

Periodic Research

Sex Workers' Human Rights Making Visible the Invisible



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Abstract

"You have done me favours
in literature, in poetry, in rituals;
You have worshipped me as mother,
celebrated as Nature.
Then, having painted my lips,
you left me on the streets as the fallen woman;
Yes, I am that woman."

-Anonymous

The debate that surrounds the legitimization of sex work is not new to our society. It is not merely a legislative policy debate rather one of morals and actual practice. In the middle of all this, what is being subsided is nothing but the rights of those who are involved in this work. And, so does the very first issue arise- whether sex work is a work? The paper thus deals with such questions and tends to throw some light on the contribution of International Labour Organization in this regard. Also, the paper shall aim to draw a comparative study between the policies of various nations which are categorized as- (1) where the prostitution is illegal and completely banned, (2) where the Prostitution is legal but procurement is illegal, and (3) those nations where the prostitution is legalized and regulated. The main focus shall retain on the condition of sex workers in India. It is an insensitive approach of the government towards these people which has made them live a life so abnormal quite normally. A new question that has been added after the recognition of third gender is that of their rights as most of them earn their livelihood through this industry only. Thus, the paper sets to look upon this dark area of study and shall propose a way in order to protect the rights of the sex workers who are no less than the other labour and thus it is required to extend the labour rights to this sector so as to protect the rights of those involved in this work.

Keywords: Sex Workers, Human Rights, International Labour Organization, Labour Laws, United Nations, Comparative Analysis, Law in India.

Introduction

Sex work is not new to any society. It is even considered as world's oldest profession and the tales of famous courtesans like UmraoJan, Anarkali in India gives us the glimpse into the past. Throughout the time, something that has not changed is the social denial of those who work in this industry. We, 'the decent people' don't want to talk about them much and so there prevails various crimes that take place in the streets called so dirty where 'fallen' women lives. But closing our eyes merely makes us blind and does not clear the problem. Thus, the aim of the paper is to discuss certain problems that are faced by sex workers in India for which help has been taken from a documentary by Sohini Ghosh i.e. 'tales of the night fairies' and a book by Mayank Austen Soofi titled 'Nobody can love you more'. Both the literature enables us to understand how the sex work is nothing but merely a means of earning livelihood and so does the question of concern arises 'why no labour rights are given to the sex workers' and for the same it is necessary to understand the anatomy of law that is prevalent in India. Also, the paper tends to dive into the collaboration of ILO in this regard through its report of 1998 and other conventions, finally drawing a comparative analysis with other nations.

Hypothesis

"The purpose of this paper is to analyze the laws in India regarding the sex work. Paper tends to highlight the issues and problems faced by the sex workers and how lawlessness in various dimensions

lead to a deteriorating environment for these people. Also, the paper further study the comparative positions in this regard in countries broadly categorized under the head as nations where sex work is legalized, illegal and restricted."

Review of Literature

Review of Literature is considered optional and in this matter the sources are vivid and usually the statistics acquired from the online sources as not many previous studies are made in this regard. Hence, refrain from adding the review of literature.

Sex Work: Understanding its Anatomy

Sex work, generally termed as prostitution, is the exchange of sexual services for material gain or certain payment. The issue of prostitution is not new to the world, there are various socio- economic phenomenons that surround the issue and actually lead to such a prevalent practice of sexual services. In order to understand the reasons for sex work it is important to analyze it on two grounds i.e. social and economic.

Social Foundation

The reasons for the flourishing trade of flesh lie down deep in the patriarchal framework of a society. According to Lim in the ILO report of 1998 the roots of sex work are found in socio-cultural institutions and traditions that dictate gender relations. The society is still tied in the chains of patriarchy that considers women to be nothing more than a commodity for sexual pleasure. May be, that is the reason why the sex work is a problem of women; the reason why more females are involved in this industry than the transgendered population and men.

In his book 'Nobody can love you more', Soofi, the author records the statement of the brothel owner in G.B. road Sabir bhai who while showing various newspaper clippings shouting aloud about various crimes like rape, murder, etc. says, "Do you see how much dirt is there in the society?". It must be recognized that sex work is a necessary evil in a society inevitable to satisfy the uncontrollable male sexuality. It is considered to be "society's safety valve against rape" and is expected to continue as long as the social structures surrounding and contributing to it prevail.¹ That's not all; also a simple economic notion must be taken into account while understanding the nature and dynamics of sex industry i.e. the concept of demand and supply. According to a research by End Child Prostitution in Asian Tourism (ECPAT), 1995 there has been an increase in the demand of child sex workers in many countries and so is the child trafficking and forceful involvement of children in this industry to meet the demand². But this paper attempts to distinguish the sex work from trafficking where particularly most of the countries have hazy laws and almost no attempt is made in order to carve out such distinction where suppression is mandatory for trafficking but sex work need not necessarily be criminalized.

Economic Foundation

The root cause of prostitution also links with poverty, especially in India and becomes an easy means to earn a substantial income by all those linked

with it, be it the brothel owner, pimps etc. It is believed that sex industry is highly organized and is also instrumental in redistributing income, particularly through transfer of funds from urban to rural areas and from sex workers who work overseas.³ It must be noted that sex industry contributes directly or indirectly to the local economies by the transfer of fund. In a survey by ILO in 1998 the statistics shows that the financial turnover from the sex industry in Indonesia was estimated to be between \$1.2 and \$3.3 billion per year, which constituted between 0.8 and 2.4 percent of the country's Gross Domestic Product (GDP). In Thailand, close to \$300 million was transferred annually from urban to rural areas from the income of sex workers.⁴ As per a website that lists statistics based on public documents like newspapers, government surveys etc. the total annual turnover from sex industry in India is around \$ 8.4 billion.⁵

Even after such a huge contribution by this industry in the Gross Nation Product, the sex work continues to be 'illegal' in countries like India and Thailand and remains out of the preview of the various government and other official records. According to the ILO (1998), the economic foundations of sex work are important because it is not just the individual sex worker and their families who rely on the earnings from sex work but also numerous commercial businesses like hotels, bars, liquor and cigarette industries etc. that are directly or indirectly involved with the sex industry.⁶

As per the studies done in South Asian countries under Asia Watch and Women's Right Project, 1993 on the nature of sex work indicate that one of the most prominent reason that the sex industry flourishes is because it is protected and supported by corrupt politicians, police, armed forces and the civil servants, who receive bribes, demand sexual favors and are themselves customers of the sex establishment though being illegal. The attempt to prohibit this industry is demise; such an attempt has rather led to a whole new set of problems giving rise to a more vulnerable position of those involved in sex work.

Here, 'The great Gatsby' by F. Scott Fitzgerald proves to be an illustrator how sometimes a prohibition of something in an attempt to sober up society has far more brutal realistic consequences in terms of people making their own moon shine. Thus, it is an era where such a work must also gain recognition by the governments of the native nations in order to catch the right pulse and treat accordingly. International Labour Organization over the last decade has actually contributed quite much in this field and has attempted through its work to create an awareness amongst the various nations that the right way to deal with the issue of sex work is to recognize and to understand the fine line distinction between sex work and human trafficking. The next section deals with the 1998 ILO Report and Organization's contribution.

Contribution of ILO

The 1998 ILO Report – The Sex Sector

The first ever direct attempt to deal with the issue of sex work was made by ILO in its very controversial report of 1998 i.e. The Sex Sector: The Economic and social bases of prostitution in Southeast Asia by Lin Lean Lim (Geneva, ILO, 1998) which also received a prestigious publishing award i.e. the 1998 International Nike Award at Frankfurt, Germany.⁷ The ILO study, which was also featured in the World of Work No. 26, examines the growth of the sex industry in four south-east Asian countries-Indonesia, Malaysia, the Philippines and Thailand on broader notions like the social and economic basis. The work tends to showcase the expanding dimensions of the industry as it provides an opportunity to earn livelihood to various persons associated directly or indirectly with it. The main aspect of the report was to assume sex work on economic grounds and considering it as a form of industry like any other due to huge number of participants in it.

The report estimates that anywhere between 0.25 per cent and 1.5 per cent of the total female population in the study countries are engaged in prostitution. Related activities (including the numerous bars, hotels, entertainment facilities and tourist agencies which thrive on prostitution), employ literally millions more workers. However, it is an irony that in spite of the huge size of this industry and its role played in the economy of a nation it goes unrecognized in official statistics, development plans and government budgets of almost all countries worldwide. It is an industry which is mostly unregulated and declared illegal in many nations though unofficially recognized by the same people who sit in the legislature with a blindfold on their eyes.

A Case for Children

Lin Lim added that while the conditions of adult sex workers differ greatly, ranging from freely chosen and highly remunerative to exploitation and virtual slavery, "there is no such ambiguity concerning child prostitution," which she said should be considered as a much more serious problem than adult prostitution. "*Adults can choose to become prostitutes or to work in pornography. Children cannot. Children are much more vulnerable and helpless against the established structures and vested interests of the sex sector and much more likely to be victims of debt bondage, trafficking, physical violence or torture. They are much more susceptible to diseases, including HIV/ AIDS and suffer lifelong physical and psychological trauma. While there is a range of possible options for coping with the increase in adult prostitution, there should be only one goal for child prostitution – to eliminate it.*"⁸

Thus, the report has contributed in a sense so as to draw a distinction between sex work and trafficking, further narrowing down to distinguish between the policies approach towards adult sex workers and children who are brought in this trade. It must be clear and strong policies must be implemented to cut down the participation and input of

children in sex work notwithstanding their consent etc. The policy could vary from nation to nation but the best approach which seems to be is an internal regulation. The same would be discussed herein after in the next segment of the paper.

Convention on Human Trafficking, 1930 and There After

An attempt was made by ILO to curb the evil of trafficking in its convention on human trafficking in 1930. According to ILO estimates, there are at least 2.4 million trafficked persons at any given point in time all over the world, yet there are only a few thousand convictions of traffickers every year.⁹ It is a bitter truth that the victims do not get justice and are not recognized significantly due to the involvement of the executives in malpractices themselves. The police officers take bribe from those who are found involved in such practices and bail them out or file a final report in such cases, thus, leaving the victims devoid of justice. Despite growing awareness and more effective law enforcement responses trafficking remains a low-risk criminal enterprise with high returns, like a per an estimate annual profits generated from trafficking in human beings are as high as 32 billion USD per year, all this only due the ignorance of police and other associated executives.¹⁰

The ILO's struggle against trafficking was furthermore reinforced by the adoption of two Migrant Worker's Conventions¹¹ and The Worst Forms of Child Labour Convention¹².

As per the Convention, the nature of the trafficking involves the "*recruitment, transportation, transfer, harbouring or receipt of persons*".¹³ But these terms may itself pose a great difficulty while interpreting in order to serve the purpose of the convention as the definition of these activities might cover both the legal as well as illegal domain that links with trafficking. For example, "Transportation" may be carried out by airlines or other transport companies in good faith and not by the actual traffickers. Also, as the term "Recruitment" is used here, it poses a problem that what if the initial recruitment was made after due consent of the victim and the exploitation began after such recruitment during the course of employment. Thus, the convention in itself uses such broad terms which need to be narrowed down by the respective member countries in their native laws.

It is interesting to note the critical element of the definition, i.e. the purpose of trafficking, namely exploitation which also incorporates the intention of the trafficker. At a minimum, "exploitation" must include "exploitation for the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."¹⁴

Relevance with the Sex work Legitimization

The question that arises here is how the convention on trafficking and forced labour is relevant to the theme of the paper. Here the inclusion of "*exploitation for the prostitution of others*" in the definition of exploitation creates separate difficulties itself and thus, cannot be ignored. Though, the Protocol does not mandate the criminalization of

prostitution. However, the definition is in itself wide enough to include an individual who employs a prostitute based on the other relevant facts. But the same can be misinterpreted and misutilized when it comes to the execution of the various policies making the convention a grundnorm.

Forced Labour in Sex Industry

Convention No. 29¹⁵ treats the trafficking of persons for the purpose of commercial sexual exploitation as one form of forced labour. For the purposes of the present text, commercial sexual exploitation involves the use, procuring or offering of a person for prostitution or the production of pornography through the use of force or coercion and/or for financial or material gain.¹⁶ Such a definition of forced labour creates a whole new motion of debate for all those who wish to work freely in this industry. The notion of free will is hard to be realized especially in a sensitive field like sex work. Various surveys in India in a panel formed after SC judgment in 2011 highlights the issue faced by various sex workers who wish to move out of this trade but again due to poor rehabilitation facilities they wish to continue to work as sex workers. What is the criterion of free will in such a case?

European Court of Justice Case¹⁷

The very same question of forced labour was considered by the European Court of Justice in the case of six prostitutes from Central and Eastern European countries (CEECs) who sought to exercise a right of entry, residence and self-employed economic activity as prostitutes in the Netherlands. The Dutch authorities refused the women residence and establishment permits, among other reasons on the basis that their relationships with their pimps were ones of employment. The European Court of Justice found no justification for the Dutch Government's contention that "a person engaged in prostitution whose personal and working freedom is restricted by her pimp - a situation which is covered, where appropriate, by the criminal law of the host Member State is to be treated as a person in an employment relationship." In order to determine whether Central and Eastern European prostitutes were entitled to exercise their professions as self-employed persons in the Netherlands in accordance with EC Agreements with their States of nationality, the European Court of Justice held "prostitution is an economic activity pursued by a self-employed person as referred to in [the EC Agreements with the CEECs], where it is established that it is being carried on by the person providing the service:

1. Outside any relationship of subordination concerning the choice of that activity, working conditions and conditions of remuneration;
2. Under that person's own responsibility; and
3. Remuneration is paid to that person directly and in full."

So long as these conditions are fulfilled in EU law an individual, even where exercising the activities of prostitution, is not in a position of forced or coerced labour.¹⁸

ILO Recommendation concerning HIV and AIDS and the World of Work, 2010

Also, The ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200) reaches out to all workers. In collaboration with constituents and partners, the ILO promotes the inclusion of female and male sex workers and their clients in HIV responses at the international, national, sectoral and workplace levels. ILO is looking beyond traditional HIV prevention efforts and attempts to tackle the underlying factors that enhance risks of HIV infection. Reducing stigma and discrimination, promoting economic empowerment of women and men and addressing gender dimensions are key components of this approach.¹⁹

UN and Human Rights Approach

It is further necessary to adopt a human rights approach in this field. For the same a glimpse must be made into the United Nations effort. It is surprising how UN did not wish to amend its age old convention which talks about the eradication of prostitution and eliminating it. The UN Convention for the 'Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others'²⁰ in its preamble states:

"Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community."

Signatories are required to practice three obligations under this 1949 Convention:

1. Prohibition of trafficking,
2. Specific administrative and enforcement measures, and;
3. Social measures aimed at trafficked persons.

The Convention further requires state parties to punish any person who "procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person", "exploits the prostitution of another person, even with the consent of that person"²¹, or runs a brothel or rents accommodations for prostitution purposes²². Thus, the essential feature requires that a persons involved in the trade of flesh must be prosecuted, even if with the consent of the one being prostituted. Thus, the convention considers all the prostitutes as victims and brings out an effort to eliminate the same. But the same approach is way too idealistic and hazy when comes to execution. The convention suffers the loophole in a manner that it goes far above the ground reality. It must not be forgotten that the sex work is not new and has been in existence since ages, not just the Indian epics but the western world has showcased various dramas and a wide range of literature that covers the life of prostitutes, not as victims but the women of high character.

The convention may be for such an unrealistic approach proved to be a failure. One of the striking requirements of the convention is that all the state parties are required to abolish all regulations that subject prostitutes "to special registration or to the possession of a special document or to any

exceptional requirements for supervision or notification²³. It is also one of the reasons why not many nations ratified it as it does not recognize the voluntary prostitution. The convention mandates to criminalize the same notwithstanding the consent of the person and thus, nations like Germany, Netherlands etc which recognize prostitution as a organized occupation could not ratify the same.

It is high time when the United Nations need to bring in a convention that is more realistic and sound in practice. The human- rights approach must be adopted instead of putting a complete ban on sex work as the ban is not an answer to the problems that arises in the sector. Sex Workers too do have certain basic rights, called the human rights. With making the sex work illegal we deny those who are willing to work in the industry their right to livelihood and right to live with dignity.

Laws relating to Sex Work: India

India is a party to above UN Convention of 1949 and so, the policy in India partly puts a ban on procuring sex work as a legal occupation. The major laws that deals with prostitution in India is Immoral Trafficking (Prevention) Act and certain provisions of Indian Penal Code which does not criminalizes prostitution *per se* but soliciting and exploiting prostitution are offences. As based on the UN Convention of 1949, it too considers he prostitutes selling off their services as victims of trafficking and forced labour and thus makes arrangement for rescue and rehabilitation, which is nothing but a failed attempt. The most interesting aspect of the Act is that it does not makes the prostitution illegal but only criminalizes certain part associated with it.

Main Features of the Act

The following are considered offences under ITPA (Section 3-9)

1. keeping a brothel or allowing a premises to be used as a brothel (section 3)
2. living on the earnings of prostitution (section 4)
3. procuring, inducing or taking persons for the sake of prostitution (section 5)
4. detaining a person in a premises where prostitution is carried out (section 6)
5. prostitution in, or in the vicinity of, public places (section 7)
6. seducing or soliciting for the purpose of prostitution (section 8), and
7. seducing a person in custody (section 9)

Myth v. Reality

The above provisions need a revision as they seem to be based on a myth that the brothel owners are usually the ones who exploit the sex workers but the reality is far behind. As per the various encounters by Mayank Soofi in his book and Sohini Ghosh in her documentary, it is quite clear that the relation between the prostitutes and the brothel owner or pimps is usually that of service provider and care taker. Brothel owners live with the prostitutes as one family and even enter in the relationship of husband and wife at times in order to give name to the children of the workers. The incident is even well quoted in the documentary where the owner of a

brothel recalls an incident of beating a man who was trying to abuse her girl. Thus, the law needs to be seen from a different angle where brothel owners etc. are eliminated and only the private prostitution as has been legalized prevails, the situation of the sex worker would be more vulnerable to the abusive clients.

The harsh reality is that the more idealistic laws have provided various loopholes so as to lead to the current actual situation where the police itself take bribe from those involved in this work, also cause fake arrests and raids to such areas. The condition is worst enough in a manner that the Police officials deny to record a F.I.R of the sexual abuse of a prostitute saying how a prostitute can be raped.²⁴ If such is the enforcement of the current law, then it is clear enough that how dire is the need of a new law.

Introduction of Amendment Bill

Sometime back, the Department of Women and Child Development (DWCD), Ministry of Human Resource Development, Government of India moved the *Immoral Traffic (Prevention) Amendment Bill 2005*. Ironically the sex workers, the community most affected by ITPA, were not even consulted during the process of drafting the amendments. The Bill again does not touch the ground realities and if the Bill is passed by the Parliament, it will have serious repercussions on the lives and livelihoods of sex workers and consequently affect public health goals such as prevention and control of HIV/AIDS. To this end, few sex workers independent organizations like NNSW and DMSC urge the consideration of their demands before the government and hold protests against the new law.

An attempt has been made to add certain new provisions in the Act while repealing few old ones. An analysis to the proposed amendment Bill runs as follows:

Introduction of Section 5C

The new amendments has brought in a positive step by proposing the repeal of Section 8 that criminalized the soliciting of clients and section 20 that allowed magistrates to evict sex workers from their premises thereby introducing an element of decriminalization. But the introduction of a new Section 5C washes away all the good done by the repeal of above sections. The new section punishes the clients of sex workers, thus trying to curb the demand (in economic terms). But the question is whether such a provision would be of any help? This provision will only serve to drive the clients and sex workers underground rendering them even more vulnerable to exploitation. It will be used as a tool of harassment and corruption by law enforcement officers and others as those who are powerful will escape the clutches of this new provision. Though the attempt by government is appreciated but again the new provision will not do much in order to better the current situation.

Section 13 (2)

The proposed Bill lowers the rank of police from Inspector to Sub-Inspector under Section 13 (2), the nexus behind such a proposed amendment being hazy. The stories of the police harassing, extorting

and exploiting sex workers are not unheard and still empowering those who tend to exploit the power most is a concept hard to understand.

To quote an incident, "In September 2002, Swapna Gayen, then President of DMSC was attacked and brutally assaulted by a mob of local hoodlums in Tollygunge, Kolkata in the presence of police officials."

The proposed amendments will only encourage such incidents by granting excessive powers to the police. There has been strong voice raised against these proposals by DMSC.

There are certain other such provisions as well which make it hard for a sex worker to live freely a life of dignity and undermines their rights, for instance:

Section 3 of the ITPA penalises brothels, including keeping, managing and renting out of premises for sex work. This seems to be a provision that targets the very place of occupation of the sex workers. It is a noted fact that a vast majority of sex workers in India are poor, and this is also one of a major reason for them to enter this sector. Most of them had to enter in such transactions of lease and require a room on rent as they do not own any house of their own. Criminalizing such a transaction of lease is to add to the problems of the sex workers which expose them to various other liabilities and thus extortion by police and others on such a ground. A better way would be to recognize such transactions and further make compulsory the registration of such deeds and further mandating the receipt of such transactions, so that the sex workers may not be exploited in the name of law.

Next, **section 4** of ITPA criminalizes all those who live on the earnings of a sex worker. Initially it was enacted with a purpose of discouraging pimps. But such a provision reflects the short sightedness of the legislation as it seems law does not touch the reality. Why the prostitutes are getting their hands dirty in such industry, not for their pleasure but in order to serve their families. The present section criminalizes all those who depend on their income, be it the parents or the children above 18 years of age. The question here is why such discrimination in the name of morality, why cannot these people may acquire the right to feed their families with their income? This provision has done nothing good in reality but to add to the dilemmas of the prostitutes.

The issue of prostitution was taken up by the India's highest court in a case which was filed as an appeal from the conviction judgment by the High court in the case of a brutal murder of a prostitute by her client.²⁵

Supreme Court's Verdict: Budhdev v. State of West Bengal²⁶

The Supreme Court in its judgment by two judges bench constituted by Markanday Katju and Gyan Sudha Mishra held that, "*Sex workers are also human beings and no one has a right to assault or murder them. A person becomes a prostitute not because she enjoys it but because of poverty.*

Society must have sympathy towards the sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21 of the Constitution." And further converted it into a PIL, taking suo moto cognizance and constituted a panel subsequently by another order.

The panel headed by Mr. Pradip Ghosh, Senior Advocate as the Chairman and includes Mr. Jayant Bhushan, Senior Advocate, Durbar Mahila Samanwaya Committee (DMSC), Usha Multipurpose Cooperative Society (UMCS) and Roshni through its founder Ms. Saima Hasan.

The first interim report was submitted to the court on 2nd August 2011 by the panel stating that the panel held its first meeting on 25th July, 2011 at 04.30 P.M. and discussed various aspects of the problems relating to sex workers. The court on submission noted that, "*Our effort in this exercise is to educate the public and inform them that sex workers are not bad persons, but they are unfortunate girls who have been forced to go into this flesh trade due to terrible poverty. Hence society should not look down upon the sex workers but should have sympathy with them.*"

In its second report, various accounts by the NGO's, State and Central Government as well as the self regulated agencies like DMSC etc. were brought before the court. The report tried to bring forward various schemes and programs and assessed them. The UJWALA Scheme, a central government scheme, which has five components utilized for rehabilitation of sex workers was analyzed in the report. It was also pointed out that if the sex workers do not wish to go back home, then another program called STEP is available for them, being implemented by the Central Government. Thus, the schemes are already in place but whether they are effective was another question dealt by the panel in its report. Thus, from a perusal of the UJWALA Scheme it appears that the Central Government has scheme only for rescued trafficked women but no scheme for those sex workers who voluntarily want to leave the sex trade. Also, a condition is being placed on the rescued workers who comes under the purview of this scheme that they should stay back in corrective homes in order to facilitate rehabilitation. But whether such a condition valid is a question, if not such corrective homes are more of a virtual prison than the rehabilitation centers. The panel further notes that Ms. Bharti Dey representing Durbar Mahila Samanwaya Committee (DMSC), a self-regulatory sex workers organization in Kolkata, questioned the basis of calculation of the various figures given by the Government representative. She also questioned as to where and how the sex workers have been rehabilitated under such schemes.

On the other hand, the role of this organization must be taken into account; following are the points of consideration submitted by DMSC to the panel which were also quoted in its report-

1. DMSC itself has employed about 500 sex workers in their Health intervention Program. On enquiry, it has been learnt by DMSC that 55 have

ceased to work in their old profession while the rest continue to sell sex while still holding jobs as health workers. It was learnt that those 55 who really gave up their old profession were at the far end of their working life in sex work. They were neither able to compete with their younger colleagues nor able to perform the jobs that was required of them.

2. According to the records maintained by USHA, 8 sex workers employed as Field Collectors for the Cooperative Societies, Bank have discontinued sex work. Another 10 women have started working as beautician and do not engage in sex work.
3. According to DMSC, the inference drawn from these findings is that while women may leave sex work but they do not leave the sex work sector. Those who stop selling sex find alternative work in the red light area itself. This is because they do not experience adverse stigma and discrimination among their peers as they would face outside the red light area.
4. It was emphasized that the so-called Homes run under the Government sponsored projects virtually operate as prison houses so much so that even if a sex worker may not be willing to leave the profession they would not like to live in the so called Homes. The reluctance is not so much due to loss of earning but more because they do not want to be imprisoned or to lose their freedom.

Such was the case being heard from the red light district of Kolkata. The sex workers and their issues must be dealt more practically. Further, there is a need to understand that stereotypical vocational training would be of no use as a sex worker earns more than any such work. And thus, if the government wishes the people to voluntarily quit such practice, new innovative ideas must be brought up in the picture to generate jobs that pay at least equivalent to a sex workers earning.

The most shocking part of the report is that in Delhi there seems to be no such scheme for rehabilitation of sex workers. Shakti Vahini, represented by Shri Ravi Kant, stated in the Panel meeting that not a single victim of commercial sexual exploitation has been rehabilitated in Delhi. It is so regrettable and shameful for a country like India whose capital is blinded to see and acknowledge the problems of this dirty sector being run under its nose. Ms. Indumati representing South India AIDS Action Program from Chennai stated that many of the sex workers want to learn additional skills but they still want to continue with their old profession in the red light area. For many other sex workers, the rehabilitation process is important but only if they are old and cannot get any income by selling their bodies. Many of them want vocational training only to add to their income while continuing with their sex work.

It must be noted that two things are required in order to understand the rehabilitation dynamics. Firstly, emphasis must be laid on incorporating a rehabilitation scheme which is sensitive to the needs

of the sex workers. Also, important step must be taken in order to ensure that not only the rescued workers but those who willingly wish to leave the sector must be given advantage of any such scheme. The other thing is that unless the attitude of the public in general towards the sex workers undergoes a change so as to remove the stigma attached to their profession, and there is more acceptability of the rehabilitated sex workers in the mainstream, it is difficult to persuade the sex workers to get rehabilitated leaving their old profession.

Panel's Recommendation

The final report on 15th September 2011 of the panel appointed by the Supreme Court incorporated some recommendations which run as under:

1. Direction be made to the State Governments and the Local Authorities to issue Ration Cards to the sex workers treating them as persons in special category and relaxing the rigors of the Rules/requirements regarding the verification of their address and without mentioning their profession in the Card;
2. Direction be made to the Central Government and the Election Commission to issue Voter's Identity Cards to the sex workers in relaxation of the rules/requirements in that behalf and without insisting on strict proof of their address/profession and without specifying their profession on the face of the Card;
3. The Central Government and the State Governments to ensure that the admission of the children of sex workers in appropriate classes in the Government schools and Government sponsored schools and the schools run by the Municipal and District level authorities is not hampered in any way, because of their impaired social status.
4. The Central Government must suitably alter and widen the UJWALA Scheme within a period of six months. (A least effort is being made in this regard though).

Thus, the current position in India is so as to have a partly restricted law on the issue of prostitution. The Apex court has also taken into consideration the various dilemmas faced by the sex workers and thus analyzed the law on rehabilitation which is actually a failure as per those who belong to the sex industry like the DMSC, an independent sex workers association which is now taking care of the health and sanitation of the prostitutes. The need of the hour is to analyze the problem from a practical point of view rather than an idealistic view and to decriminalize the sex work if not legitimize the same. Till the time, provisions shall remain in order to penalize such act; the problems shall be added to the life of the prostitutes. The first and foremost thing that must be done, if any is to grant the status of work to the sex work and recognize sex workers associations who may deem to play a successful role in addressing various problems and also coping with them.

The next segment tries to bring forward the picture of a nation which has legalized the sex work

on one hand and the other nation which has rendered it completely illegal and to analyze the same in Indian context.

Comparative Analyses: Countries which Legalized Sex work

The paper tends to draw a comparative analysis of the laws in India with that of a nation which has legalized prostitution and the other which has marked it illegal. The countries taken here are Germany, where the sex work is recognized as a legal occupation and is further regularized and China, which criminalizes prostitution and makes it illegal.

China

China is a nation that observes abolitionist practice when it comes to the issue of prostitution in China. Though there were no harsh laws specifically on the same till 1990's but the steps were later taken in order to curb the evil by introducing certain laws in the nation like-

1. the 1991 Decision on Strictly Forbidding the Selling and Buying of Sex and the 1991 Decision on the Severe Punishment of Criminals Who Abduct and Traffic in or Kidnap Women and Children.
2. 1992 Law on Protecting the Rights and Interests of Women, which defines prostitution as a social practice that abrogates the inherent rights of women to personhood.
3. The PRC's revised Criminal Law of 1997 which criminalizes third-party involvement in prostitution. Even the death penalty may be granted, but only in exceptional cases of organizing prostitution activities, involving additional circumstances such as repeated offences, rape, causing serious bodily injury, etc.
4. Regulations concerning the management of public places of entertainment, 1999. The provisions proscribe a range of commercial practices that characterize the activities of female "hostesses".
5. Since 2003, male homosexual prostitution has also been prosecuted under the law.

The ultimate goal of such laws is to stop managers and workers to earn profits by entering in such a business which is rather favored in a predominantly patriarchal society. In order to address such issues, strict laws have been made so as to restrict the police abuse under the colour of the authority.

Despite the position of the law, which renders a status of victim on the prostitutes, in reality the prostitutes are often treated as quasi-criminals by the Ministry of Public Security. Chinese police conduct regular patrols of public spaces, trying to bring in a deterrent effect. It is striking to note that the arrests made by the Chinese police are more of the female sex workers who are detained for long time instead of the male clients who tend to save themselves by offering bribe to the officials. Further, Anti-prostitution campaigns have been carried out by the police departments in China throughout the country which highlights the Arrest records followed by certain

slogans so as to motivate people in order to eradicate prostitution though it might take little longer.

But my inference from the above facts is that such an attempt to bring in an ideological change sounds impractical especially where the prostitutes are portrayed as bad women. With such a kind of approach it would be hard for the sex workers to live a life of dignity as the society might not be willing enough to accept them in the main stream. Instead of such practices, I find that an approach towards rehabilitation and decriminalization might help the country.

Germany

Germany lifted the ban on prostitution in 2002 and allowed such laws so as to make the opening and organizing of the brothels easier, also making the organization of such sector quite convenient. It must be noted that as per the stats before the law was passed, it was estimated that the total number of persons in prostitution was about 200,000. In 2004, after decriminalization, government statistics cited 400,000 persons in prostitution with 90 percent coming from foreign countries.²⁷

One of the prominent reason why Germany made prostitution and aspects of the sex industry legal is to stop the human trafficking. However, a UN Office of Drugs and Crime Report on the global patterns of trafficking in persons ranked Germany as a "very high" destination for trafficked victims. The above statistics themselves show that the practice has decreased amongst the natives but on the other hand the practice of trafficking from cross-border is on a hike.

The other most influential argument for any legal prostitution system is that it will help protect children from sexual exploitation. In 2003, a UNICEF-sponsored report found that child prostitution was rampant across the German border in the Czech Republic in areas "heavily frequented by German tourists."²⁸

Today, Germany is one of the most lucrative and growing prostitution economies in Europe. In 2004, revenues from prostitution were reported to amount to 6.4 billion Euros. By May, 2006, 4 years after decriminalization, annual revenues from prostitution were reported to be 14.5 billion Euros.²⁹

The current law that is being in practice is the Prostitution Act. Under this Act, police now have fewer ways of justifying brothel incursions and thus the Police officials face a problem in rescuing those who have been trafficked. These problems with the Prostitution Act were validated by the government's own admission in a 2007 German government report. The report concluded:

"The Prostitution Act has thus up until now also not been able to make actual, measurable improvements to prostitutes' social protection." As for "working conditions," there is "...hardly any measurable, positive impact...observed in practice." Nor has the Prostitution Act enhanced the means by which those in prostitution can leave the system (p. 79). Significantly, "There are as yet no viable indications that the Prostitution Act has reduced

crime. The Prostitution Act has as yet contributed only very little in terms of improving transparency in the world of prostitution (p. 79).” ...Finally, “Prostitution should not be considered to be a reasonable means for securing one’s living (p. 80).”³⁰

Thus, an example of legalization of Sex work where on one hand shows the better livelihood status of the sex workers but on the other hand comes with certain short-comings like lesser police control on the trafficking of women. This is predominantly because of the interchanging peripheral nature of the two i.e. the sex work and trafficking but strict criminal laws are no solution to either of them while legalization on the other hand at least provides the assurance of the betterment of the living standards, health and sanitation facilities of those engaged in the work.

Following is the table that highlights certain statistics³¹ and brings forth a comparative analysis:

	China	India	Germany
Legal Position on Prostitution	Illegal	Restricted	Legal
No. of prostitutes	5 million	3 million	4,00,000
Average Rates	\$80-\$1,600	\$1-\$16	\$65 (fixed usually)
Annual Revenue	\$73 billion	\$8.4 billion	\$18 billion

From the above table, it can be easily derived that a nation like China which has rendered the work illegal is facing in general the issue at worst with the maximum number of people involved in prostitution. Thus, one thing in particular is quite clear that rendering the status of illegal is not a solution. Also, as discussed earlier in context of Germany, the prostitution Act has legalized the work and thus a more regulated system has been developed but again along with the legalization of the work what lacked there is an approach so as to reduce the demand for prostitutes. As it is said that, ‘we learn from the mistakes we made’, so it’s the time for India to learn from the above examples.

Conclusion

This is the time for India to adopt a right-based approach and to better understand the current trend rather than just being idealistic. The first and foremost hurdle before India is that she is a signatory to the UN convention that prohibits prostitution and so does the domestic laws in India deal the issue in a similar approach. That restricts the soliciting of prostitution and not the work. But this is an unrealistic approach, as private prostitution is a situation where the workers would be in a more vulnerable situation and could face increased exploitation by the clients. In order to conclude, the paper sets out a 3-Step Approach while dealing with the issue:

Decriminalization

As discussed earlier, the first approach would be to decriminalize the sex work with the repeal of certain provisions so as to recognize the brothel owners, pimps etc. who are engaged indirectly in this industry.

Empowering Self- Regulated Sex Worker’s Organization

Who could better understand the problems of the sex workers than a sex worker herself. So, it is

time to empower these bodies with certain rights and also make them associated with the various government schemes of rehabilitation, promoting health care etc. These bodies could also be helpful in keeping a checking on the age of those who enter this work as is the case with DMSC.

Cutting-off the Demand

It is important to cut down the demand of this work in order to check the expansion of such industry. But criminalization of clients would lead to a whole new set of problems. The other way could be to increase the tax on such services along with penalty of fine for the clients. With a increase in taxes, the rates would dramatically increase and so the demand would fall.

Nothing could be better to end the paper than these lines:

“Madad chaahati hai ye hawwaa ki beti
Yashodaa ki hamjins raadhaa ki beti
Payambar ki ummat zulaikhaa ki beti
Sanaakhwaan-e-taqdees-e-mashriq kahaan hain?
Zaraa mulk ke rahbaron ko bulao
Ye kooche ye galiyaan ye manzar dikhao
Sanaakhwaan-e-taqdees-e-mashriq ko lao
Sanakhwaan-e-taqdees-e-mashriq kahaan hain?”

- Chakle, Sahir Ludhianvi

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3. ILO Report 1998; Lim, L. (Ed.).(1998),The sex sector: The economic and social bases of prostitution in Southeast Asia, Geneva
4. ibid
5. The people involved in sex industry is estimated to be 30, 00,000; source - Sankar Sen and P.M. Nair, “A Report on Trafficking in Women and Children in India 2002-2003,” NHRC-UNIFEM- ISS Project, Vol. 1. July 2004 (<http://www.havocscope.com/prostitution-revenue-by-country/>)
6. Supra note. 1
7. Sex sector revisited: ILO report receives 1998 International Nike Award (Article), The World Employment Report, World of Work Magazine of ILO, No.27, December 1998
8. Supra, note 7
9. ILO Action Against Trafficking in Human Beings, Geneva 2008
10. Ibid,pp.1-2

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11. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Adopted by General Assembly resolution 45/158 of 18 December 1990
12. The Worst Forms of Child Labour Convention, 1999 came into force on 19th Nov 2000; Adopted in 87th ILC Session, Geneva
13. As defined under Trafficking Protocol, UNTC
14. Ibid.
15. Convention on Human Trafficking, 1930
16. Ibid; Chapter VI, Substantive provisions of Labour legislation
17. Ruling on forced labour in sex industry (Box 8), Human Trafficking and Forced Labour Exploitation- Guidance for legislation and law enforcement, ILO Geneva (2005)
18. See: C-268/99 Aldona, Malgorzata, Jany and Others [2001] ECR.I-8615
19. The ILO Recommendation on HIV and AIDS (No. 200), Getting the zero through the world of work
20. Approved by the General Assembly on 2 December 1949 and came into effect on 25 July 1951. Recently, 82 states are party to the convention. An additional 13 states signed the convention but not yet ratified it.
21. Article 1: "The Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person."
22. Article 2: "The Parties to the present Convention further agree to punish any person who: (1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel; (2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others."
23. Article 6; And also they are required to take the necessary measure for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution (Article 20).
24. Based on the interview of a member of DMSC, Kolkata recorded by Sohini Ghosh in the documentary 'Tale of Night Fairies'
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30. Supra, note 28
31. The current statistics are derived from the web sources; in particular <http://www.havocscope.com/prostitution/>