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RESEARCH ON LEGALIZATION OF PROSTITUTION IN INDIA

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ABSTRACT

This research paper depicts a brief explanation of Legalization of prostitution in India and enactment and recommendation that should be taken by the government and Supreme Court of India and it's making the legalization of prostitution and consensual sex in India.

Index Term – Indian Penal Code (IPC), Bharatiya Nyaya Sanhita (BNS), Sexually Transmitted Infections (STIs), Male Prostitute (Gigolo), Non-Governmental Organization (NGO), Immoral Traffic (Prevention) Act (ITPA)

I. INTRODUCTION:

The term prostitution is derived from the Latin word that is called prostitute “Which means to expose publicly. It is act or practice of engaging in sexual activity in exchange for money or payment Prostitution means “selling the body for the money “ for the prostitution any one can engage whether it's a man or women now in 21st century it is a gender natural some person for the earning for the money for the livelihood.

The rate of man prostitute in our country India are hiking day by day male prostitute are known as “Gigolo”.

Any person cannot chosen this profession by his or her willingness there is some reason behind that like poverty , uneducated , left by their parents , etc.

Profession of the prostitution is one of the oldest profession legalization of prostitution is necessary in the country or any human society for the fulfillment of the sexual hunger it can also help the reduce the rape case in the society.

Due to the legalization of the prostitution the group who engage with this profession they can get rid the taboo of the word 'prostitute' and live their life in the society with the dignity and provide their children as better education health care or other facility provided to the others.

They are also live their life with the full respect and dignity and it is not shame for them to be work as a prostitute in the society they cannot be discriminate only the reason of the they work as prostitute

Work of prostitution legal only for that limit where it is working by a person with his free consent without any threat, fear or coercion. If it is under this circumstances the person forcing them is punishable under the immoral traffic (prevention act) 1956 and BNS 2023.

Legalization of prostitution in India the sources comes from the Indian Constitution article 19(1)g which cover the right to profession.

Before the legalization it is punishable under the immoral traffic (prevention) act 1956 and Indian penal code.

II. HISTORICAL BACKGROUND:

References related to prostitution can be traced back to ancient times.

- 1) **Ancient / Vedic Period:** In a Vedic period called Ganikas and Nartas they are presence in religions rituals and royal courts of the kings.
- 2) **Devadasi:** In the ancient time there is a system where they were considered god's female servants.
- 3) **Nagurvadh :** They were called a wife of the town , she entertained the kings and royal person by performing dance and music
- 4) **Haram and Tawaif system in Mughal Era :** They were kept for singing and dancing and for the sexual pleasure
- 5) **Colonial period :** In the British rule the kota system evolved and the brothel culture emerged where woman being licensed by military official and allowed to consort with soldiers
- 6) **Post Independence :** Prostitution remains prevalent in India despite being illegal under Indian law

Some Red light Areas in India

Sonagachi Kolkata (one of India's largest red light area)

G.B Road – Delhi

Kamathipura Mumbai (one of India's oldest red light district back to colonial era)

Meeraganj Allahabad

Shivdaspur Varanasi

III. LEGAL STATUS OF PROSTITUTION IN THE WORLD

1) Countries where the prostitution is illegal

China, Croatia, Egypt, Iran, Iraq, UAE

2) Countries where prostitution is Limitedly Legal

Australia, Canada, France, Japan, United Kingdom, USA.

3) Countries where prostitution is legal

Germany, Mexico, India, Indonesia, New Zealand, Singapore.

***Convention on the suppressions of Traffic in person and the Exploitation of the prostitution of other.**

The UN general Assembly adopted passed this convention which states that

“Trafficking in person for prostitution is incompatible with the dignity and worth of the human person “

*** The general assembly adopted it on December 2, 1949 and it went into force on July 25, 1951.**

There were 72 states parties to the convention in 2007, and the convention applied to 74 countries.

IV. LEGAL STATUS OF PROSTITUTION IN INDIA

1) The Immoral Traffic (Prevention) Act 1956

ITPA does not criminalize prostitution in India per se It's aims to prevent to trafficking of women and girls for sexual exploitation, criminalizing activity like running brothels, procuring individual for prostitution and living off the earning of prostitution

Sec. 3: Punishment for keeping a brothel or allowing premises to be used as a brothel

Sec. 4: Punishment if any person living on the earning of prostitution

Sec. 5: Procuring a public place

Sec. 8: Seducing for purpose of prostitution.

2) Provision of BNS

Sec. 96: Procuration of child

Sec. 98: Selling child for purpose of prostitution etc.

Sec. 99: Buying child for purpose of prostitution etc.

V. CONSTITUTIONAL PROVISION WHICH LEADS TO THE LEGALIZATION OF PROSTITUTION.

Article – 14: This article talks about the equality before the law and equal protection before the law.

So, how can be punished a person or group of person for just they are engage the work of prostitution like the other work on profession. It is also a profession in the eye of the law if they are doing by their will or full consent and they are not forced anyone to just intimate them or made a sexual relation with them other person/ other party doing with their service the party paying them.

Article – 15 : This article talks about the we cannot discriminate to the person on the basis of religion , race , caste, sex or place of birth so, we cannot discriminate the person who engage on the work of prostitution we cannot stigma them as a prostitution.

Article – 19(1)(g) : this article guarantees the right to practice any profession or to carry on any occupation trade or business

Like other profession the week as a prostitution is also a profession because it is not a free of cost here one is a service provide and other are is customer and for the service he is taking the person pay for it

Article -21 : Article 21 talk about the right to life of a person with the dignity every person home a right to live a life with dignity till the his or her death the sex worker also have that right to live in this society with the full of dignity and respect they are not doing any crime they are doing just their work.

Article – 23 : This article protect the right against “ Exploitation” it prohibits trafficking in human being and forced labors including beggars and other similar form of forced labors

VI. SOME CASES THROUGH IN INDIA LEGALIZED PROTITUTION

(1) Olga Tellis case:

In this case Supreme court held that the article 21 of the Indian Constitution guarantee the every person liberty and Supreme court also interpreted that this article also include the right to

livelihood

(2) Kajal Mukesh Singh case

In this case talks about the limited criminalization the court hold that consensual prostitution is not an offence under the immoral traffic (prevention) act. The focus is on the trafficking of person or minor not criminalized the act of sex work itself

(3) Budhadve Karmaskar vs. state of West Bangal.

In this case the incident happened on 17 sept 1999 where the sex worker died because appellant budhdev killed her with legs and fists she fell down to the ground the appellant then grabbed her by the hair and repeatedly slammed her head against the wall and floor leaving the victim with ear, nose and head bleeding on the victim's body as injuries were discovered during the postmortem eight of which were located on various areas of the face and forehead when she was brought to the hospital she was found dead on arrival

In this case Supreme court emphasized that sex worker also have the right to live with dignity under article 21 of the Indian Constitution it means they have same fundamental right as other citizen including the right to life and personal liberty

Society must have some sympathy or kindness towards the sex workers and must not look down upon them sex worker are also entitled to live their life with respected and dignity as mentioned in the under the Indian Constitution

VII EFFECT OF LEGALIZING THE PROSTITUTION

- 1) Legalizing prostitution can leads to the better life of sex worked they can live dignified life no one can treat them unequally or discriminate or degraded.
- 2) They can go easily to seek police help if any bad thing happens to them generally they are scared to go to police station. If legalized they can freely reach to the police.
- 3) If govt. legalized the prostitution it will increase the revenue and help to grow revenue or GDP of the country.
- 4) If govt. legalized than they make policies for sex worker for their betterment.
- 5) Legalized prostitution it helps to regulate the regular health check-up of sex worker it would ensure that no more sexually transmitted disease.
- 6) Legalization leads to the right of sex worker will be protected.
- 7) It reduces on the society sexual hunger and reduces the rape cases in the society.

VIII. EFFECT OF NON LEGALIZATION OF PROSTITUTION

- 1) It will increase the trafficking of the woman and children.
- 2) It increased the sex violence on the sex worker they are just treated as immoral or things because they have no right.
- 3) Non access to the police because of the fear of police or lack of rights the sex workers are become more victims and sometimes police don't listen to them and not filed their complaint some time they humiliate by police.
- 4) Because of non-legalization they live the stigma of sex worker or prostitutes and cut down by the society and become marginalization it making very difficult for them to access basis services like health care and housing.
- 5) It Increase the risk of sexually transmitted infection (STIs) because they cannot reach to proper health care or necessary check-up.
- 6) IT also increase mental illness impact due to the vulnerable life or neglected by the society or govt. It directing impact on their minds.

IX. WAY FORWARD

- 1) Government should take initiative for the sex workers and make a strict rules for their protection of legal right and making a legal frame-work for their wages and what extend of they work.
- 2) From some NGO they work the right of prostitute or manage their affairs
- 3) Government should start the rehabilitation program for the sex worker who they left that profession or live own life they helps that persons.
- 4) Awareness program started and stop the new prostitute who want to enter in early age that it is not suitable for them they can do other job or other things become it is not easy for them who works as sex workers.

X. CONCLUSION

The existence of the prostitution has been since the immortal time and this will continue as long as humanity and society exist and the legalization of prostitution is mandatory in this era we all are lived in modern era and it keeps on changing according to need of the society before we all neglected the sex worker they cannot use their legal rights for their own protection and work as a prostitute not a crime. It's their own choice if they have another option rather than prostitutes they definitely choose other it so on the basis of this we are all cannot degrade them.

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