

Prostitution, trafficking and impunity in India: A human rights perspective

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Despite the early existence of prostitution in almost all societies, there is little agreement on how it should be addressed. Different governments and policy makers have approached prostitution with varying concepts and ideas, placing themselves along a continuum, one end of which is legalization, and the other criminalization. Some countries have held firmly onto one view, while others have criminalized certain aspects of prostitution, but not all. Proponents of legalization call it the ‘oldest profession’, while critics argue that it is inherently degrading and damaging and should be made illegal. But what is common to all countries regardless of policy, is that the vast majority of those engaged in prostitution do not want to be there.¹

Traditionally, policy has done little to tackle the issues surrounding prostitution, factors that go far beyond the simple act of buying and selling sex. Prostitution includes a myriad of complex and varied aspects, including its role in increasing the trafficking of women and children; forced and bonded labour; the high incidence of violence and torture; the low cultural and social status of prostitutes; health risks such as STDs and HIV/AIDS; corruption of police; the growth in sex tourism.

If prostitution is examined from a human rights perspective, it can be seen to violate a number of basic human rights. The United Nations (UN) has affirmed that prostitution is in contradiction with the inherent worth and dignity of being human—the cornerstone of the UN philosophy and subsequent international human rights treaties and conventions. The right to be free from violence; not to be subject to torture, or to cruel, inhuman, or degrading treatment or punishment; equality before the law and to equal protection by the law; freedom of movement; to work in just and favourable conditions with equal pay for equal work; a standard of living adequate for health and well-being—these rights are all contravened through unequal power relations, poverty, corruption and the cultural inequality of men and women found in prostitution.

Increased attention on the law and prostitution has been promulgated by the dramatic and harmful rise of trafficking in women and children. It is now widely understood and accepted that trafficking exists in relation to, and because of, the sex industry. Traffickers meet existing demands for sexual services, but also help to create a demand for cheap labour. Countries that have legalized prostitution (Netherlands, Germany, Denmark and Italy) have seen a rapid expansion in their sex industry and a corresponding rise in the number of trafficked women and children. In line with a number of other countries, such as the United Kingdom, under Indian law prostitution itself is not illegal but the owning and running of brothels or profiting from the wages of someone engaged in selling sex are criminal offences. The Immoral Traffic (Prevention) Act (ITPA) 1956 makes the trafficking and sexual exploitation of persons for commercial purposes a punishable offence. It was created in response to the obligations under the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, although it has not proven successful in reducing trafficking or the sexual exploitation of women and children.

To try and inhibit the sex industry and prevent the criminalization of prostitutes, the ITPA Amendment Bill 2006 sought to suppress the demand factor that both creates and maintains prostitution, and to decriminalize the illicit selling of sex. Sweden and the United States have also

¹ Coalition Against Trafficking in Women (CATW)

introduced policy measures seeking similar objectives, but they have gone further: anyone who buys any sexual services, rather than just of trafficked victims, is penalized.

Liberals frequently argue that it is a woman's right to be free to use her body; an expression of the right to sexual freedom. In reality however, prostitution does not entertain values of freedom, dignity or respect, nor is it ever afforded the same benefits and rights as other work. Violence against women is commonplace, but merely seen as an 'occupational hazard'. Prostitutes rarely have the full freedom to dictate what they will and will not do for a customer. All aspects of prostitution are geared towards the comfort and demands of the customer. Even in countries where prostitution has been recognized as a form of work and legalized, the customer is never asked to undergo a sexual health check. Instead, this responsibility lies with the women. Their protection from HIV/AIDS is secondary to the greater enjoyment of men and their 'needs'. For their own protection, countries do not allow people to sell their own organs, so why should the sale of sex be considered different? Do we not worry about protecting prostitutes from life-threatening diseases because they are not as 'worthy' of protection? Prostitution will never just be a job when there are multiple areas of unequal power.

Under patriarchal norms prostitutes are usually social outcasts not worthy of respect, but also seen as essential for the use of men. Some proponents go as far as to suggest that prostitution helps to stem cases of rape and serious sexual harassment. In other words, it is necessary for there to be a group of women whom men can (ab)use, so that the rest of society can remain safe and untroubled. Such stereotyping of men as feral and uncontrolled is not helpful, and is in fact highly insulting to those men who are able to conduct meaningful and healthy sexual relationships. Moreover, such behaviour by men would not be considered normal; it would be seen to lie in the societal boundaries of prison and mental health care.

Arguments abound over the question of consent or choice. Those keen to dismiss the sexual oppression inherent in prostitution and its close ally trafficking, state that if a woman gives her consent then it is not sexual exploitation. This fails to comprehend the array of factors that account for the well-documented fact that the majority of those in prostitution do not want to be there. Global economic disparities enable traffickers to persuade families to sell their children in hope of a better future, or with false promises of marriage. India is a receiving, sending and transit country for prostitution due to its proximity to Nepal, Bangladesh and Pakistan, and there is a constant illegal movement of people. Human Rights Watch has estimated that there are approximately 15 million prostitutes in India. Adding to this, around 200 girls and women enter into prostitution everyday, 80 per cent of them against their will (CEDPA and PRIDE).² Choice becomes immaterial when it is recognized that prostitution is not about, or for, women, but for men.

In India, a woman without a husband is generally considered past her use, particularly if she is no longer a virgin. Women who have been widowed, divorced or forced to leave their family homes due to dysfunction and violence become impoverished social outcasts. Poverty, family desertion and the cultural tradition of Devadasi are the most common routes for those who end up in prostitution. Devadasi is the tradition of selling or dedicating poor low-caste girls to temples, in a religious sanction of prostitution. The practice continues to thrive in Karnataka, Andhra Pradesh and other parts of South India and legitimizes child prostitution—many of these girls, unable to marry, end up as prostitutes in Mumbai and Pune. The whims of men who believe that STDs and

² Centre for Development and Population Activities (CEDPA) and Planning Rural-Urban Integrated Development through Education (PRIDE)

AIDs can be cured by having sex with a virgin creates demand that is met with girls as young as seven, not uncommon in red-light districts.

The issue of consent is irrelevant for child prostitutes (raised to 18 years of age under the ITPA Amendment Bill 2006) as children are always seen as the victim. However, Indian police officers—perhaps unaware of the laws in their own country—try and charge child prostitutes with being accomplices, often at the behest of criminal gangs who control the sex industry. Bribes and coercion are commonplace, with police informing brothel owners of upcoming raids. Girls who are arrested are often returned to their traffickers and captors upon being released. This mutually beneficial relationship gives police free reign to demand—and take by force—free sexual services, and to harass prostitutes and take their money. In some instances, girls and women are kept in cages, only released to please a customer. The ease with which procurers and pimps can abuse India's criminal justice system makes the trafficking of women and girls for prostitution far less risky than narcotics or guns, and there are lesser sentences if prosecuted. This speaks volumes about the value put on the life of a woman or girl by the law, which is a reflection of society.

Words such as 'sex worker', 'sex work' and 'management' are all a deliberate attempt to reduce prostitution to a banal economic activity and legitimize the profit gained. The provisions of the ITPA and ITPA Amendment Bill 2006 are important steps in the right direction, but have done little to prevent the routine and brutal ill-treatment that exists within the world of prostitution. For instance, most of the earnings of a prostitute are taken away by brothel keepers and owners. In cases where young girls have been lured by false promises of marriage, 'husbands' will keep all their earnings but write letters to parents to avoid suspicion. Moreover, although the earnings of the commercial sex industry are significant, they are not often identified in the overall profit of an economy. Though the Amendment Bill 2006 goes a long way to criminalize the buying of sex, while decriminalizing the sale—an important recognition that it is the demand factor (men) that drives the sex industry—prostitution is inherently unsafe and dangerous because of the multiple disadvantages faced by women and girls. Stigma, discrimination and local perceptions mean that women forced into prostitution face regular prejudice by police, hospitals, schools and even the judicial system. Regardless of the law, police officers often behave in accordance with their own morals and beliefs of prostitutes, therein effectively encouraging impunity for men who exploit the services of these women. Verbal and physical abuse also prevents women from speaking out or making complaints of rape and harassment to the police. Additionally, police generally refuse to raid brothels or make 'First Information Reports' (FIRs) in these cases, perhaps believing that these women or girls are there by some misguided idea of 'choice'.

India must fight to reduce, rather than promote the commercial sex industry. This can be done by closing the gap between policy and implementation of the ITPA and ITPA Amendment Bill 2006. There must be education in schools on what constitutes a healthy relationship towards sex and women, in order to preserve the dignity and respect of all humans. Husbands and men who exploit the sexual services of women must be made aware of the health implications of their actions. Community programmes must include men, not just target women, and they should be encouraged to ask the prostitutes they visit if they have been trafficked, or why they are there. Hotlines in other countries such as Syria, have proven successful in bringing men into the fight against trafficking and the degradation of women in prostitution. Most importantly, there must be support for those women and children who want to leave prostitution. The government, NGOs and other community organizations must focus on moving resources to providing real alternatives for women and girls in prostitution, so that they too can realize their basic human rights.