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# **Legal Aspects of Prostitution in India**

*Authored By- Vaibhavjeet Singh*

In India, prostitution is the oldest profession. It is a common fallacy that prostitution is banned in India. Prostitution is lawful, but pimping, owning, and managing a brothel is not. The primary cities in India where brothels operate illegally in huge numbers include Mumbai, Delhi, and Kolkata. Prostitution is not prohibited or penalized under the statute in and of itself.

Before going further into the discussion, let us first clarify what acts can be termed as prostitution. Prostitution is defined as giving sex services in exchange for money. It denotes not just sexual gratification but also other accompanying acts such as customer solicitation, brothel administration, pimping or dealing with prostitutes, sex trafficking, and other behaviors that enable prostitution, hence promoting the rise of the sex business.

## **Roots of Prostitution**

It pursued the path of devotion in India. Historically, there was the Devadasi system<sup>1</sup>, in which Hindus contributed their female children for the purpose of dancing in temples and worshipping God. However, as feudalism declined, these so-called Devadasis lost their defenders and were mistreated by temple priests. This was the first type of prostitution. This practice expanded even more during the British era, as outsiders restricted the local textile industry, firearms, and so on, forcing these villages to rely on prostitutes for a living.

## **Impact of Prostitution on the Indian Society**

Our society has a long history of prostitution. There is no specific year when it started. It's been around since there was a need for sex workers. There are those who will pay for sexual activity and those who will engage in sexual activity in exchange for money or things.

When it comes to prostitution, the world is divided into two camps. Many countries have legalized prostitution; some have legalized it with restrictions, while others have criminalized it.

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<sup>1</sup> Prachi Darji, Sept 12, 2019, Prostitution in India,

There are far more advantages to regularising and legalizing prostitution than there are to not legalizing it. Prostitution has existed for centuries, and I do not see it being abolished or erased from society. Our history and experience teach us that it will persist regardless of how strict regulations are enacted.

Instead of battling this trade, we should come to the aid of sex workers by enacting laws in their favor. It will undoubtedly offer them all of the rights they require.

They should be able to execute their jobs without fear or limitation. They should have the right to be well. They should be given a voice by making laws that recognize them. They should have the same right as any other profession to form organizations under labor rules. These rights are only available to sex workers after all aspects of prostitution are legalized.

A West Bengal sex prostitute was recently murdered by her clients for refusing to participate in sexual intercourse. In another case, a sex worker was murdered by her customer because she demanded 1000 rupees instead of 300 rupees. Because it is the government's job to create fair legislation governing sex workers and prostitution, the central government is directly responsible for all of this. It is past time to recognize prostitution as a job and to offer equal rights to sex workers under Article 14 of India's constitution.

In **Budhadev Karmaskar vs. State of West Bengal**, the Supreme Court stated that sex workers are also human beings with the right to a dignified life. A series of judgments by this Court have established that the term "life" in Article 21 of the Constitution refers to a dignified life, not only an animal existence.

## **Laws related to Prostitution in India**

The Indian Penal Code of 1860 addresses prostitution as well, although only with regard to child prostitution. It does, however, strive to combat actions like kidnapping in general, kidnapping for the purpose of seducing and luring a person into sex, importing a foreign lady for sex, and so on.

Furthermore, Article 23(1) of the Constitution forbids trafficking in human beings and beggars, as well as other forms of forced labor. Article 23(2) stipulates that any violation of this rule is a criminal crime punished by law.

Despite being deemed unethical by the Court, prostitution is not explicitly illegal in India; however, certain acts that facilitate prostitution are considered illegal, and acts such as managing a brothel, living off the money obtained through prostitution, soliciting or luring a person into prostitution, trafficking of children and women for the purpose of prostitution, and so on are made explicitly illegal by the Immoral Traffic (Prevention) Act, 1956. (ITPA). Running a sex racket, for example, is unlawful, but private prostitution or receiving paid-for sex without previous solicitation may not be.

It was stated in *Raj Bahadur v. Legal Remembrancer*, that:- “Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral" or other purposes.”<sup>2</sup>

## **Impact of Immoral Traffic (Prevention) Act, 1956 on Prostitution**

The Immoral Traffic (Prevention) Act of 1956 governs the subject of prostitution in India. The constitutionality of this Act was challenged in the case of *The State of Uttar Pradesh v Kaushalya*. In this case, a number of prostitutes were required to be removed from their place of residence for maintaining decorum in the city of Kanpur.<sup>3</sup>

Section 20 of the Act, according to the High Court of Judicature in Allahabad, violates the respondents' fundamental rights under Article 14 and sub-clauses (d) and (e) of Article 19(1) of the Constitution. Because there was a discernible distinction between a prostitute and a person causing a disturbance, the Act was declared constitutionally legitimate. The Act is also consistent with the Act's purpose of promoting social order and morality. This Act aims to repress prostitution in women and girls while also fulfilling a public goal of rescuing fallen women and girls and stamping out prostitution, as well as providing all opportunities to these fallen victims so that they can become good members of society.

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<sup>2</sup> *Raj Bahadur v. Legal Remembrancer*, Laws Cal-1953- 2-18

<sup>3</sup> Kiran Bhatta, November, 2019, A Review of the Immoral Traffic Prevention Act 1986

The ITPA appears to be more concerned with eliminating prostitution than with combating illicit human trafficking. Such regulation has only made life more difficult, vulnerable, and dangerous for sex workers. This is an entirely inappropriate strategy for dealing with this profession; rather than making their life simpler, the government has done the opposite. No government has ever been able to outlaw prostitution through legislation. Consider the following scenario: in the absence of such restrictive regulations, a sex worker is looking for a customer. She is free to converse openly with the consumer without fear of being detained by police. If something goes wrong, whether it's coercive conduct by the client or failure to pay her professional fees, the lady is safe and free to contact the police.

But now we come to the reality of rules that limit our freedom. By enacting such regulations, the system has fostered fear of punishment in the clients. Instead of meeting the sex-worker in an open or public venue, the clients prefer to meet in a dark and isolated location to escape the police. In such conditions, it is quite easy for the client to commit a crime.

## **Sex work as a profession**

The Supreme Court of India recently stated that "sex work is a profession" like any other, and that sex workers should not be harassed by authorities. Cour further emphasized that Sex workers are entitled to equal legal protection. Criminal law must apply equally in all circumstances, regardless of "age" or "consent." When it is obvious that the sex worker is an adult participating with consent, the authorities must refrain from interfering or taking any criminal action.<sup>4</sup>

While sex work or prostitution is not illegal in India, trafficking for sexual exploitation is a crime under Indian law. Under the Indian Penal Code (IPC) and the Immoral Trafficking Prevention Act, pimping, soliciting, exploitation, and renting out property for the sex trade are all significant offenses (ITPA).

In addition, while sex work is not prohibited in India, the current legal rules make it impossible

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<sup>4</sup> Krishnadas Rajagopal; March 25, 2022; Supreme Court recognises sex work as a 'profession'; The Hindu

for any sex worker or prostitute to conduct it, and they can even be arrested for soliciting clients. When engaged in it, there is a grey area and a lack of clarity, like with other socially taboo occupations.

Sex workers have the same right to a dignified existence as provided by Article 21 of the Indian Constitution, according to a three-judge Bench led by Justice L. Nageswara Rao. Expressing worry about the "brutal and violent" way that police treat sex workers, the court stated that it seemed as if sex workers "are a class whose rights are not recognized. The rights of sex workers should be made known to the police and other law enforcement agencies, who have the same basic human rights and other rights as all people guaranteed by the Constitution.

Supreme Court's view has clarified that a sex worker who is involved in prostitution with their consent should not be ill-treated as she has the right to be in the profession she wants with dignity. But the main cause of concern is that In terms of sex jobs and the sex trade, what is required is clarity or transparency. Where is the issue of consent for a woman pushed into prostitution and unable to speak out?

There is no significant mechanism to determine and track those women, who are forced into this profession without themselves being aware of their legal rights are hampered. There are many women out there, who have no other option than to fall into this trap due to family or society suffering.

Many non-governmental organizations (NGOs) warn that people with vested interests, such as brothel proprietors, are purposefully distributing false information about the judgment. They are frightening sex workers into submission, claiming that the court has now ruled that the police cannot intervene in how sex workers are handled. This is incorrect in actuality.

The decriminalization of the sex trade has divided activists. While some say that legalizing the sex trade and removing the restrictions on it will allow for the exploitation of vulnerable women and children, others claim that legalizing the sex trade will provide sex workers with dignity and human rights. Significantly, juveniles who have been trafficked are only rescued and given access to rehabilitation through police and anti-trafficking group raids.

To address these difficulties, The court also ordered state governments to conduct a survey of shelter houses in order to examine and discharge adult women who do not wish to be there. While the court orders are well-intended, advocates have pointed out that they might be harmful to sex workers on the ground, such as leaving minor children with their mothers in brothels. Though a tough task to crack as the whole system needs to work with dedication and honesty to solve this big evil and give a dignified life to women and children.

## **Is Sex work only a women's profession**

Earlier only females were seen as prostitutes and males were their clients but now in the 21st-century male, females, and transgender, all are working in this profession. According to the BBC report, the number of males as prostitutes in India is rising at a great pace. It also states that when there are no female clients they sell sex to male clients. Male prostitutes are called gigolos. Male prostitution has been an active market in western countries for decades now. But in India, it started growing in metro cities in only a few years. Hence, no one notices this dark zone.<sup>5</sup>

## **What makes people fall into this prostitution?<sup>6</sup>**

There are several reasons that push a woman to engage in commercial sex, with poverty and unemployment being two of the most prevalent. It has been seen that women from distant locations fall victim to unscrupulous brokers who promise them respectable job possibilities and then sell them as sex workers. Poverty is the primary motivator that pulls desperate and helpless women into prostitution. It is often assumed that, of all the factors responsible for prostitution, poverty is the most crucial reason that leads people into prostitution.

Poverty has driven a great number of individuals, particularly young people, to urban areas, where many see prostitution as an easy way to meet their own and their families needs. When one considers the concept of prostitution broadly, one can see that it was not as prevalent in pre-modern periods as it is today. The growth of urbanization has resulted in a significant transformation in the structure of our reality. Urbanization has encouraged the expansion of the free enterprise, which has increased class polarisation by increasing the frequency of poverty,

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<sup>5</sup> The Supreme Court Order On Sex Work: How It Changes Things, And Laws On Sex Work; The Outlook; June 2, 2022

<sup>6</sup> Prachi Darji, Sept 12, 2019, Prostitution in India,

After being raped, around 6% of the women entered prostitution. And many times, sexual assault survivors are victimized by society's shame and stigma, which blames these women for being raped. In certain circumstances, not just society but also family members have refused to accept them. Aside from the deferral or rejection of justice, the victims are subjected to similar conditions on a regular basis. And after a given period of time, when they find no roof for refuge in our society and no ray of hope for them, they find their way into the darkness of prostitution.

Around 8% of young females turned to prostitution as a result of incestuous relationships. The most well-known incest is between a father and a young girl, followed by uncle-niece incest. And when these young victims of incest are sexually exploited at home and do not expect safety anywhere in public, they eventually end up in prostitution. Aside from the characteristics described above, there are various other factors that motivate women to become prostitutes.

### **Impact on sex workers after the legalization of this profession**

It is up to us as responsible citizens to deal with prostitution. Will we accept it with open arms and minds, or will we continue to live in denial? Many countries have opted for the latter, and many have legalized it. The following is a list of the advantages of legalizing prostitution.<sup>7</sup>

- **Improvement in the conditions of sex workers-** It is apparent that the countries that have legalized it have only helped to improve the conditions of sex workers. A study conducted in nations where prostitution is permitted yielded positive results, indicating that violence and illness spread has decreased significantly.
- **Human trafficking will be reduced-** The most important issue with legalizing prostitution is that it will boost human trafficking. If prostitution is legalized without any restrictions, such as criminalizing third-party participants, I believe the results will be the opposite. To ensure that there are no instances of prostitution-related trafficking, the government must work vigorously with the community. After legalizing prostitution, Newland

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<sup>7</sup> Yashi Verma; July, 2022; Legalization of Prostitution in India; Legal Service India

is a shining example of a country that has achieved the goal of having no incidences of prostitute trafficking.

- Legalizing prostitution will give sex workers more power. When their rights are violated, they will summon the guts to approach the police. On the contrary, when sex workers go to the police station to file a complaint about rape or a client who does not pay their professional fees, the police do not take them seriously since they know prostitution is not a legally recognized profession and it is still taboo in society.
- Sex workers will be able to enjoy a healthier life if prostitution is legalized. Legalization will help sex workers fight for their right to safer sex, such as sex with condoms or other forms of protection. The legalization of sex workers will allow them to be examined on a regular basis for their own and the client's safety. This will help to reduce the number of STDs. Every month, sex workers in Nevada are tested for sexually transmitted diseases. Condoms are also mandatory for any sex in brothels in Nevada.
- As a result of legalization, the involvement of kids will decrease. Every sex worker will be required to obtain a license, which will aid in the government's data collection. No one under the age of 18 will be permitted to work without a license.
- Reduction in rape cases- Several studies have revealed that legalizing prostitution has a significant impact on the reduction of rape cases. It significantly reduces rape incidents. After the legalization of prostitution in Rhodes Island, the number of rape incidents dropped to 39.
- Sex workers will have the option of delivering their services to whomever they wish. Similarly to how advocates can choose whose cases they want to fight, sex workers will be able to choose their customers. Due to limits, they now have a violent clientele and a lack of options and remedies.

## Conclusion

Finally, the facts show that there is no necessity for any particular strategy to a problem like prostitution, such as criminalizing, decriminalizing, or sanctioning it. Based on prior studies, it is impossible to argue that legalizing prostitution has both bad and good consequences. As a result, just legalizing prostitution will not suffice to fix the problem; instead, our country

requires a unified approach to address it.

Regulation of prostitution will help to safeguard sex workers and their children from exploitation. It will not only protect the health of sex workers but also society as a whole. A set of rules and regulations should be developed in the future to regulate this business. Prostitution is a career that can involve violence and exploitation in some circumstances. However, for certain people, it may be useful in running a family. Furthermore, people must be educated about women's issues so that they do not perpetrate such horrible atrocities against them, which is the main source of concern. Given these considerations, the researcher believes that prostitution should be legalized, with a regulatory authority overseeing the practice. He concludes that legalizing and regulating prostitution protects the protection of sex workers and children, as well as their rights.

The ultimate solution I feel is to educate the people involved in this red market up to the level so that they can be taught that there are other areas also that could look after their financial demands than fall into this rat trap. Government should run campaigns in such areas and should also collaborate with some NGOs to at least make children get proper education and upskilling, in order to make them capable in themselves to grow stronger and excel in other professions that could yield them more money.

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