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# Legalisation and Regulation of prostitution in India: Issues and Challenges

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## ABSTRACT

*The Legalisation and regulation of prostitution in India is a perpetual polemical debate. Though marked as unethical, it is thriving behind the curtains in India. India is also a nest to the largest red-light districts in Asia with thousands of Brothels and pimps selling minor girls and women for sex without consent or any protection, thus also home to rapidly growing human trafficking and increasing STD.*

*Prostitution is the oldest profession in the world, as also mentioned by Kautilya in his masterpiece 'Arthashastra', and eradicating this profession is futile.*

*As quoted by the Honourable Supreme Court in December 2009 - "if you cannot curb it by laws, then legalise it", it also added that legalising prostitution would help monitor the trade and rehabilitate sex workers.*

*This paper is written in the context of an evolving minded societies where criminalisation doesn't help the prostitute abscond from prostitution, and legalisation wouldn't snare them in it. Writing this paper, my initiation is to throw light on the path of a welfare system where the profession is regulated and protects minors from sexual exploitation, basic rights, and safety as being involved in sex work doesn't mean that consent is negated, rights in the workplace, health card with routine checkup's, removal of middlemen man and pimps, with also comparative studies with countries that have legalised and regulated it.*

**Keywords:** Prostitution, Legalisation, regulation, sex work, profession.

## I. INTRODUCTION

Prostitution as an establishment can only be acknowledged when we as a society travel over and inspect closely into the sea bed of the lives of the prostitutes at work, on what basic foundation their work rest on instead of just condemning their work as being immoral and unethical. Growing up as a child in a convent, there was a balcony in our hostel dorm directly giving us a view of the small colony beside our hostel. The girls in our hostel took the balcony as a window to the outside world and would grab every single opportunity to be lurking and absorbing the daily routine of the people's lives outside. However, this daily lurking ignited a

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curiosity about a particular event of a woman who lived just below the balcony as she always had different men coming into her house.

Being very young, we had no idea what to conclude from that scenario. We sat down to assume many different things, which soon became the subject matter of our passionate debate. We would curl up in groups to decipher out a suitable explanation of the scenario; soon, one of our seniors who lived in that very colony did give us the revelation of our passionate debate stating that the woman was a prostitute and a widow who worked giving sexual pleasure to men in exchange of money as she had a child a young boy same as our age to look after and had no other source of income. The senior also stated how her son was sent far away to pursue his education, so he doesn't get effected by how she earned their money for living. Well, we never had encountered this kind of profession before, and the least I knew about it was through some movies I had watched. The revelation did, however, create different opinions and contradicting views; some were clear that the act was immoral, while others pitied the women. I had no idea about the very professional, but in the core of my heart, I knew it surely was the most one of the hardest roads that she took in her life, walking the path of a prostitute. And the very next day, when I stood on the balcony and saw her, I now saw her in a different light, in the light of respect and admiration not of the profession she had chosen but the courage to face yet another day, sexual needy customers, the judgments and downgrading treatment by the society to earn with honesty her own livelihood with a smile on

her face.

Yes, prostitution is not the last resolve to earn a livelihood, but we as outsiders can't comprehend the events that drove them to the profession of a prostitute. Maybe it's a realization that, after all, our body is meant to provide us our livelihood; some work as a daily laborer, while some use their brains to do coding and invent, also others work in the showbiz for eye-pleasing. There are perhaps numerous ways one uses his or her own body to live this life, and prostitution is one of the many lines.

If we trace back the history and evolution of prostitution, it has made a long journey of struggles; today, not only that the prostitution reached a startling rate, but the shapes and configuration of the act have drastically changed too.

This establishment of prostitution has lived through in one form or another comprehensively in all class-based societies. During the ancient period, female prostitutes in various societies were intimately associated with religious practices, whereas today, in our modern era, the act of prostitution is mostly inclined to be associated with profligate, crime, and social damnation. In

India, the act started as the route of devotion. Anciently, there prevailed the Devadasi system, wherein it was a widespread custom and practise among Hindus to give their female child to dance in temples and worship God. However, with the decrease in feudalism, these so-called Devadasis lost their protectors and were mishandled by the temple priests. Thus resulting in the earliest form of prostitution in India.

During the colonial period in India, the main reason for prostitution was when the Britishers took over the textile industry. Other occupations of the Indian people came to a halt, thus increasing poverty and leading to prostitution as a source of livelihood.

These last four decades have seen the rise of prostitution in every part of the country at an alarming rate and occurrence of momentous changes; the forms and canals of prostitution have diversified into vast branches as of a tree. In countries where prostitution is assumed to be a part of the economy generating sector, it contributes a significant input to the economy of the country's development.

## II. THE LEGALITY STATUS OF PROSTITUTION IN INDIA: ISSUES AND CHALLENGES

In defiance of the immensity and multitudinous proportions of the occurrence of the act of prostitution in India, it has been given scant inquisitive heed. For example, the relevant literature on prostitution in India doesn't project explicit conceptual assumptions.

There are mainly three approaches, or we can say three clashing views on prostitution in India; the first is<sup>3</sup> -

*The moralist* -this approach of views represents and clearly states that the act of prostitution is immoral and contravenes the ethical standards of a human being, firmly believing that the show itself is a sin and unacceptable in civil society; thus, it must be eradicated with the adoption of disciplinary measures and sanctions, Second approach.

*The institutionalist*- This approach or view decipher the act of prostitution as one of the oldest professions of the society, arguing that the maximum a state can do is to control this act marginally, and the profession itself can't be eradicated. This approach holds a view that the work can be regulated for the welfare of all and can only be controlled by a state body with authority.

*The feminist* -this third approach project out feminists' views and women-centric approach and disagrees with both the above guidelines; it states that prostitution has only one single aspect

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<sup>3</sup> MYADVO, ( April 15, 2022, 1. 11 Am), <https://www.myadvo.in/blog/prostitution-in-india-read-its-causes-legality-and-law/>.

that is the predominant of the male upper hand in the society and thus the act justify the unequal gender relations, thus women being a subject in the being the forms of various exploitation. The sanctions or penal provisions nor any amount of moral condemnation can eradicate prostitution.

As per the Indian Penal Code,<sup>4</sup> definite ventures related to sexual activities are not, on the whole illegal as such. However, this status of hanging by a thread between the bridge of not being fully legal nor either being entirely unfair, the prostitute who are the actual sufferers in this chaos is indeed at unrest. In to- day's world with evolving generations where the nature of one's rights, from the right to life and necessities to the right to work to the right to a safe workplace, we, as a society of civil beings, have come a long way. Also, the rights to feel safe workplace with such landmark cases as Vishakha guidelines protecting women at a workplace where the Honourable Supreme Court in 1997 has given the definition of sexual harassment, would a prostitute be able to reach out to these guidelines in times of such exploitation at their workplace because sex work definitely doesn't mean that the consent is absent. With the status of the uncertainty of their profession, would a police officer pay heed to a prostitute filing complaints of exploitation? In the Indian scenario, prostitution is not clear cut illegal though enunciated to be unethical by the Court; certain acts that make the prostitution possible are considered unlawful, and actions such as running a brothel, using the money obtained using prostitution, soliciting or luring a person into prostitution, traffic of children and women for prostitution, etc. are made explicitly illegal by the Immoral Traffic (Prevention) Act, 1956 (ITPA)<sup>5</sup>. For example, managing a sex racket is unlawful, but private prostitution or receiving remuneration for sex with consent without prior solicitation might not be illegal. So what is the sex venture? One is qualified to be penalized in correspondence with laws in India.<sup>6</sup>

- Soliciting services of prostitution in public places
- Carrying out prostitution activities in hotels
- Being the owner of a brothel
- Pimping
- Indulge in prostitution by arranging a sex worker
- Arrangement of a sex act with a customer

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<sup>4</sup> Indian Penal Code, 1860, No 372, Imperial Legislative Council, 1860 (India).

<sup>5</sup> Supra Note 1.

<sup>6</sup> Ibid 4.

The set of circumstances of the acts or ventures of prostitution mentioned above are enormously instead happening and are indeed the primary occurrence of prostitution in the real world. So by terming them as illegal, does the Indian legal system make prostitution illegal? If we see at the list, there are mentions of not living off the money procured by prostitution which is the main reason many prostitutes dive into the profession.

ITPA terms the act of “prostitution” as sexual exploitation or abuse of a female for financial motive, and a “prostitute” is the one who acquires that economic gain. The Indian Penal Code of 1860 also acts toward prostitution but is restricted to child prostitution. Nevertheless, it strives to battle crimes like kidnapping in whole, kidnapping for the motive of seduction and persuading a person into sex, bringing girls from abroad for sex, etc.

In addition, Article 23(1) of the Constitution<sup>7</sup> prohibits traffic in human beings and beggars, and other similar forms of forced labor.

According to penal law, article 23(2) declares that any contravention of this provision shall be an offense punishable.

The primary statute in India governing the act of prostitution is the Immoral Traffic (Prevention) Act, 1956. The legitimacy of this Act was objected to in the case of *The State of Uttar Pradesh v Kaushalya*. The case matter presented a scenario where groups of prostitutes needed to be withdrawn from their place of residence as said to keep the decency in the city of Kanpur. The Allahabad High Court stated that Section 20 of the Act abbreviated stating the fundamental rights of the opposition party under Article 14 and Article 19(1) sub-clause (d) and (e) of the Indian constitution. The Act was constitutionally valid as there was a knowledgeable differentiation between a prostitute and a person creating inconvenience or nuisance in society.

This Act aims to subdue prostitution in women and girls. It obtains a purpose at a general level, also to come to the aid of dishonored women and girls and get rid of prostitution and thus give chances to the victims to enable them to be part of the so-called decent society again. This Act looks to criminalize the acts that amount to prostitution as written in the above paragraphs and authorizes the police force to discard them, shut down brothels, and shift them to establishments that may rehabilitate them. It commissions the Central Government to set up a Special Court to try offenses under this Act.

The Act itself reflects many loopholes as even rescuing the victims or a prostitute, the society

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<sup>7</sup> INDIA CONSTI. art 23, cl. 1.

at large would never let them fit in. There is always a connection to their past works, and the so-called decent society can't let them impure their organization.

### **A PUT FORWARD OR SUGGESTED AMENDMENTS OF 2006: HIGHLIGHTS.**

A suggested proposal was put forth in 2006 to amend the Immoral Traffic (Prevention ) Act, and it has not been yet imposed. The amendment bill sub- tracts out the provisions that penalize prostitution by soliciting clients. This suggestion was put forth to extend punishment and raise the ficient amount. It seeks to criminalize the very act of paying a visit to a brothel for the aspects of sexual exploitation of trafficked victims with imprisonment of at least three months or a fine of Rs. 20,000, which has not been criminalized in the Act.

The bill amount to authorities at the center and state level to battle trafficking. The word “trafficking in persons” has already been defined with a pro- vision for punishing any person who is guilty of the offense of trafficking in persons for prostitution.

### **III. LAWS AND SUGGESTIONS FOR THE PROTECTION OF SEX WORKERS AND THEIR RIGHTS**

The right to life preserved under Article 21<sup>8</sup> is also pertinent to a prostitute. This statement was taken up in the case of *Buddhadev Karmaskar v State of West Bengal*<sup>9</sup>. The primary subject matter of the case was that sex workers are also human beings like all of us in the society, breathing the same air, striving hard to earn their livelihood, and that yet other human beings have no such rights to assault or downgrade them just because of their profession, the prostitute shares the same amount of freedom to live, and we do. This case judgment also focuses on the predicament of sex workers. It comprehends that these women are coerced into prostitution not for pleasure but because of creeping poverty and thus administer the Central Government and State Governments to establish rehabilitation centers and relay technical and vocational skills such as sewing to attain other means of livelihood. Regarding the suggestion, the Immoral Traffic (Prevention) Act has included Section 21 as a rule for the State Governments to set up and demonstrate protection homes that need to be should be managed and regulated by licenses issued to them. A suitable power should be specified for embarking on thorough research and investigation to appeal the permit for the protection of homes. These licenses are not transmittable or passed to another person,, and they should only invalidity only for the described

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<sup>8</sup> INDIA CONST. art 21.

<sup>9</sup> *Buddhadev Karmaskar v State of West Bengal*, (2011) 10 S.C.R. 578 (India)

can the Government can generate income and taxes from the conduct of the prostitution, regulating would help the statutory bodies of India to keep track of prostitution to adhere to forced prostitution, minor and human trafficking. The male prostitution industry is still unrecognized by law, calling for due attention. On that note, rules shall be amended to include men and women.

#### **IV. ISSUES AND CHALLENGES OF LEGALIZING AND REGULATING PROSTITUTION:**

The legalizing of prostitution can work as such

##### *1- Issuance of licenses to the individual sex workers :*

-This issuance of the licenses will work as an identity card like any other regular workplace badges with proper age, photo, consent, and imposing the necessities of the card to be available at times of inspection and registering names in public records.

##### *2- Regulate Brothels as per laws :*

Yes, running brothels is illegal and penalized, but it still functions on a large scale, and also, suddenly shutting them down would displace many prostitutes living under the roof with no place to go. Thus, running the existing brothels with proper regulations and laws with good food and adequate sanitation would create a healthier environment for prostitutes.

##### *3- Database of every new prostitute:*

-It is highly a concern that legalizing and regulating would give an access to the Authoritative body to have a database of any new prostitutes with their ages, causes if the authority can find them an alternative job, etc

##### *4- Taxes to be collected :*

As every citizen of the country pays taxes to the Government, contributing to the country's economy, the government could adhere to the people's needs and protect its citizens, same way the prostitution can help to impose some revenue according to their incomes.

##### *5- Health cards :*

Just like we have health policies or insurance policies, the prostitutes should be given health cards with regular checkups and some awareness about the use of protection and safe sex so that the sexually transmitted diseases don't spread as they are spreading today.

##### *6. - Consent of prostitution :*

-Thus, having emphasized heavily the need to consent to prostitution because sex works nowhere means the consent is null; the sexual activities against prostitutes against their will



should be considered a rape like any other fellow human being under the Indian laws.

#### *7. Establishment of rehabilitation centers for victims of prostitution:*

-Other than voluntary prostitution, if the Authorities rescue victims who were forced into that profession or even those who don't want to continue the sex work due to any circumstances, there should be rehabilitation centres and alternative rescues homes or hostels teaching education or any other crafts that would sustain them their independent livelihood, e.g., as interned with Human Rights commission in Goa they have established many rescues homes for victims of sex trafficking for run Laundry business and other jobs as their families don't accept them back. It is saddening to hear real-life stories of victims rejected by their own families even after the Authorities have managed to pull them out of prostitution.

On the other end of the road, in no way should legalization and regulation of prostitution be miscalculated as the giving a pat on the back of prostitution as a green signal to expansion and thriving under the eye of the Authorities; the only reason behind regulating it is the incapability of curbing it out by roots thus holding it so that further crimes as human sex trafficking, minor trafficking for sex business, mistreat of existing prostitutes, increasing STDs can be stopped. Other mishaps didn't spread through this undying profession.

### **V. A COMPARATIVE STUDY WITH THE OTHER COUNTRIES THAT HAVE REGULATED PROSTITUTION:**

Prostitution is considered a black block in the society; the profession is used to downgrade a person and their character and is often referred to as a sinful unethical act, but strangely the world, in every nook and corner of our society, the very act of prostitution exists, and more than that flourishes. There is no country free of the infectious aura of this particular act.

The Netherlands was one of the first countries to implement measures to rectify and reform prostitution in 1983. In 2001, it was entirely legalized; the Legalisation meant voluntary prostitution and penalized and forbade involuntary participation.

Prostitution is also legal and regulated in Germany; it helps prostitutes create a safe trade of sex, facilitating them with routine medical care, government services, and tax revenue payers.

Most countries like Switzerland have legalized prostitution since 1942 and are protected under their constitution.

In New Zealand<sup>10</sup>, the profession was legalized in 2003. Even brothels operate under the

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<sup>10</sup> SCOOP, (April 15, 2022, 1. 11 Am), <https://www.scoopwhoop.com/inothernews/countries-with-legal->

authority of laws under public health and statutory employment bodies, meaning that sex workers get social welfare like any other government employee.

In Austria, prostitution is wholly legal; it is necessary for prostitutes to register, undertake regular health checkups, age to be 19 years or older, and pay taxes.

Belgium, the country just, has not legalised prostitution but is also at the peak of trying to curb out stigma, violence, and fear about prostitution; they are also very advanced in running brothels with fingerprint technology and keycards.

## **VI. CONCLUSION**

Every second we waste thousands of women, men, the children coerced into prostitution under the nose of the Police and other statutory bodies.

The government, society, NGOs, and international laws like the convention on eliminating all forms of discrimination against women. Article 6 mentions states that the state should take “all appropriate measures to suppress all forms of traffic in women and exploitation of the prostitution of women”

These failures from every section of the society instead increase the suffering and agony of the sex workers as they hang in thin air and grasp for air between ill-treatments from the customers in any case as they can't report it to the police, also bearing the burdens of judgments of the people near and dead and the society causing them mental torture. Also, no rights and neglect in health centers are not good either. The maximum odds of getting into prostitution are out of necessity and no personal choice of a prostitute. Still, once they indulge in the profession, the world shuts its door for them forever with no light of return.

The only savior in this modern era of explosive expanding of prostitution is to legalise and regulate it by law, as trying to eradicate it by law for decades has been searching for a needle in the hay. But also, at the end of the day, society at large needs to start an acceptance that prostitution is a profession and it's here to stay no matter the condemnation of immoral policing. Instead, it's high time to empathies with the survivors of prostitution of free will as their source of income until they don't conduct their profession at your doorstep.

The paper presents different aspects of why this profession should be legalised and regulated instead of letting it stand in the middle of weight with no inputs on both sides of its scale. There is also a dire need for sex education in our early education so that every growing teenager or

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prostitution/.

youth knows the aspects involved in sexual activities and doesn't hesitate to discuss the topic with a liberal mind.

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