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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE WORLD'S OLDEST PROFESSION CURSED WITH SHAME: AN ANALYSIS OF THE POSITION OF SEX WORKERS AND ITS CORRELATION WITH SEX TRAFFICKING AND FORCED PROSTITUTION.

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Sex work (Prostitution) has been a profession which has often been de-humanising and dangerous to its workers. Many of these workers are stuck in a never ending cycle of abuse and forced labour. Or they have no other prospects hence unable to leave the cycle. This dehumanisation has often victimised these women. And due to this position of sex workers despite of it high demand in our society, many women and girls are trafficked into these rackets. This paper aims to analyse the dehumanisation and victimization of sex workers and its correlation to sex trafficking. This paper also aims to shine light on the impact of caste and gender identity on the same. The paper looks to focus on if victimization and dehumanization of these workers do in fact lead to causation of the rise in sex trafficking as this treatment of the workers ignores the victims and reduces their chances of being rescued. And the paper will also highlight the disadvantageous position of lower caste women and transgender women when it comes to sex trafficking and their chances of being rescued. The paper would provide an economical analysis of the demand of sex work relation with dehumanisation and ultimately trafficking. The paper would undertake analysing existing crime bureau data, victim testimonials, existing legislative reports and independent research and legislations surrounding the profession of prostitution and sex trafficking to draw the aforementioned correlation and/or causation. The paper also provides solutions to address certain facets of the problem, through sensitisation, awareness and forming tactical policies for rescue of these sex workers. But this paper is not a complete study on this theory of correlation and causation between dehumanisation. This paper also highlights the importance of the society humanising these workers.

Keywords; Prostitution, Sex trafficking, Correlation, Causation, Dehumanization.

Introductions

Sex work is related to different activities including the trading of resources, for sexual favors or stimulation, gratification, and other sexual acts. It also has different forms, including brothel-based sex work, sexual massage, stripping, street prostitution, and more. Commercial sex workers, both male and female, provide sexual services in exchange for money.¹

Explaining sex trafficking, Sex trafficking generally involves three key elements: the use of force, fraud, or coercion; the transportation or movement of individuals across cities, states, or countries; and their subsequent sexual exploitation (Hughes, 2005). According to the 2018 Global Report by the United Nations Office on Drugs and Crime (UNODC), more than 70% of trafficking victims were female and subjected to sexual exploitation.²

This paper focuses on female sex workers in India and their struggles and how societies and the legal paternalism contributed to sex trafficking and forced prostitution instead of its intention to rescue, rehabilitate and prevent sex trafficking.

Legal Status of Sex Work in India

Sex work, though legalized by the laws, operates under very ambiguous structures of legality. For instance, "the constitution guarantees fundamental rights under articles 14 to 18 (equality), article 19 (right to profession), and article 21 (right to dignity) that apply to each citizen of this country, of course, extending to the members of sex works too". However, the act of running brothels, pimping, and the employment of minors are held criminal under the immoral traffic (prevention) act, 1956.³ code of criminal procedure, section 375c, this provision ensures that all victims of rape, whether prostitutes or otherwise, receive equal opportunities for medical services, including adequate and prompt medical care. ⁴the industry brings in an amount of ₹ 40,000 crore each year, establishing its importance in the economy.⁵

¹ Cunha, J. D. "Prostitution in a Patriarchal Society—A Critical Review of the SIT Act." *Economic and Political Weekly* 22, no. 45 (1987): 7–8. Available at: <https://www.epw.in/journal/1987/45/special-articles/prostitution-patriarchal-society-critical-review-sit-act.html> (Accessed: 16 October 2018).

² United Nations. *Global Report on Trafficking in Persons 2018*. United Nations Office on Drugs and Crime, 2018. https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf.

³ Bakhtavar, Adeeb. "A Silhouette of Society: Sex Workers & Prostitution in India." *International Journal of Law and Research* 2, no. 7 (January 2024). ISSN: 2582-6433.

⁴ Criminal Procedure Code, 1973, Act 2 of 1974, *India*

⁵ Supra note 3

Judicial Outcomes Protecting Sex Workers

Francis Coralie v. Union Territory of Delhi (1981):

The Supreme Court interpreted Article 21 to extend its meaning as being able to live with dignity. The right to have food, shelter, clothes, and things which represent the nature of a human being are also part of dignified life, it declared. It also protected the intrinsic ability to express one's human form and engage in activities that allow the individual to do so.⁶

Gaurav Jain v. Union of India (1997):

The Supreme Court supported a rehabilitative approach, considering sex workers as victims of socioeconomic disadvantage. It focused on vocational training and self-employment schemes to empower them and rehabilitate them in society.⁷

Buddhadev Karmaskar v. State of West Bengal (2011):

The Supreme Court reiterated the absolute right of sex workers to life and dignity under Article 21, clearly prohibiting harm or violence against them.⁸

Justice Verma Commission Report (2013):

The Commission made the distinction between trafficked women and consenting adults, who engage in sex work as a profession that is consensual adult sex work. It established the need for respect of autonomy and agency even as the trade was corrected through legal and social misconceptions.

These judicial decisions point out a need for an approach that guards the rights of sex workers in the face of protection against exploitation but advocates dignity, autonomy, and equal access to justice.⁹

Legal status of sex trafficking in India

The laws against sex trafficking in India are multifaceted and involved various legislative measures for the prevention and penalization of human trafficking, especially sex trafficking.

⁶ *Francis Coralie v. Union Territory of Delhi*, (1981) 1 SCC 608 : AIR 1981 SC 746.

⁷ *Gaurav Jain v. Union of India*, (1997) 8 SCC 114 : AIR 1997 SC 3021.

⁸ *BudhaDev Karmaskar v. The State of West Bengal* Criminal Appeal (SC) No. 135 of 2010.

⁹ Justice Verma Committee, *Report of the Committee on Amendments to Criminal Law*. Government of India, January 23, 2013. Available at <https://www.sconline.com/Members/SearchResult.aspx>.

Key Legislative Framework

- Immoral Traffic (Prevention) Act, 1956 (ITPA): It is the principal legislation against commercial sexual exploitation through trafficking. This act criminalizes prostitution and offenses related to it and prescribes punishments that may extend from seven years to imprisonment for life for the perpetrators.¹⁰
- Bharatiya Nyaya Sanhita (BNS): The Bharatiya Nyaya Sanhita (BNS) includes comprehensive provisions to combat human trafficking and related offenses. Section 367 addresses the kidnapping or abduction of minors for prostitution, prescribing a maximum punishment of 10 years imprisonment.¹¹ Section 369 criminalizes the sale or transfer of minors for sexual exploitation, reinforcing protections for vulnerable individuals.¹² Sections 474¹³ and 475 discuss trafficking in persons, which are activities such as recruiting, harbouring, or exploiting people for forced labor or sexual exploitation.¹⁴ These sections thus reflect a powerful legal framework that tackles trafficking comprehensively and ensures justice for victims.
- Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018: This new bill seeks to create a better framework for fighting trafficking by having investigation and rehabilitation authorities at every level. The bill classifies some forms of trafficking as "aggravated," which attracts greater punishment.¹⁵
- Protection of Children from Sexual Offences (POCSO) Act, 2012: This act provides specific protections against sexual abuse and exploitation of children, ensuring child-friendly mechanisms in legal processes.¹⁶

Convergence and distinction of consenting adults and trafficked victims.

In feminist literature, sex trafficking and sex work are often portrayed as opposing concepts. Trafficking is associated with violence and exploitation, while sex work advocates for the rights of women who choose to engage in it voluntarily. This dichotomy obscures the similarities between these experiences.¹⁷

¹⁰ Immoral traffic prevention act, 1956, acts of parliament, 1956, India.

¹¹ *Bharatiya Nyaya Sanhita*, No. 43 of 2023, § 367 (India).

¹² *Bharatiya Nyaya Sanhita*, No. 43 of 2023, § 369 (India).

¹³ *Bharatiya Nyaya Sanhita*, No. 43 of 2023, § 474 (India).

¹⁴ *Bharatiya Nyaya Sanhita*, No. 43 of 2023, § 475 (India).

¹⁵ *The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018* (India).

¹⁶ *Protection of Children from Sexual Offences (POCSO) Act, 2012* (Act 32 of 2012) (India)

¹⁷ George, Annie, U. Vindhya, and Sawmya Ray. "Sex Trafficking and Sex Work: Definitions, Debates and Dynamics: A Review of Literature." *Economic and Political Weekly* 45, no. 17 (2010): 64–73.

For demonstration two case studies are taken into consideration, case studies illustrate the complexities: one girl was sold into prostitution by her uncle after being married off early, while another entered sex work after being pushed by a local woman following her husband's abandonment. Both narratives highlight shared backgrounds of poverty, early marriages, and limited opportunities. It thus fails to make a distinction between trafficking and consensual sex work, which tends to overlook the common vulnerabilities that place women in these situations, including economic hardship and dysfunctional family structures.¹⁸

The State often fails to recognize sex work as a legitimate choice, instead conflating it with trafficking and neglecting the socio-economic contexts that contribute to women's circumstances. Myopia allows the state to sidestep responsibility for perpetuating conditions that expose women to exploitation. Gazing on trafficking through a developmental lens reveals that many women are trafficked out of family economic desperation. Hence, their commodification can be contextualized as a survival strategy rather than mere violence or coercion. If trafficking is considered purely to be a violation of negative rights, responsibility falls on individual families; however, when viewed through the lens of systemic failure in terms of development, it makes the state accountable too.

Many women, moreover, will go into sex work as a considered decision in highly constrained informal labor markets, in which it can pay better than anything else that is available. Hence, it should not be castigated absolutely, but instead situated within wider issues of development relating to equity in the economy and social justice. It is, therefore, in the understanding of their interrelatedness within socio-economic frameworks that one will find the resolution of the complexities surrounding sex trafficking and sex work.

The Reality of Sex work

The grim realities of this principle are that the laws in India are just on paper;

- This is a widespread problem: Many people are trafficked for sexual exploitation, forced labor, and other forms of servitude. Corruption among officials often undermines enforcement efforts, and thus the traffickers have a free hand.¹⁹

¹⁸ "Sex Work, Sex Trafficking, and Myopia of the State." *Economic and Political Weekly* Vol.56, Issue no. 43 (October 23, 2021).

¹⁹ id

- Underreporting and Mismanagement: There is considerable underreporting of trafficking cases, which often occurs due to societal stigma and fear among victims. In addition, the criminal justice system faces wrongful arrests and mismanagement of cases.²⁰
- Economic Vulnerability: Many victims come from poor backgrounds where economic desperation makes them vulnerable to trafficking. Early marriages and lack of education further aggravate their vulnerabilities.²¹
- Comprehensive solutions are necessary: laws notwithstanding, the lack of proper implementation and comprehensive measures that would solve the problem from the roots such as poverty and illiteracy, remain unaddressed.²²

To put it briefly, though the country has legal framework against the trafficking of women into prostitution, there is an acute systemic flaw, like corruption, under-reporting, and socio-economic vulnerability that makes it continue to go around in a circle.

To further this notion of a qualitative report which includes sex workers from Hyderabad and Chennai is discussed here;²³

Experiences among sex-trafficked persons usually begin with a person or a family's financial situation that makes them vulnerable to falling prey into a compromising situation where they are ignorant of the nature of work promised. In many instances, debt or abusiveness in their living homes confines the sex workers; this crosses the reality between sex trafficking and consensual sex work.²⁴

Most of the trafficked individuals are women and girls belonging to low-income rural families often married at an early age and are socially and economically disadvantaged. Family dynamics is complex; a family can prove to be helpful during rehabilitation; otherwise, it would also contribute to vulnerability, mainly in larger families facing financial crises. The age of

²⁰ id

²¹ id

²² id

²³ Nisha James & Shubha Ranganathan, Of Vulnerability and Agency: Perspectives from Survivors of Sex Trafficking in India, 15 Indian J. Hum. Dev. 117 (2021).

²⁴ id

victims in trafficking cases varies widely, with many being under 18 years old and lured by promises of well-paying jobs or escaping abuse.²⁵

The educational background is generally low, with many participants being illiterate or having minimal schooling, which limits their employment options and increases susceptibility to trafficking. Most individuals were engaged in low-wage jobs before trafficking, and many sought better opportunities that led them into exploitative situations.²⁶

After trafficking, survivors often gain empowerment through work with NGOs that provide skill training and support, helping them rebuild their lives.²⁷

However, stigma and fear of seeking help persist, and many survivors continue to face challenges even after rehabilitation. A significant number of participants reported experiencing abuse prior to trafficking, making them vulnerable to traffickers who exploit their trauma. Overall, the stories of victims of sex trafficking portray a complex interaction of socio-economic factors, family dynamics, and systemic vulnerabilities that lead to their exploitation.

To highlight these findings and to imbue substance to them a few case studies and real life experience of sex workers are referenced here;²⁸

- Elizabeth's Story: Elizabeth is the youngest of three daughters in a middle-class family. Caste barriers prompted her to elope with her lover at 16. She was later abandoned by her husband when he incurred a debt and trafficked while searching for work. Her case is a typical example of how caste-based societal norms and fear of stigma can lead to trafficking.
- Shaila Banu's Story: Shaila is a 13-year-old girl hailing from a middle class Muslim family, who eloped with her Hindu lover, when her mother died. She was forced into an abusive marriage. A trafficker preyed upon her loneliness and vulnerability.
- Rajni's Story: Rajni was an illiterate girl from a poor family. Her father abandoned her, and her stepfather used to abuse her. After her mother's death, Rajni tried to support her

²⁵ id

²⁶ Supra note 15

²⁷ Supra note 20

²⁸ Nisha James & Shubha Ranganathan, Of Vulnerability and Agency: Perspectives from Survivors of Sex Trafficking in India, 15 Indian J. Hum. Dev. 117 (2021).

stepsister. She was tricked into trafficking while seeking work to escape her circumstances.

These stories illustrate the complex interplay of gendered vulnerabilities, societal norms, and abuse that lead people into trafficking. Vulnerability is not confined to pre-existing conditions but continues to shape survivors' experiences long after their rescue and rehabilitation.

The intersection between sex-work and abuse and the transgender community.

Focusing on qualitative reports from sex-workers in the red-light district of Mumbai which is a limited but an accurate representation of the focus group. Many in the transgender community due to employment discrimination do not find any work so are pushed into sex-work, which leaves them extremely vulnerable to abuse due to an intersection of misogyny, transphobia, weak economic condition and fetishism.

Some testimonies and experience from certain individuals of the community reveal the rampant abuse that they face such as in the following cases;

a) In the case of Vimla where her advocacy for condom use leads to constant abuse as highlighted in her statement; “‘Rowdies’ [an Indian term for hooligans] keep teasing us, abusing us and beating us. They force us to have sex without a condom ... whenever we see them we runaway.” Vimla also highlights the injustice and abuse that she and the community faces from the police in her testimony; “The police give us maximum trouble. They beat us and we run away. If they catch us we have to pay a lot of money ... whatever money we have they take away. They [police] try to have sex with us for free, that too without a condom. If we do not agree they beat us and we have to pay money to get released.”²⁹

b) In the case of Reena who was let down by the Justice system when she complained to the police about her rape and they took little to no action as testified by her; When I complained to the police about being raped, they said, ‘They are hooligans ... where to look for them?’ I did not go back because I know the police will not take any action.”²³ Reena also highlights how her consent has been constantly immaterialised in her iteration of a gang rape she suffered; “Clients invite me to their room but I do not go. I am scared how they will behave there.

²⁹ Deepika Ganju & Niranjana Saggurti Stigma, violence and HIV vulnerability among transgender persons in sex work in Maharashtra, India, *Culture, Health & Sexuality*, 19:8, 903-917, DOI: 10.1080/13691058.2016.1271141 (2017)

Because some time ago, a client took me to his house and seven men had forced sex with me and paid nothing.”³⁰

c) In the case of Meera who was testifying for a friend who was dragged in broad daylight amidst a market by some men who later raped her and she did not report it or reach out for support because she was afraid as outlined in her testimonial;” Hooligans harass us and nobody dares oppose them. They raped my transgender friend. She was too scared to tell anyone. She was taken by force in front of the shopkeepers. Nobody dared say anything”³¹

The State’s tunnel vision

A person engaged in sex work could be for multiple reasons, could be financial constraints, family background, literacy and many more. But the state and by large the society puts sex workers in one box as immoral beings with their primary motive being a thirst for money. The state also views sex workers only through the lens of their HIV status, their minority and their crime record (which is often unreliable due to police insensitivity addressed later in the paper)

The women who are forced into sex work are often shrouded by this biased variable leaving a huge lacunae in the law and its implementation. The state’s blindness to the individuality of sex workers influenced by society’s opinion on sexual freedom and unfocused variables, leads to violence among these circles and reduces the chance of these women who want to break the cycle in breaking the cycle and chain of abuse or exploitation. Owing to the fact of a phenomenon termed hidden victimization.

The term hidden victimization is relatively under-represented in current studies but forms one of the very subtle and normally overlooked forms of victimization not brought to the public eye. In the context of commercial sex workers, such a concept particularly applies since prostitution is criminalized. It may be because, due to such criminalization of the profession of sex work, the unrecognized legal and social status of the business prevents the reporting of anti-social activities or abuse within the business.³²

³⁰ Id at 912

³¹ Id at 910

³² Nair V.V (2019). The State of Victimization of Commercial Sex Workers in India, Journal of Legal Studies & Research, Vol 5 Issue 1 (February 2019), ISSN 2455-2437

In most cases, the allegations are dismissed by the law enforcement agencies or police officers and the blame is shifted to the sex workers; these incidents discourage people from reporting any acts of abuse, torture, or harassment. And eventually, they are silent. The stigma, judgment from the society, and internal self-blame increase the situation; victims do not move forward for justice or social aid.

Hidden victimization occurs when victims are unable to report or respond to their victimization due to societal norms or internalized guilt. This results in long-term psychological damage and conditions that are conducive to further victimization.

The correlation between the victimization and failure to rescue sex workers who are abused and trafficked.

In light of the above studies and theories it is clear that how women are subjected to this cycle of abuse because of the tunnel vision of the state that victimises them instead of acknowledging their individuality and humanity. This tunnel vision has also severely affected the prevention of trafficking and coercion into sex work. The state does not acknowledge the lack of literacy, financial constraints, threats to life and abuse that pushes many women into prostitution or makes them vulnerable targets for trafficking. It also affects rescuing women from these rackets because the demonisation of the trade has caused apprehension in reporting of abuse or harassment in the racket or even information on the racket because the persons privy to the information on these rackets are more apprehensive of law enforcement to provide crucial information in rescuing these girls and women.

The states hyperfocus on girls below age of consent also leaves a huge lacunae of women forced into prostitution early on and have been in the trade for a while unwillingly but are not a focus are for rescue.

Conclusion

The ignorance of the intersectionality such as gender identity, class, status of labour has lead to an increase in forced sex work. And causes the hidden victimization of theses women which is rooted in society's in extension the state's affinity to paternalism towards women and the refusal to acknowledge and accept women's sexual freedom. This phenomenon has caused a chain reaction which has lead to the demonisation of sex work and its participants hence

allowing the continuance of abuse to the most vulnerable of our society. A few recommendations to improve this situation.

1. Special officers who have been sensitised and certified to be incharge of cases of sex work to ensure the reach to the ones in need instead of ignoring these demographics
2. A overlooking guidance commission to keep law enforcement in check and to make them more approachable
3. Focus on educating girls from rural and semi rural areas as they are the most vulnerable to sex trafficking
4. Focus on organising grunt labour sectors, especially women, to avoid exploitation causing the chain reaction into coerced sex work
5. Pass legislation on the ambiguities of sex work and formally recognise it as a form of labour

When law and societal stigma are at a deadlock law must take action as it should here.

