



The legal framework of prostitution and HIV/AIDS epidemic in India

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Introduction

History of prostitution is an old age institution in India .the well known socio-political treatise written by kautilya sometime between 300B.C.,and 50A.D,states that providing sexual entertainment using to the public trained ganikas was an activity strictly controlled by the state was also , for the most part carried by own state own establishment. the ganikas had to pay taxes usually one sixth of their income. The chief controller of entertainment was responsible for maintain accounts regarding state expenses for ganikas and payments made to them.

The politics for the rights of women in prostitution seems to have emerged in India in the decade of 1990s,and the most cited force initiating the mobilization among the women was the HIV/AIDS prevention and control discourse .For effective aids control, these women are sought to be empowered .one of the earliest and the most celebrated organization of women in prostitution in India is the Durbar Mahila Samanwaya Committee (DMSC)-established in 1995 in Kolkata out of STD/HIV intervention programme undertaken through the government-NGO collaboration in 1992. SANGRAM is another significant organisation founded in 1992 in sangli, MahArastra for prevention that eventually led to the formation of veshya AIDS muqabla parishad (VAMP)IN 1996.¹

The Indian penal code 1860 drafted by lord Macaulay lays down

certain provisions which according to the conditions prevailing , acted as a ban on prostitution or any other kind of immoral behaviour. the said activities were made offences , there by carrying on such activities was made punishable either by the way of fine or imprisonment.

¹ For a detailed account of VAMP'S efforts in controlling AIDS ,see Mena Shivadas in this volume(Editors).

Child prostitution is also seen linked to the paedophile tourism of the men of advanced capitalist countries and simultaneously to the cultural preferences for sex with young sexual partners, virgins , specifically with the increasing AIDS scare. it is now conceptualized as commercial sexual exploitation of children , which seeks to erase the shame attached to the identity of a 'child prostitute'.In India the aids control programme among the women in prostitution , more specifically , the peer education programme focusing women as the agents of intervention is appreciated for Encouraging mobilization among these women and their empowerment as the individuals rights .This program with its underlying premises that insiders are more effective than outsiders in reaching the community; the women in prostitution can reliable enforce the use of condom for their own protection(SANGRAM)is seen as significant in building the sense of community among the women thus cementing their organization²

Women in prostitution as sexual minority is another claim held by some



organisations who define prostitution as a sexual preference or a variation, similar to another forms of subversive sexuality, challenging hetero-normative discourse. Rainbow planet, a diverse collation of progressive groups working for the rights of sexual "outlaws" including sexual minorities, sex workers and people living with HIV/AIDS has sought to initiate a new and legitimate struggle for human rights in India, claiming a place among the communities of resistance. It vehemently rejects the hierarchy of oppression that threatens sexual discrimination as secondary and asserts that sexual freedom is the foundation of all other freedoms,³

The struggles by women in prostitution In a post colonial country like india have not been a creation of aids intervention and anti-trafficking endeavours. These struggles date back to the nineteenth and early twentieth centuries ,as the women in prostitution battled as individuals and informal groups against stigma and oppressive laws .the seeds of contemporary organization can be traced to this history of debates and collective actions around prostitution.

² SANGRAM 1997 flight for freedom, sangli

³ Nag moni 2005 sex workers in sonagachi; pioneers of a revolution in Economic and political weekly,40(49) ,pp5151-15

These historical struggles were strated by the women in prostitution more specifically by those who were socially recognized as prostitutes.

IPC section 268 chapter xiv deals with offences affecting the public health, safety, convenience , decency and morals

relates to public nuisance .it is stated therein as to when a person who does not act or makes an omission shall be guilty of public nuisance. E.g. if a person were to solicit people for sex in a public place by passing lewd remarks and exposing his/her person in order to solicit customers , the said person would be guilty of public nuisance if such acts of the person affect people in general who dwell in the vicinity. According to this provisions a person shall be guilty of public nuisance when such an act or omission causes any common injury, danger or annoyance to the public or the danger or annoyance to persons who may have occasion or use any public right. According to this provision it can be said that when a prostitute solicits customers in a public place or where a brothel is established and the same ca uses annoyance to the person living in the vicinity, the same shall amount to public nuisance.⁴

The national commission for women commissioned an enquiry in 1997on the matter of police complicity in prostitution there is a revealing prostitution of cases covering up before the law courts and of police actually being accused and tried in this regard , empirical studies however, tell their own stories of police bribery in the setting up and continuance of brothel-keeping and the kind of heinous abuse perpetrated on victims of immoral trafficking when taken into force custody during trials.

Immoral prevention act 1956

The present act replaced the suppress in of immoral traffic in women and girls act certain changes in the priro act .the a act mainly makes pimpism and other activities punishable , which give as a commercial aspect to prostitution that



it is likely to exploit the person of the prostitute. The act does prohibit commercial activities of the flesh trade.

Along with an HIV intervention programme largely focusing on the distribution of condoms, these organisations have initiated several other programmes such as forming a co-operative society or a cultural wing, educational programmes for women and their children, health awareness programmes. And notably a self regulatory board, attempting to act as a principal arbitrator of the sex industry. It is with the initiation of these organizations that the first national sex workers conferences was held in Kolkata in 1997. An Asian meet was organized in Kolhapur in 1999 and the sex workers carnival millennium Milan mela was initiated in 2001 to urge for rights to oppose wrongs done to the women, thus heralding the autonomous activism of the women in prostitution for their rights as human beings. The organizations such as DMSC are exalted for pioneering a silent revolution the global arena with considerable achievements in reducing of STDs and HIV/AIDS among them⁵

however the exaltation has had its share criticism, by asserting that this the empowerment of women in prostitution cannot be disentangled from the DMSC declaration that sex work is real work and we demand workers rights according to Ghosh women through this declaration 'seek to use the aids intervention programme of the state not only to claim the disease free dissociating themselves from the mark of mere sexual beings. this claim is there is not to demand better working conditions but to assert their agency and autonomy, to proclaim is made not to demand better working conditions but to assert their

agency and autonomy, to proclaim human rights and equality with in the workers and claim a new subject position outside the criminalizing the law. however this claims remains unsuccessful because of the typicality of sex a work of the ignominy of a livelihood based on sexuality and corporality. Hence the women in prostitution could become an object of welfare but not a worker with rights and dignity equal to other workers.⁶

⁴ .rakma188611 bom58

⁵.the Indian penal code ratanlal and dirajlalrpint edition 2000

⁶,3september,1949 constituent assemblydebate volumeix Sonagachi project

During the last decade or so may government and NGOS agencies in India have initiated HIV/AIDS intervention projects among FSWs, mostly in red light areas. the sonagachi project covering a large red light area of northern Calcutta of the same time was initiated in 1992 by All India Institute of Hygiene and public health. The Initial funding and technical support was provided by the WHO. The project has attained an international reputation for its remarkable success in keeping relevance among FSW less than 6 percent till the year 2000 whereas the corresponding figures in many other red light areas of India were as high as 25 percent and above at the time..

This perspective has led to collapsing the process of trafficking –the use of physical force, during the deception luring of other fraudulent means with trafficking that need not necessarily that need not necessarily before prostitution. Thus any migration to work in prostitution become trafficking while any trafficking is seen



as resulting only in prostitution with his point of argument, organization DMSC AND VAMP severly condemn the IMMORAL TRAFFIC PREVENTION act that address the prostitution only within the framework of trafficking consequently criminalizes and marginalizes them.

Prostitute rights groups are important not only in what they say but in that they articulate positions that are based on their experience .what is at stake here is the articulation of the experiences of prostitutes and the creation of identities that challenge feminist hegemonic constructions of their lives.

Critics have held that in the Indian context , prostitute rights groups such as DMSC and VAMPS are dependent on funding from inter national sources. while this may not suspect in itself- especially given that this is a trend affecting much of mainstream feminisms- it could lead to redefing prostitutes rights through the prism of the needs or dictates of funding agencies .this acquires another dimension when one considers that international funding organizations focus on prostitution from the point of view of preventing HIV/AIDs and STDs ,In other words, as vectors of infection⁷

This is indeed partially valid. However the dictates of international funding may affect activist only to the extent that they are allowed to . As I pointed earlier , many womens organisations ,Human rights organizations and NGOs in India are dependent on foreign funding for their day to day activities. However they manage to raise important issues and to critique funding agencies and the state while being some what dependent on both .these seems no reason to believe that prostitute rights groups are any

different .DMSC and VAMPS for instance do work on preventing and combating aids, but simultaneously raises fundamental questions about the structure of the sex industry and the Indian state.

The ipc section 270 deals with malignant act likely to spread infection of disease . this section deals with a malignant act as opposed to an negligent act on the part of person to spread an infection which is dangerous to life. Such persons shall be punishable with imprisonment which may extend to 2 years or with fine or both

The sangram recognized women sex works agency and placed them at the centre of their interventions .rural south maharastra where sangram began on initial work on women and HIV/AIDS is a region seped patriarchal norms and social rules that generally place women in subordinate positions in such a socio cultural environment ,women sex workers voices are rarely heard and their health rights are seldom recognised.⁸

The vamp was set up with the aims of forging and consolidating a common identity among women and Sex workers, empowering them to assert their rights and ;protect themselves from hiv infection in an intentional reference to the social stigma they face and in an attempt to reclaim the veshya by inputing meaning to it

⁷ For adetailed discussion on prostitution as caste based exploitation ,refer to anaghatambe in this volume editors.

⁸ SEE workers manifesto in sarai reader 2005. The centre for the study of developing societies newdelhi

A controversy had arisen over a unicief supported study which was conducted by



Madhya Pradesh human rights commission about caste based prostitution. This study is seen to have degraded and stigmatized particular castes and their women. This has been a challenge for the social contempt it breeds against the women of these castes making it impossible for them to lead respectable lives. Further the study marks the men of these communities as essentially criminal and condemns them for forcing women into prostitution. The study noted that girls were forced into prostitution by their own relatives, and they had to live with it throughout their life. It thus brands the particular caste as practicing prostitution, and as HIV prone and consequently legitimizes the separate medical examination conducted specially on them.

The IPC section 377 deals with unnatural offences, it is stated that whoever voluntarily has carnal intercourse against the order with any man or woman or animal shall constitute an unnatural offence and the same be punishable with imprisonment, thus gay prostitutes, kothi workers, hijras rendering sexual services would be covered under this section. According to this section carnal intercourse shall be penetration..

In the immediate post independent period the Indian legal history of prostitution can be traced to the debates in the constituent assembly where the subject of prostitution was discussed at length. It was proposed to include a new entry in the concurrent list or list III (concurrent list includes on which both the centre and the state can legislate of the seventh schedule of the constitution.⁹

The struggle by women in prostitution in a post colonial country like India have not

been a creation of AIDS intervention and anti trafficking endeavours. These struggles date back to the nineteenth and early twentieth centuries, as the women in prostitution battled an individual and informal groups against stigmas and oppressive laws. The seeds of contemporary organization can be traced to this history of debates and collective actions around prostitution. These historical struggles were started by the women in prostitution more specifically by those who were socially recognized as prostitutes.

⁹Based on field work in Calcutta, August 1999 and May-June 2000

The study deals with the different categories of words that indicate various dimensions of multi-partner man-woman relationships

- 1 kept women /mistresses
2. performing artists
- 3 servants
4. religious prostitution
5. prostitutes from heaven
6. words related to the body
- 7 words related to soubhagya
8. words for a public woman
- 9 words related words
- 10 words meaning deviation from norms.

These clusters of words may not be mutually exclusive. A performing artist could also be a mistress. A religious prostitute like a devdasi could also be a performing artist as well as a keep. The categorization of the words is done on the rationale that the dances of words have a commonality binding them together.



After looking at the diversity in the meaning of the words that directly or indirectly mean a prostitute, it appears that that the society perceived any heterosexual relationship other than another than one within marriage as prostitution. Those not in compliance with the prevalent ideals of femininity or chastity were chastized or stigmatized as fallen and addresses were by words suggestive of immoral status.

The members of VAMP have started meeting other collectives of sex workers outside their home states and national at international meetings-- for example VAMP women actively participated the world social forum in Mumbai in 2004 and at the 4th international HIV/AIDS conference in Bangkok in July 2004. As they network and share their experiences with other sex workers activists they will bring in new perspective in their mobilization and advocacy efforts to prevent HIV/AIDS. VAMP is beginning to be an important player in lobbying efforts at the district and state levels. Their voices are being heard at national and international levels too and they have emerged as persons in their own right.

Keep mistresses are not prostitutes, as we understand today but the dictionary has given the meaning prostitute. They are women who may be committed to a particular man, and engage in singular relationships. They are akin to a wife in all respects except without the formal sanction of marriage. From this has emerged a set of words indicative of the varied status of mistresses, suggestive of interpersonal relations of the man with her, or of social and cultural backgrounds in which they existed.

Though their activists to prevent HIV/AIDS infection and help colleagues

living with HIV/AIDS cope with their health and social problems. The VAMP women have questioned common perceptions of women sex workers. Particularly the notion that women sex workers particularly the notion that women sex workers are vectors of infection and therefore to be treated as significant threats to the social fabric. They have also drawn attention to the idea of risky behaviour in HIV/AIDS infection as opposed to high risk groups and focused on responsibility in sexual relations. In so doing they have shattered the culture of silence that surrounds sexual relationships and HIV/AIDS in public discourses.

The experiences of VAMP and SANGRAM have key lessons for policy and practice. The following observations can be seen as a basis for further analysis and consideration.

Any HIV/AIDS intervention with women sex workers that is initiated in collaboration with the sex worker community is more likely to succeed, as women in the business more than anyone else about works and what does know

Any intervention that is based on needs assessment that captures women sex workers perceptions responses and interpretations of their lives and well being is more likely to succeed because it does not address HIV/AIDS isolation.

Identity information, mobilization efforts and empowerment from within are key factors for successful HIV/AIDS prevention strategies among women sex workers

Facilitating the realization of rights entails giving marginalized women sex workers a voice and the space to realize



their potential as change agents in transforming unequal social situations.

Conclusion

Women in prostitution are not just helpless receptacles of activism. they define agendas as much as they are subjected to them. there have been in recent times critiques from within the mainstream feminist movements in India that have tried to examine the issue of prostitution not as harm or coercion , but according to the multiple positions held by women in prostitution feminists in India and elsewhere have had to confront challenges not only from the state, but also from women who identify themselves as working against aspects of patriarchy , but rejecting the hegemonic claims of womens organizations . these enrich and give a deeper hue to feminist poitics