of the fact which particular school of thought is being preferred or adopted.⁵

Prostitution exists in all societies all over the world .the size of the population, which indulges in prostitution, worldwide is not known accurately and only rough estimates are available .according to a conservative estimate of national commission for women's affairs 1994, there were at least 200,000 sex workers in Thailand. ⁶ According to other estimate by the same organisation in 1996, 20,000 to 40000 girls under the age of 18 years were engaged in commercial sex work in Thailand⁷ it is estimated that in India 2 million women are in commercial sex work of which 25 % are below 18 years.⁸ At least 25000 children are engaged in prostitution in the major metropolitan cities of Bangalore, Calcutta, Delhi,

³ Its Cause And Effect ,Ms Radhika Coomarswamy 1994, Para 205

⁴ Law Commission Report ,64th Report On The Suppression Of Immoral Traffic In Women And Girls Act, 1956, Ministry Of Law And Justice And Company Affairs ,Government Of India ,1075.P1

⁵ Report Of The Committee On Prostitution, Child Prostitutes And Children Of Prostitutes And Plan Of Action To Combat Sexual Exploitation Of Women And Children, Department Of Women And Child Development,Ministry Of Human Resource Development , Government Of India ,1998.

⁶ NCWA 1994

⁷ NCWA as given by the UNICEF 1997

⁸ Situation Of India Report 1998

Hyderabad, Madras and Mumbai.⁹ In Mumbai alone 40000 girls between the ages of 10-16 years are selling bodies.¹⁰ According to an estimate by the UNICEF, there are about 5,000 commercial sex workers in Kathmandu alone, of which 1000 are children, more than 20% of women are under the age of 16 years.¹¹ According to the country report, Srilanka (1998), estimates of children in commercial sex work range from a low of 2,000 as quoted by the government sources to 30,000 as per international sources.¹²

SEXUAL VIOLENCE AGAINST PROSTITUTES: ITS CAUSES

There are various causes of prostitution like economic, socio-cultural, psychological, etc. amongst all the reasons, economic compulsions or poverty plays a major role in perpetuating flesh trade. Due to lack of other viable means of sustenance, children and women from poor families are coerced into prostitution. Sometimes the psychological impact created by the media and films push young people into prostitution, who want to be rich and fulfil their ambitions within a quick span of time. Sometimes the children are sold by the parents for induction into this trade. Deception, by promising employment in good jobs is another common mode by which the vulnerable lots are lured into prostitution. Traditional practices like dedication of girls to temples as 'devdasi' further promote flesh trade.

Whatever may be the reason in a particular case, it remains a matter of fact that all prostitutes are subjected to severe economic exploitation, though the degrees may be varying. A few may be held in debt bondage and may not see any percentage of their labour earnings at all.¹³ Prostitutes are very dependent on various organizational edifices like pimps and touts, who profit immensely from their labour.

Due to illegal or highly regulated status of prostitution, women and children in prostitution face enormous legal and moral isolation. Because of their highly stigmatised social status and vulnerable legal status, the prostitutes can acquire no help from the legal machinery. The extensive health hazards -STDs and HIV/AIDS, to which the prostitutes are subjected are life threatening. It is found medically that male to female transmission of HIV/AIDS is three times more efficient than female to male transmission i.e., the virus spreads rapidly through

⁹ Figures Provided By Government Of India

¹⁰ NCW1997

¹¹ UNICEF1997

¹² Country Report ,Sri Lanka 1998

¹³ Preliminary Report Its Cause And Effect ,Ms Radhika Coomarswamy 1994, Para 205

prostitution community through male clients .on the other hand, in part, owing to fear of HIV /aids, there has been a marked increase in demand for ‘fresh’ or ‘virgin girls’. Apart from economic exploitation and serious exposure to health hazards, brutal physical violence awaits the woman who refuses to comply with the commands of brothel owners and their agents or tries to escape from the brothel .in one known incident in Thailand, five girl prostitutes were burned to death in a brothel because they had been chained to their beds and could not get away.¹⁴

The chief causes of prostitution can be classified in the following categories:¹⁵

Economic Causes:

Through the economic compulsions constitute the major factor in the causation of prostitution; it is by no means the only and exclusive causes of the phenomenon. It is not the cause that every prostitute accepts money for her services or that all prostitutes hail from indigent homes. There are many prostitutes who hail from well to –do families. In India, of course, there are many prostitutes who are compelled to adopt prostitution to feed themselves and their dependents. However, poverty is not the only economic factor; there are many other factors which are economic. The economic factors are comprised of:

- i. poverty,
- ii. Under age employment
- iii. Unhealthy working conditions,
- iv. The pollution and corruption in Industrial centres and
- v. Immoral traffic in women and children.

Poverty: the poverty is the main economic factor responsible for prostitution. A woman who is unable to get any gainful employment and who has no supporter must either starve to death or earn her livelihood through prostitution. The illiterate the semiliterate women cannot easily get employment. More often than not they have to sexually gratify their prospective employers. More often than not they have to sexually gratify their prospective employers. Many parents feel so utterly helpless that they prostitute their own children. The maid servants are after objects of the lust of their employers. The concept of poverty however is

¹⁴ Dr.Vandana, *Sexual Violence Against Women*, Lexis Nexis, Butterworths Wadhwa, Nagpur,2009

¹⁵ S.M.A. Qadri , *Ahmad Siddique criminology*, Eastern Book Company, 5th edition, 2005

relative. Woman may prostitute herself in order to live well and give first-class education to her children.

Under-age employment: Many females have to work in hotels, officers, industry and shop at immature age, at this impression able age they are easily misled by lust-seekers. Bad working conditions: In India many women are able to get employment through intermediaries. These intermediaries and agents recruit women and keep them at their mercy whenever opportunity offers itself they exploit it fully and often succeed in receiving sexual bribe. Once a woman falls prey to their lust hey in no time make a professional out of her.

Pollution and Corruption in Industrial Centres: The living conditions in most of the industrial centres are barbarous in India. Living accommodation is scares and whatever is available is in slums. "Due to paucity of accommodation most of the workers are compelled to leave their family and live alone. In the absence of family, cinema going gambling etc. Make prostitute mongers of these persons. The industrial towns have busy brothels and innumerable prostitutes. In India women are paid fewer wages than men. Therefore, contractors make it a point to recruit maximum number of women in the labour force. These women are easy prey to the lusts of contractors and their friends. Due to poverty and habit the labour women wear scanty clothes and often their raw bodies are exposed to full view of these lust seekers. In slums the unmarried girls have to witness sexual activities of their relatives and are often seduced prematurely. The precocious development of sex often drives women of prostitution.

Immoral Traffic in Children Women: Many tender girls are kidnapped from their homes by unscrupulous gangsters. They properly train them in the art of prostitution and when these girls mature they are sold.

Social Causes:

The social causes are extremely important factors in encouraging and promoting prostitution. The social factors are comprised of:

- i. family causes,
- ii. Marital factors,
- iii. Bad neighbourhood and
- iv. Illegitimate motherhood.

Family Factors: A study of London Prostitutes published as *Women of the Street* reveals that most of the prostitutes are connected with family troubles. Their parents were either living separately or their family relations were so strained that as children they were left to their own machinations and received no love. An unloved child when she grows up offers all of herself to any one showing any degree of love and affection. The children of criminals show a marked tendency to become prostitutes. If the mother is characterless and has to carry her clandestine liaisons, she rarely escapes the eager eyes of her daughter. Often it happens that a man sleeping with mother succeeds easily in seducing the daughter.

Marital Factors: Many a superstition prevalent in India force women into prostitution. For example, widow-remarriage is still frowned upon. The widows unable to remarry due to social stigma may fulfil their physical needs by self-abuse, seducing of young etc. But as these are poor substitutes for the real sex. They may choose to become prostitutes secondly, in India it is still common to marry persons very young. If these girls become widows they often do so when they are very young. In India homes particularly in villagers and poor, the illicit communications are common. Even Brothers step so low as to have sex connections with their sisters. As a matter of fact there is no relationship so sacred that it does not get sometimes consumed by the fire of passions. Evidently these illicit connections are temporary and do not meet the sex needs of young women fully. Therefore, they seduce their servants or themselves to outsiders. Due to the irregular security, unable to satiate their desires, they take prostitution as a last resort.

Bad Neighbourhood: The children living near brothels or in the company of immoral persons become so used to seeing sex trade that they come to accept it as normal. The brothel keepers usually haunt these areas for their prey. The children who get exposed to sex business want to have these exhilarating experiences at the first available opportunity. The young boys are lured to serve as sex slaves of wealthy sex crazy women.

Illegitimate Motherhood: The women who become pregnant as a result of their liaisons and who cannot get abortion get exposed in society. Nobody wants to marry them but everybody wants to enjoy them sexually. Desperately such women prefer to become regular prostitutes.

Psychological Causes:

There are some psychological facts which tend the person towards prostitution. A woman who is frigid becomes desperate. She tries one man after another. Because of frigidity she is

unable to experience pleasure and becomes a prostitute by trial and error. Some women are incapable of submission. In order to assert their independence they consort with other men. There is a psychological abnormality known as troilism. A husband who suffers troilism wishes to watch her submitting to the embraces of another man, sometimes he wants another woman to embrace his wife sexually and at the same time he sodomites her. It is not possible to go into the full range of psychological factors.

Biological Factors:

The persons born with defective sex organs or over active glands may feel compelled to seek sex gratification in a bizarre manner.

Religious and Cultural Factors:

In India there has been religious sanction to prostitution. In south, every family was supposed to offer one daughter to the temple where apparently she was supposed to serve gods with total dedication. They were known as devadasis god-slaves. But in actual practice they lived a life of prostitution. In ancient and medieval Indian prostitutes enjoyed the status of courtesans, that is, pleasure girls of courtiers and kings. These courtesans enjoyed high status in society. There are certain religious sects in India as well as abroad in which the priest has the right to deflower every newly married girl. The polyandry and polygamy sanctioned by many societies are sophistications of prostitution. A man with numerous wives has to countenance lesbianism and illicit liaisons with servant in his family. Even eunuch is used by such women to obtain relief. It is natural that if a person lives in a highly lascivious and erotic atmosphere his or her desire is multiplied and seeks release in normal as well as abnormal channels. In many cultures a guest is honoured by the offer of wife or daughter by the host.¹⁶

PARADIGMS FOR ADDRESSING PROSTITUTION

There are four primary legal paradigms for addressing prostitution

- 1) Criminalisation (which takes two forms -prohibition and toleration)
- 2) Decriminalisation
- 3) Legalisation regulation

¹⁶ Kumar, Urban Sociology, 7th Edn, Publisher Lakshmi Narayan Agarwal, Agra, pg. 198-202 (2008)

4) Decriminalisation combined with a human rights approach¹⁷

Both criminalisation and decriminalisation approaches view prostitution as an evil, which must be subjected to penal measures. Toleration treats sex work as a necessary evil, whereas prohibitionist approach seeks to abolish prostitution through the criminalisation of all acts and actors including the prostitutes themselves. The 1949 convention for suppression of the traffic in persons and the exploitation of prostitution of others arises out of prohibitionist perspective and seeks to criminalise acts associated with prostitution, though not prostitution itself. The convention does not take human rights approach and views prostitutes as vulnerable beings in need of protection instead of independent actors endowed with rights and reason.

The decriminalisation approach views prostitution outside the ambit of penal laws as it considers that sexual activity among consenting adults is a matter of personal choice of the individuals. Legislation/regulation approach also places prostitution outside the purview of criminal law and seeks to regulate the activity through zoning, licensing and health checkups, etc.

Decriminalisation with a human rights approach, calls for decriminalisation of prostitution and all related acts and the application of human rights and labour rights of sex workers. Whether prostitution should be legalised is a difficult question. According to Ms. V. Mohini Giri¹⁸, the personal interviews of nearly 80,000 prostitutes all over the country revealed that the mother prostitutes would not like their daughters to join the profession of sex workers as they do not find it to be a dignified profession and were not in the favour of legislation.¹⁹

It is true that the value of collectivism and building of cooperative self-help spirit cannot be undermined and it may go a long way in protection of rights of such prostitutes. Such organised collectivism will be facilitated if the legitimacy is accorded to prostitution by legal systems.

In the existing legal scenario, the fact cannot be challenged that forced prostitution occupies an extreme position on the continuum of sexual violence against women.

CONCLUSION AND RECOMMENDATIONS

¹⁷ Radhika Coomarswamy, *Its Cause And Effect*, 1994, Para 205

¹⁸ Former Chairmain, National Commission for Women, India

¹⁹ Dr. Vandana, *Sexual Violence Against Women*, Lexis Nexis, Butterworths Wadhwa, Nagpur, 2009

There are different effects of prostitution on the society and the people living in the society:

No doubt, prostitution cause personal, family and social disorganization. The prostitutes suffer from deterioration. The prostitute and the person who approaches her lead a sort of 'double life'. They suffer from moral collapse and lose their status and position which other respectable men and women enjoy in society. Respectable people hate them, avoid their company and want to isolate them in society. As a result, the pimp and the prostitute become 'hated and isolated islands'. They lead a life with their own definition of promiscuous sex conduct and a life with their own definitions of promiscuous sex conduct and immoral principle. This will be quite different from the society's conception of morality.

The man who approaches a prostitute may be contaminated with venereal diseases. If married he may communicate the disease to his wife and children. The children born to the parents having venereal diseases are likely to be maintained for life and many a time is born blind. The illegitimate and adulterous sexual union, if known to the wives, brings tension in the family and ultimately to desertion to divorce.

There are clinical and psychoanalytic evidence to show that many young men who had pre-marital sex - union with prostitutes suffer from 'psychic impotency' in married life. The reasons for this may be many and various depending upon the individual. One of the reason for the 'psychic-impotency' is the hatred owned towards the prostitute's sex developed before, during or after the sex-union and fear of the contamination of venereal diseases from the prostitute at the time or after he had sexual relation with her.

A prostitute performs two functions in the society-viz., the commercial functions and health function. The brothels, call flats and disorderly hotels where prostitution is permitted become accessible places for the public to have free sex satisfaction. This brings money to those who conduct it, but, at the same time, it spreads venereal diseases. The managers of hotels, pimps, panderers and prostitutes perpetrate criminality in society by inducing and kidnapping girls. They resort to various foul methods of procuring young innocent girls and women to make their trades very prosperous and profitable. By this, they wreck the personality, communicate diseases, scatter marriage and ruin the family of many girls and people in society.²⁰

²⁰ Haveripeth Prakash, Prostitution and Its Impact on Society-A Criminological Perspective

It may be said that the practice of prostitution is a hydra-headed serpent that has many facets and therefore, must be dealt with at various levels and from various angles; it requires a radical change in the society. This would involve a comprehensive review of the whole problem of social customs and mores regarding marriage, divorce, sex education as well as socioeconomic conditions, and also evolving a suitable and comprehensive programme to raise the economic level and the socio-moral and emotional level of the people. It is important to realize that *“economic hardship is a form of psychological stress. And all mental stress of whatever kind is one of the commonest precipitation factors in abnormal conduct”* Hence, efforts should be made not only to alleviate every variety of psychological stress, but to provide compensatory children the love, affection, proper knowledge of facts of life’ and sense of security and belongingness that is necessary for their normal life, we cannot expect them to lead normal life. This calls for reorganization of the entire problem of child care and child upbringing.

Prostitution lead to awe and suffering to the women .she is sometimes subjected to harsher conduct and behaviour. They are exploited to that extend that leads to huge pain and suffering. It lead to criminal conduct as well .there are laws which help these prostitutes to recover from violence .there are different rehabilitating agencies and NGOs which are taking initiatives to protect them from violence .

By giving sex education would lead to awareness among the people regarding sexually transmitted diseases and also lead to social control and avoid pregnancy and also people would know that it leads to negative effect on their relationship. Also by providing employment to the women and by abolishing social customs like widow remarriage should be encouraged. Even the law punishes those who force prostitution or who kidnaps, abduct and traffic women for prostitution.