

LEGALIZATION OF SEX WORK: THE CHALLENGES OF INTERSECTIONALITY IN INDIA

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Abstract:

The following paper revolves around the contemporary issues of class and caste intersecting to create a plethora of conundrums around the issue of legalization of sex-work in India. The debate regarding the 'oldest profession' interplaying with intersectionality, poses questions for Indian feminists and how oppression of different women has resulted in this to-and-fro between Dalit feminists and 'Savarna' (upper class) feminists.

Introduction:

[Kimberlé Crenshaw](#), an American law professor in 1989 coined the term 'intersectionality' and explained the same as "a prism for seeing the way in which various forms of inequality often operate together and exacerbate each other"(Crenshaw, 2020). It was the third-wave feminism that saw the evolution of intersectionality with many black feminists coming forth and sharing their experience as being both women and black. This broadened the scope of feminism to interact with other forms of inequality and allowed the entry of race, caste, religion, and class to intertwine with gender as a mechanism of inequality. This paper takes the issue of the movement for legalization of prostitution and how the largely *savarna* (upper-caste) discourse has conflicts for the movement posed by Dalit feminist and highlights how intersectionality though welcome has ushered an array of complicated questions that require the attention of law, politics and the patriarchy.

The Oldest Profession:

The 'oldest profession' has been in India since harems of aristocracy in Brahmanic India and even is mentioned in detail in Kautilya's '*Arthasasthra*' which contains rules, rights and duties of the subjects involved in the profession (Bala, 2016). Whether it was *Menka, Rambha, Urvashi or Thilothamma* (Bala, 2016), all were the epitome of beauty, grace, and femininity, but this is not what sex workers are today. Since the fall of the Mughal empire and colonialism, the pedestal that once women employed in sex work stood on, is no longer a pedestal at all, rather a web of silence, covered in shadows and hidden under red lights in densely populated, morally questionable cities.

The laws governing sex work come from the Immoral Traffic (Prevention) Act, 1956 which does not technically make prostitution illegal, but does well in hiding the profession through laws making other activities related to sex work illegal. Supporting activities related to prostitution such as maintenance of brothels or soliciting customers are made into punishable offences under the Act (Sethia, 2018). Section 7(1) of the Act makes engaging in prostitution in or near public place such as “any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind” (Immoral Traffic Prevention Act, 1956) a punishable offence. Furthermore, “any person who keeps or manages, or acts or assists in keeping or management of, a brothel” (Immoral Traffic Prevention Act, 1956) will be punished as well under Section 3 of the Act. This paper does not indulge deeply into criticizing the existing laws regarding sex-workers and their rights, rather focuses on the dimensions of arguments presented by two opposing sides of feminist discourse about the legalization of sex work. Though it is essential to keep in mind that sex work is technically not illegal, the law penalizes sex workers who seek refuge under law.

Savarna Discourse on Legalization of Sex Work:

The main argument for legalization of sex work is one heard quite often through feminists, that is the argument for owning women’s sexuality. Women’s sexuality is perceived as a threat by the patriarchal institutions that govern the genders, especially marriage (Gothoskar and Kaiwar, 2014). Women employed in prostitution are kept away from society, shunned, and exploited with no refuge to seek under the law. The stigma associated with sex work has ensured that such “morally problematic” workers are kept out of the political sphere and away from the women’s movement as well (Gothoskar and Kaiwar, 2014). Feminists argue that the female body is not a subject that must be controlled by the state and rather “choice” of women is the most essential element so far as sex work is concerned.

Women are not deemed political and therefore sex work is also ignored as a profession and those employed under it as workers, who deserve rights and must be protected by capitalist structures who do not offer wages and exploitation of any other kind. Karl Marx in 1844 wrote – “prostitution is only a specific expression of the general prostitution of the laborer” (Karl Marx and Friedrich Engels, 1978) and Karnataka Sex Workers Union (KSWU) holds this belief, stating that “KSWU stives to get sex work recognized as dignified labor and campaigns for decriminalization of sex work” as they stated in 2008 (Vijayakumar, Chacko and Panchanadeswaran, 2015). Another active sex worker advocacy group includes the Durbar Mahila Samanwaya Committee (DMSC) in Kolkata that although started as a HIV prevention project has advocated very strongly for health and labor rights for sex workers (Vijayakumar, Chacko and

Panchanadeswaran, 2015). It is the argument of feminist scholars in favor of legalization of sex work that the “worker” identity “provides an alternative to the existing state relationship with sex workers; as potential criminals, deviant fallen women, helpless victims of sexual violence, or vectors of HIV/AIDS” (Vijayakumar, Chacko and Panchanadeswaran, 2015).

Arguments against legalization of sex work often mention that the repercussion of such legalization would mean that sex trafficking would increase and women in such a profession are not doing so under their own volition rather are coerced. Feminists arguing for legalization have explained that legalization of sex work would not mean that laws governing sex trafficking would not operate and should not be rigorous. Furthermore, they state that the whole point of legalization is to given women employed in the sector a choice. A choice to pursue the profession or leave it all together, a choice that legalization would make possible. Absolving sex workers from the stigma they face for having such a profession, would require the intervention of the law first and foremost. Only after the law states that “selling bodies” is not a crime if done so by choice, would legislature come forth and a discourse surrounding the rights of sex workers as “workers” would emerge and further develop.

Legal developments especially those by the Supreme Court in recent years show the change in thinking regarding stigmatization of sex work. Maharashtra government had tried to ban dance bars in August 2005 and failed after the intervention of the Supreme Court (Sinha, 2019). The Supreme Court later in 2019 delivered a verdict that revoked “total prohibition” of bars serving alcohol in dance bars and instead brought forth “regulations” in Maharashtra (Sinha, 2019). This was in response to the provisions in Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant and Bar Rooms and Protection of Dignity of Women (Working therein) Act, 2016 and the court stated -“It appears from the history of legislative amendments made from time to time that the respondents have somehow developed the notion that such performances in the dance bars do not have moralistic basis” (Indian Hotel & Restaurant Assn. (AHAR) v. State of Maharashtra, 2019). This shows great promise for the legalization movement and a rather progressive development in feminist jurisprudence relating to Article 21.

Internationally, Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and most importantly, Convention on the Elimination of all forms of Discrimination against Women (CEDAW) provide much legislature in favor of legalizing sex work and being advocates for the rights of the workers employed in the profession. Furthermore, legalization of sex work has happened in

many countries including Netherlands, Sweden, and the state of Victoria in Australia. All these countries have shown great improvements so far as cases of violence are concerned.

Dalit Feminists and their Opposition:

It is the argument of Dalit feminists that sex work is largely dominated by women of their community and the *savarna* discourse surrounding the same ignores this fact and the continued oppression of Dalit women engaged in prostitution. The Deadasi system, is an illegal practice where members of lower castes and Dalits are made “touchable” by making women as young as twelve years-old marry a regional deity and thereby force her into prostitution from that age itself. As soon as girl is married to a deity, she becomes a toy for the village elite, exploited and her children are forced into the same practice as well. The practice was made illegal in many South Indian states in the late 20th century including Telangana, Andhra Pradesh, Karnataka, and Odisha. Traditionally these women were upper caste women and enjoyed a very high status in society but changes in social moralities caused untouchable women to take up the position (Jha and Sharma, 2016). The practice has many names such as ‘*Jogini*’ in Andhra Pradesh where lower caste women are replaced with Dalit women but the larger issue surrounding sexual exploitation remains the same (Jha and Sharma, 2016). Cases however have not stopped of forced ritual prostitution where some as recent as November 2020, continue to occur in Andhra Pradesh where a twenty-five-year-old woman was rescued from the practice (Sadam R and Ors, 2020) and it is important to remember the practice was banned in 1988. Whether it is ‘*Mathamma*’ in Rangareddy or ‘*Amababai jogini*’ in Karimnagar, the system has not stopped simply because the law came into place. Furthermore, this is not restricted to South Indian states, the Nat community in Punjab, tribes of Bedia and Bachra all over North India are proof that “caste is a principle determinant of forced prostitution” (Jha and Sharma, 2016). Dalit literature including poetry of Namdev Dhasal and stories of Baburao Bagul have highlighted Dalit women’s humiliation and exploitation in Mumbai’s red-light districts time and again (Jha and Sharma, 2016).

When countries like Sweden legalized sex work, they ensured extensive training of law enforcement officials to not penalize the sex workers, rather those who were engaged in trafficking of women and children and increasing public awareness about the subject. In India where police brutality and mob lynching cases are on the rise especially since 2013, it is an understandable objection of Dalit feminists that legalization of sex work will only dig the grave deeper. Caste is very much a reality and so is the Deavadasi system, which was decriminalized several years ago and yet, reality has changed little for the community. The general objection

against women taking choices regarding their bodies, the sex work industry dominated by a particular caste which has suffered years of injustice and oppression, combined finally with the fact that law enforcement officials have little sympathy for the suppression of sex workers does not paint an enlightening picture for the future if sex work is legalized.

Perhaps the most important thing to be noted is that the intersection of caste and gender do not create an experience for the Dalit women that is simply a sum of the two, rather it creates an overlap of inequality that has its roots so deep into its subjects that the repercussion of this intersection changes the discourse itself.

The Oldest Debate:

There is not only opposition from Dalit feminists regarding the legalization of sex work but from feminists who simply see the further degradation and objectification of the female sex and the transgender community if sex work is legalized. In a national consultation of the National Commission of Women on 8th November 2014, it was reported that “sharp differences” among members of the Commission and the representatives of sex workers were present (2014). Even sex workers unions, representing approximately three million women do not have consensus on the issue (2014).

Consent is rather key in the issue of legalization and that is where striking differences in opinion of feminists occurs. It is the argument of those in favor of legalization of sex work, that it would bring “bureaucratic order to a shady, sordid and brutal world” (2014), making life a little easier for those engaged in the profession so far as police brutality and the abuse of middle men involved in the profession is concerned (2014). Those who oppose the legalization do so for two larger arguments, one being the possibility that this would “allow” trafficking of women and children, thereby increasing the sex rackets present and second, the fact that legalization of sex work would mean the degradation of women (2014). For India, the second argument against legalization includes a very fundamental objection of Dalit women who have been in the profession and abused for the intersectionality of their caste and sex and therefore, this blurs the lines of “consent” into the profession itself. Internationally, neo-abolitionist feminists argue that “consent” is irrelevant when it comes to sex work and that the industry itself should be eliminated because they see sex work as inherently a patriarchal and exploitative institution against the female sex (George, Vindhya and Ray, 2010).

Therefore, a question before all feminists is “Can Dalit women in a system where they have been oppressed over their caste and gender, ever have actual “choice” when it comes to sex work, and would the legalization of sex work ensure this fictional choice is made into a reality?”

Conclusion:

The question that is posed before all legal and feminist scholars is one of standardization. Even if sex work is legalized, the complexity of caste and class is such that no one standard legal response can be formulated easily. Unorganized labor marks and red-light districts differ in many ways depending especially on the degree of urbanization (Sahni and Shankar, 2014). Taking all of this into account, it is the conclusion of this paper that “one rule fits all” measures cannot be adopted so far as legalization of sex work in India is concerned (Sahni and Shankar, 2014). The sentiments and experience of Dalit women cannot be unaccounted in the discourse and while it may seem that the two sides are always on cross, what is absolute is that both kinds of feminists agree that the current state of sex workers cannot be and should not be a discussion ignored.



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