

“Is the Prostitution Legalized in India? – View on Feminist Perspective”

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Abstract

Prostitution has often been a highly controversial subject that has tended and still tends to make many uncomfortable. Over the centuries, the debates on prostitution have raged on. Feminist perspective sees prostitution as a freely chosen profession by many women and calls for the same rights for such women as are accorded to workers in other professions. While in the focus on equal rights, right to life and freedom from fear and exploitation is important and comes under the ambit of Universal Human Rights; the matter of ‘choice’ cannot be explained in simple black and white terms. To what extent a woman, man or child ‘chooses’ to prostitute needs to be looked at in the larger context of social, cultural, economic and political factors. Again, it has happened because they are exposed to a large number of clients and have no right to insist on safe sex. In this condition either these girls are dumped or thrown out of the brothels with nowhere else to go. Will legalization solve the problem of such women? Therefore, in gist whether prostitution should be legalized or not the arguments made for and against it are given.

KEYWORDS- Prostitution, Feminist View, Legalization, Women and Girls, Indian Legal System

“It is a matter of bitter shame and sorrow and of deep humiliation that a number of women have to sell their chastity for men’s lust. Man, the law giver, will have to pay a dreadful penalty for the degradation he has imposed upon the so-called weaker sex. When women freed from man’s snares, rises to the full height and rebels against man’s legislation and institution, designed by him, her rebellion, no doubt non-violent, will be nonetheless effective.”²

In our country, prostitution has existed from times immemorial. From the Rigveda, it is found that there were women who were common to several men, i.e., who were courtesans or prostitutes. In ordinary parlance the word “Prostitute” means a woman who offers her body to indiscriminate sexual intercourse, especially for hire.³

A necessary evil, prostitution is rampant in a social system supported by a complex matrix of social forces where parents and relatives throw females into the flesh trade. They not only force them to be in the profession but also procure customers and thrive on their earnings. The young girls are here treated as a commodity-saleable-sold by their own people to brothels for a price. Thus, prostitution is like kaleidoscope where images nurtured by the social public project, the status of its woman as sex objects to

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²Mahatma Gandhi (Kanya1999:28)

³Oxford Dictionary.

gratify their sexual desires. It has survived through all ages in nearly all countries though in some cases it was tried to be regulated by law. Even the legal conflict remains as to whether prostitution is illegal or a crime or offence or the exploitation of prostitute. In spite of laws to prevent it, it is practiced, promoted and protected openly. Despite police raids, and the rehabilitation and reformation programme costing a fortune to the country's exchequer, it is still flourishing.

The Immoral Traffic (prevention) Act, 1986 (ITPA) defined prostitution as “the sexual exploitation or abuse of persons for commercial purposes or for consideration in money or in any other kind.” What is important to note here was the use of the words “exploitation or abuse” indicate the stand that prostitution is inherently exploitative. This view is akin to one feminist perspective that places prostitution in the larger patriarchal framework that affects all gendered relations and results particularly in the exploitation of prostitutes (mostly females) by those who organize and run the show (mostly male). (O'Neill 2001: 16), the term ‘person’ acknowledges that prostitution is not limited to the female gender or to women alone, but extends to children and men well. “Commercial Purposes” brings the pieces together to indicate the economics underlying the phenomenon, that is the demand for and supply of sexual favors, the rate of exchange, and the profit thereof.

In this context, another feminist perspective sees prostitution as a freely chosen profession by many women and calls for the same rights for such women as are accorded to workers in other professions. While in the focus on equal rights, right to life and freedom from fear and exploitation is important and comes under the ambit of Universal Human Rights; the matter of ‘choice’ cannot be explained in simple black and white terms. To what extent a woman, man or child ‘chooses’ to prostitute needs to be looked at in the larger context of social, cultural, economic and political factors.

Prostitution has often been a highly controversial subject that has tended and still tends to make many uncomfortable. Over the centuries, the debates on prostitution have raged on. In the Indian context, however it was usually women and girls from the disadvantaged sections of society that were found in prostitution. Nearly 50% are from scheduled caste and scheduled tribes and 12.27% from the backward classes. (Nair: 2005)

Kate Millet, a legal aid and advisor in America has written: “The actual situation in the city is that prostitution is accepted by everyone- the police, judge, clerk and lawyers. Arrest and prosecution are purely gesturing that have to be made to keep up the façade of public morality. The method of dealing with it is simply a form of harassment not a form of prevention, abolition or punishment... only a total and satisfied acceptance of the double standard, excusing the male, accusing the female. Though, millet had described this situation for America, the same applies for almost all the countries, India being no exception.

Dr. MohiniGiri (Kanya: 1999:111) stated, “It is seen that young girls are introduced to the clients as virgin at the tender age. At the time of induction, they are healthy but in about two year's time they are cases of full-blown dreadful diseases as

STDs, tuberculosis, HIV/AIDS, etc. who is responsible for their such condition? Again, it has happened because they are exposed to a large number of clients and have no right to insist on safe sex. In this condition either these girls are dumped or thrown out of the brothels with nowhere else to go. Will legalization solve the problem of such women? Therefore, in gist whether prostitution should be legalized or not the arguments made for and against it are given in below:

Legalization of Prostitution: -

Argument in favors of Legalization: -

1. The sex workers earn their bread from physical labour and therefore they should be recognized as industrial labourers/ workers.
2. A Trade Union will enable them to clinch their rights as workers, help them achieve some social acceptability and protect them from regular harassment by police and other forces.
3. Such a move goes a long way, to usher in the much-needed improvements in the red-light district.
4. Countries like New Zealand, the Netherlands, Australia and Bangladesh have already recognized prostitution.
5. Such a step will pave the way for sex workers to form societies, improve their economic status and working conditions and prevent entry of minor girls in the profession.
6. Such a step will also save women from AIDS and other venereal diseases because then they will be in a position to insist on safe sex.
7. Such a step will also save women from AIDS and other venereal diseases because then they will be in a position to insist on safe sex.
8. We have not been able to abolish prostitution for ages, so why not legalize and regulate it. Moreover, it is not immoral because most of the sex workers are forced into by the system and do not have a choice to either leave or accept it.

Arguments against Legalization: -

1. The demand is illegal, immoral, unethical and violative of our Constitutional provisions. The Constitution gives the choice of profession but does not permit indulgence in socially undesirable activities.
2. Sex abuse is the worst form of violation of human rights.
3. Legalizing prostitution is not the remedy of the problem. The solution lies in rescuing and rehabilitating the women and children caught in the profession that offers no way out.
4. It would give anti-social elements the license to indulge in the trafficking and trade of humans.
5. It is mostly the poor and ignorant who are exploited and forced into trade. It is the duty of the government to prevent children from the marginalized section of society from being forced into the profession and to check perpetration of atrocities upon them.

6. Prostitution leads too many life-taking diseases and once it is legalized, there will be a quantum jump in the spread of the diseases. Moreover, it is not a healthy occupation.
7. The demand is being raised by people who are being funded by foreign donor agencies.

Whether legalization to prostitution is granted or not we are currently more concern about the issue of children who are victims of pedophilia, trafficking, incest and rape at a very tender age of five years onwards. We have to rescue them, protect them and safeguard their interests to save them from their present agony and ensure a secure future for them.

O'Dea's report of the sex trade (1993) covers women and girls. She notes that unless there is a change in attitudes towards women nothing can cure this problem, quoting Primo Levi, "Those who know about the torment of their fellow humans and do nothing to prevent it are themselves joining the tormentors" (p. 48.). This is an incisive study of the problem, focusing chiefly on the economic and social factors that combine to exploit women and girls.

In Vishal Jeet vs. Union of India⁴

'No denying the fact that prostitution always remains as a running sore in the body of civilization and destroys all moral values. The causes and evil effects of prostitution maligning the society are so notorious and frightful that none can gainsay it. Therefore, the necessity for appropriate and drastic action to eradicate this evil has become apparent but its successful consummation ultimately rests with the public at large.

Many poverty-stricken children and girls in the prime of youth are taken to 'flesh market' and forcibly pushed in to the 'flesh trade' which is being carried on in titter violation of all canons of morality, decency and dignity of humankind. There cannot be two opinions indeed there is none that this obnoxious and abominable crime committed with all kinds of unthinkable vulgarity should be eradicated at all levels by drastic steps.

Article 23 which relates to Fundamental Rights in part III of the constitution and which has been put under the caption 'right against exploitation' prohibit 'traffic in human beings and beggar and other similar forms of labour' and provides that any contravention of Article 23(1) shall be an offence punishable in accordance with law.

Further, this malignity cannot be eradicated either by banishing, branding, scourging or inflicting severe punishment on these helpless and hapless victims most of whom are unwilling participants and involuntary victims of compelled circumstances and who, finding no way to escape, are weeping or wailing throughout.

This devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy legal action against all the erring persons such as pimps, brokers and brothel keepers. The courts in such cases have to always take a serious view of this matter and inflict condign punishment on proof of such offences. Apart from legal action, both the central and the state governments who

⁴ AIR 1990 S.C. 1412

have got an obligation to safeguard the interest and welfare of the children and girls of this country have to evaluate various measures and implement them in the right direction.’

In Gaurav Jain vs. Union of India⁵

‘The primary question in this case was; what should be the scheme to be evolved to eradicate prostitution, i.e. the source itself; and what succored sustenance can be provided to the fallen victims of flesh trade? On account of the social sanctions, women are exploited by the monstrous customs of Devdasis, Jogins and Venkatansis known by other names in different parts of the country. The unfound social and religion-based sanctions are only camouflage; their real motive is to exploit the unfortunate women. Most of them belong either to Scheduled Castes or Backward Classes coming from socio-economically lower groups. The major reasons for induction of prostitution are poverty and unemployment or lack of appropriate rehabilitation etc. all abhor social stigma. The court given direction to prevent prostitution; to rehabilitate fallen women and to provide them facilities and opportunities by evolving suitable measures, by all the Governments for enforcement of their economic empowerment and social integration with dignity of person which are fundamental rights to the unfortunate fallen women that is the victims of circumstances.

Society is responsible for a woman’s becoming victim of circumstances. The society should make reparation to prevent trafficking in women, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio-economic empowerment and justice is the constitutional duty of the state. Their economic empowerment and social justice with dignity of person are the fundamental rights and the Court and Government should positively endeavor to ensure them.’

During my research on Socio-legal status of rights of children affected by prostitution, I visited to the various meetings in red light areas, I asked the women, “What your daughter to be in future?” and in each of these meetings the answers were always, “I don’t want my daughter to be in this profession. Please take her away and keep her in a boarding school.” Hence, I believe that no prostitute really think that this could be a dignified profession for her child and leads me to conclude that really speaking they would not like legalization of profession.

During my research, When I interviewed and asked Ms. Patkar Poonam (in the year 2017), who was the Director of NGO- ‘Committed Community Development’, Bandra, about her opinion on legalization of prostitution, she says, “On the basis of my observation, I will not suggest for legalization, because they are victim. It is very painful to see their actual condition. Hardly for 20 to 30 Rupees had they sold their body? And no any mothers agree/ think that in future her child should do the same trade.”

Opinion of legalization of prostitution by Probation Officer (Mrs. Patil) from Special Rehabilitation Home- Deonar (in the year 2016), she denied the legalization of

⁵ AIR 1997 S.C.3021

prostitution in India. She says, “Girls, who are forcefully brought into this business, have a bad psychological and social condition. The society should take the initiative and accept such people in the society and also help them to get in to good social stream and environment.”

On the basis of above all opinion, literature and experience, I strongly opposed for legalization or regularization for prostitution in India. My personal suggestion to the govt. that, before legalizing a prostitution in India, think by feminist view of physical, emotional, social and economical condition of a woman.

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