

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

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Overlooked Plight of Prostitutes

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ABSTRACT

The only time society thinks of prostitutes is when they demean women. Prostitutes have always been considered filth of society. Prostitutes fight a lot of unsung wars with society and most importantly themselves. These prostitutes have to live with the fact that for better opportunities for their children and families, they have to sell a piece of their souls. Although the profession faces a lot of backlashes and it has always existed in the world. Prostitution is a necessary evil that maintains balance in society. Even in a country like India where the profession has technically been legalized, the very jobs which could bring structure to the profession and would reduce the exploitation of the workers have been criminalized by the government. Authors through this article are attempting to highlight the plight of prostitutes from a human rights perspective and a labour rights perspective. Due to the nature of the work, the profession is considered to be part of the unorganized sector, and challenges related to sex workers are similar that of the challenges faced by workers in the unorganized sector. Various laws in and around the country regarding prostitution can also be seen in the paper. To understand the concepts clearly, the meanings of various terms have also been explained in detail. The authors have also highlighted an international perspective on prostitution and labour laws as well.

Keywords: Prostitution, Labour Laws, Unorganized workers.

I. INTRODUCTION

Prostitution is interpreted as the practice or occupation of engaging in sexual activity with someone in exchange for monetary benefits. Prostitution is almost considered as a taboo everywhere in the world, the profession also has a lot of social stigmas attached to it. If prostitution is purely seen as a service-offering profession, then a perspective on the violation of legal rights and violation of human rights can be noticed. Prostitution is an open secret for many countries all over the world. Even though the profession is legal in very few states, seeing prostitutes walk on empty roads at night is a common site in almost every country. Prostitution is not only the representation of violation of human rights but also the representation of violation of labour rights. Although prostitutes do not come under the ambit of labourers, they are workers, who are working hard to earn a meagre amount in this cutthroat world who deserve to

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be treated and compensated fairly. Given the characteristics of the profession, it is noticeable that the profession lacks a proper structure. Therefore, prostitutes can be considered unorganized workers. Although prostitution has gained legal status and is recognized in India, still a lot of activities like owning a brothel, and managing a brothel are still illegal in the country. According to Hon'ble Apex Court, when it is clear that the sex worker is an adult and is in the profession with her own consent, then the police must refrain from interfering or engaging in taking any action against them³.

(A) Meaning of Prostitution

According to the Black's Law Dictionary, 'Prostitution' is defined as an act or practice of a woman who permits any man who will pay her to have sexual intercourse with her⁴. The word "prostitution" is derived from the Latin verb prostituere, which means to publicly reveal. Prostitution entails performing sexual favours in exchange for monetary benefits⁵. Prostitution is an age-old profession that is all over the world. The earliest known brothels appear to have existed in ancient Egypt. Several historians contend that before the arrival of Greek and Mesopotamian travellers, prostitution was not widely practiced⁶. Some of the ancient Hindu texts have references to prostitution wherein prostitutes were called apsaras or devadasi⁷. Even though the profession is subjected to worldwide criticism, one cannot deny that it is one of the oldest professions to ever exist.

(B) Meaning of Unorganized workers

The term unorganized worker has been defined under the Unorganized Workers' Social Security Act, of 2008, as a home-based worker, a self-employed worker, or a wage worker in the unorganized sector⁸. An unorganized worker is a worker working in an unstructured organization. Although prostitutes can be considered self-employed individuals because of the profession's social unacceptance, the workers are deprived of their fundamental and legal rights guaranteed by the Constitution to unorganized workers. Unorganized Workers are those who do not have access to benefits such as pensions, maternity leave, provident funds, and gratuities. These workers are compensated on a daily and hourly basis. As there is an enormous amount

³Budhadev Karmaskar v. State of West Bengal and others (2021).

⁴Staff, T. *Prostitution*, THE LAW DICTIONARY. (May 31, 2013,) <https://thelawdictionary.org/prostitution/>

⁵Yashi Verma, *Legalization of Prostitution In India.*, LEGAL SERVICE INDIA, <https://www.legalserviceindia.com/legal/article-3392-legalization-of-prostitution-in-india.html>

⁶*Brief history of brothels*, INDEPENDENT (Jan 21, 2006, 1:00) <https://www.independent.co.uk/news/uk/this-britain/a-brief-history-of-brothels-5336946.html>

⁷Pallavi Thakur, *Tradition of Devadasi: The sacred prostitute!* SPEAKINGTREE.IN (Nov. 12, 2014) <https://www.speakingtree.in/allslides/prostitution-in-ancient-india>

⁸*Unorganized worker*, GOVERNMENT OF INDIA MINISTRY OF LABOUR & EMPLOYMENT, <https://labour.gov.in/unorganized-workers>

of unorganized labour in India, it is impossible to avoid them. The majority of unorganized employees, they are lacking access to stable, long-term employment opportunities. The unorganized sector must deal with periods of excessive seasonality in employment. Workers who are not organized lack a formal employer-employee relationship and work in a disorganized, dispersed environment. Unorganized workers are more likely to get indebted because their pay falls short of what they need to survive⁹. Unorganized workers face exploitation, harassment, and discrimination by the rest of society¹⁰.

II. VARIOUS LAWS REGARDING PROSTITUTION IN & AROUND INDIA

In India, prostitution is not considered a profession therefore rules regarding sex work are unclear. The primary law which deals with the status of sex workers is referred to as ‘The Immoral Traffic (Suppression) Act (SITA).’ According to the SITA, prostitutes can practice their trade privately but cannot legally solicit customers in the public¹¹. Private prostitution is not illegal in India¹². In reality, SITA is not known to the common public, therefore a lot of authorities end up taking advantage of the same and this law is majorly used to exploit the common public and prostitutes. The Indian Penal Code often represses SITA and the same exceeds jurisdiction and is used to punish illiterate sex workers and extort exorbitant amounts from them. According to Indian Penal Code, prostitution in its wide range is not illegal in the country but considering the stringent laws, some activities related to prostitution are looked down upon and restricted up to a certain extent in the country. Several activities like soliciting services of prostitution in public places or hotels, pimping, arrangement of a sexual act with a customer, owning a brothel, indulge in prostitution by arranging a sex worker which constitutes a very large part of prostitution are punishable under the Indian Penal Code¹³

In 1986, the old law in India was amended and was renamed as ‘The Immoral Traffic (Prevention) Act (ITPA)’ or ‘PITA Act, 1986’. The act defines prostitution as the sexual abuse of a female for monetary purposes. According to this act, a woman is not allowed to be in commercial sex within 200 yards of any public place. The Government of the country has never seen prostitutes as a taint on white cloth, it is the mentality of the people living in the country

⁹ Mrunalini, *Protection of rights of unorganized workers*, LEGAL SERVICE INDIA, <https://www.legalserviceindia.com/legal/article-3001-protection-of-rights-of-unorganized-workers.html>.

¹⁰ *Unorganised labour force in India*, VIKASPEDIA.IN, <https://vikaspedia.in/social-welfare/unorganised-sector-1/categories-of-unorganised-labour-force>.

¹¹ The Immoral traffic(prevention) Act, 1956.

¹² Explained: Supreme Court Order on Sex work, how it changes things and laws on sex work, OUTLOOKINDIA.COM (Jun. 2, 2022), <https://www.outlookindia.com/national/explained-the-supreme-court-order-on-sex-workers-laws-on-prostitution-how-sc-order-changes-things-news-198865>.

¹³ Ibid. pt. 3

who considers sex workers as criminals who deserve nothing but jail. The Government has granted sex workers the same rights as any Indian citizen. Society at large needs to realize that prostitutes are also humans who deserve to write their own stories and are entitled to be rescued and rehabilitated and accepted. The Hon'ble Supreme Court of India held that everyone, including sex workers, is guaranteed the right to dignity and life under 'Article 21 of the Constitution of India.' Even though brothel-related practices remain illegal¹⁴ sex workers cannot be harassed or arrested at the whim of the authorities.

Internationally prostitution has been legalized up to a certain extent considering the customs, and circumstances of their country. Some countries like Germany, Mexico, New Zealand, Indonesia, and Singapore have legalized prostitution and also consider it a legitimate profession, these countries have also brought about the proper structure and are gaining monetary benefits from it. In countries like China, Iraq, Iran, Egypt, South Africa, and the United Arab Emirates prostitution is completely banned, and in other countries like the UK, USA, France, Japan, Australia, and Canada it's partly legal to practice prostitution.

In Germany, prostitution is legal, it is well-organized and taxed¹⁵. It has its interpretation of federal legislation. The country also permits brothels, advertisements, and the use of HR companies to process prostitution jobs. In 2017, Germany introduced the 'Prostitution Protection Act', which aims to protect the legal rights of prostitutes. According to the 'Prostitution Protection Act', all prostitution trades must have permission, and all prostitutes must have a registration certificate to practice prostitution. In North Ireland, it is not a crime to sell sexual services¹⁶. Selling sex is legal but buying sex is completely illegal as per Article 15 of 'The Human Trafficking and Exploitation (Criminal Justice and Support for victims) Act (Northern Ireland) 2015.' In New Zealand, prostitution is a legalized act under, 'The Prostitution Reform Act, of 2003'¹⁷. However, 'The Summary Offenses Act 1981' is still in the effect, it allows sex workers who are impolite in public areas to be liable to be punished. In a country of United Arab Emirates prostitution is illegal under Articles 363-368 of Federal Law No. (3) of 1987 on the Issuance of the Penal Code. Prostitution in the Netherlands is legal and it is regulated¹⁸. Operating a brothel in the Netherlands is also legal. De Wallen is the largest

¹⁴ *Supreme Court wants full respect for sex workers: counsel*, THEHINDU.COM (May 26, 2022), <https://www.thehindu.com/news/national/sc-for-treating-sex-workers-with-full-respect-for-their-dignity/article65464684.ece>

¹⁵ Garg, R, *Countries where prostitution is legal*, IPLEADERS (Mar. 12, 2022) <https://blog.ipleaders.in/countries-where-prostitution-is-legal/>.

¹⁶ *Paying for sexual services*, NDIRECT.GOV.UK (Mar. 7, 2022) <https://www.nidirect.gov.uk/articles/paying-sexual-services#:~:text=It%20is%20not%20a%20crime,to%20control%20prostitution%20for%20profit>

¹⁷ Prostitution Reform Act, 2003 (New Zealand)

¹⁸ M.Ilr, *The Failure and Proposed Revision of Legalized Prostitution in the Netherlands*. MICHIGAN STATE

and best-known Red-light district in Amsterdam¹⁹.

III. PROTECTION OF PROSTITUTES UNDER LABOUR LAWS & HUMAN RIGHTS LAWS

Unorganized workers are workers working in an unstructured environment where there is a lack of proper regulatory authority that controls and ensures that the workers are not deprived of their labour and human rights. The unorganized sector is one of the most profitable sectors for developing countries. Unorganized sector workers in India comprise approximately 93% of the country's workforce²⁰. Although labour rights are granted to all workers, most of the unorganized workers are kept away from the benefits guaranteed to them under labour laws. Usually, workers of unorganized are not educated and are not aware of their rights, they are compelled to work in an unsuitable work environment with minimal wages. Unorganized workers also have to take a lot of health risks to earn an inappreciable amount which is not sufficient for their welfare. Recently there is also a raise in crimes against unorganized workers, because of their lack of awareness; many of the workers are often cheated and dominated. One of the biggest disadvantages of unorganized workers is the lack of security in their old age. Most unorganized workers are daily wage workers and therefore only earn a small amount which will suffice them only for a day. Since prostitution is an unorganized sector²¹, prostitutes all over the world are subjected to similar forms of injustice. Prostitutes have to fight a lot of battles to make a place for themselves and their children in society. Prostitutes are deliberately left out of the social strata because of this they are subjected to a lot of injustice. Children of prostitutes are often discriminated against and are often subjected to bullying. Due to a lack of education among sex workers, they are forced to work for an unreasonable amount of time in unhealthy conditions for unfair monetary benefits. Most of the prostitutes fall prey to various diseases like yeast infection, HIV, Cervical cancer, etc because of a lack of a proper working environment. Prostitutes are victims of a lot of abuse in their work environment, they suffer several mental health issues like anxiety, panic attacks, etc. Prostitutes don't even get any life insurance or guarantee that they will survive the night.

In some countries where prostitution is legalized, the working conditions of prostitutes have improved exponentially. The profession has gained a lot of momentum and is seen as a career,

INTERNATIONAL LAW REVIEW (Jul.25, 2022) <https://www.msuilr.org/new-blog/2022/7/25/the-failure-and-proposed-revision-of-legalized-prostitution-in-the-netherlands>

¹⁹ Ibid pt. 16

²⁰ Prasanna Mohanty, *Labour Reforms: Noone knows the size of India's informal workforce, not even govt* BUSINESSSTODAY.IN (Jul. 15, 2019) <https://www.businesstoday.in/jobs/story/labour-law-reforms-no-one-knows-actual-size-india-informal-workforce-not-even-govt-214490-2019-07-15>.

²¹ Shriya Patnaik, *The Invisible Voices of India's Informal Sector of Sex Workers*, BLOGS.LSE.AC.UK (Mar. 22, 2021) <https://blogs.lse.ac.uk/southasia/2021/03/22/the-invisible-voices-of-indias-informal-sector-sex-workers/>

brothels even have a proper system with Human Resource Managers to hire prostitutes. Even though the law in India has legalized prostitution if the woman has given her consent, at the same time the law also allows for the eviction of sex workers from their homes in the name of the "public good", the prostitutes are often abused by government officials, police officials, and petty criminals²².

Accepting prostitutes and their profession has become the need of the hour for countries all over the world. Neglecting prostitutes and their profession and turning a blind eye to the problems of prostitutes is one of the major reasons why injustice is inflicted on poor souls who are willing to sacrifice their pride for minimal monetary benefits.

IV. INTERNATIONAL PERSPECTIVE ON PROSTITUTION

The government, NGOs, and many academics often classify laws related to prostitution into five (5) different categories namely, Prohibitionist, Abolitionism, legalization, Decriminalization, Neo- abolitionism²³. In a few of these categories prostitution is considered legal and is seen as a profession, while in a few of them, prostitutes and their profession have not been given any respect, there is their profession recognized, legalized, or regularised. Countries all over the world fit into one of these categories, therefore, understanding the approach and mentality toward the profession is very important:

1. Prohibitionist

One of the most repressive legal regimes is the absolute prohibition of prostitution. In this category, prostitution is seen as a criminal activity and prostitutes are seen as criminals who need to be punished or forcibly re-educated.²⁴ This category completely criminalizes prostitution. It is considered an activity that is against public policy and is highly immoral in nature. This category also considers prostitution to be violative of human dignity. A prohibitionist approach is taken in many countries, including superpowers like Russia and USA (although the ban on prostitution is relaxed in some parts of Nevada), in these countries prostitution is completely banned and is illegal.

²² Diaane Nongrum, *International Sex Workers Day 2020: Problems And Challenges Sex Workers Face Everywhere*, INDIA.COM (Jun. 2, 2020) <https://www.india.com/festivals-events/international-sex-workers-day-2020-problems-and-challenges-sex-workers-face-everywhere-4046995/>

²³ Marjan Weijers, *They get what they deserve: Labour rights for sex workers*, RESEARCHGATE.COM (Jan, 2009) https://www.researchgate.net/publication/291759075_They_get_what_they_deserve_Labour_rights_for_sex_workers.

²⁴ Rachel Marshall, *When Sex is Work: Organizing for Labour Rights and Protections* JSTOR(Nov 2016) <https://doi.org/10.2307/24243929>.

2. Abolitionism

Abolitionism refers to tolerance. In this category, the profession of prostitutes itself is legalized and accepted, but third-party involvement is strictly prohibited. The profession is accepted only behind closed doors but the moment the profession enters the public sphere, it is considered a criminal activity harming the sanctity of the public at large²⁵. This category is based on the popular belief that prostitution is a form of violence against women, and that punishing people who demand commercial sex can help to reduce the prevalence of prostitution. Countries like India and England fit into this category.

3. Legalization

The legalization category includes the complete legalization of the profession and enacting appropriate laws to control and regulate the industry. It includes registration, demarcation of red-light zones, granting of work permits, etc. The Netherlands is the country which has this system being followed or the very famous historical district of Japan Yoshiwara. The main goal of this category is to provide greater safety and protection for sex workers.

4. Decriminalization

This category removes all criminal penalties for prostitution, allowing individuals to engage in commercial sex work without fear of arrest or prosecution. Sex work does not attract any criminal liability. There is less stigma involved in the sex industry which creates a healthy safe work environment for the people involved in practising the work. New Zealand is the country that has this approach.

5. Neo-Abolitionism

Countries like Sweden and several other Nordic nations are protagonists of this category.²⁶ In this category, it is believed that prostitutes work in the industry out of obligation and not will. Thus, the profession violates their human rights. Prostitution is simply the sale and consumption of human bodies.

Each category has its strengths and weaknesses, and there is an ongoing debate about which approach is most effective in addressing the issues associated with prostitution. The international perspective on prostitution and labour laws is complex, with different countries adopting different approaches to the issue. However, there is a growing popularity in the opinion that sex workers are entitled to basic human rights and labour protections, regardless of the legal

²⁵ Verma, A. *Current laws governing trafficking and prostitution*, IPLEADERS (Sep. 15, 2021) <https://blog.ipleaders.in/current-laws-governing-trafficking-prostitution/>.

²⁶ Ibid pt. 23

status of their profession.

V. CONCLUSION

Prostitution has always been a controversial topic. It has always been a hot topic for a lot of debates answering questions over how it should be regulated, including whether it should be legalized, decriminalized, or completely banned. From a labour law perspective, prostitution can be considered a legitimate form of work and those who engage in prostitution should be entitled to the same legal protections as any other workers. There are still many countries where prostitution is not recognized as a legitimate form of work, and those who engage in it are not protected by any laws, because such harsh majors of countries prostitutes are subjected to exploitation and abuse without any legal recourse. Decriminalizing prostitution would ensure that sex workers get access to basic labour protections such as workplace safety regulations, minimum wage laws, and the ability to form labour unions. On the other hand, legitimizing the profession can also lead to the exploitation of vulnerable individuals. In conclusion, there is still no clear consensus on how to approach labour laws regarding prostitution. However, it is important to recognize the vulnerabilities of sex workers and to explore ways to provide them with the same basic labour protections and human rights as other workers, regardless of the legal status of prostitution. Ultimately, the decision to legalize or criminalize prostitution is a complex one that requires careful consideration of the potential benefits and drawbacks. Different countries and jurisdictions have taken different approaches, and opinions on the issue remain divided.
