

CHILD PROSTITUTION: OUR CRIME AGAINST OUR CHILDREN

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ABSTRACT

I came to know about a tradition that prevails extensively in some states of India, i.e., the system of Devadasis. In the custom, a young girl is being married to a deity of a temple and is being sexually exploited by priests and other customers at their pleasure. The practice can be generalised as “Child Prostitution”. The practice is widespread and has infected large population of India.

The activity is carried out in many parts of tribal India by various groups as their family profession. Major prostitution centres are in Mumbai, Kolkata and Delhi. Boys are equally stigmatized by the evil. Unequal distribution of power and wealth and other socio-economic factors like poverty, unemployment are the reasons for the activity. The activity leads to the spread of disease like Acquired Immunodeficiency Syndrome (AIDS), unwanted pregnancy, psychological disorders, etc. The legal status of prostitution is majorly given by the sections 5 and 8 of Immoral Traffic Prevention Act, 1953 and sections 373 and 374 of the Indian Penal Code, 1860.

The activity has to be definitely done away with. But, only after looking at the other side of the coin as well. The sex workers are being assaulted, brothels being raided, leaving sex workers along with their small children unaided, denying citizenships to such people in the name of law. They are being disallowed living their lives with dignity. Moreover, India, at current state, does not have adequate legal system and public resources to rehabilitate such large amount of population. Prostitution needs to be decriminalized. Government should currently deal with slow regulation and management of health, sanitation and improving socio-economic conditions of the people. This will definitely, in long run, lead to a slow, and peaceful, eradication of the evil from the country.

INTRODUCTION

I came across a video while scrolling on face book and which was about ‘devadasi’. I heard of it earlier but didn’t know much about it so it incited me to go through it. The video showed the grave picture of our society, how women and children are being seen and used as a commodity. On doing my research further and on seeing it from a wider perspective, I came to know that it was child prostitution. The United Nations defines child prostitution as “the act of engaging or offering the service of child to perform sexual act for money or other consideration with that person or any other person”.¹ Devadasis are the minor girls who are devoted to be married to a deity in a Hindu custom and are then forced to provide sexual favors to the priest or the other customers. When they are married to a deity, it is assumed that they are prohibited to marry any other individual but aren’t prohibited to have sexual relations and bear children². In fact devadasis were publicly auctioned off for sexual services and it was done even now but in secrecy.³

A report by the United Nations Committee on the Rights of the Child states that fifty percent of all the prostitutes in the state of Maharashtra were initiated into the profession as devadasis⁴. Understandably, devadasis in commercial prostitution are relatively safe against customers and police because of their religious status.⁵ Consequently, brothel keepers tend to procure their girls as devadasis to protect themselves against the law enforcement authorities⁶.

¹Lim, Lin Lean *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia*
https://en.wikipedia.org/wiki/Child_prostitution (1998) (last visited 25 June 2017).

²K. C. TARACHAND, DEVADASI CUSTOM: RURAL SOCIAL STRUCTURE AND FLESH MARKETS 129-32 (Reliance Publication House 1991).

³Damian Grammaticas, *Slave to the Goddess of Fertility*, BBC NEWS, June 8,2007,
<http://news.bbc.co.uk/2/hi/southasia/6729927.stm>. (last visited on 26 June 2017).

⁴Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: India, 236, U.N. Doc. CRC/C/93/Add.5 (July 16, 2003)

⁵TARACHAND, *supra* note 2.

⁶*Id.*

ORGANISATION: LOCALITIES, GROUPS

In India nearly 1.2 million sex workers are below the age of 18 with about 40 underage girls being forced into prostitution on a daily basis.⁷ The Tribal community of Bedia in Bharatpur takes pride in their family business of prostitution who, customarily, were entertainers⁸. Minor girls stand along the roadside with their fathers or brothers who fix 'price' for them. In locations such as Wadia in Gujarat, Natpurwa in Uttar Pradesh, and the Bachara tribe in Madhya Pradesh, Kanjars, Nuts in Khakranagla are some of the places and tribes where this practice is extensive. An estimated 6 to 10 thousand children from Nepal and Bangladesh were trafficked in the country annually for commercial sexual exploitation.⁹ These children are brought to major prostitution centers of Mumbai, Kolkata, and New Delhi.

Sexual exploitation of boys is also not uncommon. It has been found on a study that in three of India's major pilgrimage centers Puri, Tirupati and Guruvayoor in southern Andhra, male children are into prostitution at Hindu temple sites. In Tirupati, a survey of boys aged between 6 to 18 years revealed that sexual abuse of boys is rampant due to demand from domestic tourists. Pressure on boys to earn living was cited as the reason. 'Family members saw less risk when male children are involved in selling sex as compared to girls, as the social stigma is less and the fear of pregnancy does not exist,' the report said.¹⁰

⁷ New video on underage prostitution goes viral on YouTube, <http://indiatoday.intoday.in/story/underage-prostitution-bachpan-bachao-andolan-video-youtube/1/326394.html> (last visited Jun 26, 2017).

⁸*Child prostitution in India: Awareness can help!* :News, [Indiatoday.intoday.in\(2017\)](http://indiatoday.intoday.in/education/story/child-prostitution-in-india-awareness-can-help/1/326450.html) <http://indiatoday.intoday.in/education/story/child-prostitution-in-india-awareness-can-help/1/326450.html> (last visited Jun 26, 2017).

⁹ U.S. Dept of State Bureau of Democracy, Human Rights, and Labor, March 8, 2006 www.state.gov/g/drl/rls/hrrpt/2005/61707.htm(last visited on 26 June 2017)

¹⁰DeutschePresse-Agentur(GermanPressAgency)DPA,NewDelhi,Mar10,2009 [www.monstersandcritics.com/news/southasia/news/article_1463757.php/Prostitution_of_boys_at_Indias_pilgrim_sites_called_rampant_\[accessed on 29 May 2011\].](http://www.monstersandcritics.com/news/southasia/news/article_1463757.php/Prostitution_of_boys_at_Indias_pilgrim_sites_called_rampant_[accessed on 29 May 2011].)

Though India has ratified a series of international human rights instruments but still the devadasi system continues to remain a localized religious issue, so the provisions under the conventions do not specifically deal with the issue.¹¹

In addition to the domestic customers of India's sex industry, foreign customers spur brothel keepers to continue their business through devadasi system so that they can easily buy preteen virgin girls.¹²

All but 4 states- Maharashtra, Madhya Pradesh, Gujarat and Goa- were found to have their child boys more vulnerable to any type of sexual abuse than the child girls. In Delhi, a staggering number-65.6% of boys were reported to have been sexually exploited.

A study found out that the children between the age group of 11- 18 are most at risk of being sexually exploited, although the children between 6-10 have also been reported significant cases of assault. Analyzed by the age group, as founded by the study, the sexual assault was found as: "63.64 per cent child respondents in the age group of 15-18 years, 52.43 per cent in the age group of 13-14 years and 42.06 per cent in the age group of 5-12 years."¹³

A TERRIFYING STIGMA

In 2007, Union Ministry of Child and Women released a thoughtful- yet terrifying- study on Child Abuse and child prostitution in India. More than 12,000 children were polled to arrive at the empirical picture of sexual abuse or prostitution of children in India. 53% of the children claim that they have experienced some or the other type of sexual abuse. More than a fifth were reported to have faced "severe sexual abuse" that includes fondling adult's private parts, being forced to be photographed naked, etc. Over half of those reporting severe sexual abuse were boys, the study reported.

¹¹Comm. on the Elimination of Discrimination Against Women, Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women: India, 42, U.N. Doc. CEDAW/C/IND/2-3 (Oct. 19, 2005) [hereinafter CEDAW, Consideration].

¹²Allan Urry, *Goa - New Paedophile's Paradise*, BBC NEWS, Jan. 8, 2007, <http://news.bbc.co.uk/2/hi/southasia/6230957.stm>.

¹³S.Murali, *The ugly face of human trafficking*, The Hindu, Feb.27, 2016, at 6.

CAUSES

“Prostitution is not inevitable, it is only about unequal distribution of power,” said Author/Activist Gloria Steinem, while talking about “Feminist approaches to combating sex trafficking and prostitution”.¹⁴

Speaking about the situation in India, the founder-President of Apne Aap- An organization dealing with prostitution, Ruchira Gupta, said that the familial Socio-Economic factors contribute a great deal towards the exploitation, trafficking and prostitution of children and women in India. . “Ninety per cent of trafficking in India is internal, and those from India's most disadvantaged social economic strata including the lowest castes are particularly vulnerable to forced or bonded labor and sex trafficking,” she said.¹⁵

Extreme poverty, lack of free public education and absence of employment opportunities have forced girls into the temple prostitution under the name of the custom.¹⁶ One devadasi girl related, “My parents didn’t have a male child, so there was nobody to earn a living in the family. Instead they turned me into a whore. I don’t even remember when I started because I was so young. My parents thought that at least they will get some money from me”.¹⁷ Another devadasi girl testified that when she was thirteen, her virginity was auctioned off by her parents to the highest bidder.⁹

CONSEQUENCES

The most devastating and deadly risk that sexually exploited children face worldwide is the exposure to acquired immunodeficiency syndrome virus (AIDS). Young female prostitutes are seen as the primary carrier of the AIDS virus and as such are most responsible for its spread

¹⁴ *Id.* at 13.

¹⁵ *Id.* at 13.

¹⁶Project Combat Launched to Eradicate Devadasi System, HINDU (INDIA), Jan. 30, 2006 <http://www.hindu.com/2006/01/30/stories/2006013020130300.htm> [hereinafter Project Combat]; BROKEN PEOPLE.

¹⁷ Grammaticas, *supra* note 3.

throughout India.¹⁸ Therefore they prefer child prostitutes believing the risk of infection to be lower.¹⁹

Pregnancy is also common among young female prostitutes, as there is developing complications in giving births.²⁰ Child prostitutes and other sexually exploited children are also susceptible to a number of psychological effects such as severe depression, low self-esteem, post-traumatic stress disorder, and attempted suicide.²¹ Some children runaway and some are put in restitution homes where even they become dependent on alcohol and drugs. Poverty is the main factor, which is forcing parents to send their daughters into this area for employment. “Even when girls are rescued, families are unwilling to take them back,” says police source. “This has become a common story in a rural area.”²²

LEGAL OR ILLEGAL ?

Major legislation that deals with the Prostitution/ Child prostitution in India is Immoral Traffic (Prevention) Act, 1953 and some sections of the Indian Penal Code(IPC).

The section 5 of Immoral Traffic (Prevention) Act says that

“(a) Any person who procures or attempts to procure a [person], whether with or without [his] consent, for the purpose of prostitution; or a [person], whether with or without [his] consent, for the purpose of prostitution; or

(b) induces a [person] to go from any place, with the intent that [he] may for the purpose of prostitution become the inmate of, or frequent, a brothel; or [person] to go from any place, with

¹⁸ Friedman, Robert I. *India's Shame: Sexual Slavery and Political Corruption Are Leading to an AIDS Catastrophe*. The Nation 262:12 (1996).

¹⁹ Flowers, R. Barri, *The Prostitution of Women and Girls*. Jefferson, NC: McFarland(1998).

²⁰ Widom, Cathy S. and Joseph B. Kuhns Childhood, *Victimization and Subsequent Risk for Promiscuity, Prostitution and Teenage Pregnancy: A Prospective Study*, American Journal of Public Health 86:1607 (1996); World Health Organization, *Commercial Sexual Exploitation of Children: The Health and Psychological Dimensions*. Paper presented at the World Congress Against Commercial Sexual Exploitation of Children, Aug., Stockholm(1996).

²¹ Flowers, R. Barri *The Prostitution of Women and Girls*. Jefferson, NC: McFarland (1998); U.S. Department of justice *Prostitution of children and child sex tourism: An Analysis of Domestic and International Responses*. Alexandria, VA: National Center for Missing & Exploited Children (1999).

²²Haima Desshpande, *Using minors in prostitution is a billion dollar industry in the city* (2017), http://www.dnaindia.com/mumbai/report_using-minors-in-prostitution-is-a-billion-dollar-industry-in-the-city_1083952 [accessed 24 May 2011] (last visited Jun 26, 2017).

the intent that [he] may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a [person], or causes a [person] to be taken, from one place to another with a view to [his] carrying on, or being brought up to carry on prostitution; or

(d) causes or induces a [person] to carry on prostitution,[person] to carry on prostitution, [shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years: Provided that if the person in respect of whom an offence committed under this sub-section,—

(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;]”²³

Sections 372 and 373 of Indian Penal Code also, dealing with prostitution , say that:

372. “Selling minor for purposes of prostitution, etc.—Whoever sells, lets to hire, or otherwise disposes of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.”²⁴

373. “Buying minor for purposes of prostitution, etc.—Whoever buys, hires or otherwise obtains possession of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person

²³ Immoral Traffic (Prevention) Act, 1953, Sec.5.

²⁴ Indian Penal Code, 1860, Sec.372.

or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”²⁵

SHOULD IT BE LEGALIZED? : HANDLING THE CURRENT IMBROGLIO

For one, India simply doesn't have either the legal instruments or police infrastructure to deal with the crimes against children. Recently, two of the Punjab and Haryana High Court judges said that they intend to release guidelines regarding prosecution in child abuse cases. But, proper legal instruments are required for such steps to yield results.

In 1974, National Policy for Children declared children as “Supreme National Asset”. No country in which half of the children report sexual abuse can claim that with honesty. Our silence and inaction towards the pedophiles in our homes as well as in brothels makes us complicit in the crimes perpetrated against our children.

Without any kind of doubt, every action directed against prostitution has to focus on ending the evil. According to an organization “Apne Aap”, the traffickers buy children from their parents at small prices and sell them to another one, where they are subjected to repeated rapes. If the places are raided by police and children returned to their parents, they are sold again to the same broker. A study by the organization reports that more than 30% of the prostituted persons in India are below the age group of 18.

The major opinion that suffices right now in the masses of the whole country is to criminalize prostitution. It is believed that with the growing demand for sex, the numbers under the blanket of prostitution will only increase.²⁶

EMERGING FROM THE SHADOWS: THE UGLY SIDE OF THE COIN

“We are women first, and sex workers only after that. We want you to recognize sex work as work. Instead of viewing us through the lens of social morality, we wish you would see us for

²⁵ Indian Penal Code, 1860, Sec.373.

²⁶ Samudranil, *Legalizing Prostitution in India*, MAPS OF INDIA(Aug. 20, 2015, 10:04 AM)
<http://www.mapsofindia.com/my-india/india/legal-prostitution-in-india>.

what we are. Many of us are single women, supporting our children and old parents. We are informal, unprotected workers. Why should you and the police treat us as criminals?"²⁷

Sex workers, speaking for an estimated three million workforce, are emerging from the shadows from across the India. Sex worker representatives from Chennai, Delhi and Kolkata, energized with a new-found but hard-won confidence, and are stigmatized as they fight violence, criminalization and continuous citizenship denials that routine up their lives now. ²⁸

Their biggest complaint is against the Immoral Traffick Prevention Act,1956, that does not criminalizes prostitution per se , but a lawyer's collective working with regard to criminalization of sex work claim that the act ' de facto criminalizes the sex work as it prohibits soliciting, brothels and street work and this has effectively 'prevented sex workers and even their relatives and associates of legal protection and basic dignities of life.'²⁹

It is claimed that a hard and fast law is necessary to eliminate child trafficking and prostitution but what is needed is specific robust laws that eradicate the evil and not the wide statutes that deny the women, children or their family members even the right to live their lives with dignity. Moreover, the women involved voluntarily are being assaulted and harassed in the name of law.³⁰

The act prohibits brothels, and any premises shared by the sex workers including their residents. Often, they are thrown out by the police along with their children from the only roof that they have in the name of closing down brothels. The act criminalizes them, their children (as soon as they turn 18) and the adults whom they support.³¹

The sex workers are most beaten down by the section 8 of Immoral Traffic Prevention Act, which criminalizes soliciting, drawing attention of customers from visible, conspicuous site, either on a street or in a private dwelling. As the lawyer's collective claims " The criminalization of soliciting is the most obvious legal problem faced by the sex workers, as the act does not

²⁷ *Id.*

²⁸ *Id.* at 26.

²⁹ *Id.* at 26.

³⁰ *Id.* at 26.

³¹ *Id.* at 26.

clearly defines what constitutes the term ‘soliciting’ and sex workers are often arrested even when they are not soliciting as the police wrongly interpret the term.³²

The police are armed with wide and unusual powers to search and raid a home which is doubtful of being a brothel. Magistrates can order arrest, eviction of the workers and send them to rehabilitation homes which are often low-resourced, undignified and violent spaces. Moreover, many sex workers claim that they have difficulty in getting their children admissions in schools as the admission forms demand the parents name and profession and they do not want to disclose their profession to the school for protecting their children from its stigma.³³

CONCLUSION: LEGALIZING PROSTITUTION: WHY AND HOW ?

Prostitution is definitely a demeaning and contagious practice and previous experiences and consequences have shown that dealing with it is not easy. As it may sound a little awkward, prostitution is the oldest profession and has continued even after uncountable efforts at eliminating it. The fact that it has survived various coercive efforts at totally eradicating it indicates that regulating the practice totally in its current form may not be a viable solution of the issue.³⁴

Certainly, the ways to tackle the issue need to be pondered upon. We need to come to terms with the practice and work out a solution to at least minimize, if not totally eliminate, the negative effects that the practice is having on the society.

As there is a sheer lack of legal instrument, healthy rehabilitation cells, police infrastructure, economical alternative, public resources for compensating the people involved in India right now, a blanket ban on prostitution will definitely cause hue and cry, rather than relieving the situation. We need to handle the situation with at most care and by looking at both the sides of the coin. The first step towards the goal would be to decriminalize the sex trade. Legal prostitution will lead to regulation and management of it.

³² *Id.* at 26.

³³ *Id.* at 26.

³⁴ George Paul, *Legalizing Prostitution*, The Hindu, December 02, 2007, at 6.

In India, according to the current legal status, the seller of sex is only culpable, while the buyer goes free. This leads to involvement of the middlemen, i.e. brokers, in the activity, leading to a much more number of people being involved in the activity. The author here wants to enunciate that buyer and seller both should be allowed to carry out the practice in a controlled environment rather than allowing governmental action against one or more party. This will lead to elimination of brokers, a large number of people involved in the activity and safety will be provided to both buyer and the seller.

Moreover, since a high majority of the people involved in the activity comes from very low economic strata, if the government action be directed towards uplifting health, hygiene and other socio-economic levels of the people involved, this will definitely lead to a decreasing involvement of people in the activity.

Sweden has been successful in decreasing the number of prostitutes by enacting a legislation that criminalizes the same. However, it would be naïve to compare Sweden with India. Sweden is a true welfare state while India just professes to be one. Sweden has enough public resources to compensate the workers which are equal or more than the lost wages. The first step to rehabilitate the workers will be to compensate them as they are being put out from their jobs. With a sheer lack of resources and a very large involvement in the activity, it will be simply impossible to do it in India.

Finally, we need to manage the problem of health in a country like India which is reeling under high pressure of sexually transmitted diseases. A bulletin of the World Health Organization says “it makes practical sense to monitor prostitution and what better way is there to monitor it than by legalizing and regulating it?”. It can certainly not be done on an invisible population functioning underground.

Prostitution is undoubtedly an undignified proposition, especially of children. But we need to handle this pragmatically and not emotionally. When we reach the socio, political and

economical levels of Sweden, we may be able to provide solace to the exploited. But it may take a long time.³⁵

³⁵ *Id.*