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ANALYSIS OF PROSTITUTION IN INDIA: LEGAL AND SOCIAL PERSPECTIVES

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ABSTRACT

Prostitution constitutes a flourishing industry, regardless of its stated illegality, implicit tolerance, government regulation, or a combination thereof. Individuals employed in this sector have traditionally been marginalized as immoral and repugnant by society. The legislation governing prostitution in India is inadequate and lacks a definite plan. The vast majority of individuals in the sex industry endure prejudice within legal and societal systems, along with frequent verbal and physical abuse. Recent studies have associated prostitution with exploitation, prejudice, and violence. Due to its stigma, Indian policymakers have been sluggish in addressing prostitution. This article employs doctrinal analysis to evaluate the prospective. Sex work has been there from the beginning of civilization and has been embedded in Indian society since the establishment of marriage. Violence, discrimination, and exploitation have recently been associated with commercial sex work. Sex work is widely seen as taboo in Indian society, and little attention has been given to its regulation.

This study report examines the legality of prostitution in India. Governments, both pre- and post-independence, have enacted numerous regulations regarding commercial sex work, and there exists an extensive body of research examining the potential legalization of this profession. This research project also examines the current status of the profession and the advantages conferred upon them by the Indian Constitution. Also, to keep the job from being taken advantage of, the researcher gives a short explanation of the rules set out in the Immoral Traffic (Prevention) Act of 1956 legalization, regulation, and recognition of prostitution as a vocation like to others.

Keywords: Prostitution, Social Stigma, Law, Rights, Profession.

INTRODUCTION-:

The English term "prostitute" derives from the Latin word "prostituta." The word consists of "pro," signifying "up front" or "forward," and "situere," denoting "to offer for sale," as per several sources. Britannicaencyclopedia describes prostitution as "sexual intercourse in exchange for monetary compensation," characterized as "the act of one individual engaging in sexual contact with another to acquire money or other valuables." Prostitution may encompass heterosexual, homosexual, or transgender activities; nonetheless, the majority of prostitutes are women, whereas most clients are men. Prostitution is the most ancient profession globally. Unfortunately, it is the most reviled and least favored profession. Prostitution in India is approximately 8% of the \$186 billion generated annually by the worldwide sex trade, according to certain estimates. Numerous nations are presently contemplating modifications to their legal frameworks regarding sex work to capitalize on the business while safeguarding the health and safety of both sex workers and their clients. In India, the constitutional guarantee of equality for all individuals does not consistently translate into practice. Prostitution has been one of the most ancient professions since the inception of Indian civilization.[1]

A bronze statue of a dancing girl can be found inside the walls of the mother goddess temple at Mohanjodaro. The oldest literary work in India, the Rigveda, has the earliest recorded mentions of prostitutes. It has been covered in detail in both the Vatsayana Kamasutra and Kautilya's Arthashastra.[2] The male and female partners of a married spouse are represented by Jara and Jatini. The Sanskrit and Pali terms for impermanent unions, mututta and muthurtika, respectively, symbolized only temporary unions with no lasting connection. These 'Hetaerae' can be found in the Pitakas, Avadanas, and Jatakas, among other Buddhist texts. In some regions of the country, temple prostitution—known as devadasi—has gained societal acceptance. Pre-colonial Hindus were required to sacrifice their daughters in order to demonstrate their devotion to God and to maintain the devdasi system. Prostitution is a common occupation in the country nowadays. According to reports, there were 657,829 sex workers in this nation in 2016.

According to unofficial estimates, the number of prostitutes in India ranges between 3 and 10 million. India has become a major destination for sex tourists, and the sex industry is a multibillion-dollar sector that is growing rapidly.[3]

HISTORY OF PROSTITUTION IN INDIA:-

According to Indian history, because of its peculiar characteristics, prostitution is among the oldest occupations still in use today. Early Vedic times forced young women without brothers to engage in prostitution, relying on the money they earned for self-support. Temple prostitutes, called "ganika," played a crucial role in religious rituals throughout the early Vedic era. Courtesans, or Nartas, were skilled artists who worked in royal palaces in antiquity. The Rig Veda contains examples of girls being sold into slavery and offered to rishis and rulers. Sanskrit refers to prostitutes as Vaishya.[4]

'Vaishya' comes from the early use of 'Vish' or 'Vaish' to refer to merchants. They leave their spouses behind and move between places in search of work. To satisfy their sexual urges, the rulers made arrangements for them to have access to women. In the early days, the occupation was also known as "Devadasis" and "Nagaravadhu," which means "woman of the town."

In India, the term "Devadasis" refers to individuals regarded as divine servants, not limited to temple duties. They were in charge of maintaining temples and carrying out rituals. They also practice Bharatanatyam and other classical arts, and the women who are classified as devadasis are married to gods and deities before being sexually exploited by upper-caste men or local zamindars.[5]

Due to British colonization, prostitution gained popularity in the 18th and 19th centuries, with Indian devadasis engaging in dance and entertainment to satisfy their wants. According to an analysis, over 60% of those who are prostitution-related do so because they are poor, while about 40% are impacted by their genes.

PROSTITUTION: LEGALITY IN INDIA:-

It is important to note that prostitution is not inherently deemed an unlawful activity under the Indian Penal Code. The Immoral Traffic Act of 1956 explicitly designates some prostitution-related actions, such as pimping, brothel operation, and trafficking, as criminal offenses in India. The Immoral Traffic (Prevention) Act, sometimes referred to as the Prevention of Immoral Trafficking Act, is an addendum to the statute established in 1956, enacted in 1986. The objective is to diminish and ultimately eradicate prostitution in India through a systematic process of prosecution.[6]

India legalizes sexual interactions while prohibiting brothels and public solicitation as part of its abolitionist policy to regulate prostitution. Here, we depict the criminalized role of the commercial sex consumer in sustaining the sex industry. The objective of the ITPA is to prevent human trafficking and support victims through legal action. Rather than addressing various aspects of the sex economy, it penalizes brothel proprietors. The statute has several essential elements, including individuals who operate, oversee, or provide premises for a brothel are liable to the penalties specified in Section 3 of the statute. The statute characterizes a "brothel" as any location, dwelling, or chamber explicitly designated for prostitution. The maximum penalty for a first offense, as stipulated by law, is a fine of up to 2,000 rupees and a severe prison sentence ranging from one to three years. Subsequent convictions incur more severe penalties, comprising a fine of up to 2,000 rupees and a prison term ranging from two to five years.

Section 4 of the Act outlines the penalties for earning money through prostitution. The section also makes it clear that anyone who is 18 years of age or older and makes a living via prostitution is accountable and could face up to two years in prison, a fine of one thousand rupees, or both. Furthermore, it will be assumed that anyone found guilty is purposefully making money off of prostitution. [7]

Section 5 covers the acts of acquiring, inducing, or taking someone for prostitution. It makes actions related to forcing people into the prostitution industry illegal. A conviction carries a harsh sentence of three to seven years in prison and a fine of five to two thousand rupees. Section 6 imposes penalties for the arrest of a sex worker at a brothel or other establishments connected to prostitution. Conviction carries a seven-year sentence, with the possibility of a life sentence.

According to Section 7 of the Act, anyone found to be involved in prostitution in public settings, including hotels, places of public religious worship, or hospitals, will be subject to legal action. The act's Section 8 deals with client soliciting in public places. By attempting to control public solicitations for prostitutes, it contributes to the regulation of the industry and the preservation of public order. [8]

LEGALIZATION OF PROSTITUTION IN INDIA: UNDER INDIAN CONSTITUTION AND OTHER LEGISLATION-:

The laws governing sex labor in India are established in the constitutional framework, specifically the Constitution of India, 1950; the Indian Penal Code of 1860; and the Immoral Traffic (Prevention) Act of 1950. Furthermore, it is crucial to acknowledge that the Constitution contains provisions pertaining to personal liberty, equality, freedom of association, and the right to life. It is also crucial to stress that the Constitution protects against the abhorrent practices of forced labor and human trafficking. Specifically, it ensures the prohibition of human trafficking and exploitative work. India is proclaimed a sovereign, socialist, secular, democratic republic in the preamble of the Indian Constitution, which also highlights the need to guarantee equality of status, dignity, and opportunity for all citizens.

We need to recognize that the Indian Constitution clearly sets up legal protections that uphold everyone's basic rights to freedom, equality, and other things that are important, no matter their gender, caste, religion, or social class. The Constitution guarantees several rights, some listed below: By reaffirming that every person has the right to equal treatment under the law and to live without facing discrimination on any grounds, Article 14 guarantees legal equality. It offers equal opportunities to all citizens.

Article 15 states that no citizen shall face discrimination on the basis of gender, caste, race, religion, or place of birth. It expressly prohibits discrimination on these grounds by the states. No one shall be denied the fundamental rights of life and personal liberty, which are safeguarded by Article 21. Every citizen has the right to petition the Supreme Court if their rights have been violated, according to Article 32.[9,10,11]

The Immoral Trafficking Prevention Act is a significant statute aimed at combating human trafficking for sexual exploitation. This misperception renders prostitution illegal, subjecting sex workers to its consequences. Prostitution is not criminal when conducted consensually. Therefore, we should prohibit human trafficking. This law does not differentiate between forced and voluntary prostitution. It penalizes the nation's disfavored minority groups through the imposition of prohibition. India's abolitionist stance on prostitution control needs modification. It is essential to recognize the existence of prostitution. Legalizing prostitution will aid in the fight against the AIDS epidemic and other sexually transmitted infections.

Legislation will no longer view prostitutes as second-class citizens, but rather as individuals earning a livelihood legally. We should allow them to live with dignity.

CONCLUSION -:

Violence results from the stigmatization of prostitution. Exploitation is more widespread in nations that exhibit a deficiency in gender sensitivity. Partial legalization without comprehensive standards and safeguards is inadequate. Educating individuals about women's issues is essential to deter them from perpetrating terrible atrocities against women. Considering these concerns, it is imperative to explicitly legalize prostitution and establish a regulatory authority to regulate the industry. The study asserts that sex workers and children would unequivocally receive rights and protection through the decriminalization of brothels, the establishment of regulated legislative frameworks, and the augmentation of societal awareness regarding prostitution.

The legalization of sex work not only confers rights upon participants but also yields numerous benefits for the country. Commercial sex work has been in our country for millennia. In a nation such as India, societal viewpoints frequently exhibit moralistic prejudices, potentially stemming from religious convictions or an idealistic interpretation of feminism that remains reticent on these issues.

In a society where women are anticipated to emphasize household management and familial responsibilities, personal interactions are a crucial aspect of both her life and her husband's. The prevalence of female prostitution is significant. Nevertheless, situations are changing. The legality of prostitution is inadequately addressed, notwithstanding the presence of laws aimed at combating the criminal trafficking of women, as illustrated by the Immoral Traffic (Protection) Act of 1956.

- Sex education is very much essential nowadays; specifically, education must be provided to children. So that they have proper knowledge related to sex and could adopt purposeful future decisions in their respected lives.
- In order to facilitate the marriage of females from low and middle-class backgrounds, it is imperative that laws and dowries be enforced with greater rigor. The individuals who demand dowry must, however, be subjected to punishment. Additionally, the penalty must be as severe as possible in order to serve as a model for society.

- The police must designate an increasing number of informers to ensure that they receive information about the occurrence of such acts in the community at a faster pace.
- The mediators are the primary source of pro. We must penalize the mediators, as they are the primary source of prostitution growth of more prostitutes, it is imperative that Nari Niketans be established on a larger scale.

REFERNCES

- Gautam, S. S. (2014b). The Courtesan and the Birth of Ars Erotica in the Kāmasūtra: A History of Erotics in the Wake of Foucault. *Journal of the History of Sexuality*, 23(1), 1–20. <https://doi.org/10.7560/jhs23101>
- M. S. BEDI, PROTECTION OF WOMAN IN MORAL DANGER 15 (1st ed. 1992).
- PRAN BATARIA, SEX AND CRIME IN INDIA 86 (1st ed. 1992)
- Gautam, S. S. (2014b). The Courtesan and the Birth of Ars Erotica in the Kāmasūtra: A History of Erotics in the Wake of Foucault. *Journal of the History of Sexuality*, 23(1), 1–20. <https://doi.org/10.7560/jhs23101>
- Wright, E. (n.d.). How Poverty Encourages Generational Prostitution in India. THE BORGAN PROJECT: THE BLOG. <https://borgenproject.org/prostitution-in-india/>.
- Dixon, L. (n.d.). Prostitution and drug misuse: breaking the vicious circle. OPENDEMOCRACY. Retrieved August 27, 2022, from <https://www.opendemocracy.net/5050/lucy-dixon/prostitution-and-drug-misuse-breakingvicious-circle>.
- The Constitution of India, 1950; The Indian Penal Code, 1860; The Immoral Traffic (Prevention) Act, 1956.
- Article 19(1), Constitution of India, 1950.
- Article 21, Constitution of India, 1950.
- Article 23, Constitution of India, 1950.
- Article 39 (a), Constitution of India, 1950.
- Article 39 (e), Constitution of India, 1950.
- Article 46, Constitution of India, 1950.
- Article 51, Constitution of India, 1950.
- Article 47, Constitution of India, 1950.
- Article 51 A (e), Constitution of India, 1950.
- P.N.Swamy, Labour Liberation Front, Mahaboobnagar v. Station House Officer, Hyderabad 1998 (1) ALD 755.

- §293, 294, 317, 339, 340, 341, 342, 354, 359, 361, 362, 363, 365, and 366, 370, 371, 372, 373, 375, 376, 496, 498, 506, 509, 511, Indian Penal Code, 1860
- Harshad Barde, (Mis) Reading through the lines, Prostitution and beyond: an Analysis of Sex Work in India (New Delhi: SAGE Publishers, 2008) 227.
- Barde, H. (2008). (Mis)Reading through the lines, Prostitution and beyond: an Analysis of Sex Work in India. SAGE PUBLISHERS, 227.
- Saxena, P. (2002). Immoral Traffic in Women and Girls: Need for Tougher Laws and Sincere Implementation. JILI, 504, 523.

