

LEGALIZING THE PROSTITUTION IN INDIA

K. Suveda & Janani G.

VIT School of Law, Chennai

ABSTRACT

Prostitution is engaging oneself in the sexual activities for the payment. The one who engages in such kind of activities are known as prostitutes. This is a way long practised activity since the society was organised. This is a problem which is been prevalent both in ancient and modern India. In ancient days it was practised in the form of devadasi system. In a literal sense they have been devoted to god which means they are the wife of god and don't require to marry a mortal being. Later these women were mishandled by the priests of the temple. The report suggests that the women who indulge in such kind of activities are from the poor background and has no way for survive since they don't get any parental guidance. Though it's been practised in India for a very long period of time, prostitution as an institution is always been evil. On the other hand, some part of the society states that prostitution is a necessary evil in order to avoid rapes and unwanted sexual coercion. The prostitutes are the most vulnerable people in the society. In order to protect them there are many laws in the society. In 1956, immoral traffic (suspension) act was passed, which ban the practise of prostitution in public but can be done privately. Section 372 of IPC prohibits the selling of children for prostitution. Though there are certain provisions and act to protect them, it is not been clearly mentioned whether prostitution is legal or illegal unlike United Kingdom where it had made prostitution as illegal. This paper is all about prostitution and effect of legalising prostitution in India. Will also be analysing effect of not legalising prostitution in India and also the laws which protects the prostitutes in India?

Keywords: prostitution, legalising, prostitute, sexual coercion, women.

INTRODUCTION

Prostitution is the act of involving in sexual activities in exchange of money. The term prostitution is derived from the Latin term called prostitute which means to expose publicly. It is sometimes mentioned as commercial sex or hooking. It is an assortment of structures, and its legal status varies from one nation to the other. It is just one part of the sex business

the other side include pornography or other sexual entertainments. Like other form of violence that is been committed against women, prostitution is another gender specific issue because women are the one who are vulnerable and the victim of such kind of activities. But we wouldn't be completely being ignorant on the fact of sexual exploitation and violence against men. Earlier only females were working as prostitutes and men were their clients. But in this era both men and women are indulged in this profession. According to the report of BBC, the rate of men prostitutes in India are hiking. Male prostitutes are called as gigolo.

Moreover, the transgender often gets unnoticed when we speak about prostitution. Billions of profits are been made in India out of the prostitution by taking advantage of socially and economically backward class people. Basically, taking advantage of the vulnerable people in the society. Prostitution in India is a way old profession. In Hindu mythological inferences sex workers were referred as asparas. Prior to the colonial period devadasi system was much prevalent in the Indian society. The women were given to god but when feudalism and colonialism diminished, these women were been exploited by the temple priests. This is one among the oddest forms of prostitution in India. Even the Vedas there was a reference to the prostitution. In Rig Veda as stated by Kausalya, "women who lived by their beauty can entertain men". This shows the existence of prostitution in ancient India. In India prostitution is legal only if it is carried out in the private but it excludes some other form of sexual activities such as owning or managing brothel, kerb crawling, soliciting in public place, and prostitution in hotel and child prostitution. But many brothels illegally have been operated in metropolitan cities of India.

LEGAL PROVISIONS RELATED TO PROSTITUTION IN INDIA

Immoral trafficking act, 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.¹ This act is also known as SITA. This act mentions that the prostitutes can carry out their trade in private but not in public. The clients will be arrested if it is been carried out in the public. According to this act, women shouldn't indulge in commercial sex within 200 yards of public place. Even the prostitute doesn't come under the ambit of labour laws.

¹ <https://indiankanoon.org/doc/69064674/>

Later an amendment was made to this act in the year of 1986, where it stated that the prostitutes can be arrested if they are found soliciting in the public or seducing others. The mobile numbers of the call girls shouldn't be posted in the public. If it is been published then they can be punished for 6 months along with the penalty. If the client is indulging with the sex worker within the area of 200 yards of public space can be imprisoned for 3 months with fine. In case of involving in a sexual activity with the minor, he/she can be punished with imprisonment of 10 years. If an adult man lives with a prostitute then he is found guilty unless he proves himself as innocent or he will be punished with imprisonment for 2-4 years. The ITPA, 1986 is vital because it is in accordance to the preamble as well gives effect to the trafficking convention signed at New York on 9th May, 1950 for preventing the immoral trafficking against women and children.

In "*The State of Uttar Pradesh vs. Kausalya*"² the constitutional validity of the ITPA was challenged. The facts of this case are that few of the prostitutes were asked to be removed from the city of Kanpur in order to maintain the decorum of the city. The HC of Allahabad held that section 20 of this act abridged article 14 and article 19(1) (e), (d). The act was held to constitutionally valid and there was an intelligible differentia and also the reason ought to be achieved by the act.

This act it focuses on maintains decorum and morality in the society and also to rescue the women and girls by providing them with rehabilitation so that they become decent member of the society.

A proposal was made to amend this act in 2006. The amendment bill it removes the provision which penalize prostitution by soliciting the clients. Also intended to criminalize the person who visits the brothel for the purpose of sexual exploitations of the trafficked victims with fine amount of Rs. 20,000³

Article 21, it discusses about right to protection of life and personal liberty. Also mentions that no person shall be deprived of life and personal liberty except according to the procedure established by law.

² 1964 AIR 416, 1964 SCR(4)1002.

³ Diva Rai, legal aspects related to prostitution in India, from <https://blog.ipleaders.in/legal-aspects-related-to-prostitution-in-india/>.

In the case of *“Budhadev Karmaskar v. State of West Bengal”*,⁴ in this case it was held that the sex workers are also human beings and they should be treated with humanity and dignity. This shows that article 21 was upheld in this case.

In the constitution of India, a provision for trafficking is explicitly mentioned. **Article 23** prohibits trafficking in every form including sexual exploitation of women and girls. In addition to the ITPA and the constitution, we have certain provisions mentioned under IPC.

Under IPC

1. Section 366-A deals with procurement of minor girls
2. Section 366- B deals with importation of girls.
3. Section 372 deals with selling of girls for prostitution.
4. Section 373 deals with buying of girls for prostitution.

The provision related to rape is also applicable for the rape of brothel inmate but it must be without her will. The minimum punishment is 7 years under IPC.

LEGALIZING PROSTITUTION IN INDIA

Legalizing prostitution what does the term legalizing mean? Does it mean that they can open a sex parlour or brothel? Does it mean that like doctors they could also open the parlour and hang the board mentioning the availability of girls? It is not in such a way. Legalizing mean giving legal recognition to those sex workers so that they have certain rights. There have many arguments and discourses regarding giving legal status to the prostitution in India. Many countries like France, Canada, Germany, Denmark, Wales etc... Have regulated and legalized the prostitution.

In the German country the prostitution is being considered as a profession not only legal but also taxed, where the brothels are allowed to advertise and send job offers to the companies and the country had passed the recent legislation in 2016 which regulates and protects the prostitutes but providing the permit for all prostitution trades and a prostitution registration certificate.⁵

⁴ C.R.A. NO. 487 OF 2004.

⁵ Dr. Sandhya singh, prostitution- an overview of socio- legal perspective, IJTRS international journal of technical research & science, volume 3 issue VI, July, 2018.

In India, there's no provision under law which states that prostitution is a criminal offence but, seducing any person in the intention of prostitution or running a brothel is illegal⁶.

Bombay high court, justice prithiraj chavan said that prostitution is not considered has a criminal offence under the immoral traffic (prevention) act, 1956.⁷

To say that legalising the prostitution would reduce the rape rate in India. The logical solution could be to legalise the prostitution with the hope that the government would able to regulate the trade in the interest of the sex workers.

EFFECTS OF LEGALISING THE PROSTITUTION

- It constitutes the better life for the sex workers
- It ensures the labour rights for sex workers
- Generally, prostitutes are scared to go to police station, if it's legalised the fear for going police station would change and they will have a right to go to the police station without any fear.
- Sex workers will have respect in the society and not degraded.
- The government will have track or have a data and ensure that no minor is being involved
- Regular health check-ups would ensure that no more sexually transmitted disease
- The concept of forced prostitution will be abolished since when its legalised and the government will have a tap on it
- The major change will be reduction of rape rates and trafficking
- The sex work will be considered as a work and will not be degraded
- It will boast the economic empowerment
- Taxes must be introduced instead of bribes
- Rehabilitation and related service must have the special legislation or the provision for the same.
- Legalisation of prostitution will enhance and upgrade the system.
- The main thing is about eradication of the forced prostitution will come to an end
- The right of the sex workers will be protected.

⁶ Yashi Verma, legalisation of prostitution, from <http://www.legalserviceindia.com/legal/article-3392-legalization-of-prostitution-in-india.htm>.

⁷[https://www.indiacode.nic.in/handle/123456789/1661?locale=en#:~:text=India%20Code%3A%20Immoral%20Traffic%20\(Prevention\)%20Act%2C%201956&text=Long%20Title%3A,the%20Prevention%20of%20Immoral%20Traffic](https://www.indiacode.nic.in/handle/123456789/1661?locale=en#:~:text=India%20Code%3A%20Immoral%20Traffic%20(Prevention)%20Act%2C%201956&text=Long%20Title%3A,the%20Prevention%20of%20Immoral%20Traffic).

Thus, the scope of gender equality which must include equal dignity and respect towards the women who chooses this line of profession of prostitution and future policy needs to focus on the growth of such areas, government, social and security support to NGO's working for the same cause will add more effective and power of the struggle towards this where the authorities can join hands with the locals and once it becomes legal then the harm of harassment of women of the sex workers and the fear of police would reduce completely.

EFFECTS OF NON-LEGALISATION THE PROSTITUTION

On the other side it becomes more socially acceptable. "It's wrong" since the human body is a gift, meant to be kept pure. Selling it would lead to immoral. Feminist view on against the prostitution argues deprived of lives of most women who enter into this trade.⁸ No doubt that India's position in prostitution of the sex worker industry is being looked down upon and degraded. And to put an end for trafficking the right way is to criminalise the prostitution.

The others effects are thus following;

- It reduces the trafficking
- Violent sex would be abolished
- No to male dominance over females
- The minor sex workers will be reduced
- Low pay
- No longer there will be an effect on the prostitutes
- Decrease in STDS.
- It won't change the social stigma attached to prostitution.

Thus, there are more benefits of regularisation and legalisation of prostitution that not legalising it.

Your One Stop Legal Destination

SOLUTIONS

The problems involved in the prostitution are very much complicated. It can be solved in two ways

1. Prevention of entry of new prostitutes.
2. Rehabilitation program for the women who are into prostitution.

⁸ Prostitution and beyond: An analysis of sex work in India (New Delhi: SAGE publisher, 2008).

PREVENTION OF ENTRY OF NEW PROSTITUTES

1. Counselling and guiding programmes should be given to the public with regard to the cause and problems of the prostitute. More economic opportunity should be given to the prostitutes since they are most vulnerable in the society. The concept of community policing should be made popular so that the police officers would be familiar with the local inhabitants. The involvement of civilians and NGO in policing can be done.⁹
2. The children of the prostitutes should be given respectable future.

REHABILITATION PROGRAM FOR PROSTITUTES

The government along with the NGO should conduct rehabilitation program along with that for the victims they have to conduct vocational training so that they get other jobs and have a respectable life in the society.

CONCLUSION

Prostitution is an old profession which is been flourishing for a very long time. It is the legal responsibility of the government to conduct the rehabilitation programmes for the women involved in the prostitution. Decriminalising the sex workers with proper health security and better wages and protection would lead to better society. Not only in the society but it will lead to a progressive step which will eliminate many social evils, from the society like rapes and child prostitution, etc., A better inclusive legal legislation, laws and frameworks and implementation of all the safeguard would lead a better society.

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⁹ Dr. Tulsing sonwani, prostitution of Indian society: Issues, trends and rehabilitation.