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SHOULD PROSTITUTION BE LEGALIZED IN INDIA?

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ABSTRACT

Prostitution, an ancient occupation, remains a contentious issue in India, where cultural, social, and economic factors intersect. The debate about its legalization has gained momentum in recent years. This essay delves into the multifaceted considerations surrounding the legalization of prostitution in India, examining the potential benefits and drawbacks.

Historically, prostitution has been practised in India since ancient times, rooted in both cultural practices and colonial influences. The Immoral Traffic (Prevention) Act, of 1956, criminalizes certain activities related to prostitution, leaving the exchange of sexual services for money ambiguous. Prostitution has persisted due to socioeconomic vulnerabilities and a lack of opportunities. Red-light districts like **Sonagachi**, **G.B. Road**, and **Kamathipura** are prevalent, showcasing diverse systems and support networks for sex workers.

Benefits of legalization include enhanced safety and regulation, providing sex workers with access to healthcare and basic employment rights, and the potential to reduce human trafficking. Moreover, legalizing and regulating prostitution can generate tax revenue for the economy. However, opponents raise ethical concerns about the commodification of human bodies, the potential increase in demand for commercial sex, the reinforcement of gender stereotypes, and the risk of continued exploitation.

International case studies offer insights: the Netherlands showcases regulated prostitution with challenges, Germany's experience is mixed, and certain parts of Nevada, USA, allow regulated prostitution in licensed brothels. These case studies underscore the complexities of legalizing prostitution.

In India, the Immoral Traffic (Prevention) Act (ITPA) and other legal frameworks govern prostitution, but they often lack comprehensive solutions. There are ongoing debates about

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whether sex work should be regarded as legitimate work and whether the legalization of prostitution could reduce incidents of rape and sexual abuse. Society's acceptance of sex workers remains limited due to cultural stigma.

The question of legalizing prostitution in India involves careful consideration of its potential societal impacts. Successful legalization would require robust regulatory frameworks, extensive research, collaboration between government agencies and NGOs, and continuous monitoring. Addressing the root causes of prostitution, such as poverty and lack of education, is crucial for a holistic approach.

The conclusion emphasizes the necessity of in-depth research, consultations with the prostitute communities, collaboration between governmental agencies and NGOs, and continuous policy monitoring. The essay underscores the significance of addressing the root causes of prostitution, such as poverty and limited economic opportunities. Ultimately, the decision to legalize prostitution in India must be approached with a balanced assessment of the potential benefits and drawbacks, while keeping the welfare, rights, respect, and dignity of sexual workers first in the conversation.

INTRODUCTION

Today India has a total literacy rate of 77.70%. Even though many people lack literacy, they struggle to accept many aspects of society. This is true of sex jobs or prostitution. One of the earliest occupations in the world is prostitution. In India, discussing prostitution openly is frowned upon and it is often regarded as taboo. Prostitution cannot be outlawed since it has been a widespread practice for too long and is an old practice. There are a large number of Indian women who use sex work as a source of income on the streets. The main reason people choose this occupation is that they lack the necessary skills and literacy to find employment.²

HISTORY OF PROSTITUTION

PROSTITUTION IN ANCIENT TIMES

India's oldest occupation is prostitution, which has existed since the beginning of written history. Because of their precarious condition and lack of access to basic resources to survive, sex workers

²Author Name-Roshni S, Title-Prostitution in India and its legality, www.primelegal.in, <https://primelegal.in/2023/03/06/prostitution-in-india-and-its-legality/> (assessed on 26-06-2023)

in India are compelled to choose prostitution as a career. It is equivalent they are selling their bodies to survive because they need food to eat and clothing to wear, whereas we are selling our brains. A nation with a strong spiritual past like India gets disturbed when prostitution is practised as a profession there. However, the context makes it quite evident that prostitution was already a previously accepted employment, “Menaka, Rambha, Urvashi, and ‘Thilothamma’”, are figures from Indian mythology who have been compared to those with the highest levels of charm and feminine beauty. There are guidelines for how a prostitute should behave and live in Kautilya's well-known Arthasathra.

Prostitution In India has primarily followed the path of devotion. In the past, it was common practice for Hindus to donate their female child to dance in cathedrals and praise God. This practice gave rise to the Devadasi program. The girls were given the names Devadasi throughout South India and Mukhies throughout North India. The word "Devadasi" changed over time and is now used to refer to an institution as the "Devadasi system." Devadasi is still in use, and what makes it noteworthy is that it is said to be adaptable. The word "Devadasi" refers to women who serve "gods." Girls were wed to the local deity in ancient times, which meant they were committed to serving the deity. Prostitution became an activity from a certain family or society for the creation of girls, who were known as prostitutes, as this network grew over time and included offspring from these devadasis.³

PROSTITUTION IN MODERN TIMES

India's contemporary landscape includes several significant red-light districts where prostitution thrives. One such district is **Sonagachi** in Kolkata, which happens to be Asia's second-largest red-light area. Additionally, other prominent red-light districts in India include G.B. Road in New Delhi and **Kamathipura** in Mumbai. These areas serve as hubs for commercial sex work and have their unique histories and dynamics. Prostitution, defined as the exchange of money for sexual services, is legal in India.

Sonagachi, G.B. Road, and Kamathipura are red-light areas with intricate social and economic systems. They are frequently distinguished by a network of brothels where sex workers work under different contracts. While some may work separately others can be connected to pimps or brothel

³Author Name-Khushi Katre, Title-Prostitution in India: Birth and Evolution, www.lawsisto.com, <https://lawsisto.com/legalnewsread/NTg1Mw==/PROSTITUTION-IN-INDIA-BIRTH-AND-EVOLUTION> (assessed on 26-06-2023).

proprietors. Additionally, these areas are home to support groups that offer services including medical aid, HIV/AIDS prevention, and vocational training to enhance the well-being of sex workers. These groups include non-governmental organizations and health clinics.

KINDS OF PROSTITUTES

There are various kinds of Prostitutes which are discussed below-

- 1) **Brothel Prostitutes-** They conduct their business at a brothel run by a former prostitute. A commission is given to the prostitutes in exchange for the sexual assistance they provide.
- 2) **Call Girl Prostitutes-** Normally, they operate separately from her location. She might be accessible directly or via middlemen.
- 3) **Street Prostitutes-** This group of businesses approaches potential clients on the street and drives them to a scheduled appointment.
- 4) **Other Forms-** Nightclubs, massage parlours, entertainment venues, dance clubs, and other establishments may all offer other forms of prostitution.⁴

GOVERNING LAWS RELATING TO PROSTITUTION IN INDIA

Prostitution is largely legal in India. Prostitutes are allowed to practice their craft in private, but organized and requested prostitution, such as in brothels, is illegal. Prostitution can occur outside of open areas. In India, only female prostitution is also considered negatively. For instance, if someone is engaged in the illegal activity of pimping, they would face legal repercussions; nevertheless, in India, receiving payment in exchange for consenting to have sex without prior request is likely legal.

Article 23(1)[7] of the Indian Constitution prohibits all forms of trafficking, including the use of women and children for bossiness and sexual exploitation. Any rejection of this agreement will be a crime punishable by law, according to Article 23(2)[8].

⁴Author Name-Mr. Shubham Kumar Singh, Title-Prostitution in Indian Society: Issues, Trends and Rehabilitation, www.lawaudience.com, <https://www.lawaudience.com/prostitution-in-indian-society-issues-trends-and-rehabilitation/> (assessed on 26-06-2023).

Along with the laws outlined in the IPC (Indian Penal Code), we also have unique laws like the Immoral Traffic Prevention Act (ITPA) and others. In the Indian context, prostitution isn't categorically considered unlawful because the legislation doesn't expressly state that it is. However, certain prostitution-related activities, such as managing brothels, seeking, dealing, and pimping, are typically punishable offences in India under THE IMMORAL TRAFFIC (PREVENTION) ACT, (1956).

The Immoral Traffic Prevention Act of 1956 was the first law created with consideration for prostitutes in India. The penalty for operating a therapeutic massage parlour or allowing a location to be used as a brothel is a few years in jail and a fine under Section 3 of the Law [10]. acquiring someone with the desire to use them for prostitution without acquiring their consent is punishable under Section 5[11] by a period of three to seven years in prison and a fine. Prostitution is not allowed in public areas or close by, as stated in Section 7[12] of the rule. Unfortunately, the act says nothing about the predicament of trafficked children or the brutal attacks that clients commit against women who work in the field.

Additionally, prostitution is governed under sections 372 and 373 of the Indian Penal Code of 1860, however, it is essentially restricted to child prostitution. Minors or teenagers who are coerced into prostitution for a multifariousness of reasons are considered children in forced prostitution. Child prostitution, more especially the purchasing and selling of juveniles for prostitution, is punishable under the Indian Penal Code, of 1860. Selling adolescents and teenagers for prostitution is punishable by up to ten years in jail under section 372 of the Code. The Code's Section 373 also provides for a ten-year prison sentence if a minor is bought to use the intention of using them as a prostitute. However, these parts' interpretations only show the exchanging of a girl kid and no young man.

But under Sections 366A, 366B, and 370A of the IPC, respectively, rebuffing for crimes involving the recruitment of younger women, trafficking of young women from abroad for sex, and maltreatment of a trafficked person is managed. As a result, there is very little prostitution that falls under IPC regulations.

Clause(A) Section 366 of the Indian Penal Code [16] addresses and administers penalties for obtaining an underage woman for unlawful intercourse. Similar debates on the trafficking of young women from foreign countries for prostitution are covered in clause (B).⁵

IMMORAL TRAFFICKING PREVENTION ACT 1956

The Immoral Traffic (Prevention) Act, also known as the PITA Act, was passed in 1956 as a result of India's signing of the International Convention for the Prohibition of Immoral Trade in Persons and the Exploitation of Prostitution of Others in New York in 1950. It was later revised in 1986. It was altered to become the current law, which was formerly known as the All-India Suppression of Immoral Traffic Act (SITA).

The regulations were created to regulate and ultimately abolish prostitution in India by gradually criminalizing various forms of sex trade.

- The 1986 amendment to this law made it clear that prostitution was lawful and that engaging in it or running a business that facilitates it was punishable by law.
- According to the ITPA, anyone who engages in soliciting, transferring, transporting, harbouring, or receiving individuals for prostitution is subject to punishment. The persona may serve up to seven years in prison.

IMMORAL TRAFFICKING ACT

Even with numerous changes and increased knowledge of the horrors of trafficking in humans, it is still a big problem for girls and kids of all ages and socioeconomic backgrounds. 16 million women and girls are the victims of sex trafficking in India, where there are around twenty million commercial prostitutes. Four females in India enter the prostitute industry per hour, three of them against their will, according to Legal Services in India. These appalling figures highlight the significance of the Immoral Traffic Prevention Act's (ITPA) enforcement.

THE IMMORAL TRAFFIC (PREVENTION) AMENDMENT BILL, 2006

To combat human trafficking and sexual exploitation, the Immoral Traffic (Prevention) Amendment Bill, which alters the Immoral Traffic Prevention Act 1956, was passed in 2006. On May 22, 2006, it was introduced in the Lok Sabha. On June 2, 2006, it was brought up to the standing committee. On November

⁵Author name-Sreyasi Sarma, Title-Legal Scenario of Prostitution in India, www.lexlife.in, <https://lexlife68840978.wordpress.com/2021/08/03/legal-scenario-of-prostitution-in-india/> (assessed on 08-07-2023).

23, 2006, the report was produced. According to the Immoral Traffic Prevention Act (ITPA) Bill, anyone who enters a brothel with the desire to sexually exploit trafficked people is subject to punishment. To combat trafficking, it also consists of state and federal authorities.

The total number of victims of human trafficking is rising every year, despite increased efforts to combat it and other crimes against people.

This demonstrates the need for adequate enforcement of the current laws for society as a whole to unite and put an end to this issue in our nation.

PUNISHMENTS UNDER THE IMMORAL TRAFFICKING PREVENTION ACT

The Immoral Traffick (Prevention) Act [PITA] Acts one where there were various penalties are prescribed and listed in various sections 3,4,5,6,7,8,9, Section 11,18,20, and 21. The offences are also punishable under the act:

- upkeep and use of the premises as a brothel;
- living off of the revenues of prostitution; pimping or engaging in other forms of prostitute solicitation;
- Prostitute in a public setting, seducing someone while they're being held, etc.⁶

In India, we have to say that Prostitution is partially legal.⁷

Whether Sex Workers are Accepted by our Society?

One of the survey answers to prove that the Aged between 18 and 40, 34 out of 50 respondents agreed that society should not agree to receive sex workers.

Do you think sex is considered work?

The Survey responded that 33 out of 50 respondents who were between the ages of 18 and 40 believed that sex was not work.

Do you think only those men who are depressed and feel lonely go to sex workers for their satisfaction and happiness?

⁶[https://byjusexamprep.com/upsc-exam/immoral-traffic-prevention-act-itpa#:~:text=The%20main%20aim%20of%20the%20Immoral%20Traffic%20Prevention%20Act%20\(ITPA,sexual%20exploitation%20of%20trafficked%20victims.](https://byjusexamprep.com/upsc-exam/immoral-traffic-prevention-act-itpa#:~:text=The%20main%20aim%20of%20the%20Immoral%20Traffic%20Prevention%20Act%20(ITPA,sexual%20exploitation%20of%20trafficked%20victims.) (assessed on 07/08/2023)

⁷ <https://wisevoter.com/country-rankings/countries-where-prostitution-is-legal/> (assessed on 08/08/2023)

The results of the survey show that 12 out of 50 respondents who were between the ages of 18 and 40 believed that males only resort to sex workers when they're feeling alone and repressed, while 38 others said there are several different causes for the same.

Does the legalization of prostitution reduce incidents of rape and sexual abuse?

The results of the poll show that 12 out of 50 respondents who were between the ages of 18 and 40 believed that males only resort to sex workers when they're feeling alone and repressed, while 38 others said there are several other causes for the same. According to survey responses, 27 out of 50 respondents who were between the ages of 18 and 40 believed that legalizing homosexuality would stop rapes and alternatives to sexual abuse.⁸

LANDMARK CASES REGARDING PROSTITUTION BE LEGALIZED IN INDIA

1) GAURAV JAIN V. UNION OF INDIA (1997)

In this instant case, after learning about a "red light trap" in India Today journal, an advocate brought a public interest lawsuit, according to the Court. Because the milieu in which prostitutes live is unhealthy for children, he offered prayers for separate inns and schools of vocational training where the children of prostitutes may live and possibly become more integrated into society. The Court also emphasized the necessity to end prostitution. Additionally, it mandated the construction of separate hostels for these kids as well as juvenile home facilities for their vocational training. The Supreme Court Bar Association, with the help of the original applicant Gaurav Jain, filed a review petition with the court to reflect the nature and application of "Articles 32, 142, and 145 (1) of the Constitution", as well as to request that the court issue directives for the abolition of prostitution. The Court rejected the recommendations for reducing poverty but maintained the recommendations for creating juvenile homes for the offspring of these sex workers.

2) BUDHADEV KARMASKAR V. STATE OF WEST BENGAL (2011)

In the case where he was found guilty of killing a prostitute by repeatedly hitting her head against the room's wall and floor, the appellant's appeal was rejected. A Public Interest Litigation was submitted by the Court on its initiative to address the issues facing sex workers. A panel was assembled with the guidance of an advocate, experts with social work expertise, and resource individuals. With the aid of a commission created specifically for the purpose, the federal and state governments were instructed to launch programs and policies for the vocational and skill training and rehabilitation of sex workers. The Court ruled that sex

⁸ Authors name-Janees Rafiq, Dr.Geeta, 'Title-Legalisation Of prostitution in India through the lens of Sdg's an empirical study, Res Militaris, Vol.13,n03, March Spring (2023) Page Number-(790,791,793), [www.researchgate.net](https://www.researchgate.net/publication/369550672_Legalisation_Of_Prostitution_In_India_Through_The_Len_s_Of_Sdg's_An_Empirical_Study), https://www.researchgate.net/publication/369550672_Legalisation_Of_Prostitution_In_India_Through_The_Len_s_Of_Sdg's_An_Empirical_Study (assessed on 08/08/2023)

workers have the same right to a dignified existence as other people and are protected by Article 21 of the Constitution of India. The Court pointed out some major points-

- to stop sex trafficking
- to help sex workers who wish to quit the sex industry get better to give sex
- Sex workers who are seeking to stay in the sector with a respectable existence and dignified working conditions.

The Court observed that the rescue effort is doomed to fail until and unless the relationship between the traffickers, Prostitutes, or family members is severed. The Court further ordered NGOs and various state governments to offer a helpline number so that people can resolve their disputes and get legal counsel as needed.⁹

CONCLUSION

The subject of legalizing prostitution in India is complex and fraught with ethical dilemmas. The potential advantages of improved safety, regulation, and empowerment for sex workers are enticing, but it is impossible to ignore the negative effects of possibly increasing demand, ethical questions, and the reinforcement of gender inequities. It is critical to understand that strong regulatory frameworks and a thorough approach to tackling related issues like trafficking, exploitation, and societal stigma will play a significant role in whether legalization is successful. Any decision to legalize prostitution must be supported by thorough research, consultation with sex worker communities, cooperation between government agencies and NGOs, and a commitment to continuously monitor and adjust policies as necessary in light of India's distinct cultural and socioeconomic context. A comprehensive strategy to lessen the predominance of the business must also address the core reasons for prostitution, such as poverty, a lack of education, and restricted economic prospects.

In the end, it is important to weigh the possible advantages and disadvantages of legalizing prostitution in India while also considering the wider implications for society, gender dynamics, and human rights. The well-being and dignity of sex workers must stay at the forefront of the conversation, ensuring that their opinions are heard and their rights are honored, whichever course is taken.

⁹ Author name-Rida Zaidi, Title-Judgements on rights of sex workers, www.blog.ipleaders.in, <https://blog.ipleaders.in/judgments-rights-sex-workers/> (assessed on 08/08/2023)