

LEGALIZING PROSTITUTION IN INDIA

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Abstract

This article deals with the need for legalizing the practice of prostitution in India. Prostitution can be described as trading of sex and sexual practices in exchange for money. The profession of prostitution is not new in India. It has a long history. If we go through it, we can see that it was mentioned not only in some of the popular and quality ancient texts such as Arthashastra, Meghadoot and Kamasutra, but it was also mentioned in Vedas and flourished during the Mughal era as well as in British dynasty. The legal status of prostitution in India is such that it does not criminalize prostitution per se but it does not effectively support prostitution in the country. We can look at the legal status of prostitution in some other countries like, Germany, Austria etc. where we can observe a lot of benefits which these countries are enjoying by legalizing this profession. Legalization of prostitution can also lead to a lot of benefits for our country. Human trafficking could be reduced. Child prostitution can be minimized. Instances

of rape and other sexual crimes can be reduced. Further, by making the registration and medical checkups compulsory for the prostitutes, the risk of sexually transmitted diseases such as AIDS can be minimized. Prostitutes can be brought under the protection of labor laws. Moreover, legalizing prostitution will help the government in earning revenue in the form of taxes and duties. It is worth mentioning here that no government in the world so far has been successful in stopping prostitution. Thus, we should also accept the fact that prohibition of prostitution is not purposeful. Instead of that, legalization of prostitution will help the government and society in many areas as elaborated by the author in the article.

Introduction

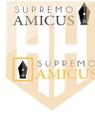
“Slavery still exists, but now it applies only to women and its name is prostitution”

-Victor Hugo

Prostitution means sexual exploitation or abuse of persons for commercial purposes.¹ It is considered as the oldest profession in the world.² Some countries are considering the profession of prostitution as a means of employment and women’s right to do whatever she wants to do with her body, whereas according to some other countries, it is

¹ Section 2(f), Immoral (Traffic) Prevention Act, 1956.

² Anam Yousuf, Harsh Sinha & S.M.H. Mehndi, *Prostitution: The Oldest Profession in the World*,



offensive to society and is treated as a crime.³ In this article, the author will be throwing some light on how this practice of prostitution is a significant part of the history of our country. Apart from explaining the legal status of prostitution in our country, the author will also be talking about the benefits that our country and our society can enjoy, if the practice of prostitution is legalized in India.

Practice of Prostitution forms a significant part of Indian History

The profession of prostitution has a long history in India. There was a complete chapter devoted to it in *Kautilya's Arthashastra*, written around 3rd and 4th century BC.⁴ The amorous ways of life of prostitutes were also discussed in *Vatsayana's Kamasutra*.⁵ These facts clearly suggest that prostitution is not a recent phenomenon in India. This profession can even be traced back to the archaeological findings of the Indus valley. The bronze figure of a dancing girl

from Mohenjo-Daro represents a sacred prostitute carrying out her duties.⁶ *Mrichakatika*, a story which is written in Sanskrit back in 2nd century BC also throws light on flourishing sex trade in Vaishali (which is present day Bihar).⁷ Even *Rigveda* mentions the word called 'sadbarani' which refers to such women who offers sex for money.⁸ The 'Devadasi System' which attaches prostitutes to a place of worship is also of ancient origin.⁹ Bible also mentions prostitutes, where Jesus Christ welcomes a girl in his kingdom even after knowing that she is a prostitute.¹⁰ Even in *Ramayana*, Valmiki gives a legendary account of the existence of Apsaras, the divine prostitutes.¹¹ Further, 'Meghadoot' written by Kalidasa also describes prostitutes as dancing and waving flywhisks at a Shiva temple.¹²

This profession was also witnessed during the Mughal era (1526-1857). The words such as "tawaif" and "mujra" gain popularity during this period.¹³ In 19th and 20th century, The British even took this practice a step further. In this period,

³ Deep Majumdar, *Do You Know the current situation of Prostitution in India*, 5 Oct, 2016, available at <https://www.weetjj.com/the-current-situation-of-prostitution-in-india>.

⁴ Brijesh Kalappa, *An argument for legalizing prostitution*, The Times of India, 14 Jan, 2013, available at <https://blogs.timesofindia.indiatimes.com/emphas/should-prostitution-be-legalized/>.

⁵ Pallavi Thakur, *Tradition of Devadasi: The Sacred Prostitute*, 12 Nov, 2014, available at <https://www.speakingtree.in/allslides/prostitution-in-ancient-india>.

⁶ Ibid.

⁷ *Thirty facts that will change your outlook towards prostitution*, Daily Bhaskar, 26 Aug, 2013, available at <https://daily.bhaskar.com/news/NAT-TOP-thirty-facts-that-will-change-your-outlook-towards-prostitution-4357907-PHO.html?seq=3>.

⁸ Supra, Note 5.

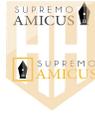
⁹ Ibid.

¹⁰ Anuj Kumar, *Legalization of Prostitution in India: Need of the Hour*, 23 May, 2016, available at <http://www.legaldesire.com/legalization-of-prostitution-in-india-need-of-the-hour/>

¹¹ Supra, Note 5.

¹² Ibid.

¹³ Ibid.



ship loads of girls from other colonies of Britain and minors from Japan were transported for prostitution. These were being used by the soldiers for their sexual requirements.¹⁴ Thus, this profession of prostitution is present in the Indian Society from a very long period of time.

towards them. This itself shows the hypocrisy in our society.

Why we are living in a hypocritical society?

In India, during Navratre, our pujaris while worshipping Maa Durga goes personally to beg some dust from prostitutes.¹⁵ This is because it is believed that a man who enters a brothel leaves all his purity there and this is why the soil from outside the prostitute's home is considered holy.¹⁶ This tradition of bringing dust from the prostitute's residence also shows the irony of the Indian society as throughout the year, we looked down at prostitutes as a blot on the society but on the occasion of Navratri only, some sort of respect was shown

How the respect and dignity attached with the practice of prostitution went away?

Earlier, prostitution was referred as courtesanship. Courtesans had imperative roles and had a huge impact on the society.¹⁷ They were considered as a learned community.¹⁸ Begum Samra, a courtesan, ruled over Western U.P. because of her military and political prowess and there was also Maran Sarkar (a courtesan), who even went on to become queen of Raja Ranjit Singh of Punjab in 1802 and was highly respected among the masses.¹⁹ The existence and respect of this community went wrong when the British undertook the annexation of Awadh in 1856. This marked the fall of this respected community of women.²⁰

Thus, we can conclude that in our history, women who entered into this profession of prostitution were having some sort of respect in society but after the origin of

¹⁴ Ajay Mohan, *40 serious facts related to prostitution in India*, 30 August, 2013, available at <https://hindi.oneindia.com/news/2013/07/16/feature-40-unknown-facts-about-prostitution-in-india-253338.html>.

¹⁵ *Durga Puja: Why are prostitutes considered sacred during Navratri*, Daily Bhaskar, 8 Oct, 2013, available at <https://daily.bhaskar.com/news/JM-durga-puja-why-are-prostitutes-considered-sacred-during-navratri-4396164-PHO.html?seq=7>.

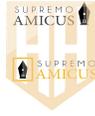
¹⁶ Avishek Sengupta, *Making of Durga idols require a handful of soil from the brothels: Do you know why?*, 28 Sep, 2017, available at <http://www.guwahatipus.com/daily-news/making-of-durga-idols-require-a-handful-of-soil-from-the-brothels-do-you-know-why>.

¹⁷ Supra, Note 3.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.



British dynasty in India, it goes away and today prostitution is considered as a blot on our society. It is ironic that ancient India was much more advanced in passion and love making than in the so called modern era.²¹ Prostitution back then was a piece of art unlike seen today as a taboo.²²

Legal Status of Prostitution in India

As far as the legal status of prostitution in India is concerned, prostitution in India is not illegal per se.²³ The primary law which deals with sex workers in India is Immoral Traffic (Prevention) Act, 1956 (hereinafter referred as ITPA). Activities such as pimping (A pimp is one who controls the actions and lives off the proceeds of one or more prostitutes)²⁴, soliciting these services at public places²⁵, kerb crawling (Driving slowly along the edge of the road in search of a prostitute), seduction of a person in custody²⁶, trafficking²⁷, living on the earnings of prostitution²⁸ are prohibited under the provisions of this Act. In this way, the Act does not prohibit the

profession of prostitution per se but punishes the acts by third parties facilitating prostitution.²⁹ Indian Penal Code also has some provisions related to prostitution. Selling, letting to hire or otherwise disposing of any person under the age of 18 years, is an offence punishable with imprisonment for 10 years and fine.³⁰ Similarly, buying of minors for the purpose of prostitution is also an offence punishable with imprisonment of 10 years and fine.³¹

Thus, we can conclude that prostitution itself in India is not an offense but the activities related to prostitution are prohibited by the law in India. But, Prostitution could not take place without such activities; hence it can be considered that our law is not supporting prostitution in India.

How other countries are getting benefited by legalizing the prostitution

There are a lot of countries in world where prostitution is legalized such as New Zealand, Australia, Austria, Bangladesh, Belgium, Brazil, Canada,

²¹ Sanchit Garg, *History of Prostitution & Why it should be Legalized in India*, 16 Apr, 2015, available at <http://nationalviews.com/history-prostitution-ancient-india-legalization>.

²² Ibid.

²³ *The Unfinished Journey: Securing from HIV/AIDS*, National AIDS Control Organization, Vol. IV, Issue 2 (2008).

²⁴ Section 5, Immoral (Traffic) Prevention Act, 1956.

²⁵ Section 7, Immoral (Traffic) Prevention Act, 1956.

²⁶ Section 9, Immoral (Traffic) Prevention Act, 1956.

²⁷ Section 5(a), Immoral (Traffic) Prevention Act, 1956.

²⁸ Section 4, Immoral (Traffic) Prevention Act, 1956.

²⁹ Dr. Tulsing Sonwani, *Prostitution in Indian Society: Issues, Trends and Rehabilitation*, available at <https://www.ugc.ac.in/mrp/paper/MRP-MAJOR-SOCI-2013-25158-PAPER.pdf>

³⁰ Section 372, Indian Penal Code, 1860.

³¹ Section 373, Indian Penal Code, 1860.



Colombia, Denmark, France, Germany and many more.³² Prostitution Reform Act was passed in New Zealand in 2003 with the objective of decriminalizing prostitution and to create such framework that safeguards the human rights of sex workers and protect them from exploitation.³³ There are even licensed brothels operating under the public health and employment laws, which mean that the sex workers will also get social benefits just like other employees.³⁴ In Austria also, Prostitution is completely legal and the prostitutes are required to register, undergo periodic medical checkups and pay taxes.³⁵ In Ecuador, almost everything related to sex work is legal and you are allowed to sell your body, run a brothel and you can even be a pimp.³⁶ In case of Germany, prostitution was legalized in 1927.³⁷ They have proper state run brothels. The workers of brothels have to pay taxes but they have the facility of health insurance and they receive social benefits also like pension.³⁸

How our country and society can be benefited by legalizing prostitution

Our country will be immensely benefited by legalizing the practice of prostitution in India. First of all, it will help in reducing human trafficking. It is a disappointing fact that thousands of Nepalese girls are being trafficked to India and sold into the conditions of virtual slavery.³⁹ In order to understand that how human trafficking could be reduced by legalizing prostitution, we should take the example of Germany. In Germany, the cases of human trafficking significantly reduced by 10% during the period of 2001 to 2011, after they have legalized the prostitution.⁴⁰

Legalization of prostitution will also help in bringing the sex industry under control.⁴¹ It will help in giving dignity to the women engaged in this profession and will save them from living as second grade citizens. Legalization will also prevent police from robbing money from these helpless prostitutes, who are forced

³² Rohit Bhattacharya, *15 Countries around the World that have legalized Prostitution*, 26 June, 2015, available at <https://www.scoopwhoop.com/inothernews/countries-with-legal-prostitution/#.tntjvr85s>.

³³ Fraser Chrichton, *Decriminalizing sex work in New Zealand: Its History and Impact*, 21 Aug, 2015, available at <https://www.opendemocracy.net/beyondslavery/fraser-crichton/decriminalising-sex-work-in-new-zealand-its-history-and-impact>

³⁴ Supra, Note 32.

³⁵ Supra, Note 32.

³⁶ Ibid.

³⁷ Sonja Dolinsek, *The German Prostitution Model: Reducing Violence Against Sex Workers*,

13 Sep, 2013, available at <https://www.faiobserver.com/region/europe/german-prostitution-model-reducing-violence-against-sex-workers/>.

³⁸ Supra, Note 32.

³⁹ Human Rights Watch Report, *Rape for Profit: Trafficking of Nepali Girls and Women to India's brothels*, Vol.12, No. 5(A) (1995).

⁴⁰ Dave Anderson, *Top 10 reasons why prostitution should be legalized*, 8 Dec, 2014, available at <https://www.listland.com/top-10-reasons-prostitution-legalized/>.

⁴¹ Kristie Trifolios, *Legalizing Prostitution: An Introduction*, Seaton Hall Review (2014).



to give a major part of their income to the policemen to let them live in peace.⁴²

It will also help in preventing the prostitution of children. A CBI report published in May, 2009 had revealed that more than 12 lakh girls who are engaged in sex business in India were below the age of 18 years.⁴³ This CBI report also revealed that at least ten crore females in the country had embroiled themselves in prostitution. Depressingly, 40% among them were minors.⁴⁴ One of the primary reasons for the child sex slaves exists due to the criminalization of adult prostitution. If people can legally buy sex from women who are 18 years or older, this will eventually help in reducing child prostitution. Moreover, if adult prostitution is legalized, those who are in the commercial sex market will employ willing adults (because it is legal) rather than children.⁴⁵ In this way, by legalizing adult prostitution, we can control child prostitution.

Legalization of prostitution will also require prostitutes to mandatorily register themselves with the local authorities and submit themselves for the proper medical checkups.⁴⁶ Legalization of prostitution will take care of these women and

medical facilities can be provided to them which will further help in reducing the spread of various sexually transmitted diseases like AIDS. A National AIDS Control Organization (NACO) report claimed that 58% of the call girls who were engaged in this profession in Surat (Gujarat) were suffering from HIV.⁴⁷ Another survey, carried out by NACO revealed that in Mumbai, there are more than 2 lakhs women who work as prostitutes, and out of them, about 50% of were found to be HIV positive.⁴⁸ It has been estimated that around 50 million of 200 million prostitutes worldwide, who are suffering from deadly sexual diseases, live in India.⁴⁹ After legalization of this practice, registration and proper medical checkups can be made compulsory for these women. Thus, legalization of prostitution can serve as a means of ensuring “public health”⁵⁰ which may also reduce the expenditure of government to control deadly diseases like AIDS.

Another benefit of legalization would be that it will help in bringing the prostitutes under the protection of labor laws. This will give them equal right to protect

⁴² *The Dark Industry, A view of Red Light Areas in Indian Perspective*, 1 Feb, 2013, available at <http://hatpakha.com/the-dark-industry-a-view-of-red-light-areas-in-indian-perspective/>.

⁴³ *Thirty Facts that will change your outlook towards prostitution*, Daily Bhaskar, 26 Aug, 2013, available at <https://daily.bhaskar.com/news/NAT-TOP-thirty-facts-that-will-change-your-outlook-towards-prostitution-4357907-PHO.html?seq=3>.

⁴⁴ Ibid.

⁴⁵ Supra, Note 40.

⁴⁶ Jeein D'Cunha, *Prostitution Laws - Ideological Dimensions and Enforcement Practices* (1991)

⁴⁷ Supra, Note 43.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Dharmendra Chatur, *Legalization of Prostitution in India*, Jan 2009, available at http://www.academia.edu/613653/Legalization_of_Prostitution_in_India.



themselves from discrimination and various unsocial elements.⁵¹

In those countries where prostitution is illegal, billions of dollars are being spent to deal with it. We can take example of U.S. where the law enforcement agencies spend at least \$2000 for a single arrest of a sex worker and because of the large number of prostitutes in the country, it costs the government around \$120 million to control prostitution.⁵² We should appreciate this fact that spending this much amount on controlling prostitution is not of worth. This amount can be saved if we legalize prostitution. Moreover, the legalization of prostitution will also help the Indian Government in gaining additional revenue. By legalizing prostitution, brothels, workers and other related business will be obliged to pay taxes and this may help the government in earning revenues, just like they earn from other legal businesses.⁵³

Legalization of prostitution will also help in reducing rape and other sexual crimes because people will have an authorized and legal way of satisfying their physical requirements.⁵⁴ Most of the rapes took place because of the unsatisfied physical needs of the victims. If there was an option available with them, where they can legally avail services of a prostitute to

satisfy their sexual needs, this will encourage them to do so and it will help in reducing the crime rates in India. The late Indian novelist and Journalist, Khushwant Singh has also said that “*The more you try to put down prostitution, the higher will be the incidence of crime against innocent women*”.⁵⁵

Moreover, after legalization, prostitutes will have an opportunity to conduct their business on their own will without the control of an abusive pimp, which further reduces the possibility of their abuse and exploitation.⁵⁶

There are many teenage girls who are engaged in this profession not of their own choice but because of various other reasons such as financial constraints or human trafficking. Around 8% women in India who are in this profession have quoted by various sources that they are forced into this profession by their fathers.⁵⁷ Great Indian philosophers like Vatsayana, has also supported this fact that “*Sleeping with strangers for gain does not come naturally for women.*”⁵⁸ Another reason for women to move towards this profession can be of family background. There are some classes of people in India who are engaged in this

⁵¹ Supra, Note 3.

⁵² Supra, Note 40.

⁵³ Ashwati Mohan, *Legalization of Prostitution in India: Pros and Cons*, available at <http://womennow.in/legalisation-of-prostitution-in-india-pros-and-cons/>.

⁵⁴ Devin Bowen, *The Impact of Legalizing Prostitution on violent crime*, May 2013, available at

https://asp.mercatus.org/system/files/Bowen_M_GPE.pdf.

⁵⁵ Supra, Note 40.

⁵⁶ Ibid.

⁵⁷ Supra, Note 43.

⁵⁸ *Sex, Art and History in India*, available at http://factsanddetails.com/india/People_and_Life/sub7_3h/entry-4189.html.



profession as a tradition.⁵⁹ There are many locations such as Wadia in Gujarat, Natpurwa in Uttar Pradesh, Banchara tribe in Madhya Pradesh and Devadasis in Karnataka and many more, where prostitution happens to be the only way for survival.⁶⁰ Among these locations, Natpurwa is inhabited with Nat caste. Nat caste has a 400 years old tradition of this profession.⁶¹ In these families, the girls are brought up in such a way so as to suit this profession, irrespective of the fact whether they are willing to enter into this profession or not? Justice K. Ramaswamy has also stated in the case of *Gaurav Jain vs. Union of India and others*⁶² that “the victims of the trap are poor, illiterate and ignorant sections of the society. Rich communities exploit them and harvest at their misery and ignominy in an organized gangsterism”.⁶³ Thus, in order to protect this exploitation of the ignorant sections of the society, legalization of prostitution is the need of the hour.

carried forward in one or other way in different era of society, hence, prohibition of prostitution will not help in any manner. On the other hand, if it is being legalized by the government, it may help the society and nation in many ways as elaborated above.

Moreover, it has also been stated in the 64th Report of the Law Commission of India that any attempt to curb prostitution by legislation or by any other means of social control, has always proved abortive. Even if the law stops it, in some other insidious and subtle form, it is bound to reappear in the society.⁶⁴ It is time to accept that prohibition of prostitution is not purposeful. No Government in the world so far has been successful in stopping this trade and thus the only wise decision would be to regulate prostitution with the help of laws.⁶⁵

Conclusion

Thus, we can conclude that this profession of prostitution is rooted in our own history. The history of our country itself indicates that this profession is not an immoral act in the society. It is being

⁵⁹ Preeti Panwar, *Places in India where prostitution is the main source of income*, 23 June, 2015, available at <https://www.oneindia.com/feature/places-in-india-where-prostitution-is-the-main-source-of-income-1786111.html>.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² *Gaurav Jain vs. Union of India and others*, AIR 1997 SC 3021.

⁶³ Ibid.

⁶⁴ P.K.Das, *Protection of women from domestic violence*, at 291.

⁶⁵ Supra, Note 3.