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### RESEARCH ARTICLE

#### DECRIMINALIZING SEX WORK IN INDIA-NEED AND SIGNIFICANCE FOR A ‘POST FACTO CLEARANCE’

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#### Abstract

Prostitution has been with us since the dawn of human civilization. Prostitutes no longer exist in a modern democracy. Transition of ‘prostitute’ to ‘sex worker’ has a long story of great oppression, sufferings, struggles and resistance. Criminalization, partial criminalization, legalization and decriminalization are the different approaches different countries have adopted to deal with prostitution and its invisible world of human trafficking. Covid-19, its mask culture and social distancing norms have totally ruined sex industry and lives of sex workers all over the world. In this backdrop the investigators aim to contextualize the need and significance of decriminalizing sex work in India.

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#### Introduction:-

Sex work as an institution, often known as prostitution, has been with mankind right from the very beginning of human history. Some thinkers believe that suppression of sexuality is the cause of prostitution while some other thinkers believe that it is an inevitable offshoot of monogamy. Sex work does not arise out of emptiness .It has always been a product of historical contexts closely entwined with economic and psychosocial factors. A sex worker is different from a mistress, female lover, concubine and wife in a polygamous relationship in terms of her apparent lack of love and caring beyond a level of ‘acting or faking out ‘ towards her client. Free love is to be separated from sex work. Payment of money is the essential part of sex work. Prostitution has originated and grown side by side with myriad forms of free love in different human communities. Sex work has umbilical connections with religion, belief systems, trade, commerce, wars and slavery. Trade and commerce directly resulted in the emergence of brothel houses across the world. Male and female prostitutes were attached with temples in many countries. ‘Devadasi system or ‘temple courtesan system’ existed in India is a classic example of how prostitution, religious beliefs and economic interests were interwoven each other for satisfying the needs and interests of dominant classes in a society.

Prostitution as an institution has ample references in ancient texts of India. Rig Veda, Buddhist texts, Mahabharata, Kautilya’s Arthashastra have vivid references to prostitution as an institution. Kautilya talks of appointing some officials to collect tax from prostitutes and take care of their welfare. Courtesans attended kings’ palaces and had warm relationships with rich people and officials of high echelons. They enjoyed social prestige and affluence. Manusmriti, one of the illustrious law texts of ancient Indians, does not approve of courtesans and their profession. Manu, the ancient law giver had recommended little or meagre punishments for those who even kills a prostitute. The Kamasutra, a classic treaty on sex, portrays a prostitute as an expert teacher and practitioner of sex. Textual

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sources show that social status of the prostitutes used to swing between ‘adoration and denigration’ in India since the age of Vedas. Religions, moral-guards, teachers, rulers and lawmakers have tried their best to eliminate prostitution from social spheres but it has been with us as an integral part of social life like family.

**Masked sex work and sex industry during covid-19 in India:**

Uninvited corona virus has conquered all countries in the world. It has affected every walk of life, destroyed our economic world, broken our dreams and hopes and made our world a desolate place with sad stories of poverty, grief and deaths. Everybody has become invisible behind his or her mask. World nations also wear huge masks around their geographical boundaries. The idea of a global village no longer exists in this time of masked nationalism and shadow war on vaccines. People are trying hard to fight against the virus by adopting innovative ‘work at home’ strategies. Media across the world are flooded with success stories of those who survived economic distress caused by the virus through various ‘work at home’ solutions. There are certain workplaces where social distancing and mask culture are not at all possible. Attachment, touch, intimacy and care are the key inputs of production there. Sex work is one of them. Not many ‘work at home’ magic solutions are available for a sex worker.

“Sex workers are adults who receive money or other forms of compensation in exchange for consensual sexual services, either regularly or occasionally”.<sup>1</sup> A sex worker can be a male, female or a transgender. Sex work is normally a business between two people conducted in an environment of privacy. Mutual caring with lots of closeness and intimacy is the essential ingredient of it. Sex work is a matter of deep physical contact so social distancing and masks will completely shatter the business. Sex workers are trying to overcome these cold business days with warm live sex chat and live stripping sessions using internet based solutions across the world. Many such avenues are not available for ordinary street sex workers living in poor socio economic conditions in India. They are poor with no savings at all. Their clients are also poor. Sex workers find it very difficult to get any charity help from others because of the stigma associated with their profession. Most of the good hearted people may be reluctant to extend any help during this time to distressed sex workers by fear of getting their name tarnished. Governments are also not much keen about helping sex workers. All streets are under the surveillance of police and civil authorities. Not many dark nook and corners are available for a hapless sex worker to find her living. Night curfew has become normalcy. Besides all, interrupted public transport is the final nail in the coffin. In this difficult situation the best available option for a sex worker is to continue with her job risking her and her clients’ life.

Sex work has been criminalized all over the world through legal restrictions on selling sexual services, solicitation of sex, living off the earnings of sex worker, running professional brothel houses etc. Sex workers face arrests, prosecution and harassment. “By limiting sex workers’ freedom to negotiate condom use with clients, access public services like health care, and organize and advocate for their rights, criminalization increases sex workers’ vulnerability to violence, extortion and health risks”.<sup>2</sup> Sex workers have already been in precarious conditions because of sexually transmitted diseases happen due to exposure to forced unprotected sex. “More than 30 different bacteria, viruses and parasites are known to be transmitted through sexual contact”.<sup>3</sup> Eight of these pathogens are linked to the greatest incidence of sexually transmitted diseases. More than 1 million sexually transmitted infections are acquired everyday worldwide and each year there are an estimated 500 million sexually related infections occur worldwide. Most of these infections have mild symptoms or no symptoms at all. This ‘mild or no symptom status’ of sex workers makes their and their clients’ life more vulnerable. Sex workers’ life have constantly been tossed up and down by the brunt of economic distress, violence in their workplace, police brutality, unjust judiciary, social exclusion, hostile family environment, work related exposure to substance use and now the covid-19 adds more pain and anguish to their existing woes. Female sex workers are the most wretched folks in India during this pandemic time.

Female sex workers are all the time exposed to violence from their clients, agents, brothel owners, their goons, police, other authorities and self- appointed guardians of public morals. Helplessness and fear of death are their basic nature of existence. Society always portrays sex workers in extreme colours either as someone living in star hotels, enjoying all luxuries of life or as someone living in den holes addicted to intoxicants and running a storehouse for sexually transmitted diseases. They are just like anybody else. They are not criminals or someone destroying others’ family or giving them deadly diseases. Sex workers are ordinary people like you and me. They are sisters or daughters of somebody. They are cousins or mothers of somebody. They are friends or colleagues of somebody. They have their beloved ones to take care of. They are not some alien creatures brought to this world from such unknown long distant planets. They are as humans as we are. They have every right as we have to lead a

good decent and peaceful life with self-respect and dignity. I don't think any child would imagine of becoming a sex worker when she grows up. Sex work is not anybody's ambition or goal to be achieved in their life time. People are forced to do it for some reasons. Blaming someone for doing sex work is no use for anyone. It is a sheer waste of time if we have no alternatives to offer them.

There are mainly three types of female sex workers in India. Sex slaves in brothel houses in designated red light areas like Kamatipaura in Mumbai or Sonagachi in Kolkatha are the first category. Sex workers who are homeless and abandoned, doing their job in precarious conditions in abandoned buildings, under bushes or some lonely places and living in the street are the second category. Third category is such sex workers who have a home and probably they do their business in daytime in lodges, flats or in their own home. Lives of all these three categories are equally affected by the pandemic. National AIDS control organization in its phase three program estimated that there were more than 800000 sex workers in India<sup>4</sup>. Actual number may be more than this. Crime records with police and judiciary and hospital records may not reflect the real size of sex worker population in India. Millions of women may be finding their life and livelihood from sex work in the darkness which is beyond the comprehension of any official statistical surveys and government radars. Men, women, and transgender people constitute our sex worker population. Female sex workers and transgender sex workers are the most vulnerable.

Most people treat sex work and sex workers as evils. No one is willing to have an open friendly relationship with sex workers. All would like to keep a distance from them. Legal systems across the world treat sex work in different ways. Complete criminalization of sex work is the age-old practice in most part of the world. Everybody involved in sex work is treated as a criminal and the law is chasing down all and wherever possible authorities put all stake holders in sex work in jail. In complete criminalization everybody involved in sex work – sex workers, clients, pimps, brothel owners and other aides – are criminals. Partial criminalization is the lesser violent version of full criminalization. In partial criminalization of sex work, police and justice system allow sex work in a private place as something done between two adult individuals on mutually agreed terms and conditions with or without cash payment. It is purely an affair between two adult individuals within their private space. Any institutional arrangements for facilitating sex work like soliciting in public places, pimps, agents, brothels are treated as part of criminal offences in partial criminalization. In some other countries the law does not book sex workers but their clients. It is a demand side intervention of the law while supply chains of sex work are open free. Other mode of controlling sex work is legalisation of the business. Experiences of many countries where legalisation of sex work was adopted show that it actually has resulted in indirect criminalization. Most of the legal procedures involved in legalisation of sex work are causing greater money costs and bureaucratic interferences so sex workers and brothel owners feel that going underground is profitable for them. In short all forms of governmental restrictions placed on sex work across the world have been miserably failed to realize their objectives—protecting women and eliminating trafficking.

During covid-19, governments, at all levels, extended many support mechanisms to workers in formal and informal sectors. Unfortunately no such support has been offered to sex workers because no government treats them as workers. They are not a part of any social security protection scheme introduced by the government. Sex workers need financial assistance and safe environment to pursue their job. In ideal public morality sex is a sacred physical intimacy and union between husband and wife. Human history, biological and cultural evolution of mankind tell us that we have gone well ahead of such a 'holy matrimonial ideal sex' discourse. Today even 'kinky' sex is acceptable.

Since the dawn of human civilization sex work has been with us. Sex is the basic instinct of a human being. Craving for sex is normal and there is nothing to be ashamed of in it. It is one of our basic needs. It should be satisfied. That's all. It should be one of the most beautiful and happiest moments in everyone's life. It should give people happiness and a feeling of well-being rather than self-pity and sadness. Sex is a birth right of every living organism. Denying sex is denying one's right to life. Sex is not something to be performed in a coercive environment, under darkness in the backyard of an abandoned building, hidden corners of bus stations or railway stations, frighteningly lonely places or under bushes in constant fear of shame and self-indignation. People should never be felt ashamed of or in a state of eternal regret. Sex is just a normal phase in everyone's life so long as we do not use force on others and breach the privacy of others including our partner. All are not supposed to marry, having babies and leading a family life. If married couples can pursue sex without the purpose of procreation, there is no reason to deny that right to other adult human beings who are single, divorcees or any other social categories of human species.

Sex work is not illegal in India. But society does not approve it. People still consider sex outside wedlock is a sin and an immoral act. So a kind of social stigma is shrouded around sex and sex workers. Naturally statutes that deal with sex and sex workers give more importance to preserving societal morality rather than protecting the rights of sex workers and their clients. Immoral Traffic Prevention Act 1986 and its predecessor, Immoral Traffic in Women and Girls Act 1956 were drafted in line with United Nations International Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949<sup>5</sup>. The Trafficking of Persons [Prevention, Protection and Rehabilitation] Act 2018, latest set of rules framed to “protect sex workers” is also an extension of previous statutes that deal with sex and sex workers. All these statutes are big failures in the sense that none succeeded to remove criminalization of consensual sex with sex workers. Law enforcement personals are still chasing sex workers and their clients. Existing statutes do not protect the rights and interests of sex workers and their clients. These statutes do not consider sex work as a recognized form of work for living. Sex between two adults on mutually agreed terms and conditions is legal in India. Unfortunately people have to go under a bridge or bushes or to some other alien planets to realize consensual sex is the irony.

Quasi criminalization of sex work by rules in India, in practice, becomes full criminalization and gross denial of rights of both sex workers and their clients. Millions of Indian citizens are involved in sex markets in India as sellers or buyers. It is a reality. Quasi criminalization of sex industry is not doing any good. It is as bad as full criminalization. One’s desire to have sex in a dignified way is to be a human right in a democratic country like India. Decriminalise sex work and recognize sex work as a work just like any other work with safety rules and regulations are the two things Government of India must do urgently to protect the interests of both sex workers and their clients. In sex industry clients are invisible. We have millions as clients. Governments all over the world have made different laws and regulations to prevent or remove sex work and preserve moral standards of our society. Fortunately or unfortunately sex work has been with us right from human civilization as commodity because people are there to purchase it. So we need a safe and just sex market. Let us hope this pandemic may induce law makers to move towards decriminalization of sex work in India. Sex workers and their clients are not criminals or antisocial people. They are citizens of this country. If the state does not recognize sex a basic human right and “sex work” a work, sex workers and their clients will go to bushes and police will run after them for no apparent good for anyone.

Decriminalisation of sex work is the only way to help both sex workers and their clients. Decriminalization removes all criminal charges imposed upon sex workers and others involved in sex work like clients, brothel owners and pimps. It is different from legalization that refers to putting legal restrictions on sex work. Sex work is a ‘contract’ between two adult parties. There is exertion of labour on the part of a sex worker involved in sex work. Criminalization, partial criminalization and faulty legalization are all, in practice, resulting in gender based violence on female sex workers and denial of their rights. Gender rights include the right to life, the right not to be subject to torture or cruel inhuman or degrading treatment or punishment, the right to work, the right to just and favourable conditions of work, the right to equal protection under law, the right to be healthy, and her reproductive and sexual rights<sup>6</sup> [UN committee on the Elimination of Discrimination against Women [CEDAW] [1992]. Indian statutes that deal with sex work and sex workers deny female sex workers all gender rights enshrined in the CEDAW general recommendations in 1992. Sex work and trafficking women for sex work are two different things. Trafficking women for forced sex work is to be prevented but not at the cost of the right of an adult woman who is voluntarily doing sex work.

Decriminalization of sex work results in recognising it as work; so better and safe working conditions could be provided. It enhances the dignity of sex workers and assures their human rights. Decriminalization eliminates chances of violence and abuses from police and vigilante groups. It enhances sex workers’ access to health care systems and other grievance redressal mechanisms. Decriminalization reduces the chances of sex workers contracting HIV and other STDs. Decriminalization ensures better and safe living conditions. Human trafficking for sex work could be effectively prevented under decriminalized sex work regime. Decriminalization of sex work respects human dignity, gender rights, bodily autonomy of the people and their privacy. Unnecessary state control over body, sex and sexual expressions could be prevented by decriminalizing sex work. Criminalization of sex work limits sexual choice of people and imposes morality of the society upon the determination and autonomy of the individual. Criminalization of sex work is not only undemocratic but also harmful to people. Decriminalization of sex work improves economic conditions of sex workers, enhances their confidence and psychological well-being. It helps sex workers to lead a dignified life free from all forms of societal coercions.

New Zealand was the first country to decriminalize sex work. Prostitution reform act 2003 paved the way for decriminalization regime in sex work in New Zealand. The act clearly states its purpose at the very outset “The purpose of this Act is to decriminalize prostitution [while not endorsing or morally sanctioning prostitution or its use] and to create a framework –[a] safeguards the human rights of sex workers and protects them from exploitation ;[b] promotes the welfare and occupational health and safety of sex workers: [c] is conducive to public health ;[d] prohibits the use in prostitution of persons under 18 years of age : [e] implements certain other related reforms”<sup>7</sup>. The Act was enacted after having close dialogues with all stakeholders in sex work so it is arguably the best available practically workable Law model that protects interests and human rights of sex workers and their clients. New Zealand Prostitutes’ Collective, [NZPC] a collective of sex workers for sex workers, is the actual force that worked behind realizing decriminalization of sex work a reality in the country. Role of NZPC has been vital in altering moral discourse on sex work to a question of legal and human rights. Sex workers are always labelled as deviants, other, people having abysmally low moral values and dangerous perverts in all countries. I am not sure if decriminalization will help to remove these social stigmas. Experiences of New Zealand in this aspect are also not much hopeful and bright. Decriminalization of sex work is good to ensure public health, occupation health and human rights and legal rights of sex workers and their clients. Gillian M Abel concludes that “Many sex worker rights activists and academics have visited New Zealand in recent years. While not from Mars, they have come from Canada, the UK, the USA, the Netherlands and Sweden and have all been impressed not only by individual sex worker rights within New Zealand, but also by the very different environment in which sex work happens. New Zealand sex workers, unlike those in most other countries, although unarguably still stigmatized to some degree, certainly have citizenship rights. They may be ‘down under’ but they are not underground”<sup>8</sup>

### Conclusion:-

We are not saying that sex work is the ideal job a person can pursue or must pursue. Sex work is to be legalized not for everyone to become a sex worker but to save sex workers’ children from sex work. We would say if democratic governments are not able to provide employment income and decent living conditions for their “citizens”, preventing sex workers and their clients on moral grounds may not be much acceptable to people with minimum logic and social understanding. If women choose sex work for money and better living conditions, denying them that choice is violation of Article 21 of Indian constitution. “Ease of doing business” is the buzzword today. Why can’t we extend that “ease” to sex workers? In socio economic impact assessment on decriminalization of sex work in India, possibility of a “post facto clearance” for sex work may be explored. Sex workers are invisible citizens. Decriminalization of sex work may give them dignified visibility. Historical transition of the category “prostitute” to “sex worker” is to be seen and reflected in the context of transition of a feudal “subject or slave” to a fully functional and autonomous “citizen” in a democracy.

### Reference:-

1. UNAIDS, Guidance Note on HIV and Sex Work (2012), <http://www.unaids.org/sites/default/files>.
2. Shannon K and Csete J, [2010] “Violence, condom negotiation and HIV/STI risk among sex workers,” *Journal of the American Medical Association* 304(5): 573-74
3. WHO Fact sheet on Sexually Transmitted Diseases as part of Human Reproduction Program ,2014
4. National Aids Control Organization, Phase 111 Program. As per UNAIDS, Sex worker population in India was around 688,751 in 2016.
5. A.K.Jayasree [2004] Searching for justice for Body and Self in a Coercive Environment, *Reproductive Health Matters* 12:23, 58-67
6. UN Committee on the Elimination of Discrimination against Women [CEDAW] General recommendation No 19 adopted at the 11<sup>th</sup> session in 1992 [<https://www.refworld.org/docid/453882a422.html>]
7. Prostitution Reform Act 2003, Ministry of Justice, Government of New Zealand
8. Gillian M. Abel [2014] “ A decade of decriminalization: Sex work ‘down under’ but not underground”, *Criminology and Criminal Justice* 2014 Volume 14[5]580-592.