



LEGALIZATION OF PROSTITUTION IN INDIA

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ABSTRACT

This paper addresses the perplexity regarding legality of prostitution. By the word 'Prostitution' we mean buying and selling of sex in exchange of money. People may oppose to it intensely, but a world of narrow alleys and shady rooms still exist in many corners of the country where mostly women and children are exploited day and night, where the customer's reputation is upright but service giver is seen as disgrace to the society, void of any rights that a human being should have. Calling prostitution illegal is a otiose formality and denouncing it as an immoral blotch on the society does not serve any purpose. Recognizing it as a profession will help curbing consequential evils that accompany, like child prostitution, drug abuse, and increased rate of criminal offense.

The paper further focuses imperatively on the legality of prostitution in India after a comparative analysis of the possible advantages and disadvantages of doing the above mentioned. This paper shall also look into the current scenario of India and answer the question that whether India is really ready to legalize Prostitution and recognize it like any other trade? And if it is ready then how to implement it effectively and in a way so

that nobody can take advantage of the legalization in a negative way.

The Immoral Trafficking Prevention Act 1956 and some sections of the Indian Penal code indirectly criminalize prostitution. The paper shall examine these laws and find out the loopholes so, that a comprehensive law could come into force which shall protect the rights of people irrespective of their status in the society and many people could be saved from being exploited.

The paper also examines the scenario in different countries' status with regard to legalization of prostitution and the existing scenario regarding the same of these countries.

INTRODUCTION

Prostitution is the business or practice of engaging in sexual practice in exchange for payment either as money, goods services, or some other benefit agreed upon by the transacting parties. Prostitution is sometimes called as commercial sex or hooking. According to the Immoral Traffic (Prevention) Act, 1956 'prostitution' means the sexual exploitation or abuse of persons for commercial purpose.¹

Prostitution is a term that is of a questionable nature in India. Illegal in principle and prospering in practice, prostitution has become a thriving profession. Prostitution is said to be an age old profession. Prostitution

¹ Rajendra Kumar Sharma, Criminology and Penology, 45-46.



was a part of daily life in ancient Greece. In the more important cities, and particularly the many ports, it employed a significant proportion of the population and represented one of the top levels of economic activity. In the ancient city of Heliopolis in Syria, there was a law that stated that every maiden should prostitute herself to strangers at the temple of Astarte.

Indra, the god of rains and also the king in Gods, had beautiful dancers called the Apsaras. They were the biggest assets of Indra's court; the vedas do mention some of them, of which Urvasi and Meneka are the most beautiful. Whenever his throne was in danger, he asked the Apsaras to seduce and distract his enemies with beauty and dance. At times they lived together without marriage ceremony. If we look closely, these are the prostitutes in modern day. The Apsaras are highly respected today and even people compliment by saying that 'you are looking like an Apsara'.

Even Jesus Christ welcomes a woman in his kingdom knowing that she is a prostitute.² Chanakya's Arthashastra established a well organized sector for buying and selling sex, mentioning the minimum wages ensuring the protection and dignity of women.

Navratre, a nine day festival devoted to Maa Durga, is the one of the most important festivals in India. During this festival, the people worship the deity of Maa Durga, made of eighteen soils, taken from eighteen places, one from a prostitute's door, which is the great irony because that soil is called the

purest and the prostitutes themselves are considered to be sinners.

All these makes it very clear that our ancestors were more open. So the question comes that why are we today as a society not accepting the prostitutes as normal human being and should get the same rights which others enjoy? Are we moving towards modernization or orthodization?

Around 3 million people are involved in prostitution in India.³ These many people enjoy no rights. If they are exploited they cannot go to police station and lodge an FIR. They are looked as disgrace to the society. A child born to a prostitute is actually a prostitute before even growing up, because no school will take the child and as a result the child will have no qualification and the only job which will be left is prostitution. Around one million children live in brothels in India. It is a given fact that most of the sex workers have been forced to get into prostitution or have been trafficked.

So if prostitution is bad and immoral then why not abolish it?

It cannot be abolished because there is demand. Though people may not accept it at front but in the back of their minds they know this. For example Devdasi system was abolished but still it is very much prevalent in India especially in South Indian States. The present Indian law's status is

Prostitution as profession? 'yaaay!'

²Luke 7:36-50

³Ministry of children and women 2015



Prostitution, the activity ? “Booo! , chi chi!” So the only option left is to Legalize it. By legalization we don’t mean to encourage others to get into sex work or give advantage to the traffickers but on the contrary to help those who are already stuck in the profession and to keep check on the traffickers and also help abolish child trafficking.

LEGALIZING PROSTITUTION

➤ **CONS AND ARGUMENTS AGAINST LIGALISATION**

Legalizing prostitution would benefit the pimps and the facilitators and not the victims. In India where woman are coerced into the trade and kept in it almost like bonded labourers, such a move will not benefit them. Commercial sexual exploitation is a form of slavery and slavery cannot be legalized. India should not compare itself with the western countries where prostitution enjoys legal status because our social customs are different from them. Since abortion is illegal in India there is no question of legalizing prostitution. So giving legal status to it means society is giving approval to flesh trade. Some critics say that prostitution wrecks personality and affects family relationship.⁴

How legalizing would affect?

- Lucrative incentives prohibiting the tendency to work-For population that belongs to the group that earn less ,is less educated and less skilled prostitution becomes a viable option to earn money in a speedy manner. This will enable people to

simply avoid putting in efforts and these people will resort to prostitution. This will lead to unrecognized potential and forte.

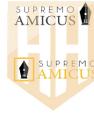
- Forced Prostitution - Although it is argued that a person’s body is his/her personal property, prostitution is not always voluntary. The report published by the ILO [International Labour Organization] makes it quite clear that most women choose prostitution for economic reasons.
- No job security or guarantee – This profession offers no job security (whatsoever. Also, the number of customers per day cannot be guaranteed thus making it difficult for the workers to estimate their monthly income and determine their budgetary expenditure.

➤ **PROS AND ARGUMENTS FOR LEGALIZATION**

- The benefit of legalizing prostitution in India will be that at least we will have a track record of sex workers. For example when dance bar in Bombay was closed most of the workers migrated to Gujarat and Karnataka and started their business undercover⁵. Now one may be wondering why is it necessary to keep a track record of sex workers? It is necessary because if someone is forced into this profession if there is track record , then once free she cannot be again subjected to same force. Also if the exact number is known their health status can regularly be checked. It is to be noted

⁴www.ijetst.in

⁵Times of India story 2013



that 21.17 lakhs people are suffering from HIV AIDS.⁶ It has become the second most dangerous killer after heart attack.

- Sex workers are not within the ambit of normal labour laws. Once recognized as a trade the workers will get their minimum wage that they are entitled to.
- The ILO suggests that by including prostitution as an economic sector, poor countries of South East Asia can benefit economically through the revenues generated by the industry.
- By legalizing prostitution and taking strict measures to regulate it, we can ensure removal of minors from the profession, thus protecting their rights and confirming their safety.
- Removal of intermediaries from the sector - Legalization of prostitution will lead to a systematic betterment of the industry. The service of pimps and middlemen will no longer be required, leading to a decrease in criminal behaviour, decrease the rate of trafficking and an increase in the wages of the sex workers.
- If legalization is done the sex workers will be able to come out of the trade whenever they want because now they will not have the social stigma attached to them.

- If prostitution is against morality then what about the item numbers which are enjoyed by everyone public-ally without any shame or hesitation. If a child says something about sex, immediately he/she is made to shut their mouth, but if the same child sings or dances on an item number, the talents are appreciated.

We often see that at a tender age people are getting into relationships with many men/ women and loose their virginity for fulfillment of their sexual desire. This is not just with youth even adults do it like having extra marital affair, sexually harassing others and many more. The only difference between the prostitutes and these people are that they are not doing it for money because they are well off and prostitutes are doing it because they need money. What is the harm then the prostitutes are causing?

If prostitution is against morality then why not make laws against the customers who are availing this kind of service? Why only the prostitutes will suffer from social stigma?

The answer is that we all know that prostitution won't come to an end because there is a great demand in the market. By legalizing it , it will protect a human being from being exploited.

LAWS DEALING WITH PROSTITUTION IN INDIA

⁶National AIDS control organization



The Law governing prostitution in India is Immoral Traffic (Prevention) Act which is a 1986 amendment to the primary law passed in 1950 known as the Immoral Traffic (Suppression) Act. The law does not criminalize prostitution per se but only organized form of prostitution is against the law. The Indian Law bans the act of trafficking, procuring, detaining, pimping, lending a premise for carrying on prostitution for running a brothel.

The Suppression of Immoral Traffic Act, 1956 was the major legal effort concerning prostitution. The purpose of the Act was primarily the abolition of prostitution among women and children. Lacunae in the act led to its amendment in 1986. However, the new legislation has widened its scope. It includes that children and even men who are exploited for commercial purposes and should be protected. Section 3 of the Act has a broader definition of brothels, which will make easier

to prosecute the brothel keepers. Section 9 of the Act provides greater punishment to persons who cause, aid, or abet the seduction of women and girls, over whom they have care and custody, for prostitution. The centre government under this act has powers to allow police officers arrest without warrant in any premises where this offense is suspected of being committed and rescue a person forced in this profession. This act also has provisions to have protective and corrective homes for safe custody of children⁷, however, living conditions of protective homes were found to be inhuman and degrading⁸.

IPC has also been lending support in this very context, in a consequential, yet in an effectively binding manner. Sections 366-A⁹ and 366-B¹⁰ make procreation of the minor girl for illicit sexual intercourse as illegal. Sections 372¹¹ and 373 make buying and selling of girls of any age for the purposes of

⁷Shobha Saxena, Crimes against woman and Protective laws, 259-261.

⁸Upendra Bakshi v. State of Uttar Pradesh

⁹SECTION 366 A- procreation of minor girl.— Whoever, by any means whatsoever, induces any minor girl under

the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is

likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with

Imprisonment which may extend to ten years, and shall also be liable to fine.

¹⁰ SECTION 366-B - Whoever imports into [India] from any country outside

India [or from the State of Jammu and Kashmir] any girl under the age of twenty- one years with intent that she

may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, [shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.]

¹¹SECTION 372- Selling minor for the purposes of prostitution- Whoever sells, lets to hire, or otherwise disposes of

any 1[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

2[Explanation I -When a female under the age of eighteen years sold, let for hire, or otherwise disposed of to a



prostitution as a heinous crime for which 10 years punishment and fine can be awarded.

Under the ITPA, a Magistrate, if he deems it to be necessary, can order the removal of a prostitute from any place in the interest of the general public. The 2006 Bill omits sec-8 of the original Act, thus removing the offense of soliciting or seducing for the purpose of prostitution ,it also omits sec-20 of the Act regarding the removal of prostitute from any place.The newly proposed sec-5(c) provides for punishment of any person visiting a brothel for the purpose of sexual exploitation of any person.

INADEQUACY AND LOOPHOLES OF ITPA

The uneven enforcement of the ITPA against prostitute women is attributed to various causes: first there is a strong collusion between elected representatives, law enforcement agencies and the brothel keepers that impedes the strict implementation of the provisions of the Act¹² and this collusion has to be busted and decimated. Corrupt officials in the law enforcement agencies are widespread. An overhaul of the prevalent police procedures involved in ITPA cases and the scrutiny of their corrupt practices

might bring a more desirable effect. For this purpose sensitization of police is a must.

The second persistent problem with the enforcement of ITPA has been uncovered during field studies and one such study confirms the complexity of collection of sufficient proof to make a conviction absolute. Some police officers have said that there is an immense gap between the number of crimes committed in reality and the registration of crimes in the police records as many crimes that are reported are not registered(around 60 percent)¹³

The third problem is with the reformative (corrective and rehabilitative) homes that are set up under the Act and their inadequacy. Such homes are overburdened and cannot accommodate the large number of sex workers who are convicted under ITPA. The rules for protective homes must compulsorily provide for literacy and a range of vocational and occupational training based on the woman's aptitude and market value of job; counselling which helps in redefining inmates as surviving human beings must be provided; and subsidized hostels and care homes must also be set up to house inmates discharged from homes.

LAWS IN OTHER COUNTRIES

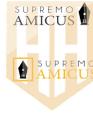
prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of Prostitution.

Explanation II - For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is

recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi - marital relation]

¹²P.Kotishwaran,Supra note at 171

¹³NHRC-UNIFEM-ISS Project,Supra note 47at 363



Countries like the United States, Russia, Massachusetts and china have made prostitution illegal. But even after implementing anti-prostitution laws strongly it has failed. China has 5 million prostitutes, US have 1 million.¹⁴ in Boston since the mid 1990s more than 130 people have come forward with horrific tables of child abuse by the priests in their locality.¹⁵ The children were made victim because they were easy to prey upon and secondly since prostitution was illegal, they had to do it undercover so that they can fulfill their sexual desire. The high number of prostitutes is because making prostitution illegal merely shifts it underground, where it becomes more difficult to regulate.

Prostitution has been legalized in countries like Germany, Netherlands, Greece, Denmark, Sweden and few more countries. In Germany there are proper state run brothels and the workers are provided by health insurance, have to pay taxes and they even receive social benefits like pension.

There has been a significant increase in the number of brothels in Victoria, Australia, since legalization, the number of legitimate brothels grew from 40 in 1989 to 94 in 1999. Legalization is a ‘pull factor’ for traffickers. Project Respect estimates, “at least seven licensed brothels in Victoria have used trafficked women in the last year”.

So we can see that there are some flaws with legalization of prostitution. To overcome

these flaws we need a comprehensive law in India and strong implementation.

RECOMENDATION FOR LEGALIZATION OF PROSTITUTION IN INDIA

India is a country where most of the people are still orthodox and are not at all free to talk about sex on the dinner table or to say that they have suffered marital rape. Legalization of prostitution in India would be a big challenge. There will be a lot of criticism but one needs to understand also the need of this at this hour. Before legalization there has to be awareness of the benefits in large scale and the steps taken for legalization has to be taken with proper care and strong implementation. The following are some of the steps:

- i. The state can bring in certain measures to curb excessive exploitation and preserve public health, it does not seek to abolish prostitution per se but is only targeted at trafficking in women and girls for prostitution, brothel-keeping, pimping, procuring and renting premises for prostitution, here prostitutes will not be criminalized for their work and they will have more or less the same rights as other citizens in the society. Child prostitution will be eradicated as it will be considered a legal profession.
- ii. It would require to have a license or to register prostitutes and brothels so that,

¹⁴A havocscope report- Global black market information

¹⁵Boston global



- prostitutes can be monitored and checked for venereal diseases.
- iii. The ILO suggests that by including prostitution as an economic sector poor countries in South East Asia can benefit economically through the revenues generated by the industry¹⁶.
- iv. After legalization there should be a committee made at the center and as well as all the states and the districts. This committee shall grant the license after verifying that the prostitutes are not brought by force and confirm their nationalities and as well as their residence and as to why they are joining the profession. The committee should have one social worker with the experience in this area and two retired lawyers or an old sex worker. Also this committee will look after any problem suffered by the prostitute.
- v. There should be an online portal of the registration of the prostitutes and regularly checked by the center.
- vii. In 2011 in West Bengal the legal service authority started a program in which legal aid was given by directly reaching the people in a van. In this van three lawyers would be present and give their service. But, this unfortunately could not go for long because of lack of funds. This idea can again be put to use. If this is renewed and this time inspection could be carried out with regard to prostitution. If all the states and district have these van and this van shall go to all the places where brothels are located and ask the prostitutes that whether they are forced or not along with the regular police inspection. In the van there could be retired lawyers sitting or social workers.
- viii. To work this legalization effectively both the center and the state has to work together. The government before legalizing prostitution in the whole of India, it can experiment first by legalizing prostitution only in Goa which is a small state and would be easier to handle it unlike big states. Goa is also famous for sex tourism. After implementing it in Goa we can see what are the results and loopholes and correct them before applying to the other states.

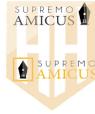
There should be regular campaigns initiated by the government and NGOs to make the prostitutes aware of their rights.

- vi. Should be regular inspections hold in the brothels to check whether all the workers are licensed or not.

CONCLUSION

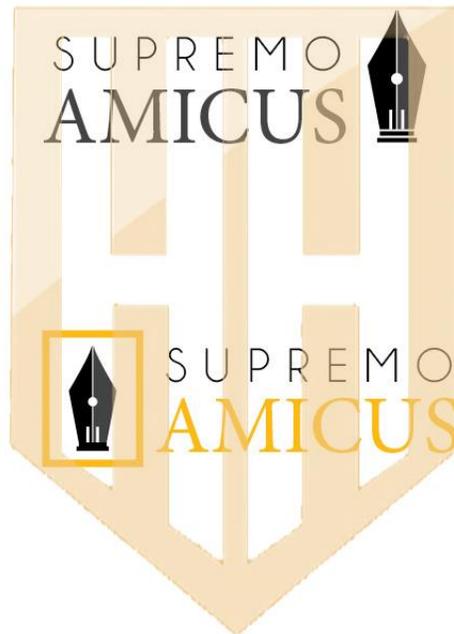
Transformation of prostitution into a legal, regulated form of work is needed to adequately address the situation in which women can voluntarily exchange their sexual

¹⁶Janice C Raymond, prostitution on demand : legalizing buyers as sexual consumers 10(10), Violence against women 1156, 1162(2004)



work for money. Such an exchange for money is not for accumulating capital, but for basic survival, a means for women to provide and feed her children and to resolve an immediate economic problem¹⁷.

To legalize this profession of prostitution, there has to be a radical transformation of the beliefs, sentiments and enhanced education about this issue. If things progress in a slow but a steady manner, there still lies a hope of betterment of the situation.



¹⁷S.C.Singh, Conceptualization of Prostitution as Labour, 2, APEX COURT EXPRESSIONS 51, 55 (2003).

