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RIGHTS OF SEX WORKERS IN INDIA

ABSTRACT

Prostitution has been in Indian society since the institution of marriage and is as old as civilization itself. Nowadays, prostitution is frequently linked to exploitation, violence, and prejudice. Prostitution is usually viewed as taboo in Indian society, hence its regulation has not received the necessary attention. This essay investigates the connection between prostitution and abuse of sex workers as well as the links between prostitution and exploitation and violence. Prostitution is always going to be a thing, legal or not. In order to address the problems that women and children participating in prostitution face, it is preferable to address the current problem.

INTRODUCTION

Public policy is simply what a government does or does not do regarding a subject that is brought to its attention for consideration and potential action. One such area of public policy that needs consideration is prostitution. Over 20 million sex workers are employed in India, according to a Human Rights Watch report. This article discusses prostitution and the predicament of sex workers over time. Prostitution is, in fact, a topic of public policy.

In plain English, prostitution is defined as engaging in sexual activity for payment. However, section 2(f) of the Immoral Trafficking (Suppression) Act of 1956, used to define prostitution as sexual exploitation or misuse of any persons for commercial purposes and a prostitute is a person who gains that commercial benefit¹. The primary component of the definition of trafficking is the use of force, deception, or coercion to compel a person to work for or continue to serve the master. Generally speaking, there are two opposing viewpoints on prostitution: one holds that it should be legalised and handled like any other profession; the second holds that it is immoral and contrary to public policy. There are some nations that have decriminalised prostitution, while others have criminalised it or made it legal with restrictions. India is one of those nations that has limited its legalisation. Even though it is legal, this line of work is nevertheless somewhat taboo. Sex workers frequently lack the rights they are entitled to, which makes it challenging for them to reintegrate into society, particularly if they want to quit the industry and begin a new life.

¹ the Immoral Trafficking (Suppression) Act of 1956, sec 2(f), Acts of Parliament, 1956(India)

MEANING OF PROSTITUTION

Prostitution is defined as the sexual exploitation or abuse of people for monetary purposes, and a prostitute is a person who gains that commercial benefit.²

However, the word "prostitution" comes from the Latin word "prostitute," which means to make anything known in public. It is split into two sections. Prostitution that is either forced or consensual falls under this category. 'Consent' is the one factor that divides the two. Prostitution that is forced falls under the concept of rape. The majority of victims of this type of prostitution are brought to brothels by human trafficking.

According to a 2008 survey by the Ministry of Women and Child Development, there are roughly 3 million sex workers in India, the vast majority of whom are male and, contrary to popular belief, most of whom are in the 15–35 age range.

The more serious issue is that sex workers' fundamental rights are also infringed as a result of the stigma they face in society and that most of the time these offences go unpunished. Every person in India is accorded equal rights under the country's constitution. They practise a profession they desire to practise and are also citizens of the country. Additionally, that line of work is legal in India.

The base of our civilization is somewhat connected to the motivation behind prostitution. Indian culture is patriarchal, and in our society, women from these families are not regarded as being on par with males. Even though the situation is significantly better than it was previously, much more work has to be done. In the past, this circumstance contributed to a number of social ills, including female illiteracy and the caste system. According to the caste system, prostitution was the only way for women from lower classes to become financially independent.

Let's now delve deeper into the background, current laws, and several other concerns relating to the rights of sex workers.

PROSTITUTION IN INDIA

One of the oldest occupations in human history is prostitution. Prostitution has been a part of human civilization ever since it was first established. The Rigveda, the first known work of literature from India, makes reference to prostitution as a well-organized, long-established, and widespread occupation. Numerous celestial demigods known as aspires who engage in high-class prostitution are mentioned in Indian mythology as examples. They are Thilothamma, Rambha, Urvashi, and Menaka. They are said to be the ideal representations of unmatched beauty and feminine charm. They are very talented in dancing and singing. In the court of Lord Indira, the Hindu mythological figure known as the Lord of Rain, their duty was to amuse the divinities and their visitors.

'Devadasis' was a concept that emerged in Hindu culture's later stages. In Sanskrit, "Devadasi" refers to a female deity's servant. They used to devote their lives to God, viewing Him as their spouse, and as a result, they never got married while they were alive. These devadasis were then given the name "Nagarwadhu." They once performed dances in the kings' courts. They had gained sexual freedom and were respected members of society. However, these Nagarwadhus' situation deteriorated after the British took control of India. They were kept in

² the Immoral Trafficking (Suppression) Act of 1956, sec 2(f), Acts of Parliament, 1956(India)

a specific society, and the British used to visit such areas for recreational sex. These areas transformed into what are known as "red-light" areas throughout time. These regions were mostly found in British colonies, including Mumbai.

The title "Nagarwadhu" was substituted with "prostitute," and their work came to be known as "prostitution," which was not respected by other societies. Slowly but surely, all of the individuals participating in this profession of prostitution were isolated from the country's general community. People did not frequently profess this work because it was not regarded as respectful in society. Human trafficking for sex employment increased as a result in India.

PROSTITUTION: EXPLOITATION AND VIOLENCE

Prostitution as defined in the Oxford English Dictionary is, "the practice or occupation of engaging in sexual activity with someone for payment³. One of the oldest professions in the world is frequently considered to be prostitution. In the twenty-first century, women are not the only ones working in this field. Prostitution is also practised by men and transgender people, though less frequently than with women. Street prostitution, escort prostitution, and brothels are just a few examples of the many different types of prostitution. Various nations have various laws governing prostitution. Prostitution is currently legal and regulated in Austria, various states in Australia, New Zealand, Canada, Belgium, and Brazil. The majority of African countries, as well as Brazil, Argentina, Italy, Spain, the United Kingdom, Singapore, and Sri Lanka, to name a few, have laws against prostitution. Prostitution is legalised but unregulated in nations like India.

The history of prostitution can be traced to the Ancient Near Eastern Civilizations, where it is depicted in temple architecture. Prostitution in India first manifested itself in the form of extramarital or illicit love affairs in ancient India. The word "Sadharani," which is a synonym for "prostitute," is used in the Rig Veda to imply the existence of prostitution. Prostitution developed alongside the institution of marriage. The Sultans' Courts used dancing girls, some of whom were prostitutes, even throughout the Mohammedan era. Additionally, the Sultans maintained these women for the amusement of the soldiers. The term "Tawaifs" applied to these women. For the troops, brothels were built during the British era. One of the earliest pieces of legislation pertaining to prostitution in India was the Cantonment Act of 1864, which was passed by the British Raj.

Many claim that the exploitation of women takes the form of prostitution. This is accurate, at least in relation to India. Prostitution is more of a subjugating vocation for women in India, where most women are either passively or actively coerced into it. This is because they chose prostitution as a job to support themselves (out of necessity) or were trafficked or sold as child prostitutes by their own parents. Women and children are taken advantage of and forced into prostitution in this way. Under the guise of marriage or employment possibilities, vulnerable or underprivileged women are recruited and forced into prostitution. They are frequently coerced into the profession by members of their own family. According to the numerous interviews conducted with Indian prostitutes by various researchers and social workers, they are then subjected to the cruellest type of torture by their clients after being trafficked in this manner. The clientele, who are primarily men, refuse to use condoms, which raises the

³ *Prostitution*, Oxford English Dictionary (2d ed. 2013).

HIV/AIDS prevalence rate. They compensate the proprietors of brothels in order to keep abusing the women.

PROSTITUTION LEGALISED IN INDIA

On December 30, 1956, the Suppression of Immoral Traffic in Women and Children Act, 1956 (often abbreviated as SITA), received assent and became operative throughout India. As India ratified the United Nations International Convention for the "Suppression of Women in Traffic in Persons and of the Exploitation of Others" in New York on May 9, 1950, the legislation was created to legislate and repress the immoral trafficking of women and children. The Immoral Traffic (Prevention) Act of 1956 was amended later, and the preamble was changed in addition to the act's name. This legislation covers all required prostitution-related provisions.

Prostitution as a career is not specifically prohibited by Indian law; but, a number of actions that are associated with it are. These rules are covered under the 1956 Immoral Traffic (Prevention) Act. The following actions are prohibited by this Act.

Keeping and maintaining a brothel

As per this provision, if any person keeps or manages, or acts or assists in the keeping or management of, a brothel then he/she shall be punished with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees on first conviction and if he/ she is caught for the second time then he/she shall be punished with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees⁴.

Allowing premises to be used as a brothel

As per the clause (2) of this provision, Any person who-

1. being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or
2. being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel,

shall be punished on the first conviction with imprisonment for a term that may extend to two years and with a fine that may extend to two thousand rupees, and in the event of a second or subsequent conviction, with rigorous imprisonment for a term that may extend to five years and also with a fine⁵.

⁴ the Immoral Trafficking (Suppression) Act of 1956, sec 3, Acts of Parliament, 1956(India)

⁵ the Immoral Trafficking (Suppression) Act of 1956, sec 3(2), Acts of Parliament, 1956(India)

Living on the earnings of prostitution

As per this provision of the Act, any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punished with imprisonment for a term of not less than seven years and not more than ten years⁶.

Procuring, inducing or taking a person for the sake of prostitution

As per this provision, if any person procures or attempts to do so, induces a person to go from any place, takes or attempts to take a person, or causes a person to be taken from one place to another with a view to indulge them in prostitution, then they shall be punished on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with a fine which may extend to two thousand rupees, and if any such offence is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years⁷.

Detaining a person on premises where prostitution is carried on

As per this provision of the Act, if any person details someone in a brothel or at any other place with the intent to force that person to indulge in sexual intercourse, then such person shall be punished on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to a fine⁸.

Prostitution in or in the vicinity of public places

As per this provision, anybody who carries on prostitution and the person with whom such prostitution is carried on, in any premises which are restricted by the state government as per clause (3) of the provision or which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home, or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or magistrate in the manner prescribed, shall be punished with imprisonment for a term which may extend to three months. If such offence is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine⁹.

Seducing or soliciting for purpose of prostitution

As per this provision if any person, in any public place or within sight of, and in such manner as to be seen or heard from any public place, whether from within any building or house by words, gestures, wilful exposure of the person, or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution or solicits or molests any person, or loiters or acts in such manner as to cause obstruction or

⁶ the Immoral Trafficking (Suppression) Act of 1956, sec 4, Acts of Parliament, 1956(India)

⁷ the Immoral Trafficking (Suppression) Act of 1956, sec 5, Acts of Parliament, 1956(India)

⁸ S6,ibid

⁹ S7,ibid

annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punished on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees¹⁰.

Seduction of a person in custody

As per this provision, if any person having the custody, charge, or care of, or a position of authority over, any person causes, aids, or abets the seduction for prostitution of that person, that person shall be punished on conviction with imprisonment of either description for a term that shall not be less than seven years but which may be for life, or for a term that may extend to ten years, and shall also be liable to a fine¹¹.

Apart from these activities, the Indian Penal Code, 1860, in Sections 372 and 373, discusses the trade of minors for prostitution. Also, Section 366-A, Section 366-B and Section 370A talk about the procurement of minor girls, the importation of girls from foreign countries, and the trafficking of persons, respectively.

The Constitution of India talks about the prohibition of traffic and forced labour¹². It prohibits trafficking, beggar and any other form of forced labour, and it includes sex work as well. No person should be trafficked and forced to work as a sex worker, and the same is ensured by the legislation provided in the Immoral Traffic (Prevention) Act, of 1956.

Any activity except the ones talked about above is completely legal and not punishable in India.

EFFECT OF LEGALIZATION OF PROSTITUTION ON EXPLOITATION AND VIOLENCE

The moral, medical, and legal ramifications of legalising prostitution have all been taken into account. As previously indicated, prostitution that takes place in secret and on an individual basis is lawful in India. Prostitution needs to be regulated, and brothels and related businesses need to be under government control. Despite the fact that there are laws prohibiting the development of brothels and pimping, these businesses nevertheless operate and take advantage of women. Police raids aren't always useful since the proprietors of the brothels bribe the officers. Supply and demand are clearly at fault for this. Supply and demand will be met if the government takes control of these brothels, and middlemen won't be needed either. Aside from him, prostitutes must be permitted to practise their trade covertly so they can support themselves while avoiding attention from the general public.

The governance of prostitution will be simpler once it is decriminalised. This will lessen the amount of women and children being coerced into prostitution. It is challenging to ascertain whether the women have given their agreement to engage in prostitution under the current system. Bringing prostitution under the legal radar will help victims and also make it easier to manage criminal behaviour. By regulating prostitution, young women can be removed from

¹⁰ the Immoral Trafficking (Suppression) Act of 1956, sec 8, Acts of Parliament, 1956(India)

¹¹ S9, ibid

¹² Indian constitution act,1950, [Article 23\(1\)](#), Acts of Parliament, 1950(India)

the industry and paedophilia can be curbed. The operators of the brothel give their customers additional money in exchange for allowing them to do violent acts against the prostitutes, which includes sexual assault. Almost little respite or escape from this kind of assault is available to prostitutes. Government control will work wonders in reducing the atrocities committed against women in the name of prostitution by taking the place of these horrible middlemen.

Naturally, the exploitation of women will continue to some extent despite these efforts. In order to break up any potential ongoing unlawful networks, regulation also entails the police taking a proactive role. Police corruption cannot exist, and the government must prevent it. This kind of regulation of prostitution has the potential to drastically reduce social ills including sex industry exploitation and violence.

CONCLUSION AND SUGGESTIONS

The profession of prostitution has long been regarded as shameful by society, and those who engage in it are seen as unclean and shameless. India's prostitution regulations are ineffective and lack a defined strategy. Due to this, control of such operations is absolutely necessary. It is preferable to have restrictions than to outright forbid the conduct of sex work because it will still exist even after strict laws are put in place. In some instances, the profession of prostitution also involves violence and exploitation. However, it might support certain people in managing a family. The main worry continues to be that people need to be made aware of issues with women so that they do not perpetrate such horrible atrocities against them. In light of these factors, the researcher believes that prostitution should be made legal with a regulatory agency in charge of monitoring the activity. The researcher comes to the conclusion that legalising and regulating prostitution provides the rights and protection of sex workers and children.

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