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THE JUSTICE DEBATE: THE STIGMATIZATION BEHIND SEX WORK- Aniket Raj & Tanmay Yadav¹**ABSTRACT**

Prostitution is a profession where individuals perform sexual services for pay. From prehistoric times up till the 19th century in British India, prostitution has a long history in India and is still widely accepted as a societal reality today. Rich groups exploit them and gather at their wretchedness and dishonour in composed gangsterism, notably with police nexus; the victims of the trap are impoverished people, unskilled and ignorant segments of the general public, and they are the objective gathering in the tissue trade. A class of women was allegedly upgraded to "prostitutes" as a result of unfortunate situations, erroneous societal approvals, disabilities, and forceful sorts of sexual activity. The goal of this research paper is to examine the legal aspects of business sex in India and determine whether it is plausible given the various social and legal barriers that our country has in place. An overview of the problems raised throughout the paper would be included in the conclusion.

PROSTITUTION?

*"Slavery still exists, but now it applies to women and its name is prostitution"*²

A prostitute is someone who works in the field of prostitution, which is a practice or business in which people engage in sexual behaviour in exchange for money. Prostitution encompasses a variety of forms, and its legality varies from nation to country. It might be upheld or unenforced crime, unregulated, or even a directed vocation. Along with pornography and other forms of sexual entertainment, it is a part of the sex industry. Brothels are organizations dedicated solely to prostitution.³ Around the world, the position of prostitution and the law is changing, resulting

¹ Students at IFIM LAW SCHOOL, Bangalore

² Dharmendra Chatur, *Legalization of Prostitution in India*, 4 59–71 (2009).

³ *Is prostitution legal in India*, INDIA LEGAL, (Jun 28, 2022, 3:28PM), <https://www.indialegalive.com/legal/is-prostitution-legal-in-india/>.

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in various results. Some people see prostitution as a form of cruelty or barbarism⁴ directed at women and children that contributes to the emerging crime of human trafficking.⁵

HISTORY OF PROSTITUTION

Paid sex has a long and illustrious history in India. In our nation's long-standing traditional prostitution networks, such the devadasi and tawaifs, the roots of human trafficking are deeply embedded. Women's trafficking is claimed to be a result of their disadvantaged circumstances, which are exacerbated by their social exclusion from society because of gender discrimination and ineffective development techniques in a society that excludes women from jobs and education.

Prostitution has always been a tolerated profession in India. Many of the country's fashionable red-light venues have a history dating back to the Mughal Empire. However, by the late nineteenth century, sex labor had come to be considered restrictive and exploitative for women due to societal changes. While prostitutes were once viewed as entrepreneurs with royal support and significant influence in state matters, theological and political shifts over the centuries have led to a reduction in the respect for their occupation. When the princely kingdoms were destroyed and the zamindari system was abolished after independence, the tawaifs or prostitutes lost their royal patronage and clients, and the tawaif system eventually died out. According to research, after the descent of the royal clientele, the offspring of these tawaifs took up bar dancing in metropolitan towns, where they were not accorded the same respect, they had before independence.

Females who live off the earnings of their beauty have been chronicled in numerous epics in varied circumstances throughout history. In the book *The Arthashastra*, Kautilya wrote an in-depth essay on prostitution. In this book, he goes into great depth regarding common female occupations, such as the Rupjiva, who made a living as a modern-day prostitute.

In India, prostitution took the path of devotion. Anciently during the times of the Devadasi system where it was a prevalent practice among Hindus to contribute their female child to dance in temples and worship of God. These so-called Devadasis, however, lost their protectors as feudalism disappeared, and were tortured by temple priests. This was the first form of prostitution. This practice flourished during the British era, when outsiders curtailed traditional

⁴Snehasis Behera, *Rights of Sex Workers in India: A Legal Analysis*, LAW ESSENTIALS, (June 26, 2022, 4:00PM), <https://lawessential.com/all-blogs/f/rights-of-sex-workers-in-india-a-legal-analysis>.

⁵Diva Rai, *Legal aspects related to prostitution in India*, iPLEADRES, (Jun 26, 2022, 5:45PM), <https://blog.ipleaders.in/legal-aspects-related-to-prostitution-in-india/>.

textile industries, armament, and other industries, forcing these populations to turn to prostitution for a living.

ACTS THAT CONSTITUTE PROSTITUTION

Prostitution is defined as giving sex services for a fee. It encompasses not only sex enjoyment but also related activities such as customer solicitation, brothel management, pimping or trading with prostitutes, sex trafficking, and other actions that aid in the growth of the sex industry.

There are a variety of circumstances that drive a woman to engage in commercial sex, poverty and unemployment being two of the most significant. Women from distant places have been known to fall prey to unscrupulous brokers who promise them respectable job options before selling them as sex workers. It is widely believed that, of all the factors that contribute to prostitution, poverty is the primary one that drives people into prostitution.

The rising rate of poverty has pushed many people, particularly young people, into urban areas, where they see prostitution as a quick way to meet their needs and of their families. Looking at the concept of prostitution in general, one can see that it was not as prevalent in pre-modern periods as it is today.

Approximately 6% of women who were raped went into prostitution. Survivors of sexual assault are frequently traumatized by the shame and stigma forced on them by a culture that blames them for having been raped. In certain circumstances, not only society but also their family members have refused to accept them. Aside from deferral or rejection of justice, the victims are confronted with comparable scenarios regularly. And once a certain period has passed, when they have no place to call home in our society and no glimmer of hope, they find their way into the darkness of prostitution. Approximately 8% of young women turned to prostitution after experiencing incest.⁶

PROSTITUTION AND LEGALITY INVOLVED

Certain sex-related behaviour are not deemed unlawful per se, according to the Indian Penal Code, notwithstanding existing restrictions. However, if the following behaviour is discovered to be real, one is entitled to be penalized in line with the laws of the legal arena in place:

- Soliciting prostitution services in public areas.
- Performing prostitution activities in hotels

⁶ Muzdalifat Abed, *Community perceptions of rape and child sexual abuse: a qualitative study in rural Tanzania*, BMC INTERNATIONAL HEALTH HUMAN RIGHTS (Jun 28, 2022, 6:30PM), <https://bmcinthealthhumrights.biomedcentral.com/articles/10.1186/1472-698X-14-23#Abs1> .

- Owning a brothel
- Pimping

Now, the situation is such that the activities are very genuine and coexist. So, does the Indian legal system make prostitution unlawful by prohibiting them? Because, in most situations, government officials overlook the fact that unlawful trafficking of women and children is the core reason for prostitution's booming industry.

IS PROSTITUTION LEGAL IN INDIA?⁷

Types of countries in terms of prostitution-

1. Kenya, Morocco, Afghanistan, and other countries where prostitution is not tolerated, and it is illegal to engage in prostitution.
2. Prostitution is allowed in several countries, but only with constraints and restrictions, such as Canada, and France.
3. Prostitution is legal and regulated in countries such as India, New Zealand, Australia, Austria, the Netherlands, and others.

The most pressing question is whether prostitution is legal in India, and if so, what rights do prostitutes have?

There is a "Yes" or "No" answer to this query. Since prostitution is not specifically mentioned as being punishable by law, it is not officially outlawed in India. However, a few activities related to prostitution, such as running brothels, soliciting, trafficking, and pimping, are all punishable offenses in India under THE IMMORAL TRAFFIC (PREVENTION) ACT.⁸ For example, running a sex racket is prohibited, but private prostitution and receiving payment for consenting to sex without previous solicitation are not.⁹

PROSTITUTION-RELATED LAWS IN INDIA

According to the ITPA, "prostitution" refers to the commercial exploitation or abuse of a woman for financial advantage, and "prostitute" refers to the person who profits from it. Prostitution is also dealt with in the Indian Penal Code of 1860; however, it is limited to child

⁷ Akash Khan et al., *Legal aspects related to prostitution in India*, IPLEADERS (Jun 28, 2022, 6:30PM), <https://blog.ipleaders.in/legal-aspects-related-to-prostitution-in-india/>.

⁸ The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).

⁹ Aditya Shanker Singh, *Regulation and legalization of sex work*, S. BHAMBRI AND ASSOCIATES, (Jun 28, 2022, 5:35PM), <https://www.sbhambriadvocates.com/post/regulation-and-legalization-of-sex-work> .

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prostitution. However, it tries to stop things like kidnapping in general, kidnapping for seduction and seducing someone into sex, importing a foreign girl for sex, and so on.

"Traffic in human beings" refers to the sale and purchase of men and women as commodities, as well as the immoral trafficking of women and children for immoral" or other objectives."

IMMORAL TRAFFIC (PREVENTION) ACT OF 1956: PRINCIPLES

The Immoral Traffic (Prevention) Act of 1956 governs the subject of prostitution in India. In the case of *The State of Uttar Pradesh v Kaushalya*¹⁰, the Act's constitutionality was questioned. In this case, several prostitutes had to be removed from their homes in Kanpur to maintain the city's decorum. Section 20 of the Act, according to the High Court of Judicature in Allahabad, abridged the respondents' basic rights under Article 14 and sub-clauses (d) and (e) of Article 19(1) of the Constitution.¹¹¹² The Act was found to be constitutionally valid since the distinction between a prostitute and a person producing a nuisance was clear.

This Act is aimed at suppressing prostitution among women and girls and attaining a public objective, namely, to rescue the fallen women and girls and stamp out prostitution, as well as to give these victims every opportunity to become good members of society. This Act intends to outlaw the above-mentioned acts of prostitution and empowers the police to remove them, close brothels, and place them in institutions that can help them change. It gives the Central Government the authority to create a Special Court to hear cases brought under the Act.

A PROPOSED AMENDMENT IN 2006 - HIGHLIGHTS

The Immoral Traffic (Prevention) Act was proposed to be amended in 2006, but it has not yet been put into effect. The amendment bill eliminates the clauses that make recruiting clients for prostitution illegal. This proposition suggests tougher penalties and higher fines. The act of entering a brothel to sexually exploit trafficked individuals is intended to be made illegal, and the punishment will be at least three months in prison or a fine of Rs. 20,000. In order to combat trafficking, the bill establishes authorities at the federal and state levels. Any individual found guilty of the crime of trafficking in persons for prostitution will be punished under the

¹⁰ *The state of Uttar Pradesh v. Kaushaliya*, 1964 A.I.R. 416, 1964 SCR (4)1002 .

¹¹ INDIA CONST. art. 14.

¹² INDIA CONST. art. 19.

definition of the phrase "trafficking in persons" that has been established.¹³

ARE THERE RIGHTS AVAILABLE TO PROTECT SEX LABORERS?

According to the Constitution of India, every citizen of India has their fundamental right and therefore sex workers also being citizens are entitled to enjoy these rights.

The right to life enshrined under Article 21 applies to all the citizens of India, a prostitute being a citizen of India has the right to life. This right to life was highlighted in the case of *Budhadev Karmaskar v State of West Bengal*.¹⁴ The case states that sex workers are human beings and have the right to live. None has a right to assault or murder them as they have the right to live to be citizens of India. The judgment also highlighted the plight of sex workers, empathizing that these women are forced to engage in prostitution not for the pleasure of it, but because of poverty, and directed the federal and state governments to open rehabilitation centres and teach technical and vocational skills such as sewing so that they can find alternative sources of income. The Immoral Traffic (Prevention) Act has integrated Section 21 as a regulation for state governments to build and operate protective houses, which should be regulated by licenses issued by them, by the directive.¹⁵

WHAT ARE ILLEGAL ACTIVITIES RELATED TO PROSTITUTION?

The Immoral Traffic (Prevention) Act of 1956 declares a number of behaviour to be forbidden.¹⁶ These actions include soliciting for prostitution, running a brothel or allowing certain locations to be used as brothels, living off the earnings of a prostitute, enticing or kidnapping girls for prostitution, holding girls in brothels, seducing someone who is being held for prostitution, and engaging in prostitution within 200 meters of any public location, such as a school, college, temple, hospital, etc.¹⁷

PUNISHMENT AND PENALTIES FOR INDULGING IN ILLEGAL ACTIVITIES?

Even if convicted for the first time, the above-mentioned activities are punishable by harsh

¹³Prachi Darji, *Prostitution in India*, MYADVO, (Jun 26th, 2022, 6:30 PM), <https://www.myadvo.in/blog/prostitution-in-india-read-its-causes-legality-and-law/>.

¹⁴ *Budhadev Karmaskar v. State of West Bengal*, 2011 10 S.C.R. 577.

¹⁵ *Supra* note 1.

¹⁶ *Whether prostitution is legal in India?*, LAWAYZ VERIFIED AFFORDABLE LAWYERS (Jun 28, 2022, 3:45), <https://lawayz.com/whether-prostitution-is-legal-in-india-202100262-20210042-3716/>.

¹⁷ Sathya Narayanan, *Prostitution: A Brief History*, SPEAKINGTREE.IN (Jun 26th, 2022, 7:00 PM), <https://www.speakingtree.in/allslides/prostitution-a-brief-history/child-prostitution-in-india>.

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penalties such as strict imprisonment. The minimum penalty for running a brothel is a year in prison and a fine of up to 2,000 rupees. Buying a girl child for prostitution carries a sentence of at least seven years in jail, with the possibility of life imprisonment.¹⁸ Under the unamended Act, seducing or soliciting for prostitution carries a penalty of six months in prison or a fine of Rs. 500 for the first offense, and a year in prison or a fine of Rs. 500 for the second offense. Furthermore, under Section 370A of the Indian Penal Code, the perpetrator who exploits a trafficked minor is sentenced to five to seven years in prison.

WHAT ARE THE LAWS TO PREVENT FORCED PROSTITUTION?

Young children or teenagers who are coerced to become prostitutes for a number of reasons constitute forced prostitution.¹⁹ The Indian Penal Code, 1860, prohibits the sale and purchase of children for prostitution. Selling a juvenile for prostitution is punishable by at least ten years in jail under Section 372 of the Code. Buying a juvenile for prostitution is punishable by 10 years in jail under Section 373 of the Code. Every minor but boys are mentioned in the explanations for these sections.²⁰

LEGALIZATION OF PROSTITUTION

In India, prostitution is considered a taboo subject that is rarely discussed openly and is frowned upon. However, because of its role in weakening the institution of marriage, sexually transmitted illnesses, kidnapping of female children, social isolation of prostitutes, physical and mental trauma, and so on, it seriously jeopardizes the foundation of Indian society. According to reports, there are approximately 38000 sex workers in Delhi. Mumbai's condition is even sadder. As a result, there is a growing necessity to regulate prostitution.

Prostitution's elimination is a monumental endeavor because it is an ancient tradition that has survived for far too long. Even though it has been labeled as unlawful, it continues. This could be due to a lack of law enforcement or the inability to put a stop to the practice. The legalization of prostitution could be used to fight this problem, as abolition appears to be a pipe dream.

FOR AND AGAINST LEGALIZING PROSTITUTION IN INDIA

¹⁸ *Is prostitution legal in India*, LEGAL ADVICE GURU, (Jun 28, 2022, 3:45PM), <https://legaladviceguru.com/is-prostitution-legal-in-india/>.

¹⁹ Arkarupa Roy and Saheli Samanta, *Prostitution as a Profession*, UNIQUE LAW, (Jun 27, 2022, 8:30PM), <https://www.uniquelaw.in/post/prostitution-a-profession-in-india-1>.

²⁰ *Id.*

Some people in our culture consider that prostitution is a bad thing in and of itself, while others support its presence in society. As a result, it can be viewed in either direction. However, there is no denying that there are sex workers who are sexually tortured or who have been victims of viciousness from their procurers and even consumers in this sphere of prostitution. Legalizing prostitution has protected women from exploitation and brutality, without a doubt. Unlike illegal prostitution, where sex workers were forced to engage in sexual intercourse without the use of a condom or any other precaution, decriminalizing sex work allows the state to impose a condom or other form of protection requirement on sex workers and their clients, as sex work is associated with several occupational health risks.²¹

Additionally, legalizing prostitution has assisted the state in developing a system of rules and regulations governing the age of prostitutes, required earnings, and clinical facilities for sex workers. And with this, sex workers are able to exercise some of their rights, such as equal educational opportunities for their children, the right to medical treatment, the right to protest exploitation, violence, and rape, and so on. It has also been observed that in a country like India, where there is a large population and few work possibilities, some women enter the dark realm of prostitution for a living. The rapid rise of this industry is also due to a lack of education and awareness. By allowing prostitution to be licensed, the state is able to provide basic education and training to sex workers, allowing them to learn income-generating talents such as weaving, sewing, knitting, and painting. Another significant benefit of legalization is that the government is able to keep track of the number of sex workers in our country. So that the government may devise new strategies to safeguard sex workers while also benefiting society.

Earning money through selling a woman's dignity and regard, on the other hand, is not at all admirable. Now since prostitution has become legal in India, it will be seen as a career, and more woman would be encouraged to participate in this business as a quick way to make money. As a result, this industry will experience huge expansion. The second source of concern is the possibility of criminalizing prostitution may lead to an increase in human trafficking. More than 84 million people in India are poor, and many people sell their female children to sexual predators for money to survive. With prostitution decriminalized, more youngsters will be compelled to work as sex workers. There will also be a significant increase in the number of

²¹ Platt L, *Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies*, NATIONAL LIBRARY OF MEDICINE (Jun 28, 2022, 9:30PM), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6289426/>.

scams.

CONCLUSION

Finally, based on the analysis, it may be concluded that there is no need for any specific remedy for prostitution, such as criminalizing, decriminalizing, or sanctioning it. Based on previous studies, it is difficult to deny that legalizing prostitution has both harmful and positive implications. As a result, simply legalizing prostitution will not be enough to tackle the problem; instead, a unified rule governing its administration in our country is required. Regulation of prostitution will aid in preventing the exploitation of sex workers and the children they leave behind. Not only will it preserve the health of sex workers and society, but it will also protect the environment. To regulate this industry in the future, a set of rules and regulations need to be formed.

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