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Legalisation of Prostitution: Defining New Boundaries for the 21st Century

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ABSTRACT

It is an undeniable truth that the sex trade is a never-ending activity. By seeing it as a form of legitimate activity, all stakeholders can receive guaranteed benefits. It will effectively reduce the burden on the government in terms of making laws against prostitution and paying for more law enforcement. This paper aims to analyse the impact of legalisation of prostitution and its advantage on the economy and society and the paper addresses the connection between prostitution and exploitation and violence, as well as the potential impacts of legalising and regulating prostitution on the abuse of sex workers. This paper is on the move to investigate the aspects of permitting prostitution as a profession in India and whether it can actually be practiced in society looking at the various social and legal issues that exist in our nation, or would only be one of the many aspirations that remain on papers. The decisions of the Supreme Court and the various high courts will be considered when issues of prostitution have been considered and addressed. The conclusion will contain a framework for issues submitted in the paper.

Keywords: *Prostitution in India, Legalisation of prostitution, status across the globe, legal framework and Advantages and Disadvantages.*

I. INTRODUCTION

“Why is it immoral to be paid for an act that is perfectly legal if done for free?”

- Gloria Alfred

Prostitution is an age-old practice that has been prevalent in India for centuries. Although it is illegal in India, it continues to exist as an underground industry, posing significant challenges for law enforcement agencies. In this research paper, we will examine the pros and cons of legalizing prostitution in India, analyzing the current legal framework, the socio-economic implications, and international best practices. The paper concludes that the legalization of prostitution in India can lead to significant benefits, including improved safety and working conditions for sex workers, increased government revenue, and reduced human trafficking. The paper recommends the adoption of a comprehensive legal framework that provides for the

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legalization and regulation of prostitution, including the protection of sex workers' rights and the provision of support services.

In a landmark judgment, a three-judge bench of the Supreme Court, led by Justice L. Nageswara Rao, held that prostitution shall now be seen as a “profession” in India. With such a huge step being taken toward this long-debated line of work, it would make one wonder, “how effective is this decision of the hon’ble court?”, “will prostitution ever manage to be a regulated area of work?”, “given the current situation of society, will prostitution be accepted as a profession?”. The list of questions that this single judgment gave rise to is endless, however, we shall attempt to rationalize the major concerns raised and detach the stigma from this profession.³

Prostitution is defined as an act where one person offers sexual favors to another, in exchange for money as a means of earning a livelihood. Across the globe, there is a great degree of social stigma associated with prostitution, and its legal status differs from country to country. In India, prostitution has a very long history, evidence of which can be found in many ancient texts where it has been described as a profession. Kautilya’s Arthashastra and Vatsayana’s Kama Sutra have chapters devoted to prostitution. References can also be found in the Vedic word ‘sadbarani’, which refers to a female who offers sex for payment.⁴

Based on a general observation, prostitutes are usually women, who are either abducted and trafficked by a group of people called “pimps”, or those women who are made to travel from rural areas to cities with a promise of work and are then eventually forced to carry out these activities.

Prostitution in India is a serious social problem widespread and its solution has been rendered difficult. Like other forms of violence committed by men against women, prostitution is a gender-specific phenomenon; the enormous majority of victims are girls and women, while the perpetrators are constantly men. Societies in which prostitution is legal have concluded that it is best to regulate a profession, which will never disappear. But will this happen in India?

II. THE GENESIS

Prostitution is the exchange of sexual services for money or other forms of compensation. It is a complex and multifaceted issue, with deep cultural and socio-economic roots. In India, prostitution is illegal under the Immoral Traffic (Prevention) Act, 1956, and the Suppression of Immoral Traffic in Women and Girls Act, 1956. Despite this, prostitution continues to exist as

³ Budhadev Karmaskar vs. State of West Bengal, 2022 SCC OnLine SC 704.

⁴ Pratik Goyal, Prostitution in India: *Understanding the Conditions of Prostitutes*, YOUTH KI AWAAZ, (Jan. 29, 2023, 10:04 AM), <https://www.youthkiawaaz.com/2011/03/prostitution-in-india/>.

an underground industry, with an estimated 2.8 million sex workers in the country.

The legalization of prostitution has been a controversial issue in India for many years. Supporters argue that it can provide significant benefits, including improved working conditions and safety for sex workers, increased government revenue, and reduced human trafficking. Opponents argue that it is immoral, unethical, and goes against the cultural and religious values of India. In this research paper, we will examine the pros and cons of legalizing prostitution in India, analyzing the current legal framework, the socio-economic implications, and international best practices.⁵

Anything that exists today has its own roots. Some customs date back to antiquity, while others are still practiced today. Religious, ancient, and literary history are the three broad categories into which history can be divided. Prostitutes were known as 'devadasi' in Indian history, and they were believed to devote their entire lives to serving Lord Krishna. Devadasis were thought to be married to God and thus prohibited from marrying other human men, according to religious groups. They were dubbed 'nagarvadhu,' or 'brides of the town,' because their role was to dance and sing for the royal clan.⁶ All of this changed after the arrival of the Britishers in India; devadasis who had never been touched inappropriately by any man in the country were used as sex dolls by them. They began calling them names and forced them to do vile activities, thus prostitution was born in a religious country like India. The decline of dances in the temple during British rule was due to Devadasi's conversion from the status of being "Brides of God" to "prostitutes".⁷

Further, during British rule, the Indian economy deteriorated, and the majority of people were unable to meet their basic needs. Huge amounts of taxes were being levied on people and the cost of living had significantly increased. Women began selling their bodies to British citizens in exchange for money to repay their families' debts. Japanese women were also captured and brought to India as sex slaves during the late sixteenth and seventeenth centuries when some parts of India were Portuguese provinces. Another example was seen during the company development in India. The military established "whorehouses" for its soldiers in various parts of India. Village women and girls were exploited by brothels and legally compensated by the

⁵Yugank Goyal and Padmanabha Ramanujam, *ill-conceived laws and exploitative state: toward decriminalizing prostitution in india*, THE UNIVERSITY OF AKRON, (Jan. 15, 2023, 11:00 AM), <https://www.uakron.edu/law/lawreview/volumes/v47/issue4/07%20Toward%20Decriminalizing%20Prostitution%20in%20In%20India%20Macro%202023%203.pdf>.

⁶Pratik Goyal, *Prostitution in India: Understanding the Conditions of Prostitutes*, YOUTH KI AWAAZ, (Jan. 29, 2023, 10:04 AM), <https://www.youthkiawaaz.com/2011/03/prostitution-in-india/>.

⁷Pratik Goyal, *Prostitution in India: Understanding the Conditions of Prostitutes*, YOUTH KI AWAAZ, (Jan. 29, 2023, 10:04 AM), <https://www.youthkiawaaz.com/2011/03/prostitution-in-india/>.

military.⁸

III. LEGAL FRAMEWORK

According to India's Immoral Traffic (Prevention) Act of 1956⁹, prostitution is forbidden. The Acts forbid the operation of brothels, soliciting prostitutes, and the trafficking of women and minors for prostitution. Prison time and financial penalties are imposed for breaking these statutes.

The Immoral Traffic (Prevention) Act of 1956 is the main piece of legislation that controls prostitution in India (ITPA). The ITPA makes it a crime to engage in prostitution, trafficking, and associated activities such operating brothels, finding clients for prostitution, living off the proceeds of prostitution, and encouraging or helping prostitution. The penalties for these offences include both jail time and fines. Yet, the ITPA also includes provisions for the recovery and social reintegration of prostitution and trafficking victims. Along with that the government has implemented schemes for the welfare and empowerment of sex workers, such as providing education, healthcare, and legal assistance.

In addition to the ITPA, several other laws and judgments impact the legal framework of prostitution in India. For instance, the Supreme Court of India has recognized the right to life and livelihood of sex workers and directed the government to ensure their protection, dignity, and safety¹⁰. Further in a landmark case it was held 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'¹¹

Several state governments have made an effort to control prostitution by registering sex workers and legalising brothels. For instance, the West Bengal Suppression of Immoral Traffic Act, 1956, which was passed by the state of West Bengal, permits the regulation of brothels and the registration of sex workers. Nonetheless, this law has come under fire for continuing the exploitation and abuse of sex workers and for failing to offer them enough protection and benefits.

IV. THE THREE MODELS

Prostitution is a contentious and complicated problem that is dealt with differently in each

⁸ Priyam Saharia, *Forgotten and defiled: The Devdasi who fought a war*, MOMSPRESSO, (Jan. 30, 2023, 10:30 PM), <https://www.momspresso.com/parenting/anecdotal-evidence-only/article/forgotten-and-defiled-the-devdasi-who-won-a-war-part-1-flipthescrypt-historicalfiction-3pzmxwalo451>

⁹ Immoral Traffic (Prevention) Act, 1956.

¹⁰ G. B. Road Bachao Andolan v. Union of India & Others, (2019) 8 SCC 266.

¹¹ Budhadev Karmaskar vs. State of West Bengal, 2022 SCC OnLine SC 704.

nation. Although prostitution is theoretically allowed in India, several related actions, like soliciting in public places and living off an income generated through prostitution, are banned. The phrase "legalisation with regulation" refers to this strategy or concept. In contrast, several nations, notably the United States, have embraced a "criminalization paradigm" in which prostitution in all of its manifestations is prohibited. The purpose of this strategy is to stop the exploitation of sex workers and stop the spread of STDs. Yet, this strategy has come under fire for making prostitution more dangerous for sex workers and driving it underground. The Netherlands and Germany are two European nations that have adopted the "legalisation model," which makes prostitution legal and controlled. In these nations, sex workers must register with the government and go through routine medical exams. This strategy aims to lessen the spread of STIs while also enhancing the safety and working conditions for sex workers. It has drawn criticism, too, for encouraging the exploitation of helpless people and raising the demand for prostitution.¹²

V. THE STATUS ACROSS THE GLOBE

As mentioned before, prostitution is fully legal and regulated in some countries, while in others it is strictly prohibited and punished severely. The status of prostitution varies depending on cultural, religious, and political factors, as well as the level of enforcement and the effectiveness of laws and policies. In some countries, like Japan, prostitution is de facto legal and regulated. It is not explicitly legal but because of the statutory definition, all sexual acts are legal and attract no liability. Hence, it is not strictly enforced and is widely accepted. In China, prostitution is illegal but it is widely tolerated and remains unenforced, with many sex workers operating in unofficial "entertainment venues" such as hair salons, karaoke bars, and massage parlors. Prostitution laws and enforcement often vary greatly between nations, and methods for controlling it are always changing. Some contend that criminalization is required to stop exploitation and lower demand for prostitution, while some contend that legalisation with regulation is the most effective method to safeguard the rights and health of sex workers.¹³

Sex workers have access to social resources, legal protections, and medical treatment in nations where prostitution is accepted and regulated, like Germany and the Netherlands. Also, these nations have legislation in place to stop human exploitation and trafficking. Critics contend that legalising might raise demand for prostitution, which might promote human trafficking and

¹² Emily Mullin, *How Different Legislative Approaches Impact Sex-Workers*, THE ORGANISATION FOR WORLD PEACE, (Dec. 12, 2022, 10:00 AM), <https://theowp.org/reports/how-different-legislative-approaches-impact-sex-workers/>.

¹³ Procon.org, *Countries and Their Prostitution Policies*, BRITANNICA PROCON, (Jan 10, 2023, 09:08 AM), <https://prostitution.procon.org/countries-and-their-prostitution-policies/>.

other forms of exploitation. Sex workers sometimes face arrest, jail, and other forms of punishment in nations where prostitution is illegal, such as the United States and the United Kingdom. Also, they do not have access to social services, legal protections, or health care. Opponents contend that criminalization can result in more violence against sex workers as well as a higher risk of contracting HIV and other STDs. The strategy is to prohibit the demand for prostitution while offering help and resources to sex workers who wish to quit the business in nations where prostitution is neither legalised nor criminalised, such as Sweden and Norway. The "Nordic model" is a strategy that has been adopted by several other nations, notably France and Canada. The argument put forth in favour of this strategy is that it lessens the demand for prostitution and aids in the decrease of human trafficking and exploitation. Prostitution is sometimes carried out in a traditional or cultural setting, as is the case in several regions of Asia, Africa, and South America. Prostitution is not governed by the same laws and regulations as it is in other nations because it is frequently seen as an essential or traditional component of society in these settings. Critics contend that this increases the danger of HIV and other sexually transmitted infections, as well as the exploitation and abuse of women and children.

As a result, it is safe to state that the status of prostitution is complicated and greatly varies based on cultural, religious, and political factors around the world. Prostitution is criminalised in some nations while it is lawful and regulated in others. Prostitution is a contentious problem, though, and there is ongoing discussion about how to best address it in all nations.¹⁴

VI. IMPACT OF LEGALIZATION OF PROSTITUTION AS A PROFESSION

1. Protection of sex workers' rights and safety: This might offer a foundation for sex workers' rights and safety. Nowadays, sex workers live in a shadow economy and are subject to assault, abuse, and exploitation. Sex workers would be able to access legal safeguards and seek remedy for any rights violations if prostitution were legalised. For sex workers, this would result in a safer and more secure atmosphere.¹⁵
2. Regulation of the industry: Legalizing prostitution might also result in industry regulation, which could assist stop wrongdoings like forced labour and human trafficking. Mandatory health examinations, licence requirements, and administrative monitoring are examples of regulation. This would lessen the possibility of exploitation and make the sector more accountable and open.

¹⁴ Procon.org, *Countries and Their Prostitution Policies*, BRITANNICA PROCON, (Jan 10, 2023, 09:08 AM), <https://prostitution.procon.org/countries-and-their-prostitution-policies/>

¹⁵ Yuktha Suresh, *Legalization of Prostitution in India and its Impact on the Exploitation and Violence Against Women*, IJLMH, (Jan. 14, 2023, 10:30 PM), <https://www.ijlmh.com/paper/legalization-of-prostitution-in-india/>.

3. Improved tax revenue: Making prostitution legal could increase the government's tax income. Programs for social welfare, such as those for healthcare and education, might be funded with the help of this income. Both sex workers and the larger community will get benefit from this.
4. Criminal activity might decline if prostitution were legalised, including crimes like extortion, assault, and corruption. This would make the working conditions for sex workers safer and ease the workload for law enforcement.
5. Women's empowerment: Women who choose to work in the prostitute industry may feel more empowered if it is legalised. Women would be able to exert more control over their job and bargain for better working conditions by having a legal and regulated framework for sex work. This might aid in advancing gender equality and lowering the stigma attached to prostitution in society.

While there are significant advantages of legalisation of prostitution, however, to legalise this activity the negative impacts of the same should also be kept in mind and a legislation should be made with a balancing effect. The legislation should not lead to increase in demand for prostitution may rise as a result of legalisation as it will become more prevalent and accepted in society. This may result in the exploitation of marginalised communities and other vulnerable populations, such as children and legalization can exacerbate gender inequality by maintaining the idea that women's bodies are commodities that can be purchased and sold. As a result legalisation of sex work may result in its normalisation, which will make it more challenging to promote alternative kinds of employment and address the underlying causes of inequality and poverty.¹⁶

VII. CONCLUSION

One aspect of creating a safer space for sex workers is to put in place stringent laws and regulatory mechanisms that ensure safety and health of the workers and their accessibility to basic healthcare facilities. The other, more strenuous aspect, is removing the social stigma attached with the sex industry in the society. It shall involve a substantial amount of education to acquaint the public with the realities of sex work and eliminating the discrimination faced by them on a daily basis. Only when these two aspects are met will the future of sex industry be just and fair.

In conclusion, legalizing prostitution could make society for sex workers safer and more

¹⁶ *Negative Effects of Prostitution on Society*, JARED JUSTICE, (Jan. 01, 2023, 10:45 AM), <https://www.jaredjustice.com/blog/negative-effects-of-prostitution-on-society/>.

equitable. We can safeguard sex workers from exploitation and abuse while also guaranteeing that they have access to healthcare and legal protection by creating a legislative framework for regulating the sector. Moreover, legalisation can aid in separating consensual sex work from sex trafficking, making it simpler to spot and prosecute traffickers. While legalisation may have unfavourable effects, they can be reduced with appropriate regulation and popular acceptability. The ultimate objective of legalising prostitution has to be to advance the dignity and well-being of sex workers while also taking into account the intricate social and economic variables that motivate individuals to engage in sex work.

VIII. REFERENCES

1. Pratik Goyal, Prostitution in India: Understanding the Conditions of Prostitutes, YOUTH KI AWAAZ, (Jan. 29, 2023, 10:04 AM), <https://www.youthkiawaaz.com/2011/03/prostitution-in-india/>.
2. Yugank Goyal and Padmanabha Ramanujam, ill-conceived laws and exploitative state: toward decriminalizing prostitution in india, THE UNIVERSITY OF AKRON, (Jan. 15, 2023, 11:00AM), <https://www.uakron.edu/law/lawreview/volumes/v47/issue4/07%20Toward%20Decriminalizing%20Prostitution%20in%20In%20India%20Macro%2023%203.pdf>
3. Priyam Saharia, Forgotten and defiled: The Devdasi who fought a war, MOMSPRESSO, (Jan. 30, 2023, 10:30 PM), <https://www.momspresso.com/parenting/a-necdotal-evidence-only/article/forgotten-and-defiled-the-devdasi-who-won-a-war-part-1-flipthescrighthistoricalfiction-3pzmwxwalo451>
4. Emily Mullin, How Different Legislative Approaches Impact Sex-Workers, THE ORGANISATION FOR WORLD PEACE, (Dec. 12, 2022, 10:00 AM), <https://theowp.org/reports/how-different-legislative-approaches-impact-sex-workers/>.
5. Procon.org, Countries and Their Prostitution Policies, BRITANNICA PROCON, (Jan 10, 2023, 09:08 AM), <https://prostitution.procon.org/countries-and-their-prostitution-policies/>.
6. Yuktha Suresh, Legalization of Prostitution in India and its Impact on the Exploitation and Violence Against Women, IJLMH, (Jan. 14, 2023, 10:30 PM), <https://www.ijlmh.com/paper/legalization-of-prostitution-in-india/>.
7. Negative Effects of Prostitution on Society, JARED JUSTICE, (Jan. 01, 2023, 10:45 AM), <https://www.jaredjustice.com/blog/negative-effects-of-prostitution-on-society/>.
