

PROSTITUTION IN INDIA: A LEGAL AND SOCIAL ANALYSIS

*Reena Deepak

ABSTRACT

Regardless of whether it is actively outlawed, tacitly accepted, formally controlled, or a mix of these, prostitution is a booming industry people who work in prostitution have long been stigmatised as dirty and shameless by the society. The laws dealing with prostitution in India are weak and lack a clear approach. The vast majority of those who engage in the sex business experience regular verbal and physical abuse as well as discrimination in the legal and social system. Prostitution has been linked in recent research to acts of violence, prejudice, and exploitation. Policymakers in India have been slow to address the problem of prostitution because of the stigma associated with the industry in the country. This article uses doctrinal analysis to consider whether or not prostitution should be legalized, regulated and treated like any other profession.

Keywords: *Prostitution, Social Stigma, Law, Rights, Profession*

INTRODUCTION

The English word "prostitute" comes from the Latin *prostituta*. According to some sources, the verb is made up of the words "pro," which means "up front" or "forward," and "situere," which means "to offer up for sale."¹ Prostitution has been defined by Britannicaencyclopedia² as, '*Sex for money is when one person makes sexual contact with another person for the aim of getting money or other valuables, this is referred to as sex for money. Prostitution can encompass heterosexual, gay, or transgender acts, however generally, the vast majority of prostitutes have been women and customers have been men.*'

The oldest occupation in the world is Prostitution. Sadly, it is the least popular and most hated profession.³ According to some estimates,⁴ the worldwide prostitute trade makes \$186 billion each year with prostitution in India accounting for more than 8% of this total. Many nations are now contemplating, altering their legal attitudes towards sex worker in order to benefit from the profession's income as well as maintaining the safety and health of prostitutes and those who utilise their services. Although the Constitution of India grants everyone the right to equality, this principle is not always realised in practise. Prostitution is among the oldest professions in existence, dating back to the dawn of Indian civilisation.

* Pursuing Doctorate in Law from University of Kurukshetra, Haryana, India.

¹Dwivedi Richa, 'Prostitution: A Controversial Career validity under Article 19(1) (g) of Indian Constitution', (2014) available at: <https://ssrn.com>, (last visited June21, 2023)

² Available at: <https://www.britannica.com>, (last visited June21, 2023)

³Dr.SonwaniTulsing, 'Prostitution in Indian Society: issues, Trends and Rehabilitation, available at: <https://www.ugc.ac.in> (last visited June 23, 2023)

⁴ GoyalYugank, RamanujamPadmanabha, 'Conceived laws and Exploitative Sate towards Decriminalizing Prostitution in India' available at: <https://ideaexchange.uakron.edu>. (Assessed on June23,2023)

Inside the walls of the mother goddess temple at Mohanjodaro is a bronze sculpture of a dancing girl. The earliest known references to prostitutes may be found in the Rigveda, India's oldest literary text.⁵ A whole chapter has been devoted to it in Kautliya's arthshashtra and Vatsayna Kamasutra.⁶ Jara and Jatini are portrayed as the male and female partners of a married spouse.⁷ The Sanskrit and Pali terms for impermanent unions, mututta and muthurtika, respectively, symbolised only temporary unions with no lasting connection.⁸ These 'Hetaerae' may be found all across the Buddhist scriptures (the Pitakas, Avadanas, and Jatakas).⁹ Devadasi is a term for temple prostitution that has become socially acceptable in certain parts of the country.¹⁰ To show their devotion to God and to uphold the devdasi system, pre-colonial Hindus had to sacrifice their daughters.¹¹

Prostitution is a common occupation in the country nowadays. In 2016, there were reportedly 657829 prostitutes in this country.¹² According to unofficial estimates, the number of prostitutes in India ranges between 3 - 10 million.¹³ India has become a major destination for sex tourists and sex industry is a multibillion-dollar sector that is growing rapidly.

SOCIAL STIGMA LEADS DISCRIMINATION

Stigma is a symptom of shame, societal disdain, or spoiled identity for sex workers. In India, prostitution is a serious societal issue. Like other forms of violence against women, prostitution is overwhelmingly an act of males against women, with the vast majority of victims being girls and women.¹⁴ Since marriage and motherhood are significant needs for a woman to be valued in their own society, sex workers said that being a prostitute deprives them of these types of respect.¹⁵ According to sex workers, who described in painful detail how their families rejected them, how they were thought to be vulnerable to sexual exploitation, how they were evicted from their rented apartments, how their daughters were deemed unfit for marriage, and how their children were teased at school because of their parent's profession. Widespread discrimination occurs against sex workers.¹⁶ They have a number of negative effects on both physical and mental health. The risk of developing

⁵Thappa D.M, Singh N. Kaimal S, Prostitution in India and its Role in spread of HIV infection, Indian J Sex Transm Dis 2007, 69-75.

⁶Ibid.

⁷ Gosh Shreya, 'Exploring Prostitution in Ancient India: a subversion of Contraries' available at: <https://dhaaramagzine.in> (last visited June 23, 2023)

⁸Bhattacharji Sukumari, Prostitution in ancient India (15) ,Social Scientist 1987, pp.32-61

⁹Ibid

¹⁰ Tracing the history of Prostitution and Sex Trafficking in India, available at: <https://www.youthkiawaaz.com>, (last visited June 23, 2023)

¹¹ Legalization of prostitution in India, available at: <https://www.legalservice.india.com> (last visited June 23, 2023)

¹²Sex workers: Population Size Estimate- Number, available at www.asideinfoonline.org.UNAIDS (Last visited June, 2023)

¹³ How many Prostitutes are in the United State and Rest of the world, available at: <https://prostitution.procon.org>. (last visited June 24,2023)

¹⁴Sharma Bhavna, 'Prostitution in India: A Critical Analysis' 11(10) Review of International Geographical Education' (2021)

¹⁵ Cornish Flora, 'Challenging the stigma of sex work in India: Material Context and Symbolic Change' 16(6) Journal of community & applied social psychology 462-471. (2006)

¹⁶ Ibid

HIV/AIDS or other sexually transmitted diseases is the greatest.¹⁷ Growing patterns have also revealed a rise in mental illness and psychological discomfort among sex workers.¹⁸

The moral uncertainty of prostitution is bringing into question its formalisation.¹⁹ Perception that sex workers in India are criminals rather than citizens contributes to the widespread violence they face. As a consequence, sex workers' human rights, such as the right to life, dignity, equality, equal protection under the law, and due process, have been violated on a large scale and consistently. Sex workers are susceptible to attack for a number of reasons. Because of the stigma associated with sex work, people are more likely to experience personal abuse from family members and intimate partners. Violence is used to exercise sexual authority, and it has come to be seen as a punishment for having sexual contact with males. Lacking consistent legal protection, they are forcibly detained and rehabilitated; they have difficulty accessing essential health services, including treatment; and they are subjected to many kinds of abuse, including physical attacks and harassment, from clients, family members, the community, and state authorities.²⁰

PROSTITUTION IN INDIA IS SHROUDED IN LEGAL AMBIGUITY

Although prostitution is partially legal in India. The Immoral Traffic (Prevention) Act of 1956 is the current legislative framework in India that governs prostitution.²¹ Prostitution, as defined by the Immoral Traffic (Prevention) Act of 1956, is the sexual exploitation or manhandling of a person for financial benefit.²² It also does not violate the IPC. Despite assertions that sex work is permitted, it is illegal to run a brothel. It goes against the definition of prostitution itself. Since they are unable to open their own brothel, they have to find other places to meet their clients, such as hotels. Such hotels are frequently the target of police raid, during which both the hotel and its guests are detained. They are typically apprehended on the grounds that their actions were unlawful. However, it is lawful. Along with the ITPA, additional laws addressing prostitution and prostitution trafficking include the Indian Penal Code of 1860, the Indian Constitution of 1950, the Juvenile Justice (Care and Protection of Children) Act of 2015, and other state laws. Several acts associated with the prostitute industry are forbidden by law even if prostitution itself is not unlawful. These include operating a brothel, profiting from prostitution, pimping, soliciting, employing prostitutes in institutions or elsewhere, and engaging in prostitution in public. *In State of U.P vs. Kaushailiya* section 20 of the SITA was declared unconstitutional by the High Court because it infringed constitutionally protected fundamental rights. The Supreme Court disagreed with the High Court and overturned its verdict, concluding that the constraints imposed by Section 20 are "reasonable restrictions imposed in the public interest." The ruling of the High Court

¹⁷ Prostitution in India, available at www.isca.in (last visited June 24, 2023)

¹⁸ *Ibid*

¹⁹ S. Rajeshwari, 'Formalisation of Labour: The Economics of Prostitution in India' 4(2) International Journal of Social Sciences, 288-303 (2018)

²⁰ Violation faced by sex workers in India, available at: <https://uprdoc.org> (last visited 23 June 2023)

²¹ Bhandhari Aastha, 'A Critique of the Abolitionist Approach to regulate Prostitution in India' 5(4) International Journal of English Literature and Social Sciences, (2020)

²² Legalization of Prostitution in India, available at: <https://thelawbrigade.com> (Last visited 23 June, 2023)

may be seen as significant in terms of professional independence as a Fundamental Right; it sets the path for future legalisation.

In *Gaurav Jain vs. Union of India*²³ the Court outlined ways to rescue and rehabilitate prostitutes and their children. These rules are as follow:

- Prostitutes should be seen as victims of their social circumstances, not perpetrators.
- The court ordered juvenile institutions to protect and rehabilitate minors.
- It established a commission to investigate and plan the victims' elevation.

After this judgment, a petition for review was filed and moved to a three-judge panel, larger than the original bench. The petition for review overturned the prostitution eradication ruling. The petition for review affirmed the previous case's prostitutes' children guidelines. The ruling was remarkable due to the fact that women were not considered to be the culprits. The Bombay High Court decided in *Kajal Mukesh Singh v. State of Maharashtra*²⁴ that there are no national anti-prostitution legislation. Only commercial sexual exploitation or abuse of a person is banned, save under some circumstances, such as when someone is caught soliciting or seducing another person. The Supreme Court decided in *Budhadev Karmaskar v. State of West Bengal*²⁵ that sex workers had a fundamental right to human dignity and respect. It is further held that engaging in sexual acts is considered as a profession. The Supreme Court determined in Furthermore, it was decided that adult who freely participate in sex work should not face any type of police criminal prosecution. It is a landmark decision that provides a light of hope for the legalisation of this profession.

Despite these verdicts, Indian law fails to adequately safeguard the rights and welfare of people engaged in prostitution and sex work. It not only takes a moral stance but also puts sex workers in danger due to its ambiguity. The exploitative treatment of prostitutes was described as follows: *“According to Shabana, a sex worker in Karnataka who is a part of the sex workers' union VAMP, the police would visit us at night and engage in sexual activity without using condoms. Then they would leave in the morning after forcing us to have sex with them. Shabana, there is a case against you, a different police policeman would then arrive in the morning. Join us as we attend court. They used to charge us with stuff we had never done. You were walking along the street, flirting with guys while your pallu was not covering your breasts. There is a case against you because of this”*²⁶

²³ (1997)8 SCC 114

²⁴ Available at: <https://lexpeeps.in>. (last visited June 23, 2023)

²⁵ 2022 SCC Online SC 704

²⁶ ‘Rights and Issues of people involved in Prostitution and sex work in India’, submitted by Sampada Gramin Mahila (SANGRAM) and VAMP for The Office of The United Nations High Commissioner For Human Rights. Available at: <https://www.ohchr.org>. (Last visited 23 June, 2023)

SUGGESTIONS

India uses an abolitionist method to regulate prostitution, allowing both the buying and selling of sex but forbidding practises such running brothels and public solicitation. This places the buyer of commercial sex in the limelight and his involvement in driving demand for the sex business is criminalized. The goal of the ITPA is to prevent and prosecute human trafficking and to help victims with rehabilitation.

It penalize brothel owners rather than sex workers. The Immoral Trafficking Prevention Act is a key law aimed at preventing human trafficking for sexual exploitation. But in practice prostitution is deemed criminalized as a result of this misunderstanding, and sex workers face the consequences as a result. When prostitution is done freely, it is not considered a crime. The act of trafficking people for this reason should be punishable.²⁷ This law fails to distinguish between forced and consensual prostitution. Through its prohibitionist attitude, it punishes the country's unpopular minority groups. India's abolitionist approach to regulating prostitution in the country has to be changed.²⁸ Prostitution is a fact that must be recognized. When the government legalizes prostitution, it will also fight sexually transmitted diseases and the AIDS pandemic. Laws will transform prostitutes from second-class citizens to persons who earn a living in a legal manner. They should be given the opportunity to live with pride.²⁹

CONCLUSION

Prostitution is stigmatized that leads all violence. The country which is not good with gender sensitivity there the exploitation is greater. Partially legalizing it without proper guidelines and protection isn't enough. The fundamental concern remains that people need to be made aware of issues concerning women so that they do not commit such heinous atrocities against them. Given these considerations, prostitution should be properly legalised, with a regulating organisation in charge of monitoring the practice. The study concludes that decriminalizing brothel, regulatory law provisions and regulating awareness in society about prostitution will definitely provide sex workers and children rights and protection.

²⁷ Prostitution and issues Surrounding it with Special Reference to the debate of crimilizing or decriminalizing the Sex Trade, available at: <https://docs.manupatra.in>. (Last visited 23 June 2023.)

²⁸ *Supra Note 16*

²⁹ P.Abhishek and Kannappam M, 'An empirical Studies on Legality of Prostitution in all States of India', 17 (119) International Journal of Pure and Applied Mathematics 1073-1086 (2018)