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The Legalisation of Prostitution in India - Right to a Dignified Life

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Since the prospect of marriage first emerged, prostitution has been a part of Indian culture. Prostitution is as ancient as human progress. Prostitution and violence, divorce, and abuse have recently become synonymous. In Indian culture, prostitution is frequently frowned upon and its prohibition has not received urgent consideration. This paper examines the link between prostitution and dishonesty and savagery, as well as the potential effects of legalising and regulating prostitution on sex workers' abuse and assault. Prostitution has been the subject of numerous demonstrations by the post- and pre-autonomy legislators, as well as numerous publications and articles on its legalisation. Two distinct perspectives are presented in these publications, even though they focus on a larger area of the problem.

Keywords: *prostitution, sexual crime, disease, marriage, culture.*

BACKGROUND

The practice of prostitution has historically been common in India. In truth, there are instances of sex workers who are referred to be apsaras in various Hindu imaginative derivations. The devadasi structure before the period of the early pioneers, and was widely used by Hindus to donate their female child as a sign of their devotion to God. Devdasi, when used strictly, means

that a person is dedicated to a deity; in other words, they are married to God and are not supposed to marry any other people.¹

Physically liberated women who were successful in traditional dance and singing among other artistic endeavours. The imperial system, however, brought with it a system of deceit and double-dealing. The English started to use these women as mirrors for their cultural restrictions, changing the fundamentals of sexual freedom, womanliness, craftsmanship, and culture into commitment, bhakti, and other such concepts. Additionally, with the end of expansionism and the abolition of feudalism, these women started to be abused by sanctuary ministers. They become helpless in the face of sexual deception and poverty as a result. One of the oldest forms of prostitution still practised in India is this one.

From the Guptas through Aurangzeb, whores were even considered normal in antiquity. Similar to what Indra had practised, the training was conducted. When the concubines were being courted, whores were invited to sing and dance, and occasionally they also stood strong on important foundations. The ruler and various prostitutes used to spend time with them to exert pressure, and during times of conflict, they forced the troops to provide sexual services to the combatants to encourage and support them while they do everything they can in the conflict zone.

Because of the training, the writing isn't perfect; in earlier times, prostitution was categorised. For instance, the famous Kama sutra by Vatsyayan discusses how people behave sexually. A work that fully describes the intrigue, seduction, sex, sexual positions, and many aspects of sex as they are. We have Chanakya's Arthashastra, which outlines an effective space for dealing with sex and makes reference to the whores' base pay and other obligations. ensuring the protection of sex workers and the dignity of women. Furthermore, Kalidas' Abhigyan Shakuntalam and Meghadoot contain notices of prostitutes and prostitution. When one learns

¹ Sukumari Bhattacharji, 'Prostitution in ancient India' (1987) 15(2) Social Scientist
<<https://www.jstor.org/stable/3520437>> accessed 17 August 2022

that the goddess we revere today assisted the artist Raja Ravi Varma in creating his paintings, they are in a state of shock.

One of the most important festivals in India is Navratra, a multi-day festival honouring Maa Durga. People worship MaaDurga, a goddess created of 18 soils obtained from 18 better spots, one of which is a whore's entrance, during the festivity. The paradox is that while a whore's doorstep dirt is said to be "punyamati," or pure soil, they are referred to as bad individuals. Since sex is present in the general population, even the sculptures are not perfectly clean. Rules illustrating various sex positions may be found in the sanctuaries of Khajuraho and the verifiable caverns of Ajanta Ellora. It's possible that our ancestors were more modern than we were; in the modern world, having sex was taboo and untouchable. In contrast to how they are treated now, where they are treated like trash, humiliated, tortured, and worst of all, everyone turns a deaf ear to their pleas, the sex labourers were once both respected and lived with dignity. Is it possible to say that we are heading in the direction of modernisation or authorization?

"Every country has made the laws to regulate prostitution so that it might remain within its legal limits and without unduly violating upon the institutions of marriage and family."

- Law Commission Report of India

INTRODUCTION

Prostitution is defined as a generalised sexual activity performed in exchange for money or other material resources. Females are by no means the only ones practising this calling in the twenty-first century. Prostitution is also practised by men and transgender persons, but less frequently than by women. The Rig Veda contains a warning about prostitution in India. The tawaifs provided respectability in dancing, music, and tastes in middle-class India. This was the beginning of prostitution, which subsequently progressed to include sexual favours for regular people. Currently, this is referred to as prostitution. The fundamental question that arises about prostitution is whether it is sanctioned for good or for bad.

Currently, prostitution is legal in Austria, a few Australian and New Zealand provinces, Canada, Belgium, and Brazil. Prostitution is neither categorically forbidden nor strictly regulated in India. The Immoral Traffic (Prevention) Act, 1956 (ITPA)², also known as the SITA act, forbids organised sex work, pimping, and other related activities such as pretending to work at a home of ill-repute (henceforth alluded to as something very similar). Prostitution is referred to as "sexual mistreatment" in this example. However, the rally does not see males who have turned to prostitution as a career.

Because of the stigma associated with prostitution, whores frequently receive medical attention. Included in this are unintended births, HIV/AIDS, and other STIs among prostitutes. The prohibition on prostitution and whorehouses will thus aid in reducing this risk.

REASONS FOR PROSTITUTION

The situation started to deteriorate for the lowest rungs of society, namely those working in collections of mistresses, castles, and questionable establishments, after the Mughal empire fell. The main driving force behind prostitution is poverty. When a woman has been denied access to education, freedom, and abilities, it is particularly difficult for her to achieve financial independence in the man-centered society of India. As a result, the only profession that may earn money is prostitution. The British Raj had a crucial role in expanding the profession of prostitution in India, while prostitutes existed in old India as destitute women exploited by rulers. When we look at the Contagious Diseases Act of 1864³, it becomes evident that this was the case. The females involved in prostitution were expected to register with the authorities and underwent a medical evaluation as part of the demonstration's plans.

Police were in a good position to identify who was a whore because of the demonstration. If the woman is found to have a venereal disease, she will be kept in a "lock clinic" until she is declared "clean." The intent behind this action was to defame the whore's body as a repository for all that is repulsive and dirty, rather than to thwart vice and impropriety among its soldiers. Under this

² Immoral Traffic (Prevention) Act 1956

³ Contagious Diseases Act 1864

demonstration, young, attractive young women were encouraged and allowed to be used as whores for the enjoyment of British soldiers stationed in India. As a result, prostitution became a profession in the nation. The restrictive, pervasive Indian culture, which views women just as a thing or a product, renders them defenceless against sexual double-dealing. Another major factor in prostitution is India's pervasive rank system, in which women of lower social status are frequently physically abused and left to deteriorate. Different causes of prostitution include a lack of sex education, theft, and kidnapping.

MENTALITY AT BROTHELS!!

We should thoroughly examine our motivations before endorsing prostitution. If it poses a threat to the public, we should condemn the practice rather than just denounce the demonstration. Claiming that it was practised by our ancestors doesn't make it legal for it to be sanctioned because not all training can be approved, such as the act of "sati," which involved burning a widow alive on the fire of her partner and was forbidden by Raja Ram Mohan Roy in 1829. The act of trading sex requires a different perspective because nothing can be dealt with in the same way and nothing can be seen from the same angle or understanding as the other. This is because the sex industry is thriving and there are still a lot of requests for buying sex, even though it is widely regarded as an untouchable. It frequently has a purposeful name.

A response should be given to the questions of why someone buys sex, what pleasure they derive from it, and most importantly, why someone sells sex. In the aforementioned statement, the word "individual" rather than "men" or "ladies" is intentionally used because it is important to recall that not only women but also males sell sex and that not only men but also women go to prostitutes to buy sex. The majority of those who allude to and describe sex as an evil against profundity that is weakening society as a whole are those who purchase it. If prostitution is unethical in the extreme, shouldn't something be said about the item numbers that are enjoyed by everybody in public without shame or delay? When a child talks about sex, they are immediately told to shut up, yet when the same child sings or dances to a song, their talents are appreciated.

The following categories of sex consumers can be made:

Men who buy women's sex: The tests reveal that there is a significant difference in how people crave sex. A woman has some control over her want for sex at any stage, while a man has no control over himself beyond the third stage. The desire for sex is divided into four stages. In this approach, a man's wage doesn't affect how frequently or how much he spends at a whore. Although different in each man, cravings do exist.

Male buyers of various types⁴:

- The word "occasional buyer" suggests that they are not a regular customer, but rather, they don't hesitate to buy when given the chance, such as at a party or during a festive period.
- Adventuresome customers are regular customers who visit a variety of prostitutes in a wide range of industries, locations, and identities.
- Regular customers are the most devoted customers since they see the same-sex expert repeatedly over a long period.
- In addition to paying for sex, sugar daddies also pay for sex professionals. To prevent the expert from providing similar services to other customers, they pay all of the specialist's expenses.
- The regular customers keep the tissue trade going, but the regular visits give the sex expert a sense of belonging. They even fall head over heels for them and want to marry them, but they are prevented from doing so by the public's objections. The worker could leave the sex industry after seeing them in action.
- Buying sex from other men: The buyer or the seller can only be described as heterosexual and cannot be referred to be gay or sexually open. This type of stuff is more about having sex with someone who has comparable sex.

⁴ Anuj Kumar, 'Legalization of Prostitution in India: Need of The Hour' (*Legal Desire*)
<<http://legaldesire.com/legalization-of-prostitution-in-india-need-of-the-hour/>> accessed 22 August 2022

Women buying sex from men: The main reasons why women buy sex are their partner's lack of competence in the bedroom, their partner's busy schedule, or their distant connection. The majority of women who buy sex come from wealthy families and can pay for such services without any trouble. It is highly improbable that just women might be abused during sexual activity because female customers will also prey on male prostitutes. Women buy sex from other women. Just like men, women want to buy the same sex for the demonstration, for experience, and for experience's sake.

THE CONSTITUTIONAL SYSTEM

The basic rights section of Part 3 of the Indian Constitution, which contains Articles 14⁵ and 23⁶, which allow for the monitoring of prostitution, contains the provisions that govern prostitution in India. Various laws in India regulate prostitution, including the following:

This law, known as the Immoral Traffic (Prevention) Act⁷, was adopted in 1956. SITA is another reference to it. This law states that while prostitutes are free to practise their trade in private, they are not allowed to do business in that state. Clients may be detained by the rules if they engage in any overtly enjoyed sexual activity. Even though trading sex for money is legal with one restriction, a woman is not allowed to do so within 200 yards of a public area. Sex workers are not covered by regular work rules. However, they are eligible to be protected and restored to do whatever they're residency is and enjoy all of their rights.

The ITPA, or Unethical Traffic (Prevention) Act The Immoral Traffic (Prevention) Act, which was enacted in 1986, modifies the SITA. Whores shall be arrested by this legislation for soliciting their services or seducing others. In a similar vein, call girls are not allowed to give out their phone numbers. If they are caught doing it, they may face up to a half-year in jail as well as financial penalties. Clients who associate with prostitutes or engage in such activities within 200 yards of a designated area risk up to 90 days in jail as well as penalties of the same amount. If someone engages in such activities with a person who is younger than 18, between seven and

⁵ Constitution of India 1950, art. 14

⁶ Constitution of India 1950, art. 23

⁷ Immoral Traffic (Prevention) Act 1956

ten years in jail. Also guilty of wrongdoing are pimps and similar people who support themselves with a whore's earnings. In that regard, it may be said that a guy who is an adult and lives with a whore is at fault. If he is unable to prove his innocence, he may be subject to imprisonment for a period of two to four years.

Additionally, The Indian Penal Code has rules about prostitution. An underage girl for illicit intercourse is discussed in Section 366 Clause (A) of the IPC⁸, and punishment is suggested for a situation quite similar to this. Proviso (B) of debates similar to this one on the importation of a young woman from a foreign country with the intention of prostitution Due to *Fateh Chand v Territory of Haryana*⁹, a man was held in contempt of court for procuring an underage girl for prostitution and was subject to section 366¹⁰ reservations. By Sections 372¹¹ and 373¹² of the IPC, it is illegal to sell, discard, or recruit an underage young woman with the knowledge that she would be forced into prostitution. Again, the law is silent on rebuking customers or whorehouse owners for subjecting a whore to physical mischief. Additionally, it does not make provisions for the medical care of sex workers or restrict the use of condoms, which contributes to the spread of HIV/AIDS and also to pregnancy, which in turn causes a population explosion.

A PROPOSAL OF 2006

A proposal to alter the Immoral Traffic (Prevention) Act¹³ was proposed in 2006. Arrangements that penalise prostitution by seeking clients are virtually eliminated by the amended law. This hypothesis predicts increased discipline and a higher fine amount. It means to forbid the act of entering a whorehouse with the intent to engage in sexual double-dealing with its victims, which is not forbidden by the Act, with a minimum sentence of 90 days in jail or a fine of Rs. 20,000. To combat dealing, the measure includes specialists at the state and federal levels. Dealing with people is defined as any plan for rejecting anybody who is at fault legitimately for the offence of dealing with people with the intention of prostitution. Constitution of India, Article 21 The

⁸ Indian Penal Code 1860, s 366A

⁹ *Fateh Chand v Territory of Haryana* Criminal Appeal No. 1094/2004

¹⁰ Indian Penal Code 1860, s 366

¹¹ Indian Penal Code 1860, s 372

¹² *Ibid*

¹³ Immoral Traffic (Prevention) Act 1956

article highlights the safety of life and the right to personal freedom. Except by the legal approach, no one will have their life or individual freedom is taken away from them.

About the circumstance *State of West Bengal v Budhadev Karmakar*¹⁴

In this instance, it was determined that sex labourers are people and should be treated as such. Nobody is competent to genuinely attack them. The challenges faced by the sex workers and their situation were also discussed in the verdict. The court holds that these women are forced to engage in prostitution for financial and social reasons alone, not because they choose to or like it.

The court instructed the central and state governments to enroll sex labourers in professional and specialised courses and to create recovery habitats so that better open employment would be available for them. When in doubt, the State Government should plan and maintain the assurance homes, and the homes should be controlled and approved by them, according to Section 21 of the Immoral Traffic (Prevention) Act¹⁵. For the inspection of the application for the assurance residences, a suitable expert is required. These permits were illimitable and temporary. By the principles of Article 23¹⁶ of the Constitution, the state has the authority to establish supplementary rules for permits, executives, and assistance for these residences. In addition, Article 23(1)¹⁷ states that trafficking in humans and that temporary labour is prohibited, along with other similar sorts of confined work. It is also illegal to violate this agreement in any way.

THE PENAL CODE OF INDIA

The IPC also addresses the issue of unlawful exploitation, which limits the use of women and young girls as prostitute clients and has recommended harsh penalties for offenders. The IPC lists anyone who trades or acquires ownership of anyone under the age of 18 to use them for prostitution or illegal sexual activity, or another unlawful or shameful reason, or on the other

¹⁴ *State of West Bengal v Budhadev Karmakar* (2007) CriLJ 3677

¹⁵ Immoral Traffic (Prevention) Act, 1956, s 21

¹⁶ Constitution of India 1950, art. 23(1)

¹⁷ Constitution of India 1950, art. 14

hand knowing that it is generally expected that they will use them for any such purpose at some point in their lives, or on the other hand knowing that it is generally expected that they will use them for any such purpose, detention for up to 10 years is the penalty for any such offence. The IPC recognises cross-border prostitution and stipulates that anyone who brings a young woman under the age of 21 into India from any country outside India with the expectation that she may be, or realising that it will typically be reasonable that she will be, compelled or enticed to illegal intercourse with someone else, will be guilty of detention that may extend to a decade and will also be responsible to fine.

When a prisoner from a whorehouse is assaulted, the IPC's assault provisions also apply. The IPC defines the offence as engaging in intercourse with a woman against her will, without her consent, with her consent but in fear of death or harm, with her consent when she is unaware of the consequences of her consent, or without consent when she is under the age of 16 years old. Under IPC, a 7-year prison sentence is the minimum penalty for assault. When engaging in sexual activity with children or with women who are forcibly confined in houses of ill-repute, these agreements apply to the owners of those establishments, the massage parlour employees, and the clients.

Following are the heads of wrongdoing which are connected with prostitution and Human dealing:

- Procurement of Minor girls (section 366-A IPC)¹⁸.
- Importation of Girls (Section-366-B IPC)¹⁹.
- Selling of Girls for prostitution (Section-372 IPC)²⁰.
- Buying of Girls for Prostitution (Section-373 IPC)²¹.
- Immoral Trafficking (Prevention) Act 1956²².

¹⁸ Indian Penal Code 1860, s 366A

¹⁹ Indian Penal Code 1860, s 366B

²⁰ Indian Penal Code 1860, s 372

²¹ Indian Penal Code 1860, s 373

²² Immoral Traffic (Prevention) Act, 1956

- Prohibition Of Child Marriage Act, 2006²³.

QUESTIONS ABOUT INDIAN REGULATIONS AND THEIR PURPOSE

The main problem with these agreements is that prostitution is viewed as being immoral, repugnant, and impairing public dignity. But the fact remains that engaging in sex work while following safety precautions and norms does not harm anyone. In addition, the primary rationale for why prostitution is denoted as inappropriate and sex workers are detested is that sex is generally frowned upon in our society, and the request and supply of sex in an official capacity is something to be looked down upon.

Due to the public norms for sex that people accept and continue to grow with, Indian society is unable to comprehend the reality of the sexual violence that is taking place. The manner that the protest strives to denounce the protests that encourage prostitution conveys the difficulty of the legislation in addressing the primary issue and results in temporary and feeble adjustments in addressing the problem. The fact that women are victims of sexual double-dealing, as well as men that transsexual people suffer from sexual cruelty, abuse, and mistreatment, is another important aspect of Indian prostitution laws that are often overlooked.

WHY LEGALISATION OF PROSTITUTION??

Giving the practice of prostitution in India legal status has been the subject of much discussion. Since the chances of its abolition are unimportant, it is obvious that controlling prostitution is the best course of action. Numerous countries, including Canada, France, Germany, Denmark, Wales, and others have encouraged and approved prostitution.

Better regulatory enforcement protects the system from abuse and double-dealing, and the type of framework where the calling is directed and the shields of the sex labourers are considered will generally do less harm to the sex labourers. In addition to being exposed to dangerous sexually transmitted diseases like HIV AIDS, these sex labourers also suffer from the negative

²³ Prohibition of Child Marriage Act 2006

impacts of police violence, drop in pay, provocative behaviour, etc. The Supreme Court itself advocated for the legalisation of prostitution in 2009.

The supporting justifications for legalising prostitution are as follows:

- The approval of prostitution will shield adolescents from being vulnerable to sexual misdirection. Throughout the world, there are over ten million young people who are forced into prostitution. Prostitution of young people is a terrible reality in almost every nation, but it is especially bad in Asia and South America. Serious regulations in the workplace can guarantee that minors are rejected from the system.
- Coordinated health examinations of sex workers will guarantee the management of sexually transmitted infections, including AIDS, which is fundamentally quite common among sex workers. Adequate birth control measures will prevent unlucky pregnancies and regulate other profitable bets. Regular health inspections and strict regulations will guarantee cleaner and cleaner working conditions. Additionally, a condom game plan would be helpful for both the customers and the sex workers.
- The structure will be updated and improved if prostitution is supported. When arbiters and pimps are eliminated from the system, sex workers become more real, and the manipulative and guilty elements are reduced to insignificance.
- As individuals turn back to a legal and less difficult option to satiate their sexual appetites, there will be a drop in sexual violence, attacks, and other assaults. You may use Queensland as an example, where the assault rate increased by 149% after the closure of the back rub lounges.
- Elimination of forced prostitution Prostitution is a roughly 8.4 billion dollar industry in India. A spark for public power will appear to be approving and disrupting the cycle.
- Opportunities for employees will be protected. Even though sex workers are exempt from most workplace regulations, they should be given the same respect as tenants and workers.

CONCLUSION

The general public has always seen prostitution as abhorrent, and those who engage in it are regarded as crooked and improper people. In India, there are no clear prostitution regulations and they are deficient. Accordingly, there is an urgent demand for regulation of such operations. It is saner to have regulations than to outright outlaw the presentation of sex work since it will nevertheless persist, even under the most stringent draconian limits. In a population where prostitution has a long history and is still a thriving industry, it would be careless to ignore it or keep an externally hindered eye on it or imagine the absence of the system and its flaws. Decriminalizing sex work while upholding moral principles and regulations and legalising the industry will guarantee sex workers an unmatched life with greater pay, success, security, and protection.

Similar to ruthlessness and deceptive explicit situations, prostitution is a profession. Nevertheless, it could support certain people in managing a family. The main issue still exists because people need to be educated on matters relating to women so they don't act in such a heartless manner toward them. In light of these viewpoints, the expert believes that prostitution should be sanctioned by a powerful entity without regard for preparation. The expert concludes by stating that sanctioning and regulating prostitution protects the protection of sex workers, minors, and their honour. This will be a potent move that will eliminate several social wrongs from the general populace, such as youth prostitution, violence, etc. Our society's relationship with the sex industry is quite genuine, and by understanding that it is a legitimate profession with defined guidelines and safeguards for all nuanced social events, one may be certain of reaping the rewards. The betterment of the population as a whole will only be addressed by the most complete and authentic design and implementation of all the protective measures.