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I. JUDICIARY TOO NAIVE TO UNDERSTAND THAT A MAN'S LUST MUST NOT BE ALLOWED TO GET FULFILLED AT THE COST OF ANNIHILATION OF A VULNERABLE WOMEN'S BODY!

"The man feels even more entitled when the law tells them it is okay to buy us", says Sabrina Valisce (a foreign victim of Prostitution). And there are a number of women like Sabrina (forced into Prostitution) in India, who want to & do cry their agonies aloud but does their cries evoke an adequate response by concerned authorities? Will the manifestation of sympathy, compassion felt by concerned authorities and mere formulation of variety of schemes of welfare, rehabilitation, (although mostly when it comes to implementation it ends up merely as a 'lip-service') suffice to heal their deep wounds? These wretched sex workers keep waiting for the ray of hope from around people they believe are ready to help them & well empowered to do so-the Judiciary! Alas! Those sex workers who didn't want to continue this so-called 'work' (as contented by those who support its decriminalization) were left shattered again when in 2020 Bombay High Court re-emphasized that' "Prostitution is not a criminal offence but only its public solicitation is".¹(as also clarified under Immoral Traffic (Prevention) Act,1956, Section 7² & Section 3³ etc.

However, will specifically categorizing Prostitution as a non-criminal offence be expected to be in favour of women who are pushed into it not because they derive pleasure from it but because of their unstable financial conditions (as rightly asserted by Justice Markanday Katju after the murder of a prostitute Chayay Rani Pal alias Buri by Buddhadev Karmaskar in Sep 1999). Furthermore, after being completely aware about the fact that legalization of Prostitution throughout various countries of the world such as Netherlands⁴, Denmark, Belgium, New Zealand etc., has done nothing worth commendable in favour of women. Rather the situation

¹ Kajal Mukesh Singh & Ors v The State of Maharashtra decided on 24-09-2020.

² Prohibition of Prostitution in vicinity of public places.

³ Punishment for keeping a brothel or allowing premises to be used as a brothel.

⁴ In 2000 Netherlands became one of the first countries to legalize & regulate prostitution.

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has worsened more with the cases of trafficking, abducting rising & their condition further deteriorating with their rights, protection, left unaddressed. But despite of that judges had the temerity of re-asserting it as a non-criminal offence giving wide entitlement to perpetrators, to exploit women without any fear of prosecution. First and foremost, the point of only criminalization of '*Public Solicitation*' of Prostitution but not private feels unfathomable. It is the same like one can murder or rape someone in private but not in public. Isn't the judiciary being intentionally ignorant of the severe torture and abuse of women in prostitution when judges themselves attend so many cases of sexual violence, exploitation, killings of sex-workers (*like 1999 murder of Kolkata Prostitute, in 2018 Kalaichelvi (sex-worker) was found murdered in a swimming pool at Marina, Mutilation of the body of a sex-worker who refused to stay with her client who had fallen in love with her etc*). Wasn't it the judge himself who attended the case of a young girl abducted at the age of 10 and exploited so vehemently in Prostitution that cigarette, livewire was being inserted into her private parts?

"Only sexual exploitation or abuse of person for commercial purpose & to earn bread is punishable under the Act", Observation of *Bombay High Court*. Men so lost in cravings of sex just throw themselves on these vulnerable women & use any means to satisfy their lust (violence, abuse, torture & even rape)⁵. So, doesn't all this constitute sexual exploitation & abuse?

II. INEFFECTIVENESS OF IMMORAL TRAFFIC (PREVENTION)

ACT, 1956 LEADING TO ITS FAILED PURPOSE:

It is not rare for a young sex worker to attend number of men (up to 20 or even above) per day. And it's a pity that sometimes they prefer to get intoxicated in order to endure the pain & severity met by the lustful clients. To add to the miseries of these women, in case of raid by police, it mostly leads to the detention and harassment of sex workers mostly because of their

⁵ In 2019, 3 sex workers were gang raped at a farmhouse in course of their so called "work" ___The Hindu (20-Jun-2019).

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“assumed” tarnished characters & low image in the society. In 2018, two sex workers ended up dead just to escape from a raid in Delhi. And the one brutally exploiting her is left unpunished merely because of the absence of any particular legal provision related to customers in *Immoral Traffic (Prevention) Act, 1956 (as happened in a case where a customer was left unpunished who was found engaged in a sex act with a prostitute in a hotel by Karnataka HC in 2018)*⁶.

It seems that judges are giving such censurable statements (as mentioned above) on the basis of mere “assumptions” that every client must be treating the sex worker appropriately. But the reality seems to be far away from their assumptions. *Quoting Justice Markanday Katju “Society must have sympathy towards sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21”*⁷.

I feel rather than making such huge, ostensibly impactful statements, judges must contemplate that might not the decision of decriminalization of Prostitution give a proper license to men of using women's bodies the way they like in so called “Privacy”. It feels absurd to even think that this will bring dignity to women who are used mercilessly by men craving for sex. Moreover, Section 4 of ITP Act, 1956, provides punishment for those above 18 years of age, living on the earnings of Prostitution, which in turn causes severe problems for the children of sex workers above 18 years financially dependent on their earnings.

Here again Sex workers (women) are in trouble, when the main purpose of ITP Act, 1956, was *Prevention of Immoral Trafficking Against Women & Children*. It totally points towards the failed purpose of ITP, Act, 1956, which instead of protecting women, children are acting as a shield against those who encourage & benefit from trafficking (*clients, pimps & brothel*

⁶ Nagaraju BJ @ Raju v The State of Karnataka.

⁷ Sex workers entitled to a life of dignity: Supreme Court, available at <https://www.thehindu.com/news/national/Sex-workers-entitled-to-a-life-of-dignity-Supreme-Court/article15444256.ece>.

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owners) as after decriminalization they can carry on their flesh trade comfortably at private places.

III. PROSTITUTES ARE VICTIMS/SURVIVORS!

However, there are many who welcome this move of courts. In fact, many sex workers themselves support it, who voluntarily indulge in it for earning their livelihood. This is what Kajal Verma (a prostitute by choice) opines about Prostitution” If a boy and girl on a blind date end up having sex _that’s fine. But if the guy pays the girl for sex, it becomes unethical”. So, for people having opinions like her it's totally 'fine'. But almost all women are thrown into this horrible web of flesh trade because of some unavoidable circumstances.

I feel even those who indulge in it by choice (like Kajal) would abominate letting number of lascivious men satisfy themselves but the irresistible need of money allows them to endure it. As rightly stated, & firmly believed by *Berenda Myers Powell*⁸, (*who remained in Prostitution for about 25 years*), “*Women who have been tortured, manipulated & brainwashed should be treated as survivors, not criminals*”. But the situation seems far away from this realisation in India and also many countries where the sex workers mostly are punished & further victimized & because of fear of shame, judgement by society, prosecution, even those sex workers who want to escape from it, feel terrified to even approach the authorities.

IV. JUDICIARY ENTANGLED IN ITS OWN WEB OF IRONICAL DECISIONS!

Such is the irony that courts on one hand have repeatedly emphasized the *Recognition of Rights of Sex workers (Buddhadeb Bhattacharya vs. State of West Bengal*⁹), in 2017 Gujrat HC held that “*A customer at a brothel can't be held liable for offences under ITP, Act, 1956, but can't be exempted from charges of physical exploitation*”. In 2018, Supreme Court in case

⁸ Co-founder of ‘The Dreamcatcher Foundation ‘ __A non-profit Anti-Human Trafficking Organization in Chicago.

⁹ (2011) 11 SCC 538.

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of a gang-rape of a prostitute in Delhi in July 1987 maintained, "*Even if the victim is of loose character, it doesn't give any right to the accused to commit rape on her against her consent*"¹⁰, & in September 2020 Supreme Court directed Centre & State Government's to provide monetary assistance to sex workers (*on account of want of labour cards, creating hindrance in their accessing of social security benefits & rations to them without specific requirement of identity proof*), and on the other hand courts are giving such reprehensible decisions (*Decriminalization of Prostitution*) that in no way seem or rather actually are not in favour of these sex workers.

Does anyone even envisage a sex worker as a respectful citizen deserving due respect either prior to or after decriminalization of Prostitution? By decriminalization, Judiciary is encouraging the customers, brothel owners, pimps of using women's bodies lawfully but in "*Privacy*". And expecting Amendment's to do the miraculous task of ensuring solutions to various issues of sex workers is totally vain as has been proved by the failure of the earlier amendments of 1972 & 1986 in the ITP, Act, 1956.

As per many people who advocate regulation/legalization of sex trade such as *Lalitha Kumara Mangalam*¹¹, many lawyers etc, giving due recognition to sex worker's rights & regulating their work will have incredible impact on them, making their living conditions and other important aspects much better. Quoting an activist & a Lawyer by profession, *Kamayani Bali Mahabal* "*Sex work must not be equated with sexual exploitation or sex trafficking*". It is totally true that prostitutes don't always end up being exploited & abused but they offer their bodies for sale only because they are driven into it by utter "necessity" created by their impoverishment. Moreover, when the law allows Prostitution, there are high chances that more women are trafficked into it for commercial sex purposes on account of rising client demand because of its legalization.

¹⁰ State (NCT of Delhi) v. Pankaj Chaudhary, 2018 SCC OnLine SC 2256.

¹¹ Chairperson of National Commission for Women.

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V. HUMAN LIFE & DIGNITY IS BEYOND A BARGAIN!

If the governments, law enforcement agencies, judiciary really wish to assure welfare of these destitute women, then instead of prolonged debates on pros & cons of legalization of Prostitution, discussions on recognition & regulation of Sex work for bringing improvement in their health facilities, lifestyle, educational opportunities etc, proud claims of providing monetary help to sex workers for ensuring their Right to livelihood, they should totally advocate its eradication & realize themselves & make others realize (who support its legalization) that *"a woman doesn't need to allow people use her body merely for her survival"*. Particularly Judiciary needs to be reminded that they hold the faith of so many needy people whose last hope is vested in them. Well, I believe comprehending that instead of utilising enormous funds in rehabilitation of the survivors of rape, abuse, trauma in Prostitution, in providing monetary assistance to them, the best & easy solution is to empower these women by helping them come out of this immoral, unethical flesh-trade, helping them realise that they don't deserve to be sold, abused & help in their reintegration in the society by providing them adequate assistance in every form (*be it shelter homes, health facilities, vocational training, job opportunities*).

We all are Afterall sure that our government, our country where enormous money is spent on trivial things, they can afford it aptly. Let's all make efforts by being vigilant, by raising awareness about the evils of human trafficking, Prostitution, by raising our voices for the aggrieved sex workers, pressing for their proper livelihood & sustenance to ensure that women are in reality being given respect as that of *'Goddess Durga'* and their respect not only remains confined to intricate speeches of our ministers. And also, be really hopeful that upcoming '5th October'¹² actually becomes a reality by *'No Prostitution'* in our country, making these sex workers truly believe and maintain confidently *"IK Ben Onbetaalbaar"* meaning_ *I am Priceless (as was protested in a campaign advocating criminalization of Prostitution in Netherlands in 2019)*.

¹² International Day of No Prostitution.