



PROTECTION OF RIGHTS OF A PROSTITUTE IN INDIA

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“The worst part about prostitution is that you’re obliged not to sell sex only, but your humanity. That’s the worst part of it: that what you’re selling is your human dignity. Not really so much in bed, but in accepting the agreement- in becoming a bought person.”

- **Kate Millett**

Introduction:

Prostitution in India has existed from the time immemorial. Rig-Veda made it clear that there were women who were courtesans or prostitutes, these women were common to many men. The Adiparva narrates how a vaishya (prostitute) waited upon Dhritarashtra when his wife Gandhari became pregnant. Yaj II divides concubines into two categories: 1) avaruddha- one who is kept in the house itself and forbidden to have intercourse with any other male; and 2) bhujisyas- the concubine who is kept elsewhere and is in the special keeping of the person, and another person cannot have intercourse with her.¹

According to the history of India, the old versions of prostitutes were known as “Devadasi” in South India, who used to contribute their whole life to the devotion of Lord Krishna. Devadasis consider the Gods

their husbands and thus cannot marry other mortal men. A woman if married to any idol of any male god then she was considered to be a devadasi. The same was later called as “Nagarvadhu” or the “Bride of the town” and were called upon by the royals to sing and dance. Devadasi or Nagarvadhu’s were in the palace just to entertain the kings with their dancing and singing and due to their art and they were treated with respect and honor by the Royal families. No man, including the Kings, dared to touch them. But many doesn’t know that they were treated with immense respect and reputation of these women were very high in society alike from now. They were not treated as prostitutes until British and other rulers invaded India. But after British entered India, this golden era saw its downfall at the hands of the British. These dancers started performing their art in front of the British officers who got attracted to them and thus the culture of one night stands started. The Britishers started calling these dancers for sexual pleasures and this paved the way for Prostitution in a country like India. During the British rule, the movement of Devadasi into prostitution led to the decline of temple dances. A tawaif, mostly prevailed in North part of India, was a highly sophisticated courtesan who catered to the nobility of India, particularly during the Mughal era. The tawaifs excelled in and contributed to music, dance (mujra), theatre, and the Urdu literary tradition, and were considered an authority on etiquette. Tawaifs were largely a North Indian institution central to Mughal court culture from the 16th century onwards and became even more prominent with the weakening of

¹. Mamta Rao ‘Law Relating to Women and Children’, 4th edn, Lucknow, Eastern Book Company, 2018



Mughal rule in the mid-18th century². These women were not given a negative position in those days as they are seen in society today. Women started selling their bodies when British rule came in force due to their conditions of poverty and also for the greed of money. Female folk entertainers often sell their body for a living. During the late 16th and 17th century, when certain parts of India were a colony under the Portuguese, Japanese women were captured and brought to India as sex slaves. Another example of the increased use of women as sex workers can be during the Company Rule in India. From here the trafficking in human began. The military established brothels (Current red-light areas of Mumbai) for its troops across many parts of India. Rural women and girls were employed by these brothels and were paid by the military directly. And today these red light areas have become the biggest drawback of the society and most of the brothels are run illegally. And forced prostitution has emerged widely.

“We call our country home of the brave and land of the free, but it's not. We give a false portrayal of freedom. We're not free — if we were, we'd allow people their freedom. Prohibiting something doesn't make it go away. Prostitution is criminal, and bad things happen because it's run illegally by dirt-bags who are criminals. If it's legal, then the girls could have health checks, unions, benefits, anything any other worker gets, and it would be far better.”

— Jesse Ventura (American media personality)

Meaning of Prostitution:

‘Prostitution’ according to the Immoral Traffic (Prevention) Act, 1956, means the sexual exploitation or abuse of persons for commercial purposes, and the expression “prostitute” shall be construed accordingly;

Hence we can sum up essentials for constituting the offence of the prostitution are,

- a) a female must offer her body to indiscriminate intercourse with men, usually for hire
- b) there must be sexual intercourse;
- c) It must be for hire for which the consideration may be in cash or in kind.

Brothel according to the Immoral Traffic (Prevention) Act 1956, includes any house, room, [conveyance] or place or any portion of any house, room, [conveyance] or place, which is used for purposes [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes.

Human Trafficking’ means the action or practice of illegally transporting people from one country or area to another, typically for the purposes of forced labor or commercial sexual exploitation.

Rights of the prostitutes:

It is the misconception that the prostitution is illegal in India. Prostitution itself is not illegal but propagating and developing this profession is illegal. Encouraging this as a profession is illegal. And forcing one to fall under this profession is illegal. If a women by her own wish for her livelihood if she wants to practice this trade then she can, but she cannot run a brothels. The primary law dealing with the status of sex workers is the 1956 law referred to as The Immoral Traffic

².www.wikipedia.org



(prevention) Act. According to this law, prostitutes can practice their trade privately but cannot legally solicit customers in public. There are cases where courts have openly criticized prostitution but at the same time upheld their rights to trade for their livelihood.

Prostitution is one of the oldest professions we can say. India has seen many stages of growing prostitution in its land. But the urge or sex is growing day by day in people. Not legalizing brothels can also lead to increase trade in human trafficking because it will not be regulated. And regulating these brothels is very necessary to stop the exploitation of these women who suffer in the brothels which is run illegally. The law in India provides that having sex for money is not illegal; soliciting customers is illegal, running a brothel/pimping/organized prostitution is illegal.

A majority of the **sex workers** working in India surveyed by an NGO revealed that they did not choose the **profession of Prostitution** in India by themselves but were rather forced to take out of necessity, for some it was due to fall out of marriage to support themselves, for some it was taken after being disowned by family and for some, they were tricked by their family member or acquaintance under delusion of good money. The breakdown of the agents of the prostitution in India is as follows: 76% of the agents were female and 24% were males. Over 80% of the agents bring young women into the profession of the Prostitution in India without caring about the legal aspect of same were known people and not traffickers: neighbors, relatives, etc. Over

40% of 484 prostituted girls rescued from the profession of illegal prostitution in India during major raids of brothels in Mumbai in 1996 were from Nepal. In India one estimate calculated that as many as 200,000 Nepalese girls, many under the age of 14, were sold into sexual slavery during the 1990s to boost the not so legal profession of prostitution in India. States of India such as Mumbai and Kolkata (Calcutta) have the India's largest brothel based sex industry, with over 100,000 sex workers in Mumbai and keeping the profession of prostitution alive in India. It is estimated that HIV among prostitutes have largely fallen, in last decade. Reaching women who are working in brothels has proven to be quite difficult due to the sheltered and secluded nature of the work, where pimps, Mashis, and brothel-keepers often control the profession of prostitution in India and access to the women and prevent their access to education, resulting in a low to modest literacy rate for many sex workers indulged in Prostitution in India. Despite this, several projects were launched in red light districts of Kolkata and a rise in use of condoms was seen from 27% in 1992 to 86% in 2001³-
 “We say that slavery has vanished from European civilization, but this is not true. Slavery still exists, but now it applies only to women and its name is prostitution”

- Victor

Hugo.

**Protection under fundamental rights of constitution:
 Article 14 and prostitution:**

³.By Shivam Srivastava in General Legal may 9th 2018



Equality before law -The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Generally all people should be treated equally, but the right of the prostitutes are not recognized and they are not treated as equal in the society may be because of the work or profession they are into, but what about those women who have entered into this profession due to helplessness and poverty.

Article 15 and prostitution:

How many people in general are so much with prostitutes having access to public hotels and public entertainment, most of them will criticize those women if she does so, because they are even today thought that they are harmful to this society, but they also have the right to mingle in public like other people do. These women are always stopped from having access to general public.

Article 15(3)- Nothing in this article shall prevent the State from making any special provision for women and children.

The women and children in India is being targeted for the human trafficking and it is sad that this is running on a very wide area. Girls below the age of 16 is kidnapped or forced for the prostitution, prostitution a necessary evil, prostitution is rampant in a social system supported by a complex matrix of social forces where parents and relatives throw females into the flesh trade. They not only force them to be in the profession but also procure customers and thrive on their earnings, under these circumstances this article gives the

provision where the state can make special provision for the protection of the interest of these women and children.

Article 16(1) and prostitution:

Women of such profession are trapped in this profession in such a way that they will be unable to come out of this. Even if they do they will be till their last breath treated as the prostitutes only and these women and their past will definitely have an impact on the other employment if she chooses to do so. Article 16(1) -There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; under this article if any woman of such profession tries for any employment or appointment to any office of the state then they shall not be denied for such employment on the basis of such past profession.

Article 19(1)(g) and prostitution:

Every woman has right to choose any profession as her wish which is guaranteed by the Indian Constitution under the Article 19(1)(g) by the reasonable restrictions, she could participate any profession by using her personal knowledge, intellectual capacity and personal physical body through protecting moral values which have been notified in the laws. If a woman by her own knowledge if practices prostitution then it is not the violation if the same woman is involved in human trafficking and keeping the brothels and forcing one to apt this profession then she will be punishable under law.

Article 21 and prostitution:

Protection of life and personal liberty- No person shall be deprived of his life or



personal liberty except according to procedure established by law;

This article is very wide in its scope and it gives for many other rights related to this article, like life, privacy rights, dignity, livelihood and so on..women who have possessed this profession have right to life and liberty until these rights is curtailed by law in the interest of general public.

Right to privacy: Prostitutes also holds the right to privacy, any person who will curtail privacy rights and without her permission if does any videography or photograph of such act which he is not supposed to do then he is punishable under law. No women of such profession is granted such because he has paid her the money or she is of a easy virtue, even if she is in profession by her own will or any other reason she has right to privacy.

Right to dignity: dignity has always been the dream of every prostitute that is because the nature of the work they do, the society like India where the sex is the word of four walls, have never accepted this profession, and will never do. The women who are sex workers also have a dignity and they have a right to live a dignified life like any other person of any profession.

Right against exploitation: No person can force a woman to enter this profession against her will.If a women of such profession is touched or forced to do any act for which she has not agreed for or any person who runs the brothel illegally, if exploit such women for the purpose of commercial benefit then it is against the article 21.

Article 23 and prostitution:

Article 23 strictly prohibits human trafficking, where millions of children and

women are pushed into this profession and forced labor, any person who is engaged in human trafficking will be punished under the law. Women and children are protected and provided the right against the immoral trafficking and forced labor under this article,

Article 23 and prostitution-Prohibition of traffic in human beings and forced labor

(1) Traffic in human beings and beggar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them

“Prostitution is not just a service industry, mopping up the overflow of male demand, which always exceeds the female supply. Prostitution testifies to the amoral power struggle of sex, which religion has never been able to stop. Prostitutes, pornographers, and their patrons are marauders in the forest of archaic night”

- Camille Paglia

Protection under Directive principles of state policy:

Article 38: The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The welfare of these women and children have been declining day by day as the trafficking in women is



growing as a biggest and the fastest offence in the country and the regulating of these offences are falling pale it is sad to know that most of the women fall into this profession due to poverty and need for money., welfare of such people is the duty of the state.

Article 39(f): that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Many girls are sold for the purpose of sex like a vegetables in the market, the these children are exported like any other goods to other country or places for the exploitation of their body or for the purposes of the slavery, it is the state to secure the childhood of these children and to protect against the exploitation and against moral and material abandonment, it is depressing to know that these children are given proper food and are left to die if they have fever or other medical disabilities, these children are used for their commercial purpose until these children are useful for their business later on they are injected with drugs till they die. Health of the children is the duty of the state.

Article 45: Provision for free and compulsory education for children The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Till the age of 14 years the compulsory education should be provided to the children but the children in the slums will not have

access to education and most of the children in this profession are from the background of the slums and poverty stricken, indeed it is the mandatory duty of the state to provide for the education but somewhere this is not been implemented in the state properly, and the major drawback of these state policies are that they are not enforceable in the court of law.

Covering other aspect of education of children, the education of the children of the prostitutes becomes a big thing to worry, because the education in between the other students in the school with the children of prostitutes is seems to be difficult to accept. These children are often denied to admit in the schools and this automatically leads to continuation of the profession by the children also. All these aspects will change only when minds of the people will change and accept these prostitutes as the extract of the helpless circumstances rather than criticizing them for what they are.

“Prostitution exists for only one reason; that reason is male demand. No amount of poverty would be capable of creating prostitution if it were not for male demand”
- **Rachel Moran.**

Protection under Human rights:

In *Gaurav Jain vs. Union Of India Ors*⁴ the court held regarding to the rights of the prostitution under universal declaration of human rights that, “Article 1 of the Universal Declaration of Human Rights provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and

⁴.(1997) 8 SCC 114;1998 SCC(Cri) 25



should act towards one another in a spirit of brotherhood. Article 2 provides that everyone, which includes fallen women and their children, is entitled to all the rights and freedoms set forth in the Declaration without any distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 provides that everyone has the right to life, liberty and security of person. Article 4 enjoins that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. The fallen victims in the flesh trade are no less than a slave trade. Article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The fallen/trapped victims of flesh trade are subjected to cruel, inhuman and degrading treatment which are obnoxious, abominable and an affront to Article 5 of the Universal Declaration and Article 21 of the Indian Constitution. Equally, Article 6 declares that everyone has the right to recognition everywhere as a person before the law. The victims of flesh trade are equally entitled before the law to the recognition as equal citizens with equal status and dignity in the society. Article 7 postulates that all are equal before the law and are entitled, without discrimination, to equal protection of the law. So, denial of equality of the rights and opportunities and of dignity and of the right to equal protection against any discrimination of fallen women is violation of the Universal Declaration under Article 7 and Article 14 of the Indian Constitution. Article 8 of the Universal Declaration provides that everyone has the right to an effective remedy by the competent national

tribunals for acts violating the fundamental rights granted by the Constitution or the law.”

“Prostitution happens to you because of troubles you had. In reality no women would choose to do that”

- **Catherine Deneuve (French Actress)**

Protection under Juvenile Justice act 1986:

Again quoting the judgment of *Gaurav Jain vs. Union Of India & Ors*⁵ supreme court held that, “The Juvenile Justice Act provides for care, treatment and rehabilitation by developing appropriate linkage and co-operation between formal system of juvenile justice and voluntary agencies engaged in the welfare of the neglected or socially mal-adjusted children; it specifically defines the areas of the responsibilities etc. Section 2(a) defines ‘begging’. Section 2(b) defines ‘Board’ to mean Juvenile Welfare Board constituted under Section 4. Terms ‘Brothel’, ‘prostitute’, ‘prostitution’ and ‘public place’ have been adopted as defined in ITP Act. ‘Competent authority’ or ‘Juvenile court’ as the case may be, is defined under Section 2(d). Section 2(f) defines ‘fit person’ or ‘fit institution’ to mean any person or institution (not being a police station or jail) found fit by the competent authority to receive and take care of a juvenile entrusted to his or its care and protection on the terms and conditions specified by the competent authority. ‘Guardian’ in relation to a juvenile has been defined under Section 2(g). ‘Juvenile’ has been defined under Section 2(h) to mean a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. ‘Juvenile

⁵.ibid



Court' and 'Juvenile Home' have been defined in Section 1(i) and 2(j) respectively. 'Neglected juvenile' which is more relevant for the purpose of this case, has been defined in Section 2(1) to mean a juvenile who (i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitution or any other person who leads an immoral, drunken or depraved life; (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain. 'Prostitution' means the sexual exploitation or abuse of persons for commercial purposes and the expression 'prostitute' shall be construed as it is defined under Section 2(f) of ITP Act. After the amendment to the ITP Act, 'prostitution' means sexual exploitation or abuse of person for commercial purpose." "Prostitution should not be a crime. Prostitutes are not committing an inherently harmful act. While the spread of disease and other detriments are possible in the practice of prostitution, criminalization is a sure way of exacerbating rather than addressing such effects. We saw this quite clearly in the time of alcohol prohibition in this country"

- Sherry f. Colb

Protection under Immoral Trafficking (prevention) act 1956:

Object of the act:

The object of the enactment was to abolish the commercial vice of traffic in women,

men and children for the purpose of prostitution as an organized means of living.

Provisions of the act:

Section 3 of the act punishes any person who keeps or manages or assists such keeping or management of the brothel.

Section 4 provides for the punishment for the knowingly living on the earnings of the prostitution.

Section 5 provides for punishment for the person who procures, induces or takes person for the sake of prostitution.

Section 6 provides that if a person detains any other person in the place where the prostitution is carried on whether with or without the consent of such other person will be liable for punishment.

Section 17 if any person carries on prostitution within the area prescribed in the notification by the state government directing to not to carry on the prostitution in such areas and distance of 200 meter from public places like educational, temples or places of religious worship, hostels hospitals and the like shall be liable for punishment as prescribed under this section.

Section 8 any person who has committed the offence of seduction or soliciting for prostitution shall be punished under this section.

Section 19 provides for the provision where a magistrate can order for rehabilitation of prostitutes.

Conclusion:

The profession which existed in our country from time immemorial has been a social drawback, the morals have been left behind, the woman who is treated as 'Shakti'-energy and 'Prakruti'-nature is also treated as sex object, a means to sexual pleasure. Even if a woman is a Prostitute she has to offer her



body with her own will and with free consent. The consent if not given by a prostitute and still a person forces on her and does an act of intercourse will amount to rape, because women of easy virtue is no defense in rape, prostitute also has the same dignity and respect like other women in the society just because she is in such profession does not mean that her body is granted. Her body is still her right and she shall be the only person to decide what she wants to do with it. If any person forces on her, then she is protected under law. No man shall dare to touch a woman thinking that she is a prostitute and a property of the public. She holds the dignity in society and she has the right against such exploitation.

