

NECESSARY EVIL FOR MEN V. SEXUAL EXPLOITATION OF WOMEN

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There's been a lot of brouhaha over some of these while others have just never really been topics of discussion. But with changing times, our Constitution needs to evolve too. And it is high time that the Indian judiciary look at these laws and implement them.

India is quite the ostrich when it comes to matters like prostitution and even drug abuse. Just the authorities sticking their head in the sand and wishing it was gone won't make it disappear. Prostitution is one of the most thriving businesses in the country and unfortunately, since it is not legalized, there is no way to assist those caught unaware in the business. Also, legalizing the trade can help bring down trafficking, corruption and a host of other social evils prevalent in the country. Prostitution is more a business of individual entrepreneurship now than it was in the past. More teenagers are becoming prostitutes as well. Most prostitutes use drugs. The incentives to prostitution are the money and the feeling of independence offered by the profession. However, prostitutes face extreme physical and health dangers as well as the risks of fines and imprisonment. Social costs include the spread of venereal disease, the association of crime and drug use with areas of prostitution, and law enforcement costs. The United States is one of a small minority of countries that tries to suppress prostitution. Policy options for dealing with prostitution include providing support for prostitutes ready to leave the profession, decreasing the flow of illegal drugs into areas of prostitution, strictly enforcing laws against sexual discrimination in the labor market, and legalizing prostitution. Data tables, footnotes, and a list of 46 references are provided.

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In India, prostitution (the exchange of sexual services for money) is legal, but a number of related activities, including soliciting in a public place, kerb crawling, owning or managing a brothel, prostitution in a hotel,^[1] pimping and pandering, are crimes. Prostitution is legal only if carried out in private residence of a prostitute or others.

History

In ancient India, there was a practice of the rich asking Nagarvadhū to sing and dance, noted in history as "brides of the town". Famous examples include Amrapali, state courtesan. During the British East India Company's rule in India in the late 18th and early 19th centuries, the British set up comfort zones for British troops wishing to make young girls and women into sex tools to satisfy the British soldiers who frequently set up their own prostitution rings. A write up by the BBC of England states that British troops helped to establish prostitution dens across India in capitals such as Mumbai which is now the hot bed of child prostitution,^[2] Indian lascars seamen who were forced into the British military to the United Kingdom copied the masters by joining the British forces on frequent visits to the local British prostitutes there.

Organization

Government organizations like MDACS (Maharashtra District AIDS Control Society) have played a very prominent role in generating awareness on HIV/AIDS through the assistance in providing free literature and organizing street campaigns. There are several NGO that feed on funds for protecting STI/STDs spread to common population NACO (National AIDS Control Organization), a government agency leads these NGOs.^[3]

Prevalence

There are an estimated two million female sex workers in the country^[4] In 2007, the Ministry of Women and Child Development reported the presence of over 3 million female sex workers in India, with 35.47 percent of them entering the trade before the age of 18 years.^[5] The number of prostitutes rose by 50% between 1997 and 2004.^[6]

Areas of Work

Brothels are illegal *de jure* but in practice are restricted to certain areas of any given town. Though the profession does not have official sanction, little effort is made to eradicate or impede it. India's largest and best-known red-light districts are Sonagachi in Kolkata, Kamathipura in Mumbai and G. B. Road in New Delhi, that host thousands of sex workers.^[7] Earlier, there were centres such as Naqqasa Bazaar in Saharanpur, Chaturbhuj Sthan in Muzaffarpur, Lalpur, Maduovwedih in Varanasi, Meerganj in Allahabad and Kabadi bazar of Meerut.

Underage Prostitution.

Surveys show there are an estimated 1.2 million children involved in prostitution. ^[8] International organizations like Free a Girl are very willing to assist the Indian police in capturing traffickers, pimps and sex offenders. Recently some child saving operations were canceled, as the higher police officials of Mumbai were very displeased with the presence of a foreign journalist. ^[9]

Research

Much new knowledge on sex work in India came from the first major survey, in April 2011. ^[10] This was performed by the Centre for Advocacy on Stigma and Marginalization (CASAM), which is part of SANGRAM, ^[11] a major NGO that deals with sex workers.

Legal Status

The primary law dealing with the status of sex workers is the 1956 law referred to as The Immoral Traffic (Suppression) Act (SITA). According to this law, prostitutes can practice their trade privately but cannot legally solicit customers in public. A BBC article, however, mentions that prostitution is illegal in India; the Indian law does not refer to the practice of selling one's own sexual service as "prostitution" Clients can be punished for sexual activity in proximity to a public place. Organized prostitution (brothels, prostitution rings, pimping, etc.) is illegal. As long as it is done individually and voluntarily, a woman (male prostitution is not recognized in any law in India but even consensual anal intercourse is illegal under section 377 of the Indian Penal Code) can use her body in exchange for material benefit. In particular, the law forbids a sex worker to carry on her profession within 200 yards of a public place. Unlike as is the case with other professions, sex workers are not protected under normal labour laws but they possess the right to rescue and rehabilitation if they desire and possess all the rights of other citizens.

In practice SITA is not commonly used. The Indian Penal Code (IPC) which predates the SITA is often used to charge sex workers with vague crimes such as "public indecency" or being a "public nuisance" without explicitly defining what these consist of. Recently the old law has been amended as The Immoral Traffic (Prevention) Act or PITA. Attempts to amend this to criminalize clients ^[12] have been opposed by the Health Ministry, and has encountered considerable opposition. In a positive development in the improvement of the lives of female sex workers in Calcutta, a state-owned insurance company has provided life insurance to 250 individuals. Over the years, India has seen a growing mandate to legalize prostitution, to

avoid exploitation of sex workers and their children by middlemen and in the wake of a growing HIV/AIDS menace.

Immoral Traffic (Prevention) Act - ITPA

The Immoral Traffic (Prevention) Act or ITPA is a 1986 amendment of legislation passed in 1956 as a result of the signing by India of the United Nations' declaration in 1950 in New York on the suppression of trafficking. The act, then called the All India Suppression of Immoral Traffic Act (SITA), was amended to the current law. The laws were intended as a means of limiting and eventually abolishing prostitution in India by gradually criminalizing various aspects of sex work. The main points of the PITA are as follows:

1. Sex Workers: A prostitute who seduces or solicits shall be prosecuted. Similarly, call girls can not publish phone numbers to the public. (imprisonment up to 6 months with fine, point 8) Sex worker also punished for prostitution near any public place or notified area. (Imprisonment of up to 3 months with fine, point 7)
2. Clients: A client is guilty of consorting with prostitutes and can be charged if he engages in sex acts with a sex worker within 200 yards of a public place or "notified area". (Imprisonment of up to 3 months, point 7) The client may also be punished if the sex worker is below 18 years of age. (From 7 to 10 years of imprisonment, whether with a child or a minor, point 7)
3. Pimps and babus: Babus or pimps or live-in lovers who live off a prostitute's earnings are guilty of a crime. Any adult male living with a prostitute is assumed to be guilty unless he can prove otherwise. (Imprisonment of up to 2 years with fine,)
4. Brothel: Landlords and brothel-keepers can be prosecuted, maintaining a brothel is illegal. (From 1 to 3 years' imprisonment with fine for first offence,) Detaining someone at a brothel for the purpose of sexual exploitation can lead to prosecution. (Imprisonment of more than 7 years,) Prostitution in a hotel is also a criminal offence. Procuring and trafficking: A person procures or attempts to procure anybody is liable to be punished. Also a person who moves a person from one place to another, (human trafficking), can be prosecuted similarly. (From 3 to 7 years' imprisonment with fine)

5. Rescued Women: The government is legally obligated to provide rescue and rehabilitation in a "protective home" for any sex worker requesting assistance.

Public place in context of this law includes places of public religious worship, educational institutions, hostels, hospitals etc. A "notified area" is a place which is declared to be "prostitution-free" by the state government under the PITA. Brothel in context of this law, is a place which has two or more sex workers (2a). Prostitution itself is not an offence under this law, but soliciting, brothels, madams and pimps are illegal.

→ Political and legal debates

Clauses in the ITPA relating to living of the earnings are being challenged in court, together with criminalization of brothels, prostitution around a notified public place, soliciting and the power given to a magistrate to evict sex-workers from their home and forbidding their re-entry. Other groups are lobbying parliament for amendments. The apex court accepted to examine the plea of the Central Government that sex workers should not be allowed to operate under the cover of working "with dignity". The government counsel contended that any such endorsement by the court would be ultra vires of ITPA which totally bans prostitution.

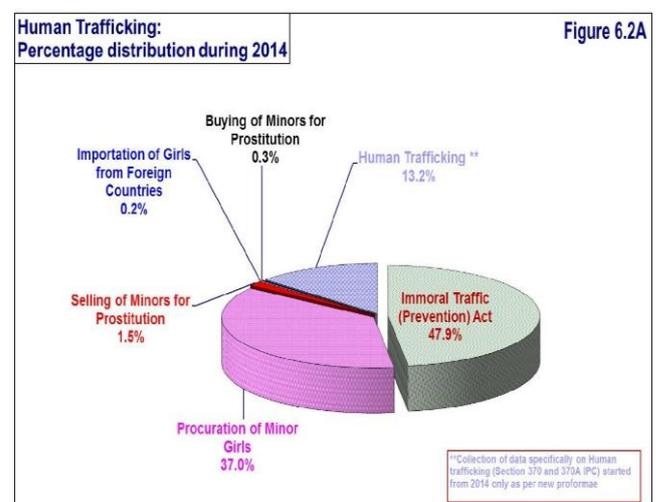
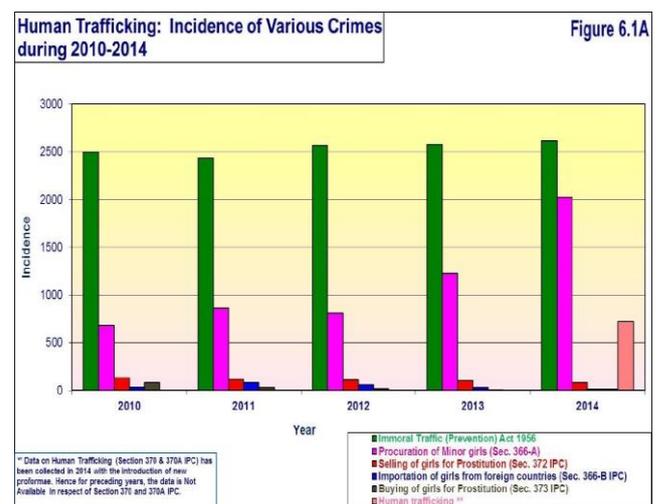
→ Reasons for entry

Most of the research done by Sanlaap indicates that the majority of sex workers in India work as prostitutes due to lacking resources to support themselves or their children. Most do not choose this profession but out of necessity, often after the breakup of a marriage or after being disowned and thrown out of their homes by their families. The children of sex workers are much more likely to get involved in this kind of work as well. A survey completed in 1988 by the All Bengal Women's Union interviewed a random sample of 160 sex workers in Calcutta: Of those, 23 claimed that they had come of their own accord, whereas the remaining 137 women claimed to have been introduced into the sex trade by agents. The breakdown was as follows:

1. Neighbour in connivance with parents: 7
2. Neighbor's as pimps (guardians not knowing): 19
3. Aged sex workers from same village or locality: 31
4. Unknown person/accidental meeting with pimp: 32

5. Mother/sister/near relative in the profession: 18
6. Lover giving false hope of marriage or job and selling to brothel: 14
7. Close acquaintance giving false hope of marriage or job: 11
8. "Husband" (not legally married): 3
9. Husband (legally married): 1
10. Young college student selling to brothel and visiting free of cost: 1

The breakdown of the agents by sex were as follows: 76% of the agents were female and 24% were males. Over 80% of the agents bring young women into the profession were known people and not traffickers: neighbors, relatives, etc.



Data on Human Trafficking under section 370 & 370A of IPC has been collected for the first time in 2014. ^[13]

A total of 720 cases of human trafficking under section 370&370A of IPC were reported in the country during 2014. Jharkhand has reported 150 such cases followed by Maharashtra with 108, Assam (68 cases), West Bengal (55 cases) and Madhya Pradesh (50 cases). However, maximum victims (2,605 persons) against 1,106 such cases were recovered/reported in Kerala during 2014.

- **Disposal of Crimes by Police**

Out of 8,521 cases for investigation, 4,937 cases were disposed of by police (investigation completed). Charge-sheets were submitted in 4,489 cases resulting in 94.6 charge-sheet rate under crimes related to human trafficking during 2014. 100% detection by police (i.e. charge-sheet rate) was made in section 6 & 8 of Immoral Traffic (P) Act during 2014. A total of 3,584 cases remained pending for investigation at the end of the year 2014

- **Disposal of Crimes by Courts**

Out of 17,599 cases relating to human trafficking under trial, trials have been completed in 2,284 cases during 2014. A total of 1,029 cases under human trafficking ended in conviction, showing a conviction rate of 45.1. Maximum conviction rates were observed in cases under the Immoral Traffic (P) Act (49.8) whereas lowest conviction rate was reported under procurement of minors for prostitution (12.6) during 2014. A total of 15,246 such cases remained pending for trial at the end of the year, showing pendency rate of 86.6

A total of 1,255 cases accused persons were either acquitted or discharged by various courts during 2014. All crime heads under human trafficking have shown high acquittals during 2014

- **Disposal of Person Arrested by Police**

Out of 21,694 persons (including 14,442 persons arrested), 12,378 persons were charge-sheeted under various crime heads relating to human trafficking during 2014. A total of 935 persons (consisting of 789 males and 146 females) and 3,328 persons (consisting of 2,386 males and 942 females) were charge-sheeted under sections 370 & 370A of IPC and the Immoral Traffic (Prevention) Act respectively during 2014.

A total of 276 (consisting of 225 males and 51 females) were released or freed by police or magistrate before trial for want of evidence or any other reason. Investigation in respect of 64,842 accused persons remained pending at the end of the year 2014

- **Disposal of Person by Court**

Out of 65,440 persons (including 12,378 persons sent for trial during 2014), trials have been completed for 6,303 persons. A total of 2,323 persons have been convicted under various crime heads relating to human trafficking during 2014, maximum such convictions were reported under the Immoral Traffic (P) Act (2,256 persons) during 2014.

A total of 3,951 persons were acquitted from all charges of offences relating to human trafficking and 29 persons were discharged for either want of evidence or otherwise by courts during 2014.

A total 72 persons against whom cases reported under offences relating to human trafficking were compounded by courts and against 4 persons the cases reported under human trafficking were withdrawn during 2014.

Trials of 46,683 persons remained pending in different courts at the end of the year 2014

References

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- [7] Sex tourism, Incredible India's dark side *CNN-IBN*.
- [8] "More than 1M child prostitutes in India". CNN. Archived from the original on 28 February 2011.
- [9] "Sputten En Slikken Op Reis - India En Kinder prostitute". BNN.
- [10] Pan-India Survey of Sex Workers April 2011
- [11] SANGRAM Is a voluntary organization that works at the grass root level with a lot of activists, volunteers and paid workers. It is slowly gaining importance as a practical training ground for other NGO's and GO's interested in working on HIV/AIDS in a rural context.
- [12] LEADER ARTICLE: Sex Workers Need Legal Cover-Editorial-Opinion-The Times of India.
- [13] Statistics collected from <http://ncrb.nic.in/>