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# Legalization of Prostitution

*Authored By- Siya Sharma*

Prostitution is defined as the practice of engaging in relatively indiscriminate sexual activity, in general with someone who is not a spouse or a friend, in exchange for immediate payment in money or other valuables.<sup>1</sup> Often considered as one of the oldest professions in the world, prostitution has been a part of our society ever since civilisation has come into existence. Perceptions and stereotypes surrounding prostitution vary from culture to culture however, when we specifically talk about India, prostitution has always been looked as a taboo. Prostitution has been a central part of the ancient Indian culture, either under the ambit of Devadasi or Vatsyayna's Kama Sutra.

While the profession of prostitution has sustained for centuries in India, the laws governing it still demand a lot of regulation. The business of prostitution is worth Rs 40,000 crores annually with around 10 million prostitutes in India and about 1,00,000 alone in Mumbai making it Asia's largest sex focus industry. These figures are a realisation of how big this industry is and how important it is for us to bring regulations in this industry. Despite, the fact that there are a number of rules and regulations governing and protecting our human rights yet, for most it's difficult to find them in action.

## **Immortal Trafficking Act, 1956**

Immortal Trafficking Act, 1956 is one of the primary legislations on prostitution that was enacted with the aim of reducing prostitution in India. However, this particular act didn't ban prostitution as a profession. However, it did bring certain restrictions in the working of prostitution.

**Section 2(f) of the Immortal Trafficking Act of 1956** defines prostitution as sexual exploitation or abuse of a female for monetary purpose and a prostitute is a person who gains the commercial benefits.

Under this particular act, a fine and an imprisonment of about 2 or 3 years is given for practicing prostitution in a certain place or operating a brothel. Although, nowhere in this particular act,

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<sup>1</sup> ("Prostitution | Definition, History, and Facts")

prostitution has been explicitly called illegal but a few activities like operating brothels, trafficking, soliciting and pimping are all punishable offences. Even if a single instance of prostitution is caught being conducted in a particular place, it is enough to show that prostitution is being conducted and therefore, people who were involved in can be penalised for the same.

**Section 3 of the Immortal Trafficking Act to Section 9 of the Immortal Trafficking Act** lists offences which are punishable under this legislation-

- **Section 3-** Punishment for keeping a brothel or allowing premises to be used as a brothel.
- **Section 4-** Punishment for living on the earnings of prostitution.
- **Section 5-** Procuring, inducing or taking a person for the sake of prostitution.
- **Section 6-** Detaining a person in premises where prostitution is carried on.
- **Section 7-** Prostitution or in the vicinity of the public places.
- **Section 8-** Seducing or soliciting for purpose of prostitution.—Whoever, 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 or not.
- **Section 9-** Seduction or of a person in custody- Any person who having the custody, charge or care of, or a position of authority over, any person, causes or aids or abets the seduction for prostitution of that person shall be punishable 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 fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

In 1986, this particular act was amended wherein instead of young girls, all people be it male or females who are sexually exploited for commercial purposes were included. Therefore, an act which was initially a gender biased act, amended to cover males as well as females.

In *Ratnamal and Another Vs Respondent AIR 1962*<sup>2</sup>, it was held that the Immortal Trafficking Act of 1956 mainly aims at abolishing trafficking of women in a commercialised manner.

In *Sahyog Mahila Mandal V State of Gujrat (2002)*<sup>3</sup>, the high court refused to recognise prostitution as

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<sup>2</sup> AIR 1962 Mad 31

<sup>3</sup> (2004) 2 GLR 1764

a legitimate way of living. As calling prostitution as a legitimate profession will open a pandoras box for women to be trafficked and this could also be misunderstood as a fundamental right.

## Child Trafficking

This Immortal Trafficking Act also doesn't talk about child trafficking as well as violence faced by other women. As a result, in the case of *Smt. Afjal Vs. State of U.P.*, the accused was running a brothel with minor girls and was forcing them down towards the path of prostitution. However, only the accused was penalised and the minor girls were let free because of the statutes that were outlined in this act.

Although, legislation against child trafficking can be found in the **Indian Penal Code (IPC) under clause 366** which categorically criminalises employing underage girls in sexual activities. This section also prohibits bringing minor girls from foreign countries and solely engaging them in sexual activities. An example of this could be seen through the case of *Fateh Chand v. State of Haryana* wherein the defendant was young man who was accused of forcing a minor girl down the path of prostitution, therefore, violating section 366.

Furthermore, **Section 372 of the Indian Penal Code** penalises the act of selling a minor girl with the prior knowledge of pushing her into the profession of prostitution.

**Section 373 of the Indian Penal Code** punishes the act of purchasing a girl with the motive of driving her into the profession of prostitution.

## Deficiencies in the working

However, this particular act has some deficiencies, the act's primary focus lies on identifying brothels as a place where prostitution is being carried out and arresting people who assist it rather than focusing on trafficking which was the primary reason as to which this act was written in the first place.

More so, although, this act was a big step in the governance of prostitution but the ground level reality remains untouched. The fact that the police officers still arrest prostitutes instead of the brothel owners and the so called clients shows the hypocrisy and the judgemental nature of these stakeholders of our democracy. Thirdly, the living condition of the rehabilitation centre and safe houses for girls who went

to move away from this darkness is also safe. The number of safe houses and women's home are less than the needed number neither do they guarantee safety and security to these young girls.

Lastly we can clearly notice a problem which can be recognised in all these acts is how no legislation has been made for prohibiting brothel owners from inflicting physical damage or abuse on these young girls. Adding on, it doesn't specify the need for using contraceptive and condoms or others ways of prohibiting unwanted pregnancies as well as protecting these young girls from getting any sexually transmitted diseases like HIV/ AIDS which can be life threatening and also lead to an increase in the population of the country.

## **Prostitution a Legal Work**

Supreme court in its latest landmark judgment constituted prostitution as a legal profession where the sex workers are entitled to the same level of dignity and safety as any other citizen in the country. The three judge bench led by Justice L. Nageswara Rao stated that "It need not be gainsaid that notwithstanding the profession, every individual in this country has a right to a dignified life under Article 21 of the Constitution," and further said that "Sex workers are entitled to equal protection of the law. Criminal law must apply equally in all cases, on the basis of 'age' and 'consent'. When it is clear that the sex worker is an adult and is participating with consent, the police must refrain from interfering or taking any criminal action,"

The bench passed the orders by using their special powers under article 142 of the Indian Constitution. Further directed that sex workers should not be harassed or penalised if a raid is made in brothels as practicing prostitution is not illegal but running brothels is. They also further directed that a child of a sex workers can also not be separated from the mother just merely because of their profession and it cannot be always concluded that all minors present in a brothel are trafficked, before concluding its necessary to ask people around and conduct a DNA test to substantiate their plea.

The court called out the attitude of police officers and instructed them to treat sex workers with the same dignity and respect as any other citizen and if a sex workers comes in a to lodge a complaint it is important to investigate the matter and a lot of care should be given to not revealing the sex workers identity.

Lastly, it is also noteworthy that prostitution was never banned or illegal in Indian but certain practices

related to prostitution were banned in India.

## Hidden troubles due to legalisation of prostitution

While it was important to be recognised as a legal profession however, a lot of criticism also surrounded that decision.

1. A number of feminist suggested that legalising prostitution can also lead to an increase in the number of trafficking cases in India and forcing more females to join the profession of prostitution. With time it's difficult for these girls to go back to their original roots as a result, they voluntarily stay back.
2. Another outlook is that how more regularisation will make uncover their identity and can lead to more mental anguish and embarrassment and societal pressure. A number of these girls prefer to live respectful lives during day.
3. This could also lead to rise in the number of people involved in the practice of prostitution therefore, promoting people to force more women into this profession and therefore leading to commodification of women.
4. Lastly, although, a lot of countries have legalised prostitution but these countries come under the ambit of developed countries which can provide better facilities to these victims unlike a country like India which is still developing and has shortage in providing these facilities.

## Conclusion

Prostitution has always been seen as taboo in India and has always been perceived as something which needs to be hidden away from. But it's imperative for us to understand that an industry as big of that of sex workers in India calls for regulations and laws. Sex workers are as old as civilisation so shying away from them and will not lead us anywhere. It's important we regularise their rights and give them the dignity they deserve socially as well as legally. While there are a plethora of rights it's important those laws are being used in the right places and by the right people. This needs to be a joint effort and therefore, the entire community needs to come together and stand by these injustices faced by these sex workers.

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