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Legal Framework for the Protection of Prostitution in India

KAMAL KUMAR¹

ABSTRACT

Prostitutes are those who engage in sexual acts for a profit. Prostitution is largely regarded as an unfortunate fact of life in India today, being present in its ideal form from ancient times and continuing throughout the eighteenth century in British India. The target demographic for the tissue trade, which constitutes gangsterism, particularly with a government nexus, consists of impoverished, uneducated, and uninformed individuals who fall into the trap. Rich groups take pleasure in these individuals, amassing money at their expense and misery. Another idea was that a particular number of women are driven into prostitution as a consequence of forcible sexual exchange, unjustified societal approbation, impairments, and other factors.

Overall, more than seventy of Indians are educated. Despite becoming well-read, a considerable proportion of the population struggles to accept many aspects of society. This applies to prostitutes and sex work. Prostitution is said to be among the world's oldest vocations. This is a multibillion-dollar enterprise. Trafficking is looked down upon and rarely publicly discussed in India due to cultural taboos. Prostitute is an age-old practice that has lasted far too long to be eradicated. Many Indian women and she work as prostitutes on street corners make a living from their trade.

Keywords: *Prostitution, Legalization, Sexual Harassment, Immoral Traffic.*

I. INTRODUCTION

The word "prostitution" is derived from the Latin prostituere, which meaning to expose in public. Prostitution is fundamentally the exchange of sexual pleasure for money. Given that the majority of prostitution victims are women, it is a specific to gender issue, similar to other types of male violence against women.

Still, it would be foolish to assume that males are immune to sexual assault and exploitation. Even worse, the transgender community is frequently overlooked while criticizing India's prostitute sector. Prostitution generates thousands of dollars in India and other nations by exploiting the economically and socially poor.

¹ Author is an Assistant Professor at BRCM Law College, Bahal, India.

Prostitution has always been prevalent in India. In actuality, prostitutes are mentioned in a variety of Hindu mythical stories known as apsaras. Prior to the coming of the British, Hindus followed the devdasi system, whereby they offered their female child to the deities as a token of their devotion. Strictly interpreted, "devdasi" means "devoted to the god," implying that they were wedded to the god and so free from having to marry humans. These were sexually free women who excelled in music, classical dance, and other creative disciplines. However, colonialism created a repressive and exploitative society. The British began imposing their own cultural constraints on these women, substituting conceptions of art, culture, feminine characteristics, and sexual autonomy with devotion, bhakti, and other similar concepts. As empire and feudalism vanished, temple priests began to abuse these women. As a result, they are more susceptible to sexual abuse and impoverishment. This is one of India's earliest kinds of prostitution.

(A) Definition of Prostitution

A prostitute is a person who works in the prostitution business. Prostitution is an entity or practice where individuals are paid to participate in sexual behavior. Prostitution's legal status varies by country and region, and it may take place in a variety of situations. It might be classified as a permissible or unpunished transgression, an uncontrolled or unguided vocation, or something in between. Pornography, like all other types of erotica, is a product of the sex industry. Brothels are places that only provide prostitute services. Prostitution and legality are developing widely, with various effects.

II. EVOLUTION OF PROSTITUTION IN INDIA

India has always been a prostitute hotspot. It all started under the Mughal Empire, when ministers and rulers took advantages over women. They were even regarded as sexual commodities while Hindustan was under British rule. As a result, an assembly of women was established, and sex labor was finally done on their progeny. Since prostitution was their main source of income and they were penniless, women were eventually exploited. Prostitutes under the head, referred to as devdasis, were abused and abused for sex while being committed to the gods and abandoned in temples.

Eventually, men began trading their wives and children for money or sex, paving the door for human trafficking. At any a certain point in time, there was many brothels with a group of ladies eager to attract men for illicit sex, and the proprietors may be men or women. There was little information about contraceptives and sexual wellness at the time. Without condoms or other kinds of contraception, women were driven into prostitution, resulting in unwanted pregnancies.

This led to compelled intercourse and the enslavement of women and children as young as six years old. This also led to the establishment of various red-light areas in India, particularly in the north.

III. PURPOSE OF PROSTITUTION

There are several reasons why women prefer to work in this sector. A great deal of women are not satisfied with their occupations; some feel driven to follow them, while others want to do their own thing.

These are a few justifications for choosing this line of work:

- **Unemployment**

This is one of the factors that contribute to female prostitution. There are those who lack education, and those who do have it are unemployed. Thus, in order to pay their basic needs, many adopt this business, which entails selling their bodies for money. It is, as we may say, one of the most significant drawbacks that tempt jobless individuals to engage in this field.

- **Poverty**

Approximately half of the world's population is poverty, which means they cannot satisfy their most basic necessities such as clothes, food, and shelter. Poverty, or the necessity to make ends meet, is a key reason why women enter the prostitute profession. Our parents pay for our education and provide us with a nice standard of living. People without parents do not have someone to support their education or protect their safety and well-being, so many turn to prostitution to satisfy their financial demands and continue their studies.

The growing prevalence of poverty has forced many individuals, especially the younger generation, to migrate to cities, where many see prostitution as a quick and cheap method to satisfy their own and their family's requirements. Looking more generally at the concept of prostitution, one discovers that it was not as prevalent in pre-modern periods as it is now. Our world's structure has changed dramatically as a result of urbanization. Urbanization's creation of free enterprise has intensified the class difference and increased rates of feelings of estrangement poverty, unemployment, and crime.

- **Rape and trafficking victims**

Many people who work in this sector have been sexually abused or raped as children, compelled into labor as children, or trafficked. Considering that we live in an Indian society, we are conscious that rape on girls has a social shame, and their families usually refuse to accept them. In addition to the various laws and regulations, the amount of rape cases is increasing rapidly

every day. There is still no authority over such heinous acts. When rape victims are denied a safe haven and are not recognized by Indian society, they manage to enter the brothels.

Women who had been raped began to turn to prostitution. Furthermore, society's shame and stigma toward survivors of sexual assault is frequently a victim's own, since it holds these women accountable for the rape. In other cases, they were rejected not just by society but even by members of their own family. In addition to the postponing or rejection of justice, victims may confront similar situations. And after a certain period of time, when they are left with no place to live in our community and no hope left for them, they find their way into the shady realm of prostitution.

- **Social pressure**

Some workers in this industry do so due to peer pressure from individuals they know, while others are brought here without their will with the goal of profiting from the sale or purchase of items. Along with the prostitute business, there's is also this other sector: child trafficking.

- **Desire for easy wealth**

Nowadays, kids are more lazy, avaricious, and motivated to make money without working hard. For this reason, they also consider it an easy method of obtaining a decent livelihood to supplement what their parents provide for them and satisfy more of their luxurious aspirations.

IV. INDIAN LEGAL FRAMEWORK

The Bharatiya Nyaya Sanhita, 2023, the Immoral Traffic (Prevention) Act of 1956, and the Constitution of 1950 govern sex work in India. With the exception of the equality clause, the freedom of association clause, the right to life clause and Personal liberty ensures that forced labor and human trafficking are prohibited. Assures that rejection of both restricted work and human trafficking, The sexual exploitation or maltreatment of any person for any commercial purpose is defined as "prostitution" in Section 2(f) of the Immoral Trafficking Act (1956).

Prostitution is also covered by The Bharatiya Nyaya Sanhita, 2023, but solely in relation to minors according to sections 98 and 99.

The Bharatiya Nyaya Sanhita, 2023 has sections 96, 141, and 144 that deal with the penalties for having a child, bringing in a woman for sex, and taking advantage of someone who has been trafficked, in that order. As a result, the BNS has very few laws that deal with prostitution.

The Bharatiya Nyaya Sanhita, 2023 states that while prostitution in general is not unlawful, several of the main actions that make up prostitution are prohibited under specific sections of the code. These include:

- Soliciting prostitute services in public are;
- Engaging in prostitution within hotel establishments;
- Being a brothel proprietor;
- Pimping;
- Hire a prostitute to indulge in prostitution;
- arranging for a consumer to engage in sexual activity;

The Immoral Traffic (Prevention) Act, 1956 (ITPA) defines prostitution as the sexual abuse or exploitation of a female for financial gain; the person who achieves this profit is referred to as a prostitute. This 1956 statute, sometimes known as SITA, was passed. This legislation basically states that while prostitutes are allowed to launch their enterprises in secret, they are not allowed to do it in public. Those who prove themselves guilty of engaging in sexual activity among others may be brought under arrest in compliance with the laws.

It is forbidden for a lady to engage in business sexual activity inside a distance of 200 yards of a public location. Given the unique nature of their work, sex workers are exempt from the existing labor rules, although they are nonetheless entitled to all rights.

The initial legislation was amended in 1986 with the Immoral Traffic (Prevention) Act. According to this act, if prostitutes are discovered pursuing clients or luring people in, they will be arrested. Additionally, it is against the law for call girls to disclose their phone numbers. If caught doing so, they face a six-month prison sentence in addition to fines.

A customer faces a possible 3-month jail punishment and fines if they have sex alongside a prostitute across 200 yards of an unprotected location. An adult faces up to ten years in prison if they are found engaging sex with a juvenile. Additionally guilty are pimps and other people who live off of a prostitute's profits.

If he is unable to prove his innocence, he might receive a sentence ranging from between two and four years in prison. Since the preamble of SITA (1956), whose was later altered to ITPA (1986), notes that it was intended to execute the Trafficking Convention, it is a crucial piece of law. According to the preamble, the legislation was created by the legislature in the Republic of India's seventh year to ban the trafficking of women and children for immoral purposes, in compliance with a global agreement that was adopted in New York on May 9, 1950.

V. LANDMARK JUDGEMENTS

Budhadev Karmaskar vs. State of West Bengal, 2011 (8) SC 289

The liberties of sex workers are now protected thanks to this landmark decision. This instance highlights the social stigma associated with sex workers as well as their vulnerability. The ruling maintained the Indian Constitution's Article 21's guarantee of sex workers' right to a dignified life. Her story brings attention to the predicament of prostitutes, who are forced into this profession by poverty rather than because they enjoy it. They nevertheless have an entitlement to a dignified life notwithstanding the societal stigma associated with their occupation.

***Gaurav Jain vs. Union of India* [1997] 8 SCC 114**

In this particular case, the court noted that the defense had read "Red Light Trap" in India Today newspaper before filing the PIL. For the progeny of prostitutes, who resided in unhygienic conditions, he wished that separate dorms and vocational training institutions would be established so they might integrate into society. The Court also stressed the need to outlaw prostitution. Additionally, he gave the order to build separate dorms for these kids as well as residences for young people receiving vocational training. The Supreme Court Bar Association petitioned the court for a review, asking for an examination of the nature and extent of sections 32, 142, and 145(1) of the Constitution as well as the outlawing of prostitution, with the help of the initial petitioner Gaurav Jain.

The mandate to create a young people's home for youngsters of these prostitutes was supported by the court, but the direction to end poverty was reversed.

***State of U.P. vs. Kaushailiya*, (1964) 4 SCR 1002; AIR 1964 SC 416**

The High Court invalidated Section 20 of the SITA in the 1963 case because it violated the fundamental rights protected by the Constitution. A profession or trade that is a "inherently immoral activity like prostitution," according to Justice W. Broome, "is open to the authority of the state to enact a total ban; and no one can claim a basic right to carry on such an activity." This is true even though the High Court did not investigate the fundamental questions of slavery or the various interests) involved in it. In concluding that the limitations imposed by Section 20 are "... adequate limits imposed in the public interest," the Supreme Court disregarded the High Court's decision and did not agree with it. In a unanimous ruling, Justice Subba Rao of the apex court rejected numerous significant and vital arguments put forth by the High Court to bolster their ruling.

Kajal Mukesh Singh and Ors vs. The State of Maharashtra

As the court in Bombay made clear, the statute aims to protect sex workers rather than penalize them. Sexual exploitation for profit, including pimping, recruiting, and seduction in public areas, is forbidden by law. Additionally, it is against the law to run a brothel or permit

prostitution to occur on its property. The law acknowledges that those who exchange their bodies for cash are victims, not offenders. Prostitution itself is not illegal under the Immoral Trafficking (Prevention) Act of 1956; rather, the systems of support that allow and encourage prostitution are.

It is considered that prostitution is the oldest "vocation," and attempts to legalize it have been made time and again. However, one thing is certainly unavoidable: unemployment or some other pressing circumstance is the main cause of prostitution among people. When advocating for the making legal of this "profession," one should consider whether we, as a society, genuinely wish to elevate prostitution to the level of a profession, comparable to that of a doctor, engineer, or lawyer, and whether we want our kids to engage in it as a "career choice."

VI. IS PROSTITUTION LEGALIZED IN INDIA?

There are three groups of countries when it comes to prostitution.

- In countries where prostitution is legal but restricted, like Kenya, Morocco, Afghanistan, etc.;
- In countries where prostitution is legal but restricted, like Canada, France, India, etc.
- In countries where prostitution is legalized and controlled, such New Zealand, the nation of Australia, Hungary, Netherlands, and others.

Whether prostitution is legal in India and, if so, what privileges do prostitutes have been among the most crucial considerations.

(A) Argument in favour and against for legalization of prostitution in India

When it comes to prostitution, there are mostly two types of arguments that come up. The first is whether or not prostitution is a business. One type of occupation is prostitution. It is something that only certain men and women who possess a particular set of skills can accomplish. Thus, it qualifies as a vocation. When people work as prostitutes in brothels, trafficking can also be regarded as a business. When a ring or cluster of women collectively engages in prostitution a sizable sum of money is received. In India, prostitution is permitted but owning and operating a brothel is prohibited.

The second point of contention is whether or not prostitution is indecent, against public decency, and morals. People engage in sex work as a career, and Art. 19(1)(g)'s reasonable restriction does not appeal to them. The Hicklin standard, established in the *R v. Hicklin* case, is used in India to define obscenity. The basis for the decision is whether the allegedly obscene material has the potential to corrupt and deprave people whose minds are susceptible to such unethical

influences and into the control of an article of this kind may fall. Most sex labor is done behind four walls, and it doesn't corrupt or deprave people's minds.

In favour of legalization of prostitution;

- Better lifestyles for sex workers will result from it.
- There will be labor rights for sex workers.
- It will be legal for sex workers to visit the police station without fear.
- They'll be allowed to resume trading.
- In society, they will be respected.
- The data will be used by the authorities to ensure that no minors are engaging in prostitution.
- There won't be any more STDs because there will be routine health examinations.
- When the government is controlling the prostitute industry, forced prostitution won't exist anymore.
- There will be fewer instances of human trafficking and rape.
- Work will be regarded as having sex.
- Taxes as opposed to bribes.
- Empowerment in the economy

In favor of making prostitution a crime;

- Trafficking will decline as a result.
- No more sex violence.
- Gone is the masculine domination over women.
- Decrease in child prostitutes.
- Low income.
- No lasting consequences for the sex workers.
- reduction in STDs

Certain individuals in our society hold the view that prostitution is intrinsically bad, while others advocate for its acceptance in society. It can therefore be interpreted in any way. That being said, there is no denying that some prostitutes in this industry endure sexual abuse or become victims of abuse at the hands of their employers or even clients. There is no question that

legalizing prostitution going forward will protect women from abuse and exploitation.

Legalizing prostitution will also assist the state in creating a set of laws governing minimum income requirements, sex workers' age restrictions, and clinical facilities that they need. Additionally, those who work in sex will be able to use this to protest against rape, violence, exploitation, and other issues. They will also be able to make use of their right to equal chance for child education and access to healthcare, among other rights. Additionally, it has been observed that some women turn to the criminal underworld of prostitution in order to support themselves in a nation like India, which has a large population and few employment options.

The quick expansion of this sector is also due to a lack of knowledge and awareness. Thus, granting licenses for prostitution will assist the government in providing sex workers with a foundational education as well as the essential training to enable them to acquire skills that will enable them to generate income, such as knitting, weaving, sewing, painting, etc. Legalization will also enable the government to maintain an all-time high of the number of prostitutes in our nation, which is a significant benefit. In order for the government to create new strategies for the wellbeing of society and the safety of sex workers.

VII. CONCLUSION

It is necessary to mainstream sex employment as a career path. We must not stigmatize sex workers. Not only are they human, but they also deserve respect and dignity, particularly for the work that they accomplish. Women and minors cannot be trafficked in the name of sex employment. In India, it is unlawful to perform sex work if it is not voluntary. Brothels and men-seeking are prohibited as well. There is still more work to be done on the legislation pertaining to sex employment. It makes no mention of the legalization of prostitution specifically. The court has advanced that argument in a number of rulings. It is necessary to educate sex workers on the many forms of contraception and how to use them. Additionally, students need to be made aware of the various Sexually Transmitted Diseases (STDs) that arise from a lack of contraception. Due to their occupation, sex workers in India have difficulty accessing health treatment and frequently experience discrimination, particularly in government hospitals. Examples of this discrimination include being denied admission if they do not have HIV medicine and being compelled to do a STI test when they become ill.

According to a survey, sex workers would rather use private healthcare providers than government agencies with advocacy training. The high expense of abortions, financial barriers, the fragile nature of life, and hospitals sending women to visit their husbands for authorization to have an abortion are some of the reasons why access to health care is difficult. They

frequently experience violence from their clientele. Because of their ambiguous legal status, sex workers are frequently labeled as repeat offenders and criminals in court decisions. The rights of those who work as sex workers must be safeguarded under the Act. Recent rulings have established the legitimacy of prostitution; however, the Act still has to be amended.

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