

Re-Thinking vagrant work as work constructions, Debates and Dimensions around Sex Work

Khushboo Srivastava

Center for Political Studies, School of Social Sciences, Jawaharlal Nehru University, New Delhi, India.

Received: August 26, 2018

Accepted: October 19, 2018

ABSTRACT

Prostitution, a vagrant form of feminized labor has enjoyed a continued existence albeit a difference. From once having religious sanction, it has come to be reflective of the socio-economic structures too in contemporary times. Encompassing commodification, objectification and violence, it has been a much deliberated and contested form of work within both academia and policy makers. While the academia is divided between the radicals who call for its abolition and liberals advocating its regulation, policies and laws across the globe too are grappling with the issue of adequately addressing it. This debate becomes much more intriguing when voices of women in the industry are put forth. Voices of women working as sex workers act as a rejoinder to the arguments of both the liberals and radicals. While they acknowledge the harm inbuilt in their work, they also point towards its empowering potential. It is in this context that issues of legalization and criminalization have sprung up impinging upon us the question can sex work be contractualised so as to bring about the required reform? This paper thus seeks to pit together these various debates and in turn look at the most viable alternative by way of conclusion.

Keywords: *Vagrant Work as Work, Sex Work, Empowerment, Victimhood, Commodification, Abolition, Regulation, Contract*

1. HISTORICISING SEX WORK AS WORK IN INDIA

Stories are perhaps the most nuanced way of understanding the phenomenon that surrounds us. Our own identity is likely to remain obscure without a proper knowledge of the issues that we grapple with. One such reality that is perhaps as old as human history is prostitution.¹ Synonymous with ignominy, the *Immoral Traffic (Protection) Act 1986* reads, "Prostitution means the sexual exploitation or abuse of persons for commercial purposes or for transaction in money or in any other kind."² Constituent of the unorganized sector, prostitution is any act in which a female makes available her body for promiscuous sexual intercourse for hire.³ (National Commission for Enterprises in the Unorganized Sector Conditions of Work and Promotions of Livelihood in Unorganized Sector. 2007)

Prostitution has travelled a long journey both in academia and in practice. From being seen as violence against women, it has today come to be seen as an occupational choice women make. "Various organizations like the VAMP and SANGRAM, prefer using terms like 'people in prostitution and sex work' (PPS) for it recognises and acknowledges people in prostitution and sex work as human beings first"⁴ (Meena 2008). It is this according to Swati Shah that has made the debate between choice and force inadequate.⁵ Sex workers have 'multiple work identities'. While women explore other options in the labour market before entering sex work, poverty, limited education, insufficient salary, no regular work, seasonal work, less profitable work are the other major reasons that push women to take to the profession.⁶ Realistically choice is a utopia.

A well conceptualized understanding of the institution of prostitution warrants a brief outlining of its historical trajectory. Sukumari Bhattacharjee highlights the restructuring of Rig Vedic society around

¹ Prostitution is different from sex work. The former is a part of the latter. Sex work includes other 'works' like pimping, bar dancers etc. in this work the two have been used interchangeably.

² The Immoral Traffic (Prevention) Act or ITPA is a 1986 was previously known as All India Suppression of Immoral Traffic Act (SITA). Passed in 1965 on account of India's signing of amendment of a 1950 UN Declaration on suppression of trafficking, it aims at curtailing and eventually eliminating the practice of prostitution in India by gradually criminalizing various aspects of sex work.

³ National commission for Enterprises in the Unorganized Sector, *Conditions of Work and Promotion of Livelihoods in Unorganized Sector*, (New Delhi: Dolphin Print Graphics, 2007), 1-10, 75-107, 154-171.

⁴ Supriya Pillia, Seshu Meena and Shivdas Meena, Embracing the Rights of People in Prostitution and Sex workers, to Address HIV and AIDS effectively, *Gender and Development* 16, no. 2 (2008): 1-13.

⁵ Swati Shah, "Sex work in Global Economy", *New Labor Forum* 12, no. 1 (2003): 74-81.

⁶ Sahni, Rohini, and Shankar, V. Kalyan. *The First Pan India Survey of Sex Workers: A Study of Preliminary Findings* (Maharashtra: Center for Advocacy on Stigma and Marginalization, 2011).

female slavery.⁷ Epitomes of beauty and feminine charms they were the attraction of royal courts and were treated as a distraction to the *tapasya* of the saints.⁸ During the Aryan rule, kings presented maidens as token of friendship. Victors were allowed to take with them their most prized prostitutes as a reward.⁹

The centrality of concubines becomes evident from the writings of Kautilya in his classical treatise the *Arthashastra* which puts forth rules for the prostitutes in the conduct of their daily chores and also their lives. Similarly Vatsyayan in his *Kamasutra* holds classification of prostitutes thereby suggesting that the common private and clandestine prostitutes of today had their prototype in the older days.

With regards to the Mughal regime it is believed that barring Aurangzeb all other rulers not only recognized the sexual services of prostitutes but also gave it patronage for it to develop. Sex workers called *tawaiifs* in the Mughal period were markers of Awadhi culture's decadence" (Bhattarjee 2010). The royal Kings had an elaborate "*Pari Khana (kothas)* based on a hierarchical set up. The peak of this structure came if they bore the child of the nawab thereby attaining the title of *mahal*"¹⁰

In the post mughal period, social disabilities and economic hardships further pushed them deeper into the sex trade. Due to British policy of non intervention in Indian social life, their conditions deteriorated and soon prostitution started operating on a commercial scale.

Prostitution is one profession that sees women in the trade grappling with innumerable stigmas and taboos. Feminized as it is, the reiteration of patriarchy and conformation to stereotypes is evident from the fact that nearly all of their customers are males. Such a heavily gendered division of labor raises fundamental questions for feminists about the justness of prostitution. "Prostitution is not simply a profession divided along gender lines it is one that is underpinned by exploitation, harassment, and violence against women.(D.Zatz 1997). From being linked to religious practices in ancient times to being associated with promiscuity, crime and social condemnation in modern times, prostitution clearly has an economic and ideological base. There are three conflicting views on prostitution:

- the moralist
- the institutionalist and
- the feminist.¹¹

"The *moral approach* maintains that prostitution violates moral sensibilities and hence must be eradicated through the use of penal measures. The *institutional argument* takes prostitution as the oldest profession, which the state at best can control marginally. The *feminist standpoint*, while challenging the first two positions argues that prostitution upholds unequal gender relations"(Anderson July 2002). Based on these three standpoints, there are following three prostitution-related laws across the globe:

- the prohibitionist system,
- tolerationist system,
- Legalized prostitution.

The *prohibitionist system* as it exists in the US bans prostitution per se, criminalizing the activities of all categories of people involved in prostitution, i.e., brothel-keepers, pimps, procurers, clients and prostitutes."(Cunha 1992) The *tolerationist system* seeksto abolish prostitution per se and targets trafficking in women and girls for prostitution, brothel-keeping, pimping, procuring and renting premises for prostitution"(Cunha 1992)

Many countries like Germany, Nevada and Switzerland have *legalized prostitution*.Under this system the prostitutes require 'work permit' from the local authorities and have to get themselves registered for periodic health check-ups VD clearance after which she is allowed to work in officially designated areas.(S. A. Anderson July 2002)

⁷Sukumar Bhattacharjee, *Women and Society in Ancient India*,(Calcutta: National Book Trust, 2010).

⁸ Mythological characters Menaka, Urvashi, Rambha were all involved in high level prostitution.

⁹ Prostitutes were even famous during the reign of the Kauravas and Pandavas.

¹⁰S. Kidwai, "Of Begums and Tawaiifs: The Women of Awadh" in *Women's Studies India: A Reader*, ed. Mary John, (Delhi: Penguin, 2008), 118-123.

¹¹ Jean D'Cunha, "Prostitution Laws: Ideological Dimensions and Enforcement Practices", *Economic and Political Weekly* 27, no. 17 (1992).

2. PROSTITUTION IN INDIA DEFINED

Laws related to commercial sex work are enshrined in the Constitution of India 1950 and the Indian Penal Code 1860”(**Mohapatra 2015**). However the most explicit provisions dealing with sex workers are enlisted in the Immoral Traffic (Prevention) Act 1956. The Indian law, embodied in the “*Suppression of Immoral Traffic in Women and Girls Act 1956 (operational in 1958)* defined prostitution as *the act of a female offering her body for promiscuous sexual intercourse for ... whether in money or in kind, and whether offered immediately or otherwise, and the expression prostitute was to be construed accordingly.*”¹² The manner in which law defines prostitution bears testimony to the established stereotype that sees sex work as a female only profession.

The act designates pimping and other activities as punishable. It does not prohibit prostitution per se but it does prohibit commercial activities of the flesh trade. For instance, “Section 3 of the ITPA provides for the punishment of any person in-charge of the premises wherein sale of sex takes place; section 4 lays down provisions for punishment if an individual is found to be living on the earnings of a prostitute; section 7 makes it an offense to practice prostitution in the vicinity of public places; section 9 puts forth clauses for seduction of a person in custody.”(**Mohapatra 2015**) Various judgments of the ITPA suggest that “the intent of the legislation was not to abolish prostitutes of prostitution as such. It was rather to inhibit the commercialized vice of trafficking in women”.¹³

The ITPA “authorizes magistrate to use his discretion and if need be to order the removal of a prostitute from any place in interest of general public interest”¹⁴(**Kotiswaran 2001**). “It also lays down provisions for providing the facility of reformation to a female offender by detaining them in established corrective institutions and for enforcement of which Special Police Officers can be appointed.”(**Kotiswaran 2001**)

However what makes this ironical is that clients face no punishment whatsoever. Panda argues that the restrictions imposed by the legal framework, has led to evolution of sex trade to its current condition.¹⁵ The legislation meant to protect the exploitation of sex workers operates against them because the customers without whom the act of prostitution cannot be committed go scot free.(**Saxena 2002**)” This explains the limited impact and outreach of the legislation. It also explains the lax on part of the police and judiciary which is prompt in arresting and detaining the sex workers while the pimp, procurers and brothel owners are let lose.

The legislation in section 7 and section 8 while has led to the localization of sex trade to a particular part of the city it has also been juxtaposed by the growing size and magnitude of operations. This localization has created a whole gamut of problems including the dependence of sex worker on brothel owners. It has thus created centers where these women seeking autonomy rather faced coercion, leading an isolated and deprived life, confined to the red light areas

Further the ITPA provision of rehabilitate is highly inadequate. **Mohapatra** in this context argues that “Such homes are overburdened and hence cannot accommodate the large number of sex workers who are convicted under ITPA”.(**Mohapatra 2015**) Ideally these homes ought to be centers for vocational training and literacy missions as also counseling. However in practice no such framework exists. Without proper rehabilitation, these women have no choice but to return to brothels. Such heavy social censoring of the prostitute has contributed to a lively and growing debate within feminist scholarship.

3. THE CONTENDING DEBATES AROUND SEX WORK:

In contemporary society there appears to be a strange paradox. While on the one hand we harp on the notion of equality and freedom to all and on the other a profession like prostitution continues to be predominantly women centric. This has raised the crucial debate of when should women be seen as empowered agents making meaningful choices and when as hapless victims in need of protection. In this context, two vying positions have dominated much of the feminist debates.¹⁶

¹² Government of India, The Immoral Traffic (Prevention) Act, 1956, Last modified, December 1, 2014, www.projectionproject.org/wp-content/uploads/2010/09/India_Acts_1986.pdf.

¹³ Ratnamala and Another v/s Respondent AIR 1962 Madras; Bai Shanta v/s State of Gujarat AIR 1967

¹⁴ Prabha Kotishwaran, “Preparing for Civil Disobedience: Indian Sex Workers and Law”, *Boston College Third World Journal* 21, no. 2, (2001): 161.

¹⁵ R Panda, “Commercial Sex Work and Sex Workers in India: A New Perspective” in *Development Issues in India: Policies and Perspectives*, ed. Atunu Mahapatra, (Delhi: Manglam Producers and Distributors, 2015), 100-122.

¹⁶ The debate on prostitution is dominated by two schools of thoughts. The first is the radical feminism school of thought. This school is constituted by the likes of Andrea Dworkin, Catharine MacKinnon, Kathleen

3.1 Call for Abolitionism: How Desirable?

Abolitionists adopting a sexual subordination approach place prostitution at the bottom of the hierarchy of male supremacy. Vital to their objection to any form of sexual labor, is harm i.e. a sort of *objectification and commodification*. As Dworkin puts it “*it is the use of a woman’s body for sex by a man, he pays money, and he does what he wants.*” The repeated performance of these exploitative acts over and over again eventually leads to oppression.’ Thus the fundamental contention is with regards to which they argue is beyond repair. This, to their mind reduces women to mere objects and hence is a means for their commodification which is extremely painful.¹⁷

There are two types of violence in sex work¹⁸:

- “*Paid-for-Violence* which is the everyday violence of unwanted and often painful penetration”(Farsley 2004)
- “*Unpaid-for violence* including rape, beatings, murder, sexual harassment, acts equivalent to torture and a host of physical and psychological health problems including post-traumatic stress disorder” (Farsley 2004).

“They therefore vehemently believe that the catalogued harms of sex work are irreparable. Legalization and decriminalization only render harm invisible rather than ameliorate it”(William 2005). The radical feminists are critical of the charitable account of ‘consent’ which they think in reality is ‘consent to the lack of consent.’ Thus, the feminists opine that:

- “that the good purchased from a prostitute is frequently, in part, her own degradation;
- that the existence of prostitution depends on the existence of an inequality in social or economic power between prostitutes and their customers; and
- That prostitution contributes to the perpetuation of the inequalities that underlie the practice. I think that prostitutes experience a specific inferiority.” (William 2005)

Andrea Dworkin points out rightly¹⁹:

“A prostitute is perceived as, treated as vaginal slime. She is dirty; a lot of men have been there. Her anus is often torn from the anal intercourse, it bleeds. Her mouth is a receptacle for semen that is how she is perceived and treated. All women are considered dirty because of menstrual blood but she bleeds other times, other places. She bleeds because she’s been hurt, she bleeds and she’s got bruises on her”(Dworkin 1992).

When men use women in prostitution, they are expressing a pure hatred for the female body. The point, the radical feminists claim, is that the subordination and degradation reflected in these harms are part of what men purchase in prostitution; hence, these harms are not incidental to or easily separable from the practice of prostitution”(Fraser 1993)

Another contention is that, prostitution as an institution does not grant autonomy to women. Pateman argues that “*When women’s bodies are on sale as commodities in the capitalist market, the law of male sex-right is publicly affirmed, and men gain public acknowledgment as women’s sexual masters—that is what’s wrong with prostitution.*”²⁰ It is argued that the harm that this industry entails is beyond the

Barry, Carole Pateman, Sheila Jeffreys, and Evelina Giobbe. Such views are well laid out in Andrea Dworkin’s “Prostitution and Male Supremacy,” Catharine MacKinnon, “Prostitution and Civil Rights,” and Carole Pateman’s “Sexual Contract”

¹⁶ The second school is constituted by the Liberals. This view is documented in Martha Nussbaum’s “‘Whether From Reason or Prejudice’: Taking Money for Bodily Services,” in her *Sex and Social Justice*, Prabha Kotiswaran’s “Dangerous Sex, Invisible Labor”. A large section amongst the sex workers, themselves have demanded normalization for e.g. Durbar Manila Samanwaya Committee.

¹⁷ Martha Ertman and Williams Joan, “Freedom, Equality and the many Futures of Commodification”, in *Rethinking Commodification: Cases and Readings in Law and Culture*, eds. Martha Ertman and Williams Joan, (New York: NYU Press, Utah Legal Studies Paper No. 05-32, 2005), 1-12.

¹⁸ Prabha Kotiswaran quotes from Farsley, Mellissa “Bad for the Body, Bad for the Heart: Prostitution harms women Even if Legalized or decriminalized”, *Violence Against Women* 10, no. 10 (2004): 1087-1125.

¹⁹ Andrea Dworkin, “Prostitution and Male Supremacy”, This speech was delivered at a symposium entitled “Prostitution: From Academia to Activism” sponsored by the Michigan Journal of Gender and Law at the University of Michigan Law School, October 31, 1992, 144–45.

²⁰ Carole Pateman, *The Sexual Contract*. (United States: Blackwell, 1988)

scope of repair by any mechanism. Contract to this end rather than being a facilitator is itself an impediment. In their schema, legalization and decriminalization only render harm invisible rather than ameliorate it.²¹

Yet another disputation holds that in prostitution, 'there exists a power syndrome based on income and wealth.' Evidently, the customers are economically better off and hence can afford 'buying' the prostitute. On the other hand, the sex worker from a position of poverty and helplessness lacks the agency to deny having sexual intercourse even if she so desires." Such a system reeks of injustice considering that "*no rational person would willingly be consumed as a sexual object, prostitution is necessarily a form of exploitation*" (S. A. Anderson July 2002)

The biggest dilemma for the feminists across the globe emerges with reference to whether sex work can be labeled as a legitimate form of work? *The radical feminists opine that sex work is an evident manifestation of violence against women. Irrespective of its nature or conditions of work it will continue to remain an aberration to a respectable form of work. Thus it can never qualify as a valid form of work.* For them sex work is a form of slavery which involves sale of sex. The second objection to the work position is that the sex industry represents a lop-sided market situation wherein all of the demand is made by men and all of the supply is created by women.. Further men are not harmed as much by sex work as women are. Thus they reject the liberal claims and terms it as a 'liberal fantasy'.

Pateman earlier independently invokes the concepts of *property in the person* and the *aristocracy of men*. The contract makes women's sexual access and availability to men all the time and gives it the orientation of being a fair and just set up, when in reality it is far from. It is this that leads her to invoke the following questions in her seminal text, *The Sexual Contract*: "Why do men demand that women be sexually available on demand?" (C. Pateman 1988)

Scholars like *Scouler* in response argue that this 'dominance theory' over-determines gender power dynamics and reduces prostitutes to just their sex acts.²² To *Maher*, such an account leaves women 'devoid of choice to make decisions about their circumstances and how they use their bodies.'²³

3.2 Re-Thinking Of Sexual Slavery: Liberal Tradition

On the other hand are the liberals, who adopting a work position argue in favor of regulating these forms of work. Since the 1970's, there has emerged a new paradigm that has countered the '*victimization of sex worker*' perspective." (S. A. Anderson July 2002). While, "being agonistic to the commodification of sex per se and cognizant of the circumstances under which prostituted women work, they view sex workers as agents with some ability to negotiate within the sex industry. Thus, they emphasize is on protecting and promoting the rights of sex workers" (Overall 1992).

Liberals argue that it is an occupational choice women should have the right to make for its effects to her freedom, financial autonomy and sexual self-determination. Further, liberals believe that there is no difference between the sale of mental and sexual faculties. Simon de Beauvoir goes on to suggest that "prostitution is better than the suppression that marriage entails where a woman becomes the property and hegemony of just one man" (Beauvoir 1974).

Prabha Kotiswaran vociferously argues that "decriminalizing prostitution would enable them to unionize, press for welfare measures like health care, child care and educational facilities for their children, social security for themselves".²⁴ (Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and Law in India* 2012)

Further decriminalization will do away with the very many taboos and stigmas that are associated with prostitution. "This system, seeks to recognize prostitution as a legitimate business, subjecting owners and managers of prostitution establishments to business and labor laws and not to criminal law. It likewise advocates the removal of all criminal sanctions against prostitutes." (S. A. Anderson July 2002)

²¹ Andrea Dworkin, "Prostitution and Male Supremacy". This speech was delivered at a symposium entitled "Prostitution: From Academia to Activism" sponsored by the Michigan Journal of Gender and Law at the University of Michigan Law School, October 31, 1992.

²² J. Scouler, "The 'Subject' of Prostitution: Interpreting the discursive, symbolic and material position of Sex Work Theory", *Feminist Theory* (2004): 343-355.

²³ Teela Sanders, Maggie O'Neill and Jane Pitcher, *Prostitution: Sex Work, Policy and Politics*, (London: Sage, 2011).

²⁴ This view is documented in Martha Nussbaum's "*Whether from Reason or Prejudice: Taking Money for Bodily Services*," in her *Sex and Social Justice*, Prabha Kotiswaran's "*Dangerous Sex, Invisible Labor*". A large section amongst the sex workers themselves has demanded normalization for e.g. Durbar Manila Samanwaya Committee.

This pushes liberals to advocate reforms for the sex workers. They call for “both re-envisioning what it is that prostitutes do as well as revising the typical attitudes of society at large toward prostitution, and prostitutes in particular” (Davidson 1998)

This ‘charitable work position’ argument however is not without flaws. *Kinnell* and *Davidson* argue that no mainstream employment enlists the kind of dangers ripe in prostitution.²⁵ It therefore becomes imperative to analyze both the standpoints at some length.

4. LEGALIZATION V/S DECRIMINALIZATION

On December 2009, a Supreme Court Bench of *Justices Dalveer Bhandari* and *A K Patnaik* told the Solicitor General *Gopal Subramaniam* “When you say it is the world’s oldest profession and when you say that you are not able to curb it by laws, why don’t you legalize it? You can then monitor the trade, rehabilitate it and provide medical aid to those involved in the trade. The apex court said legalizing sex trade would be a better option to avoid trafficking of women and that nowhere in the world has the trade been curbed by punitive measures.”

What should be the most ideal way of dealing with prostitution is subject to contestations. One is the normalization argument which lays down ideas of legislation and decriminalization. It becomes pertinent herein to differentiate between legalization and decriminalization. This paper seeks to argue that legalization undertakes registration of prostitutes and brothels. It is an addition to decriminalization.²⁶ Decriminalization pertains to reforming certain aspects of the practice to facilitate the complete renewal of any sanctions against prostitutes. These include recognition of third party managers, i.e. brothel owners, managers and pimps be recognized as legitimate business men and women; regulation of the business under business and labor and not criminal laws; provision for third party managers to provide safe, healthy and non-exploitative conditions of work for prostitutes, and repealing of pimping laws. The formulation of any regulations for third party managements of prostitution business should be the function of prostitution boards or commissions, the majority of whose members should be prostitutes. De-criminalization thus is a movement towards Contractualization. Legalization is a step ahead in granting legal status to the work as just any other profession.

Apart from these strands of normalization also exists the school of Criminalization or the prohibitionist system, “which aims at changing criminal sanctions in order to control the ‘social evil’ of prostitution and to countenance it by amending the criminal law” (Mohapatra 2015).²⁷

India has adopted an approach of limited tolerance where being a prostitute per se is not a crime or an offence and practicing sex work privately an independently is also not an offence but soliciting it in or near a public place is a punishable crime.²⁸

While laws across the world stand divided, the women’s movement also differs much from the stand taken by sex workers themselves. Historically, women’s movements have opposed the institution of prostitution. However, prostitutes reject support that requires them to leave prostitution. Women in the job have maintained their distance from the feminist scholarship and have therefore also refuted the claim of them being their spokesperson. Radical feminists have argued that prostitutes in believing so are succumbing to the traditional patriarchal equation between the individual in prostitution and the institution of prostitution and in doing so leave the latter’s inevitability, assumptions and existence unchallenged.

5. CONCLUDING REMARKS

In retrospect prostitution as a form of feminized labor raises plethora of issues and conflicting viewpoints. As has been vociferously put forth by a strand of feminists, sex work upholds and to an extent perpetuates the unequal status of women. The use of a woman’s body for another person’s pleasure who happens to be a man exemplifies the harm that it causes to women. When it is repeated over and over again, it reduces women to just being sexual slaves. This is what is wrong with prostitution.

On the other end of the ideological spectrum stand liberals who prefer to look at prostitution as just another line of work. While they do acknowledge the exploitation that women as sex workers are subjected to, they

²⁵Hilary Kinnell, *Violence and Sex Work in Britain*, (United Kingdom: Wilian, 2008).

²⁶ Valerie Jenness, “From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem”, *Social Problems* 37, no. 3 (1990): 403-420.

²⁷ As has been discussed in the above section

²⁸ Geentanjali Gangoli, “Prostitution, Legalisation and Decriminalisation: Recent Debates”, *Economic and Political Weekly* 33, no. 10 (1998): 504-505.

believe that if the conditions of work are regulated, sex work too can add meaning to the lives of these women. Considering that sex work is a choice that women make, they believe that it gives them economic empowerment which is a fundamental for living a life of dignity.

What bridges the gap between these two vying view positions, are the voices of these many women who work as sex workers. Sex workers are targets of both the moral brigade and the surveillance regime of the state which is restricted to rescue, rehabilitation, policing and disciplining them. According to an account by Durbar Mahila Samanwaya Samiti, this rehabilitation is both meager and falls short of erasing the stigma of being a prostitute. Further the absence of transparency, legitimacy or scope for any discussion about the demands and needs of the workers of the sex industry makes their condition multiply oppressed.

My interaction with sex workers living in GB Road, Delhi put forth an enchanting viewpoint. For these women, their work is all they have. Having either been sold by their fathers or husbands, women working amidst the hustle and bustle of GB Road while accepting the challenges of their work, also believe that their work has added meaning to their lives. They narrated stories of violence and pain and yet believed that the economic empowerment has meant the ability to take hold of their lives and has also translated to social upliftment as also a better position within the family structures. They believe that even if they were to quit their work, the social boycott would never end. For some who had tried to look for other work avenues, found them less financially rewarding. Thus despite all the torture and suffering they do not wish to quit their work or for the state to abolish it.

The voices of these women, has added a new dimension to the ongoing debate between those advocating abolition and those who make a strong case for regulation. It therefore seems imperative to stop pitting the two against one another. Instead the need is to negotiate them in context of what these women desire. In this regard, this paper by way of conclusion seeks to make sense of the liberal argument. This will facilitate two things. While it will provide a chance to deliberate on this stance, it will also make the efficacy of the other view clearer.²⁹

To begin with it is crucial to make a distinction between profession and occupation.³⁰ Sex workers argue that if they are presently occupied by making money out of sex, then it is only their occupation for a short span of time. The nature of the business itself is time bound. Therefore by using the term profession, prostitutes argue that they are being pushed into a category for a lifetime. When they are not making money out of sex, they are engaged in other income generating activities.³¹ Further considering that all occupations stereotypical to women capitalize on the 'feminine traits' the very socialization of the girl child to accept gendered occupations needs to be done away with.

Considering that the current situation for women involved is already grim, and that they do not have alternatives there seems to me some merit in the liberal conception calling for regulation of sex work through contracts and not in its abolition all together. It cannot be ignored that prostitutes see themselves as being more empowered than most women in the patriarchal family structure. They are the breadwinners and heads of the households. Their relationships with the men of their families are more equal, economically too giving them greater dignity. It is thus that the demand for decriminalization starts to seem plausible. It will help those women to continue making money out of sex work without stigmatization.

This paper seeks to suggest that abolition of prostitution would tantamount to affirming to the widely prevalent views that see sex outside marriage as unethical and corrupt. It would also tantamount to labeling women as immoral since they do not abide by the moral norms of the mainstream society.

Decriminalization coupled with contractualization on the other hand would be to challenge structures of power by using a part of our womanhood- our sexuality as a source of power and income. It needs to be iterated that globalization and economic liberalization have begun exerting pressure of new sorts on women. In the light of this, criminalization of the trade will force women to turn towards debt bondage, forced labor and slavery like practices making their condition worst.

According to an account of various sex workers unions, what these women desire is independent, democratic, non-coercive, mutually pleasurable, non-violent and safe sex. They argue for autonomous sexuality one wherein men and women will have equal access, will participate equally, will have the right to say yes or no and there ought to be no space for oppression and suppression. They question that in our less

²⁹ I would like to state that in attempting this I am heavily drawing from the engagement with the sex workers who work in a far less than ideal situation. Considering this my attempt is to see what is the best possible alternative for them in the wake of absence of meaningful choices.

³⁰ In the local dialect these are termed as vyasay and dhandha respectively.

³¹ This crucial difference is pointed out by Veshya Anyaya Mukti Parishad and Sangram

than ideal social order if corrupt dealings in food, health and sanitation are, why is sex for many so unethical and unacceptable? They thus demand rights and recognition, through which they can explore the current inequalities and injustices, question their basis and confront, challenge and change them.³²

To conclude then, the problem might not be so much with the institution of prostitution as it is with how it operates in the world in general and India in particular. Contractualization possibly by granting a legal status to the profession could begin the process of reforming their working and living conditions. Further with regulations meticulously drafted and judiciously implemented sex work can be seen as another profession that can give women a lucrative employment alternative.

It can be expected that legalization of prostitution will facilitate efficient track recording thereby doing away with its operation undercover. For instance, "when dance bars in Mumbai were closed most of the bar dancers migrated to Gujarat and Karnataka and other neighboring states and started their business undercover" (Political Will needed to control Trafficking September 2009). Contractualization of prostitution will hence decrease clandestine, hidden, illegal and street prostitution. Contractualization of prostitution will ensure that these women, who live life on the edge, will gain access to medical facilities, which can control the spread of AIDS and the like.³³ Also recognizing prostitution as an economic activity will enable women in India to obtain working permits as "sex workers".

In retrospect what seems most apt is rights based approach that guarantees citizenship, safe working conditions and rights to be not exploited and subjugated. Sex work ought to be seen as a legitimate form of work and emphasis should be laid on the fact that problems within the industry are not inherent in the work itself. Sex workers should be able to enjoy labor rights and human rights like the others do. This section thus concludes by seeing a potential for betterment in the plight and psyche of prostitutes with legalization and contractualization of the trade thereby giving it parity with other jobs. The need is to supplement it with other provisions like making provisions for rehabilitation, promoting unions amongst them that are truly representative.³⁴

BIBLIOGRAPHY

- Pateman, Carole. *The Sexual Contract*. Blackwell. 1988
- O'Neill, Daniel I, Shanley, Mary Lyndon, and Iris Marion Young, eds. *Illusion of Consent: Engaging with Carole Pateman*. University Park, Pennsylvania: The Pennsylvania State University Press.
- Kotiswaran, Prabha. *Dangerous Sex, Invisible Labor: Sex Work and the Laws in India*. New Delhi: Oxford University Press, 2012.
- Sanders, O'Neill and Pitcher. *Prostitution: Sex work, Policy and Politics*. Sage Publications, 2011.
- Coy, Maddy. *Prostitution, Harm and Gender Inequality*. England: Ashgate, 2012.
- Ghosh. *The World of the Prostitutes*. New Delhi: A.P.H. Publishing Corporation, 1996.
- Menon, Nivedita. *Seeing Like a Feminist*. Zubaan Publication, 2012.
- Awachat, Anil. "Prostitution in Pune and Bombay: A Report." *Economic and Political Weekly* 21, no. 12 (1986): 478-482
- D'Cunha, Jean. "Prostitution Laws: Ideological Dimensions and Enforcement Practices." *Economic and Political Weekly* 27, no. 17 (1992): WS34-WS44.
- Jayasree, A.K. "Searching for Justice for Body and Self in a Coercive Environment: Sex Work in Kerala, India." *Reproductive Health Matters* 12, no. 23 (2004): 58-67.
- Hampton, Jean. *Political Philosophy, An Introduction Modern Social Contract Theories*. Westview Press, 1996
- Anderson, Scott. "Prostitution and Sexual Autonomy: Making Sense of the Prohibition of Prostitution." *Ethics* 112, no. 4 (2002): 748-780.
- Overall, Christine. "What's Wrong with Prostitution?" *Evaluating Sex Work* Signs 17, no. 4 (1992): 705-724.
- Pateman, C. "On Critics and Contract." In *The Contract and Domination*, Ed by Carole Pateman and Charles Mills, 200-230. Polity Press, 2000.
- Reanda Laura. "Prostitution as a Human Rights Question: Problems and Prospects of United Nations Action." *Human Rights Quarterly* 13, no. 2 (1991): 202-228.
- Zatz, Noah. "Sex Work/Sex Act: Law, Labor, and Desire in Constructions of Prostitution." *Signs* Vol. 22, No. 2. 1997: pp 277-308.
- Primoratz, Igor. "What's wrong with Prostitution?" *Philosophy* Vol. 68, No. 264. 1993: pp 159-182.

³²Laura Reanda, "Prostitution as a Human Rights Question: Problems and Prospects of United Nations Action", *Human Rights Quarterly* 13, no. 2 (1991): 202-228.

³³ Moni Nag, "Anthropological Perspectives on Prostitution and AIDS in India", *Economic and Political Weekly* 36, no. 42 (2001): 4025-4030.

³⁴ Prostitution amongst minors however cannot be a part of this.

- Anderson, Elizabeth. "Is Women's Labor a Commodity?" *Philosophy and Public Affairs* Vol 19, No 1. 1990: pp. 71-92.
- Gangoli, Geetanjali. "Prostitution, Legalization and Decriminalization: Recent Debates". *Economic and Political Weekly* Vol. 33, No. 10. 1998: pp. 504-505.
- Cunha Jean, 1987. "Prostitution in a Patriarchal Society." *Economic and Political Weekly* Vol. 22, No. 45. Nov. 7, 1987: pp. 1919-1925.
- Okin, Susan Moller. "Feminism, the Individual, and contract Theory." *Ethics* Vol 3. 1990: pp 658-69
- Jaquette, J. "Contract and Coercion: Power and Gender in Leviathan." In *Women Writers and the Early Modern British Political Tradition*, ed. Hilda L. Smith, Cambridge University Press, 1998.
- Kidwai, S. "Of Begums and Tawaifs: The Women of Awadh." In *Women's Studies in India*, ed by Mary E. John, 118–23. Delhi.: Penguin, 2008:
- Ghosh, Swati. 2005. "Surveillance in Decolonized Space: the Case of Sex Workers in Bengal" *Social Test* 83 (23): 55-69
- Keating Christne. 2007. *Framing the Post Colonial Sexual Contract: Democracy, Fraternalism, and State authority in India*. *Hypatia*, Vol 22, No 4. Pg 130-145
- Baldwin, Margaret. 1992. "Split at the Root: Prostitution and Feminist Discourse of Law Reform" *Yale Journal of Law and Feminism* 5 (1) : 47-120
- Should Feminists Oppose Prostitution: Laurie Shrage *Ethics*, Vol. 99, No. 2 (Jan., 1989), pp. 347-361
- "Self Ownership and Property in the Person: Democratization and a Tale of Two Concepts" published in the *Journal of Political Philosophy*, Volume 10, No 1, 2002, pp 20-53.
- Anderson, Scott. "Prostitution and Sexual Autonomy: Making Sense of the Prohibition of Prostitution", *Ethics*, Vol. 112, No. 4, July 2002, pp. 748-780.
- Kotishwaran Prabha. "Preparing for Civil Disobedience: Indian Sex Workers and Law." *Boston College Third World Journal*, 21(2), 2001, 161.
- Dworkin, Andrea. "Prostitution and Male Supremacy". This speech was delivered at a symposium entitled "Prostitution: From Academia to Activism" sponsored by the Michigan Journal of Gender and Law at the University of Michigan Law School, October 31, 1992.
- Durbar Mahila Samanwaya Samiti. 1998. *We Demand Workers Rights*. Calcutta. India.
- Statement on Prostitution: Veshya Anyaya Mukti Parishad and Sangram