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# THE LEGAL ASPECTS OF PROSTITUTION

-Srinidhi R<sup>1</sup>

## ABSTRACT

The prostitution is always a legal, social and ethical issue to the world. The prostitution is often seen as a taboo and social stigma in the Indian society. There has always debate between the legislation and decriminalization of the prostitution. Prostitution seems as major issue by many feminist groups. They believed that prostitution affects and exploits the women. Prostitution may occur in various forms such as street prostitution, brothel and escort. The prostitution which involves both legal and moral aspects. It estimates that there are 3 million sex workers in the nation.

## INTRODUCTION

According to Oxford Dictionary of Law<sup>2</sup>, the prostitution is the exchange of money for sex. By definition prostitution involves at least two parties: The prostitute who accepts money in exchange in sexual activity and the prostitute user, who pays money in order to engage in sexual with the prostitute. Section 2(f) of the Immoral Traffic Prevention Act 1956 defines Prostitution means “the sexual exploitation or abuse of persons for commercial purpose, and the expression prostitute shall be constructed accordingly”.

Prostitution is one of the professions that have been seen as shameful by the society. Despite the fact that prostitution is legal, Indians believe it to be unethical and violation of cultural values. They are considered as abolished class in the society.

## HISTORICAL BACKGROUND

Prostitution is an ancient profession and it prevails in olden times also. The historians had different views upon the trace of prostitution. Some historians had different views upon the trace of prostitution. Some historians believe that prostitution was traced back in Vedic period. The earliest

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<sup>1</sup> Final year BALLB, Karnataka State Law University, Hubballi

<sup>2</sup> Oxford Reference ; <https://www.oxfordreference.com>

reference to prostitution are found in Rig Veda, the most ancient literary work of India where jara and jatini are depicted as male and female lovers of married spouse<sup>3</sup>.

The term Prostitution is also mentioned in ancient texts like Vedas and Kama Sutra. The Kama Sutra which was written by Vatsyayana discusses the rituals of love and role of prostitutes.

The Devadasi System was practiced where the young girls were dedicated to temples for worshipping the god but later sexual services included, which took the form of prostitution.

Later, in the Mughal Period, Tawaifs, courtesans who are skilled in arts, frequently graced the royal courts. The tawaifs or prostitutes lost their royal support and value of labor and eventually tawaif system declined.

Prostitution became more prominent during the British era, influenced by the presence of European soldiers and merchants<sup>4</sup>. They made minimal efforts in regulating the prostitution. At this time, poverty, social dynamics, hierarchy of caste and status, economic interest all came together to influence the development of brothels.

In the middle of 19<sup>th</sup> century, Contagious Diseases Act was enacted to regulate the prostitution and to prevent sexually transmitted diseases among the European population. Prostitution continues in the Independent India in many parts of the nation. The fundamental rights of sex workers were infringed. The sex workers often endure abuse, violence, social inequality and humiliation as prostitution deemed as unethical and immoral profession.

The movement for rights of sex workers also initiated during 19<sup>th</sup> and 20<sup>th</sup> century. The government also made several efforts including legal frameworks, social welfare programs and financial assistance and initiatives to prevent the human trafficking and upliftment of sexual workers.

## **LEGAL PROVISIONS RELATING TO PROSTITUTION**

The legalization of prostitution in India which has adverse impact on women there would be commercialization of women. So, the legality of the prostitution varies across the world. There may be partial criminalization where countries have laws that criminalized the certain part of the prostitution.

In some other countries, prostitution is legalized and also made laws to regulate the prostitution, such as Denmark, Hong Kong, Switzerland, Hungary, Latvia, Cyprus, Panama and new Zealand. According

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<sup>3</sup> Exploring prostitution in India ;Dhaaramagazines.in ; <https://dhaaramagazines.in>

<sup>4</sup> The History of Sex Work in India; <https://globalindiannetwork.com>

to World Population review, India legalized the prostitution in limited way where brothels, solicitation, and offering sell sex in public place is illegal. It is not explicitly illegal in India despite being viewed as unethical by court. Countries like China, Russia, Pakistan, Vietnam, Iran, Iraq has made prostitution as illegal.

The Constitution of India provides fundamental rights for every citizen irrespective of caste, religion, profession, race, sex or place of birth. The same shall be provided for sex workers.

Article 14- The concept of equality and equal protection of laws in its proper spectrum encompasses social and economic justice in a political democracy. It guarantees the similarity of treatment among all.

Article 19<sup>5</sup> – The every citizen has the right to practice any profession or to carry on any occupation, trade or business but subject to reasonable restrictions imposed by the State. The Supreme Court also recognizes prostitution as a profession.

Article 21- It states that no person shall be deprived of his life or personal liberty except according to the procedure established by law.

Article 23- This article prohibits traffic in human beings and beggar and other similar forms of forced labor. The term traffic in human beings which includes a prohibition not only of slavery but also of traffic in women and children for immoral purposes.<sup>6</sup>

Under Immoral Traffic Prevention Act 1956, states that “ prostitution can be legally done, but soliciting people and luring them into sexual activities is illegal and prohibited by law, if any person involved in this kind of work shall be penalized.”

## **SUPREME COURT’S VIEW ON SEX WORKERS**

“A sex worker deserves a billion times more respect than the mystical fraudsters of society, such as astrologers psychics and tarot card readers “ - Abhijith naskar

In May 2022, a milestone was reached by Supreme Court of India in the case of Budhadev Karmaskar v/s State of West Bengal. The honorable Supreme Court delivered the landmark judgment which declared the sex work as a profession under Article 19(1) (g) of Indian Constitution.

The case challenged the constitutional validity of section 8 of West Bengal Prevention of Immoral Trafficking Act, 1950 which criminalized soliciting and living of the earnings of the prostitution. The

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<sup>5</sup> VN Shukla, Constitution of India, page no 43, EBC Publications, 14<sup>th</sup> edition.

<sup>6</sup> Durga Das Basu, Introduction to the Constitution of India, page no 123-125, 25<sup>th</sup> Edition.

Supreme Court framed the guidelines to address the plight of sex workers for their upliftment, as there is no separate law relating to prostitution.

The Supreme Court held that recognizing sex work as “profession” whose practitioners are entitled to dignity and equal protection under law. The three judge bench led by Justice L Nageshwara Rao gave directions in order which was passed after involving special powers under Article 142 of Indian Constitution. The bench also ordered that since voluntary sex work is not illegal, if it is done by an adult, thus sex workers should not be arrested or penalized or harassed or victimized, whenever there is raid on any brothel.

The child of sex worker must have basic protection of human rights, decency and dignity. They should not be separated from the society, merely on the ground that his/her mother is a sex worker. The court also ordered to provide medico legal care for sex workers who are victim of sexually abuse or assault.<sup>7</sup>

The police do not discriminate against sex worker while filing complaint. It is often seen that attitude of police towards them is brutal and violent. The voluntary sex work in India has always been legal. The Supreme Court emphasized dignity, autonomy and consent of sex worker under Article 21 of Indian Constitution.

## **GAURAV JAIN V/S UNION OF INDIA**

This petition is based on the article “A red light trap- society gives no chance prostitute’s offspring” published in magazine India Today.

In this case, the Supreme Court used the term ‘fallen women’ instead the word ‘prostitute’ throughout the judgment. The Supreme Court gave directions regarding the rescue and free establishment of prostitutes and their children in society.

The Supreme Court states three Cs that is counseling, cajoling, and coercion were necessary to effectively enforce the provisions of statutes. Every child has the equal rights and opportunities, right to life and dignity. Further held that society is also responsible for women who entered into prostitution. It is the duty of the state to provide rehabilitation by empowering the children of fallen women. The government has to take measures for socio economic development of fallen women, so that she can up bring her child and live with dignity<sup>8</sup>.

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<sup>7</sup> The Hindu; <https://www.hindustimes.com>

<sup>8</sup> Lexpeeps ; <https://lexpeeps.in>

## **CONCLUSION**

There has been debate about the decriminalization of sex work. Decriminalizing the sex work ensures rights and legal protection of the sex workers which includes justice, equality and health care. The most of the sex workers are entered into this industry in spite of the poverty. Legalization of prostitution also ensures the financial assistance for those sex workers. Although we are living in 21<sup>st</sup> century, we trapped in blind believes and superstition. Woman have the right to make her choice and it's her decision that how to use her body. Nearly on the ground that is she is a sex worker, she cannot be isolated from the society. She also enjoys every rights and privileges man for every citizen of nation.