

Shades of Grey

Prostitution and the human rights discourse

All is not black and white... and we want to explore the shades of grey. Feminism is diverse and we don't always agree totally with one another, though we may share a similar perspective. While we don't want to silence other viewpoints, we want to focus on the finer distinctions between arguments used by people who are on the same side of the table.

Does the Human Rights discourse provide for the best and most just way of framing and addressing the issues that women in prostitution face?

Is it a useful strategy?

What are its limitations and traps, if any?

The Universal Declaration of Human Rights is the paradigmatic framework for the notion of human rights that is being used by Nation States and Civil Society the world over to give voice to the marginalised communities in all cultures and societies. This same discourse is now being proposed to empower another marginalised community that is being increasingly stigmatised and criminalised – women in prostitution and sex work. Women who have been pushed into the nether worlds of social consciousness. Women who have been the victims of violence – both from within the trade and profession and from without; the violence of a judgemental attitude; but yet whose very marginalisation has forged within them strength enough to celebrate a way of life touched little by the hypocrisies of the mainstream.

The Human Rights approach towards addressing the situation of women in prostitution and sex work seeks to affirm the individual woman's agency and equip her with the right to exercise her choice of profession and to seek redressal when she feels this right has been violated. It also provides her with the right to seek protection against violence and exploitation within the profession and provide her with the means to exit from it if she chooses to do so without the burden of being stigmatised as a victim or as an immoral woman.

This is sought to be done at different levels through:

- 1 Destigmatising the profession by declaring prostitution as *work* and therefore a legitimate option for employment.
- 2 Decriminalising prostitution by recognising it as an industry and thereby bring it overground where it can be *regulated* through appropriate labour laws and regulations.
- 3 Empowering the woman by granting her the status of a sex worker who has the same *rights* as any other citizen like the right to work, right to health, to education, to freedom of movement and to privacy.

This attempt to recast prostitution solely in terms of *sex work* and recognise it universally as an industry whose labour force comprises of sex workers who have a right to exercise an employment option is disquieting. Not so much because of its intent to affirm the women's self worth and dignity which is certainly non-negotiable, but because of the means, and the framework it is employing to do so. To understand why, we should perhaps look a little more carefully and critically at some of the conceptual limitations of this universal framework of rights, of how and why it fails to capture the nuanced realities of the women and how it will in reality affect the lives of those it is trying *empower*.

The Arrival of Rights and the Rhetoric of Progress

This idea of Rights that is today held to be *universal* was born in a specific historical and political context and therefore has moorings that are very culture specific: the culture of modern European civilisation.

The history of Rights within the European context is a tale of two movements. The first is the story of totalitarianism i.e. the complete hegemony and domination of the *culture of the state*. The second is, to rephrase Marx, the story and *history of struggle*; the recognition demanded and won by the *survivors* of industrialisation.

How this tale of two movements was inherited by the rest of the world as its own history and how the project on rights initiated by the modern European civilisation became the last word on human freedom and justice itself is a story of power and domination. For in the process of crossing European borders this idea of Rights acquired an absolutely decultured, impersonal and an almost imperious identity.

Rights therefore entered the erstwhile colonies as a kind of European gift to the savage. And it was a gift that did not come alone. It brought along with it a particular notion of progress and development and the intimations of a social context within which Rights could not only incubate but also grow into its full scope and meaning. This context was of course the Nation State.

With the formal freedom of the colonies after the Second World War, Rights was consecrated in the Universal Declaration of Human Rights and the Nation State system was propped up by the former colonisers and elites of the recently 'freed' colonies as the arrangement best suited for democratic freedom, open politics, development and economic prosperity. This combined assault by Rights and the Nation State system implicitly denied the possibilities of the political arrangements and social relations which were indigenous to non-European societies; it created a convenient amnesia in societies outside the West towards traditions of governance that were suited to and rooted in their cultural specificities.

This amnesia created societies socially engineered to run on a series of deceptions that masqueraded as universal truths. Possessive individualism as expressive freedom, industrialisation as social progress, social contract as social relations, science and technology as paradigms of truth; arithmetical democracy as popular representation; and, Nation States as guarantors of justice.

And, so today, the Nation State has replaced all other systems of political governance; the global market has subsumed all local patterns of trading and subsistence economies; the atomised individual as consumer, producer or seller of marketable goods has displaced all

other holistic notions of being human and personhood; the avaricious consumer ethic has been put into place as the central driving force of every society displacing more interdependent life visions.

And so too has Rights, that is inseparable from the rhetoric of progress, silenced all other expressions of justice and social transformation.

Women's Rights: Empowerment and Enslavement

One of the most crucial consequences of this masquerade has been the near total invisibilisation of women. This has been even more acute and prominent especially in those societies which traditionally were less hyper-masculine, which celebrated nature and the feminine and where women's presence could not be invisibilised without first splitting social worlds into public and private realms. This is not to deny that violence against women and their marginalisation existed in societies that valued the feminine. But the text of this violence was embedded in a context which did not marginalise the feminine as a principle of consciousness and cosmology and separate the personal from the public. This process of disembedding the personal from the public has created its own set of pathologies as we can see in the process of how women's rights came to be legitimised in post-colonial societies.

And so it was that when the Universal Declaration of Human Rights was first articulated in 1948 certain assumptions fortifying the public-private dichotomy were woven into this world view that legitimised the denigration of women even while invisibilising them. The founding fathers of the liberal tradition from Hegel to Rousseau understood the feminine as women's biological nature; her lack of political consciousness, her emotionality, her irrationality – all this made her a threat to public life and 'citizenship', and, therefore, all that women could contribute was in the 'rearing of citizens', not by *being* citizen; not by contributing to the definition of citizenship. And, therefore, was legitimised the public-private distinction that drew an inviolable line between the rational and the intuitive, the universal and the specific, the objective and the subjective, the feminine and the masculine. It separated not only two realms of activity, but also two realms of morality. Corinne Kumar (1999) points out, 'Women's world was not the world of the intellect, of matters of the state, of concerns of justice and liberty – for that was man's world. Hers was the Conversable World, subsistence livelihoods, of common life, of dailiness, of the vernacular'. In Mills' famous essay on liberty, he excluded from the rights to liberty the 'backward nations of the world and the women.' In its exclusion therefore of women, it not only left out the violence done to them as personal, private, domestic but also their experiences, their wisdoms, their life worlds and visions.

Over time however, and with successful campaigns by the women's movements, violence against women is being pulled into the public and political domain. Women's rights are being acknowledged as human rights. Significant gains undoubtedly. But what in fact does this acknowledgement mean? For today whether it is 'backward nations' of the world, the indigenous, the poor, the marginalised, and the women – all are being *included* into the human rights discourse... they are being *included* into development and the market...they are being given the *right* to be equal partners in progress. In this process therefore violence against women, especially in the personal realm is being made visible and addressed through the institutions of law and order that have emerged from the state-centred rights discourse. However what is being rendered invisible by this same discourse is the increasing violence against them in the public arena that is being reconstructed by

the dominant paradigm of development. A paradigm which while promising greater 'freedom' is actually creating new forms of economic enslavement that brings in its wake conditions of vulnerability and violence for the women, both within the home and outside. And all this in the name of *equality* – where the women's worth can be computed only if she becomes equal to man – the masculine principle that is central to all dominant modern societies.

The language of Rights can therefore never capture the real pain of these worlds in which lives and livelihoods are threatened by the dominant vision. It seems therefore little more than a cruel cover-up for the harshness and ruthlessness in the manner in which the poor, marginalised and defeated in the Darwinian world are treated. In this context Rights remains a chimera – an absolute enslavement that masquerades as *freedom and choice*.

The attempt to give visibility to women in prostitution and sex work within this framework of Rights is a poignant testimony to this heartless masquerade.

Prostitution, Violence and the Human Rights Framework.

In the context of prostitution therefore when in order to *right* the *wrongs* done to women, the framework of *rights* begins to replace the language of *justice*, the basic contours of this very complex institution begin to get redrawn – and more often than not, at the cost of women themselves. For as stated already, the language of rights fails to contextualize the larger realities by adopting a universal and therefore a decultured, impersonal, amoral framework that anaesthetises the pain of poverty in those *developing* worlds where not only has the violence of trafficking been institutionalised but which are also witnessing the increasing brutalisation of prostitution. Prostitution is now being transmogrified into a *sex industry* in this era of free enterprise and the global market. For in this era, prostitution too like any other trade has expanded and found newer markets beyond the local and the domestic, making profound and disturbing changes within its nature. For now it continues to be sustained not so much by community needs and demands but by larger impersonal markets that are located in more affluent metropolises within the country and outside, by invisible trafficking syndicates that are more organised and criminalised, and, in fact, by the omnipotent State itself.

For all Nation States today in the process of rebuilding their economies to cater to demands of the global market, are creating new institutional frameworks for trafficking in women and children. Paralyzing poverty being created by policies of structural adjustment leading to forced migration and therefore the creation of the economic refugee; tourism that was once thought of as a voyage of discovery but now has been reduced to another consumptive activity that thanks to State policy has declared it as an Industry with an open license for selling its lands, its peoples, its way of life and also its women; military prostitution in times of war and the increasing militarization of societies; corporate sex tourism in countries of Asia...are all rendering women more vulnerable to new forms of violence and exploitation.

The violence in trafficking and in prostitution can not be separated from the total impoverishment of entire societies that constitute either the resource base for wealthier nations or end up as waste byproducts of a highly industrialised and corporate world; a world in which the disparities between the rich and the poor are horrifyingly stark, a world in which human relationships have gained an impersonal, contractual quality and the

complex fabric of human impulses has been reduced to the unidimensional desire of an individual – rootless and ruthless in his desire for self-fulfilment.

In this context, the process of seeking legitimacy for prostitution as an industry and categorizing all women who have adopted this way of life as sex workers who have the right to choose this as a profession and therefore on this basis can make demands for better working conditions and get adequately compensated for it has certain disturbing implications.

Prostitution is not a homogeneous system. Where women come from, why they come, how they come and who introduces them into prostitution are all varying factors. Therefore searching for *one way* to understand and *one way* to decide what the 'rights' are they need to be 'given' and what the 'wrongs' are that need to be removed from their lives continue to be nebulous quests.

Governments of countries across the world have legislated systems and practices of prostitution in one way or the other through legislation ranging from criminalising women offering sex services to the prosecution of players other than the woman, such as clients, pimps, sex industry owners and managers etc. It is also a fact that legislations of all kinds seek to control or regulate prostitution and can only mean more repression of women. Surely, consensual sex between two willing adults for or without money or gain can neither be held illegal nor policed except by an extremely moralistic political regime. Prostitution is not a law and order problem. Exploitation, abuse, harassment, abduction and sale or forced sex work are, and State intervention is required only in these instances. Any greater intervention than this that would involve either criminalising or legalising the entire institution would be social engineering at its worst.

What are the specific and deeper implications of recasting prostitution to fit into the history and morality of the industrial revolution?

1 The absolute atomisation of the woman who is apparently exercising her individual rational right to a profession of her choice would totally miss the fact that the communities and cultures she is a part of are being pushed to the peripheries of the global economic order. It is not an accident that the centres of sex tourism industry lie in the peripheries like South East Asia or Eastern Europe now and not centres like California or Paris.

2 The reduction of the identity of all women in prostitution to merely sex workers is tantamount to reducing something life-giving and fundamental like sex to the clerical and bureaucratic theology of 'work'. 'Work', that as Shiv Vishwanathan says 'is a modern invention created by missionary monks and current theologians of industry'. What is more, it obfuscates the fact that prostitution more than being a right to work is actually a right to life, to livelihood.

3 Sex worker, a term conferred by impersonal global markets, seems to be a more secular and legal identity as opposed to the more common *women in prostitution* that apparently is derogatory to and denying of the women. The irony is that the rejection of latter is in fact the subtle acceptance of the moralistic presumption that prostitution is a more demeaning identity or activity.

4 The absolute devaluation of a woman's sexuality the moment it is absorbed into the

market as sexual labour where sexuality itself can only find its home in a body devoid of any personhood or humanity.

5 The decreasing control that women have over their business and lives that are being taken over by men with clear links with larger trafficking enterprises and the sex industry.

6 The institutionalisation of the complex relationship between the women, brothel owners, *gharwalis* (madams) and pimps into a *contractual* arrangement between an employer and employee who function within an established management framework is an attempt at decriminalisation and bringing the business over ground. This approach presumes that this *contractual arrangement* could be far less exploitative than the informal web of relationships around the women, which is coloured by expressions of care and *benevolence* however imperfect it may be.

7 Legalisation would also entail licensing and zoning, which while may be beneficial to those in institutionalised forms of prostitution such as brothels, would in the case of women in street prostitution, increase their vulnerability to the arbitrariness of the licensing and monitoring authorities such as the police. This would drive them to seek more discreet ways to ply their trade and in the process, fall prey to other exploitative forces such as road mafias and goons.

8 Handing over the task of destigmatising women in prostitution to the State who it appears has greater powers to *legislate* social transformation. But in fact, genuine transformation can only happen from within, when society is forced to accept moral responsibility for granting self-respect and dignity to every one of its members who in turn have the right to seek justice if it does not do so.

9 Finally, in a country that is continually diluting pro-worker legislations and where existing benefits and entitlements under the law hardly reach the lowest in the rung, is it not too much to expect that sex workers' right to work, right to benefits and entitlements will automatically become attainable on recognition of sex work as 'work'? They will then formally have the privilege to join the millions of poor and the marginalised who jostle and struggle to get even a fraction of entitlements that are rightfully theirs.

All these reveal that the historical and cultural evolution of prostitution in different contexts as a way of life embedded in community structures and a trade that has over time evolved its own sets of regulations mechanisms from within, needs to be accepted and understood before appointing the State as the protector and custodian of the Rights of the women. For otherwise the Human Rights framework becomes a strategy to replace a more radical social transformation that ensures the dignity and self-respect of the women. This is not to deny the relevance of Rights as a *survival strategy* to negotiate for wider survival spaces within the given system; to make the State, however flawed it may be, to be more responsible and accountable to all its *citizens*. But it is crucial that we restrict the Rights approach to only a strategy and not derive from it any profound visions for possible futures.

For Rights as a systemic imperative is the need only of those in power. As survivors with the sharpest insights, be it on the 'double standards of morality' in society, the violent underpinnings of trafficking networks or even the hollowness of state sponsored rights, it is the vulnerability of the women in prostitution that best enables them to define the contours

of a more rooted and diverse rights discourse that will help resist the violence in their lives. And reclaim an autonomy that no one agency can either confer or deny; an autonomy that helps them redefine dignity, security and self-worth in their own multiple languages and on their own terms.

- Madhu Bhushan and Shakun Mohini

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