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Legal Status of Prostitution in India

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ABSTRACT

Sex work has existed since the dawn of civilization and has been ingrained in Indian society since the inception of the institution of marriage. Lately, commercial sex work has become associated with instances of violence, discrimination, and exploitation. Sex workers is frequently regarded as taboo in Indian society, and insufficient attention has been devoted to its regulation. In this research paper, the researcher explores on the part whether prostitution in India is legalised or not. Both pre- and post-independence governments have enacted diverse measures concerning commercial sex work, alongside a plethora of literature discussing the potential legalization of this profession. While this research work also investigate the current scenario of the profession and the rights which are enjoyed by them, given under the constitution of India. Moreover, to limit the exploitation of the profession, the researcher also briefly explains the facts mentioned under the Immoral Traffic (Prevention) Act, 1956.

Keywords: Sex work, prostitution, brothel, prevention, Constitution.

I. INTRODUCTION

The term “Prostitution” originates from the Latin word “Prostituere” which means to offer or expose publicly. Prostitution, a longstanding practice spanning centuries, involves individuals engaging in sexual activities for monetary compensation. A person, irrespective of gender identity, who receives payment for participating in such activities is commonly referred to as a prostitute. Prostitution holds significant historical presence in India, dating back to ancient times till today’s period, and still prostitution is considered to be as such a profession which is prevalent from age long period. Most of the people in this profession are engaged from an economically disadvantaged background, and it has been seen that affluent communities take advantage of them, profiting from their misery and vulnerability through an organised criminal network, notably with collusion involving law enforcement. The act is an outcome of sex delinquency and the person engaged in such work is called to be as prostitute.

II. HISTORY OF PROSTITUTION

The Indian history reveals that prostitution is one of the oldest professions which still exist,

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because of its peculiar nature. In the ancient Vedic times, young woman without brothers is compelled to engage in the profession of prostitution as a means to sustain their livelihood through the earnings they received from it. In the early Vedic period, temple prostitutes called "Ganika" were part of religious rites. In ancient times, courtesans called Nartas were skilled artists who worked in royal palaces.³ There are instances found in Rig Veda, where girls are offered to kings and rishis as slaves. In Sanskrit prostitutes are termed as Vaishya. 'Vaishya', the reason behind the meaning is, merchants in the early period were called as 'Vish' or 'Vaish'. They move from one city to another for their livelihood, without their wives. So, the arrangements were made for them by the rulers, to serve them with woman, in order to satisfy their sexual need⁴. Some other names that define the profession in early period were 'Nagaravadhu' which denotes the meaning 'wife of the town', and 'Devadasi'. The term devadasi in India referred to individuals known as servants of the divine, and these individuals were regarded as sacred, not solely confined to temple duties. They were assigned the responsibility of maintaining temples and conducting rituals. Additionally, they actively participate in practice of Bharatanatyam and other classical arts and those girls as devadasis were given married to gods and deities and were then sexually exploited by the then local zamindars or by some upper - caste men⁵. The practice of prostitution gained prominence during the 18th and 19th centuries with the British colonization of Indian Devadasis engaged in dance and entertainment to cater to their needs.

Through an analysis the reason behind the forces and the causes of prostitution shows that nearly about sixty per cent people is in the business of prostitution because of poverty and about forty per cent people are in this profession because of hereditary influency.

III. PROSTITUTION: WHETHER LEGAL IN INDIA

As per the provisions of the Indian Penal Code, it is to be noted that prostitution itself is not classified as an illegal act. However, it is important to highlight that certain activities associated with prostitution, namely the operation of a brothel, trafficking, and pimping, are considered punishable offences in India as stipulated by the Immoral Traffic Act of 1956. The Immoral Traffic (Prevention) Act, also known as the Prevention of Immoral Trafficking Act, is an amendment to the legislation passed in 1956, specifically in the year 1986. The objective is to restrict and eliminate the practice of prostitution in India by progressively criminalising

³An Unspoken Truth Behind Prostitution in India, India, available at: <https://www.legalserviceindia.com> (Last visited on January 02, 2024)

⁴Prostitute (Vaishya), India, available at: <http://lotusanjini.blogspot.com> (Last visited on January 2, 2024)

⁵Devadasi, available at: <https://en.m.wikipedia.org> (Last visited on January 3, 2024)

different facets of sex work. Some of the crucial provisions of the act are as follows:-

Section 3, of the act, state that any person who keeps, run brothel or give premises to use as brothel will be held liable . The term brothel under the act in defined as any place or house or room given for the use of running the profession of prostitution. In accordance with the legislation, the penalty for a first conviction is rigorous imprisonment for a minimum of one year and a maximum of three years, in addition to a fine of up to two thousand rupees. For a second or subsequent conviction, the penalty is increased to more rigorous imprisonment for a term ranging from two to five years, in addition to a fine of up to two thousand rupees.⁶

Section 4 of the act states punishment for living in the earnings of the prostitution. The section additionally elucidates that any individual, aged 18 years or older, who sustains their livelihood through prostitution shall be deemed liable and shall be subject to punishment consisting of imprisonment for a maximum of two years, a fine of one thousand rupees, or both.⁷ Furthermore, any person who is held accountable will be presumed to be deliberately living off the proceeds of prostitution.

Section 5 states of “procuring, inducing , or taking a person” for the purpose of prostitution. It criminalizes the actions related to forcing individuals into the profession of prostitution⁸. A conviction will result in harsh imprisonment for three to seven years and five to two thousand rupees.

The detention of a sex worker at a brothel or other prostitution-related businesses is punishable under **Section 6**. If convicted, the sentence is seven years but may be life⁹.

Section 7 of the act deals with any person carries out prostitution activity, in a public place like hotel, any place of public religious worship, hospital etc, will be liable under the Act¹⁰.

Section 8 of the act, deals with the solicitation of clients in public places. It aims control public solicitation for prostitution contributing to the regulation of the trade and maintaining public order¹¹.

IV. PROSTITUTION UNDER IPC, 1860

Under section 372, selling kids for prostitution is a crime. Section 372 states that anyone who sells, hires, or disposes of an under-18-year-old for prostitution, intercourse, or any unlawful

⁶ The Status of Prostitution in India, available at: <https://www.brillopedia.net> (Last visited on January 5, 2024)

⁷*Ibid*

⁸*Ibid*

⁹*Id.* at. 6

¹⁰*Id.* at. 6

¹¹*Id.* at. 6

and immoral purpose is liable and subject to ten years in prison, which may be extended, and a fine.

(A) Legalization in India (under Indian constitution)

The regulations pertaining to the practice of sex work in India are codified within the constitutional framework of India, specifically the Constitution of India, 1950, the Indian Penal Code of 1860, and the Immoral Traffic (Prevention) Act of 1950. Furthermore, it is important to note that the Constitution includes provisions pertaining to equality, freedom of association, the right to life, and personal liberty. Additionally, it is crucial to highlight that the Constitution also provides protection against the abhorrent practices of human trafficking and forced labour. Specifically, it guarantees the prevention of the trafficking of individuals and exploitative work. The preamble of the Indian Constitution proclaims India as a sovereign, socialist, secular democratic and republic nation, underscoring the imperative to guarantee equality of status, dignity, and opportunities for all its citizens. Irrespective of gender, caste, religion, or social standing, it is imperative to note that the Indian Constitution unequivocally ensures the existence of specific legal provisions that steadfastly uphold the fundamental right to equality, freedom, and other such fundamental rights. It is worth mentioning that the Constitution guarantees a range of rights, some of which are enumerated as follows:

Article 14 guarantees the right to legal equality ensuring that every individual has the right to be treated equally before the law and to lead a life without discrimination on any grounds. It grants each citizen equal opportunities¹².

Article 15 guarantees that no citizen shall be subjected to discrimination based on gender, caste, race, religion or place of birth. It explicitly prohibits the states from discriminating on these grounds¹³.

Article 21 safeguards the right to personal liberty and life, ensuring that no individual shall be deprived of these fundamental rights¹⁴.

Article 32 guarantees every citizen the right to seek intervention of the Supreme Court if they have been denied their rights¹⁵.

V. RELEVANT JUDICIAL INTERPRETATION

¹²M.P. Jain, 'Indian Constitutional Law' (LexisNexis, New Delhi, 8th edn, 2022)

¹³*Ibid*

¹⁴*Id.* at. 12

¹⁵*Id.* at. 12

1. State of Uttar Pradesh vs Kaushalyaon¹⁶

In this particular case, the Supreme Court has made a ruling that establishes the permissibility of imposing limitations on the freedom of movement of individuals engaged in prostitution. Such restrictions are deemed justifiable on the basis of safeguarding public health and upholding public morals, as outlined in Article 15 of the Constitution of India.

2. State of Karnataka vs. M.R Hiremath¹⁷

The Karnataka High Court observed that prostitution is not illegal in India and adults have the right to engage in consensual sexual activities for commercial sexual activities for commercial purposes. Also the court highlighted in the importance to regulate sex trade to prevent exploitation and ensure health and safety of sex workers.

3. Budhadev karmaskau vs. State of West Bengal(2011)¹⁸

The Supreme Court has ruled that individuals engaged in the profession of sex work possess the same inherent rights as any other human beings. In accordance with Art 21 of the Indian Constitution, these individuals are entitled to lead a life of dignity.

4. Gaurav Jain vs. Union of India and Others¹⁹

The court ruled that sex-workers' children had the right to equality, respect, care, protection, rehabilitation, and mainstream social life without "pre stigma".

VI. CONCLUSION

The legalization of sex work not only grants rights to individuals engaged in the profession but also contributes positively to the nation in various ways. Commercial sex work has been prevalent in our nation for centuries. In a country like India, societal attitudes often lean towards moralistic biases, whether rooted in religion or a more idealized form of feminism that remains reticent on such matters. Primarily, in a context where a woman's role centre around managing the household and caring for her family, intimate relations constitute a significant aspect of her life and that of her husband. Hence, the prevalence of female sex work is substantial in quantity. However, times are evolving. While there are laws addressing the illicit trafficking of women, such as the Immoral Traffic (Protection) Act, 1956, there is a lack of emphasis on the

¹⁶AIR 1964 SC416

¹⁷2019 (7) SCC 5

¹⁸ Budhadev Karmaskar V. State of West Bengal, available at: <https://www.reddyandreddy.org> (Last visited at January 9, 2024)

¹⁹Supreme Court of India, Gaurav Jain V. Union of India and others,9 July 1997, available at: <https://www.acrisl.org>(Last visited at January 10, 2024)

legalization of prostitution.

(A) Suggestions: Social Measures to Curb Prostitution

1. Sex education is very much important nowadays specifically education must be provided to children. So that they have proper knowledge related to sex and could take purpose future decision of their respected life.
2. Law and dowry should be made more and more strict, so that girls from low and middle class can get married. However the people demanding dowry must be given punishment. And the punishment must be more rigorous as it could be, so that it sets as an example in the society.
3. Police must appoint more and more informers so that police received information faster, of such acts goes on in the society.
4. Prostitution is mostly grown by the mediators, thus those mediators must be punished.
5. Nari Niketans must be established more as that prostitutes can be rehabilitate more and more.
