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# The Moring Express

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## Moving beyond legalisation

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The Supreme Court of India recently asked the government why they don't legalise prostitution if they can't curb it. But do women in sex work really want a piece of paper called a license? Or police reforms that may lead to freedom from extortion, convictions against traffickers rather than new laws, directives and campaigns that make discrimination against women in prostitution legally punishable and socially condemnable?

Did you know that prostitution isn't illegal in India? It's a fact that always surprises people. "Then why are there raids in red light areas?" they will ask. "Ah, that's to look for underage women or children in prostitution" I will say. (Although raiders have been known to pick up children of prostitutes instead, leaving traumatised mothers to go hunting for their child in remand homes). I go on to attempt an explanation. "You see, prostitution per se under the PITA (Prevention of Immoral Traffic Act) is not stated to be illegal although trafficking is, and soliciting for sex in public places is. Like alcohol or tobacco is not illegal, but advertising it is?" That's the closest analogy I can think of, but by now they lose interest and I realise that this vital piece of information does nothing to change the way prostitution is perceived in society.

Even though prostitution is not illegal, debates on 'legalising' it have come up every few years because it is surrounded by a notion – rather than a fact -- of criminality, and because women in prostitution are in practice often treated as 'criminals' by society as well as segments of the law and order machinery, having an ambiguous and violent relationship especially with the police. The question came up again in December 2009, this time from the Supreme Court. In response to a Public Interest Litigation filed by NGOs Bachpan Bachao Andolan and Childline against child trafficking, Justices Dalveer Bhandari and AK Patnaik made the statement that: "When you say it is the world's oldest profession and when you are not able to curb it by laws, why don't you legalise it?" They added the potential benefits of such a move: "You can then monitor the trade, rehabilitate and provide medical aid to those involved." The Solicitor General to whom the suggestion was made said, "We will look into it".

Going by the statement it would seem legalisation is the miracle vaccine for a host of ailments: first, the trafficking (forced buying/selling) of women and children, then the very existence of prostitution itself from which women need to be rehabilitated, and finally health concerns of those in prostitution (presumably HIV/AIDS). This is quite in contrast to data from government studies themselves which have repeatedly shown us the futility of an approach that confuses trafficking with prostitution (<http://www.newint.org/features/2007/09/01/sex-work-vs-trafficking/>), focuses on rehabilitation given India's realities and the high statistics of women who return to prostitution even after being 'rescued' (<http://www.hivaidsonline.in/index.php/Vulnerable-Groups/>) and assumes there is actually an efficient and functioning structure for 'medical aid' to poor and marginalised communities, especially women in prostitution (<http://infochangeindia.org/200801146822/Agenda/>).

Other proponents of legalisation have suggested it will lead to freedom (of women in prostitution) from police harassment and pimps and make HIV/AIDS tracking and treatment possible (because health checks will then become 'mandatory'). Those against it have said that it will only give unnecessary powers to the state, lead to red-tapism and a new sort of 'license raj' and push a segment of the business underground (thereby making it more dangerous). Fears have been expressed that by doing so, prostitution would be 'encouraged', 'legitimised', become a viable 'job option', lead to a 'proliferation of brothel houses' and reach 'a whopping 5 million'. Another stream of thought advocates decriminalisation rather than legalisation, of women in prostitution – as in, to not treat women in prostitution as criminals, although even this cannot guarantee that women will not be stigmatised. Conspiracy theories also abound: red light areas are usually on prime real estate, and these are just ways to usurp them from these; it's really about them paying their taxes; it's all vote-bank politics.

Has there really been over the years, a growing mandate for the legalisation of prostitution in India? Is that really what women in prostitution want? There are existing anti-trafficking laws, yet no convictions of traffickers are made under this. A growing movement against HIV/AIDS and a rise in collectives of sex workers and women in prostitution demanding their rights have led to a growing mandate to address AIDS, weed out abusive middlemen, address discrimination against women in sex work and their children. But these are not going to be achieved by a perfunctory 'licence' that is the only real outcome of legalisation of prostitution.

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Given that these debates have been going on for 15 years or more not just in India but all over the world (<http://prostitution.procon.org/>) it is unlikely that a consensus will be reached soon. In my opinion though, there are two fundamental flaws within the legalisation debates that make a consensus next to impossible.

The first is the way we understand and look at prostitution/sex work.

There has been considerable literature and debate on the nature of sex work/ prostitution in the last decade. These debates have spiraled into a sharp polarisation internationally between two positions (<http://newsweek.washingtonpost.com/>). The first sees prostitution as a form of violence against women, and as sexual exploitation, whereas the second sees it as sex work, as labour in which sex workers' rights need to be protected. The debate has remained locked in this standoff for over two decades. Most regional/ national debates in India amongst various actors – groups working on HIV/AIDS, trafficking and international donor agencies, as well as government departments working on these issues -- have tended to replicate these positions, or rather, this division. The International Labour Organisation has also called for recognising prostitution as a form of labour, which is more useful to addressing many of the violations faced by women in the sex industry. This conceptualisation however continues to be firmly resisted. The repercussions of this on the legalisation debates are obvious – if you think it's violence, why would you even consider 'legalising' it, and if you think it's work, it's certainly not a crime.

However, we need to perhaps move beyond even this conceptualisation. The fact is that how we understand prostitution and sex work is still evolving. These debates assume that there is a distinct sex worker with a clear-cut identity and lifestyle. But in fact, for those who work on the ground, we are witnessing a collapse of identities which makes it difficult to identify who is 'a sex worker'. In the complex lives people lead, especially poor women, there is no distinction between different types of work they may need to do for survival. They have been found to often do multiple work: domestic work, daily wage labour, agricultural labour, factory work, often coupled with some sex work too. With sex work in particular, this is a pattern, even amongst better-off sex workers (in the West, it is well established that some young women undertake sex work to pay for their higher education <http://www.guardian.co.uk/society/2009/>) – that it is an additional source of income. Moreover these debates focus only on the red-light areas, accounting for only a proportion of the number of women in prostitution and sex work. Does this mean there is no prostitution in rural areas? The reality is that sex work exists much outside the scope and understanding and experiences of red-light areas, so we have no real understanding yet of the lives and realities of many women in prostitution who do not physically reside in major cities of India.

Then there is also the element of 'choice', questions of consent and class that we are yet to explore and fully understand. The Supreme Court judges in their statement also hinted at the inevitability of the continuation of prostitution, given the rise in poverty, implying that poor women have no choice but to enter prostitution: "We are talking about growing GDP. I do not know what is the development we are all talking about when the number of BPL families is at 37% which has increased from 30%. Growth of GDP does not mean some four or five families have developed. If this is the state of development, we can't help it." Ironically, although this implies also that women would choose to enter prostitution, the element of choice is largely missing from work of poor women anyway: like sweeping is not 'voluntary' for the sweeper, in many cases neither is sex work. Yet there is an element of 'choice' for a call girl or a woman who joins an escort service. How do we protect the rights of these women who are no less vulnerable to exploitation and violence? How do we explain or understand their choices with such little data available on them? And what would legalisation mean for them?

The second fundamental flaw in these debates is what I think is the total misreading of what women in prostitution/sex work really want. Do they really want a license? A piece of paper and the occasional government health checks? Or do they want respect? Recognition of their labour. Rights. Some acknowledgement of their work, financial contribution, survival skills, and ability to support their families without depending on a government that hardly cares. It is perhaps time for the sex workers movement and groups of women in prostitution who have mobilised to frame their demands differently, and reject the language of legalisation and decriminalisation. It is police reforms that may lead to freedom from police violence and extortion, a mechanism to report and address corruption within the police system that may be of more long-term help rather than a license. Convictions against traffickers rather than new laws. Broader healthcare systems for all, rather than following the government's agenda of conducting HIV/AIDS tests. Directives and campaigns that make discrimination against women in prostitution legally punishable and socially condemnable.

The sex workers' movement is young and alive, it has a powerful voice, and articulate and passionate activists who have seen tough times and are willing to take risks to push for their agendas. Because ultimately, we can do our share of speaking from the outside, but (and I'm walking a fine line between abdicating responsibility and making a point here) it is they who have the power to change the real terms of the debate.

**Infochange News & Features, February 2010**

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