



Legal Validity of Prostitution In India: And Its Effects On Public Policy

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Abstract –

One of India's oldest occupations is prostitution, and in that country, people often harassed and discriminated against prostitutes. This article primarily focuses on the legislation that the Indian government passed to legalize the activity known as prostitution there. Therefore, what benefits do prostitutes receive from legalizing their profession, and how is this law implemented in India? What are the connected regulations, as well as the advantages and disadvantages of legalizing this profession?

It is seen as sinful, demeaning, and hateful while being the oldest profession. It is vital to treat those who work in the prostitute sector like other citizens of the nation and to recognize prostitution as a legitimate economic activity. The lives of sex workers will be transformed by legalizing and regulating prostitution and the prevalence of STDs will decline in the general populace. In the context of India, there isn't a specific ban on prostitution, because it is not stated that it is criminal by law. However, several prostitution-related actions, including as operating brothels, solicitation, trafficking, and pimping, are all crimes in India in based on The Immoral Traffic (Prevention) Act (1956). In India, for example, it may not be illegal to take payment in return for having relations with someone who is willing and without the need for any prior pleading, but pimping has legal repercussions.

Keywords – Prostitution, Sex worker, Public Policy, Sex trafficking, sex work, validity

Introduction-

There are numerous factors at play when women turn to prostitution. These primarily include poverty brought on by widowhood or Separation, family debt, a lack of education, constrained economic opportunities, a lack of family support, a lack of legal or social protection, unfavorable social circumstances, vulnerabilities brought on by migration, sex trafficking, or even a cultural tradition known as "Devadasi" up until 1998, and less frequently, personal choice.. (Gore & Patwardan, 2022)

The Latin term prostitute, which meaning to expose openly, is where the word "prostitution" originates. Basically, prostitution involves performing sexual favors for cash. Prostitution is another gender-specific issue because the majority of the victims are women, just like the other forms of discrimination that are committed against women. (Ghosal, Jana, Mani, Mitra, & Roy, 2022)

To claim that men are not victims of sexual exploitation and violence would be a little stupid, though. Furthermore, when we highlight the flaws in the prostitution system in India, the transgender minority sometimes remains undetected. It would be foolish to turn a blind eye to it and maintain that it doesn't exist in a society where prostitution has long been a practice and is still a thriving industry. (Gangoli, 2007)

What exactly is Prostitution?-

Prostitution is defined as performing sexual acts for payment. It denotes not only the act of having sex but also its accompaniments, such as soliciting clients, running brothels, dealing with prostitutes, sex trafficking, and other actions that encourage prostitution and hence the expansion of the sex business. The term "prostitute" refers to a person who works as a prostitute, which is the practice or business of engaging in sexual conduct for payment. It is a component of the sex industry, much like

pornography or any other form of sexual entertainment. Brothels are establishments specifically set up for prostitution. Prostitution laws and conditions are typically changing over the world, reflecting conflicting findings. Prostitution is now often associated with violence, prejudice, and exploitation. In Indian society, prostitution is frequently regarded as taboo, hence the necessary attention has not been given to its regulation. This essay explores the relationship between prostitution and exploitation and violence, as well as the potential impacts of legalizing and regulating prostitution on the abuse of sex workers.. (Gangoli, 2007)

Prostitution in India: A Brief History

India has a long history of prostitution. In fact, sex workers are mentioned in a number of Hindu mythological allusions known as Apsaras. Devdasi system which was prevalent in ancient times and under this practice, the followers of Hinduism used to offer their daughter as Devadasis to the Hindu gods and goddesses. The literal meaning of the word Devadasi is devoted to God or maid of God. Being married to God, she was completely free to live with someone else. (Sihingal, 2015)

According to Indian tradition, prostitutes in the past were called "Devadasi," and they gave their entire lives to serving Lord Krishna. Some religious beliefs hold that the Devadasis see the Gods as their spouses and, as a result, are not permitted to marry other human beings. Later referred to as "Nagarvadhu" or the "Brides of the town," they were requested to perform by the wealthy and the aristocracy. According to historians, before the British administration, the Royal families treated the Devadasi with respect and deference. Even the Kings and Mughals never intended to even approach them. But after the British arrived, this came to a stop. The earliest one-night stands occurred as a result of the Devadasis performing in front of the British commanders. In order to prepare India for prostitution, the British began calling on these artists for sexual encounters. Temple dances decreased when Devadasi became a popular prostitution destination during British rule. (Sihingal, 2015)

The reasons for prostitution in India –

There are many reasons why a woman might become a prostitute, but the two main drivers of commercial sex for women are ----

- **Poverty** - Out of all the causes of prostitution, it is known that poverty is regarded to be the primary motivator for people to become prostitutes. Desperate and defenseless women are primarily driven into prostitution by poverty.
- **Unemployment** - Another factor that drives some women into sex work is unemployment. Many people, especially young people, are now living in urban areas where prostitution is seen as a quick way to take care of their families' needs as well as their own. This is due to the rising rate of poverty. Urbanization has stimulated the growth of free enterprise, which has contributed to the polarization of the classes and increased the incidence of poverty, and unemployment. (Khan Z. Z., 2022)
- **Crime and Estrangement.**
In an effort to cope with the harsh economic realities, this circumstance has led to prostitution becoming more widespread and notable. Women in particular are particularly at risk. Women were forced to turn to illegal transactions out of desperation because there were so few career alternatives for them. (Khan Z. Z., 2022)

Six percent or so of the women who were raped went into prostitution. And frequently, the society that accuses these women of being raped makes sexual assault survivors feel guilty and stigmatizes them. Additionally, in certain instances, not only has society rejected them but even their own relatives.

Agency in the Sex Industry -

Understanding sexual work is not necessarily exploitative and that women have the right to their own sexuality, sexual experiences, and decision to engage in sexual labor are prerequisites for being able to recognize the agency displayed by sex workers. This holds true even in a patriarchal society. For radical feminists, any assertion of the sexual agency is false consciousness, and sex work is patriarchal brutality. This is obviously in contradiction to what sex workers believe. (Karandikar, Casassa, Knight, Espana, & Kagotho)

Legal stage of Prostitution in India-

In India, is prostitution permitted?

The I.P.C states that although prostitution in its largest context is not necessarily illegal per se, there are several acts that constitute a substantial percentage of prostitutes and are forbidden by particular legal provisions: -

1. Prostitution solicitation in public spaces;
 2. Engaging in prostitution-related activities in hotels;
 3. Owning a brothel;
 4. Pimping;
 5. Engaging in prostitution by hiring a sex worker;
 6. Arranging a sexual act with a client;
- (Kole, 2009)

Regarding prostitution, there are three different types of nations.

- In places like Kenya, Morocco, Afghanistan, etc., where prostitution is not tolerated and it is against the law to engage in it.

- In countries like India, Canada, France, and other places where it is permitted but subject to certain regulations.

- Countries like New Zealand, Australia, Austria, the Netherlands, etc., where prostitution is legal and regulated by proper regulations. (Khan & Singh, 2022)

In India, if prostitution is permitted, do the prostitutes have any rights if so? This is one of the most frequently asked questions.

Both "Yes" and "No" are acceptable responses to this query, the context of India,

The ITPA of 1956 defines prostitution as the commercial benefit of sexually abusing or exploiting a female for monetary gain. This 1956 law, commonly known as SITA, was passed. Prostitutes are generally allowed to start their business in private but not to operate it in public, according to this regulation. If a person is found guilty of sexual act in public then he can be arrested as per law. (Joshi & Jain, 2022)

Within 200 yards of a public space, a woman is not permitted to engage in commercial sex. Provided how prestigious their line of work is, sex workers cannot be covered by the current labor laws, but they do have all the same rights as any other Indian citizen, including the right to be rescued and given rehabilitation if they so choose.

An amendment to the original act was made in 1986 with the ITPA. According to this law, prostitutes who are caught soliciting business or enticing strangers will be arrested. Call girls are also forbidden from disclosing their phone numbers. If discovered

doing so, they risk receiving penalties and a 6-month sentence. (Joshi & Jain, 2022)

The legality of the ITPA was disputed in the famous State of Uttar Pradesh vs. Kaushalya judgment. In accordance with the facts stated in this case, a small number of prostitutes were asked to vacate their positions in order to uphold the dignity of something like the city of Kanpur.

The Indian constitution's Article 14 and clause (d) & (e) of Article 19(1) were deemed to have been violated by section 20 of the act, as determined by the High Court of Allahabad. Since there was a clear distinction between this type of prostitute and someone who was creating a nuisance, it was found that the Act was valid.

This will enable them to reintegrate into society as respectable members.

1. Immoral Traffic (Prevention) Act proposed modification –

The revised bill eliminates the clauses that sanction client solicitation as a kind of prostitution. This suggestion suggests tougher penalties and higher fines. It aims to make it unlawful to enter a brothel with the intent to use trafficked victims for sexual exploitation; this crime is not already prohibited by the Act and will result in a minimum three-month sentence or a penalty of Rs. 20,000. A piece of legislation called the ITP Act set restrictions on prostitution. Some prostitution-related actions are now prohibited under this statute. The following details the key components:-

- According to Section 3 of the law, opening a brothel or permitting one to operate on the premises is illegal.
- Section 2(a) of such law defines "brothel" as any residence, space, or site where prostitution occurs.
- Section 4 of the statute imposes penalties on anybody who relies on prostitution earnings.
- This section includes everyone, even relatives.
- Anyone who acquires, promotes, or takes someone else for prostitution is subject to punishment under Section 5 of the act. This section focuses on traffickers, brothel owners, and pimps.
- Section 6 of the law makes it illegal to keep a male escort in a brothel or any place where prostitution is performed. This section mostly focuses on middlemen and brothel owners.

- Section 7 of the law makes prostitution that takes place in or near public areas illegal.
- Any densely populated neighborhood, hostel, house of worship, educational institution, hospital, nursing care, or other places that perhaps the government, the judge, and the police commissioner have given notice of is considered to be a public place. The term "proximity" refers to distances under 200 meters.
- The act's Section 8 penalizes sex workers who solicit or seduce a person for prostitution. This clause prohibits sex workers from using any gestures to entice anyone. (Benoit, Jansson, Smith, & Flagg, 2018)

This clause is discriminatory because it imposes a lesser penalty on men for the identical offense—roughly half of what is imposed on women.

2. Indian legislation governing prostitution -

The ITA (1956), Section 2(f), de'fine "prostitution" as the sexual exploitation or abuse of any individual for any commercial reason. Prostitution is included in Sections 372 & 373 of the IPC 1860, but exclusively with regard to child prostitution. Although the IPC's Sections 366A, 366B, and 370A separately deal with the punishment of crimes involving the procreation of young girls, the importation of girls for intercourse from abroad, and the exploitation of trafficking individuals. Therefore, there are few prostitution-related laws under the IPC. (Escot, Nguema, & Serrano, 2021)

Although it primarily addresses abduction and child prostitution, the Indian Penal Code, of 1860, also addresses prostitution. A violation of Sections 372 and 373 is the purchase, sale, or import of a minor for prostitution.

The employment of beggars and other similar forms of forced labor, as well as the trafficking of human people, are prohibited by Article 23(1) of the Indian Constitution. Anyone who violates this provision is subject to punishment under Article 23 of the Constitution (2). This Act does not forbid or criminalize prostitution or sex labor, but it makes some related actions unlawful. In my opinion, it is a clear violation of Articles 19 and 14 of the Indian Constitution. Instead of monitoring unethical human trafficking, it appears that the ITPA is more concerned

with eradicating prostitution. Such regulations have only made life for sex workers more challenging, vulnerable, and hazardous. This is a very incorrect approach to this profession; rather than making their lives easier, the government has actually made them more difficult.

In favor of making prostitution legal:-

- It will result in sex workers living happier lives.
- Labor rights will be granted to sex workers.
- Sex workers will have the right to go to police station without any fear.
- The business will be regulated.
- People will respect them in society.
- The government will be given the information necessary to monitor if any minors are engaging in prostitution. Why there won't be any more sexually transmitted illnesses because of routine health checks.
- Sex workers will be allowed to visit the police station without being afraid.
- When the government keeps a lid on it, forced prostitution will end.
- There will be fewer instances of trafficking and rape.
- Sexual work will be regarded as employment.
- Taxes as opposed to kickbacks.
- Financial empowerment.

In favor of making prostitution a crime:-

- It will lessen human trafficking.
- No more sexual violence.
- Elimination of male domination over women.
- A decrease in underage sex workers.
- Low wages.
- The prostitutes are unaffected in the long run.
- A reduction in STDs.
- Regularizing and making prostitution legal has far more advantages than not doing so. Prostitution has existed for a very long time, and I don't see it ever going away or being erased from society. No matter how severe the regulations are, it will continue to exist, according to our history and experience.

France has joined the other four European nations that have made sex workers' customers a crime. Similar legislation had already been passed in England, Sweden, Norway, and Iceland. The fact that prostitution is being practiced in some

capacity despite being illegal in many nations, including India, is also a truth. (Sonal, 2016)

Historical decision of Supreme Court on Prostitution:

Prostitution has been legalized in India by the Supreme Court. The police cannot intervene in this situation or act quickly towards sex workers who perform this activity with consent, the Supreme Court made plain in its ruling. Sex workers have the same legal rights as other citizens, according to a ruling by a three-judge panel of the Supreme Court led by Nageswara Rao. Although operating a brothel is forbidden, voluntary prostitution is not. Additionally, he stated that if a sexual offense has been committed against a sex worker, all facilities, including prompt medical attention and legal assistance, should be made available. The Supreme Court further cautioned the media in such situations, stating that the identities of the sex workers, whether the victim or the offender, should not be divulged during arrests, raids, and humanitarian relief by the police. Such images shouldn't be released. (Sharma & Sarada, 2022)

Conclusion:-

Due to the social stigma attached to their "immoral" status, which traps them in a web of marginalization and discrimination, sex workers in India frequently experience violence and harassment. By interfering with public morals, a barrier is put in place for sex workers even to seek justice or make a claim. The rights of sex workers are frequently infringed upon, including their access to healthcare. Society often ignores the need to protect sex workers from violence because it views it as an inherent feature of the sex industry. According to this article, India should pursue a neo-abolitionist strategy that would make prostitution illegal overall, with the exception of sex workers. It also looks at the current legal system in India, particularly the legal grey areas, such as how police frequently detain sex workers under the ITTPA, 1956, notwithstanding the fact that India does not have laws against commercial sex work.

Therefore, rather than opposing this industry, we should defend sex workers by passing regulations that are in their best interests. They will undoubtedly receive all the privileges they require as a result. They ought to have the freedom to labor without any constraints or fear. A right to live a

healthy life ought to be given to them. They should have been provided with a voice by acknowledging them via legislation. According to labor legislation, they should have the same freedom to organize as any other profession. Only until prostitution in its entirety is legalized will sex workers be able to take use of these privileges. Recently, customers of a sex worker in West Bengal murdered her after she refused to engage in sexual activity. In another incident, a sex prostitute who requested 1,000 rupees instead of 300 asked was murdered by her customer. All of this is directly attributable to the central government because it is its responsibility to provide reasonable regulations for prostitution and sex labor. It is past time for Article 14 of the Indian Constitution to grant equal rights to sex workers and recognize prostitution as work.

In *Budhadev Karmaskar v. State of West Bengal*, the highest court ruled that sex workers have the right to a life of dignity since they are also people. The meaning of the word "life" in the Constitution's Article 21 is well-established thanks to a number of court rulings, and it does not merely refer to animal life.

Finally, it may be concluded from the study that there is no need for any particular treatment, such as criminalizing, decriminalizing, or sanctioning it, for a problem like prostitution. It is impossible to dispute the conclusion drawn from previous studies that legalizing prostitution has both beneficial and bad impacts. Therefore, simply giving prostitution legal legitimacy won't be enough to remedy this issue; instead, a standard regulation must be developed to govern its administration throughout our nation. Prostitution laws will assist protect trafficked women and their infants from being taken advantage of. Additionally, it will guarantee the protection of the general public's health as well as those of sex workers.

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