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Legalization of Prostitution and its Effect on Human Trafficking in India

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ABSTRACT

Prostitution is an occupation during which people engage in sexual intercourse for commercial purpose. Prostitution features a long history in India ideal from the antiquated circumstances till the 19th Century in British India and a broadly perceived social reality today. The casualties of the trap are poor people, unskilled and ignorant areas of the overall public and are the target gathering within the tissue exchange; rich groups exploit them and collect at their wretchedness and disgrace during a composed gangster's, specifically, with police nexus. It had been likewise said that a category of women are caught as casualties of circumstances, unfounded social authorizations, handicaps and coercive types sexual exchange, upgraded as 'prostitutes'.

Throughout this research paper, the term 'sex labourer' are going to be utilized wherever conceivable. The term 'prostitution' or 'prostitute' could be alluded to, be that because it may, while talking about case law or authoritative text that has embraced this term. This research paper goes for investigating parts of sanctioning of business sex add India and whether it's plausibility in light of the various social and penal constraints that are existent in our nation. The paper will begin with an expansive diagram of the international legitimate structure on prostitution, sexual assault and trafficking and therefore the safeguards involved inside them. This international structure would incorporate different treaties and conventions that India has sanctioned and therefore the means in regard of penalizing. This paper will consider such steps of penalization that might be implemented in India.

Keywords: *Constitution, Prostitution, Penalization, Sex Workers, harassment*

I. INTRODUCTION

“Slavery still exists, but now it applies to women and its name is prostitution” - This was quoted by Hugo. It explains how deprived women are, though our constitution ensures right to equality there are times and few professions where equality doesn't really exist.

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Women, who work as prostitutes are deprived and that they roll in the hay to earn a living. As indicated by the Immoral Traffic (Prevention) Act, 1956, 'prostitution' implies the sexual exploitation or manhandle of individuals for business purposes.¹ Prostitution in India may be a Rs. 40,000 crore annual business and 30% of the sex labourers are youngsters whose exploiters acquire a whopping Rs. 11,000 crore. As indicated by a review, there are around 10 million sex specialists in India out of which 100,000 are in Mumbai alone, Asia's biggest sex industry focus. There around 300000 to 500000 youngsters in sex exchange India among which Bangalore alongside five noteworthy urban areas together account for 80% of tyke whores within the nation. These figures are startling and point towards the importance of a licensed intercession of the State to see this essential underhandedness. Prostitution belongs to a category of profession which involves large amount of physical tolerance, endurance and risk. This profession is further effected by various social and cultural norms; this suggests that they're victims of social stigma and poverty. During this scenario it's necessary that law injects during this vicious circle so as to strike a balance and to empower and safeguard those that are abused. The case of those sex workers are much worth or on an equivalent level of that as transgender individuals and poverty stricken individuals. These persons become the victims of sexual assault, public bashing, lack of health care facilities, several variances of mental diseases, etc. Though prostitution is against the law in India things is different in other countries where they need been given a status and hence curbing plethora of malpractices adjacent with the profession. Like, how a coin has two sides penalizing prostitution has its own pros and cons. While the pros would be that it provides continuity to the govt , provides a system of equality to the government structure, it offers more security than other sorts of government and it creates a better level of neutrality And cons would be: it are often implemented with varying levels of power, it focuses political power into people, it provides no guarantee on the standard of rule, it can discourage needed social change etc., analyzing the consequences of both these situations consistent with the prevailing conditions a determined body of laws are often constructed to match the requirements³. The constitution though doesn't expressively discuss the rights of sex workers it does implicitly provide basic human rights in Article 14 which speaks about Right to equality, Article 15 ensures that There shall be no discrimination on the basis of sex, caste, race, religion or place of birth, Article 21 ensures right to non-public liberty and life, and Article 32 ensures that each

³ Immoral traffic (prevention) act, Pub. L. No. 54-86 S 2f (1956)

citizen features a right to approach the supreme court for the enforcement of the proper if he or she has been bereft of an equivalent .

II. HISTORY

The Ancient Era Middle East was home to numerous places of worship, sanctuaries or "places of paradise," which were dedicated to different divinities. These holy places and sanctuaries were recorded by the Greek historian Herodotus within the Histories, where sacred prostitution was a typical practice. Sumerian records going back to 2400 BC are the foremost punctual recorded say of prostitution as an occupation. These depict a temple-brothel operated by Sumerian ministers within the city of Uruk. This kokum or sanctuary was dedicated to the goddess Ishtar and was the house to 3 evaluations of women. The most review of women were just allowed to perform sexual ceremonies within the sanctuary, the second gathering approached the grounds and obliged guests, and therefore the third and most reduced class lived on the sanctuary grounds. The mediocre class was additionally allowed to get clients within the lanes. In the later years, regulated prostitution for females existed in Greece, India, Japan and other countries. A Tawaif was a courtesan who created to the nobility of south Asia, especially during the Mughal era. Such people would dance, sing, make poetry and entertain people (kings and other people). The most purpose was to entertain the guests. Sex at this point, wasn't a contractual agreement but was often incidental. The very best classified tawaifs would pick any of the prostitutes who successively would dance, play music and work for them. The term "Devadasi" was utilized in India particularly to explain an individual who was referred to as a servant of Deva, such Devadasis didn't only add the temples, but they were considered as holy. Devadasis were married to a deity or Devi. They were alleged to lookout of the temples and perform rituals. They also involved themselves in performing, Bharatanatyam and other classical arts. Thanks to these reasons they enjoyed high class social station. Many temples were destroyed within the Islamic times thanks to which there was a fall within the system of devadasis and standing of temples fell quickly in India. The temples lost their kings and that they were also destroyed and therefore the devadasis who served the temples didn't have an area to travel and that they became poorer and hence they were forced into prostitution. The concept of prostitution became quite popular within the 18 and 19 century when the Britishers invaded India⁴. Devadasis danced and entertained them. But when British ladies started visiting India the

⁴ Martha Shaffer & Sylvia Davis, Prostitution in Canada: The Invisible Menace of invisibility (Feb 27, 2020, 3:34 PM) <http://www.walnet.org/csis/papers/sdavis.html>.

demand for Indian prostitution decreased.

III. LEGAL FRAMEWORK OF OTHER COUNTRIES

New Zealand

The current law regarding prostitution in New Zealand penalizes the practice of prostitution. New Zealand now has the foremost liberal laws of prostitution than the other countries within the world. Before 2003, there was an enormous practice of prostitution during this country behind the curtains of massage centres. This alteration after 2003 was caused for the prostitutes to urge police protection just in case of emergencies. Now there are brothels and sex services throughout New Zealand, evidentially in larger towns and cities. They penalized prostitution for several reasons. sexual activity was one among the explanations . Sexual activity means to use condoms while engaging in such sexual activities which is to mention that each one the sex workers are regulated to use protection while engaging in such activities (to avoid any transmitted diseases).

Victoria, Australia

Current laws on sex add Australia varies from state and territory as a results of major reforms that occurred in New South Wales, Queensland, Victoria and therefore the Canberra territory in 19970's and 80's. The new legislation passed in Victoria continues to criminalize all sorts of prostitution apart from those through Escort services or licensed brothels. On the opposite hand, New South Wales has decriminalized all sorts of sex work. However, living off the earning of the prostitution of another person is prohibited by law. But this experiment of Victoria has failed. Be that because it may, a couple of or all kinds of sex work are criminalized in Tasmania, Western Australia and South Australia. While enactment in South Australia and Western Australia stays noiseless on private specialists, Tasmania's enactment makes it legitimate for up to sex labourers to figure from similar premises, on the condition they do not utilize or affect one another.

Bangladesh

Male prostitution is banned in Bangladesh whereas, but everything else is penal. Offering your own particular body for sex is lawful. Purchasing sex is illicit. Along these lines the exchange beat all is lawful with reference to the dealer and illicit with reference to the purchaser.

Sweden

The laws on prostitution in Sweden make it unlawful to get sex, yet to not offer the use of one's own body for such administrations. Obtaining and dealing a house of ill repute stay unlawful. The criminalization of the buy of sex, yet not the offering of one's own body for sex, was novel when initially sanctioned in Sweden in 1999, however from that time forward, Norway and Iceland have embraced comparable enactment, both in 2009, trailed by Canada in 2014, Northern Ireland in 2015, France in 2016 and therefore the Republic of Eire in 2017. This approach targets men as clients and penalizes them with imprisonment. The main aim is to regulate socially unacceptable behaviour and encourage sex works to urge back to the mainstream of life and live a traditional and healthy life. These countries mentioned above could also be far advanced within the system concerned with public moral definitions, but the most question is whether or not such laws, if applied, would add India or not.

IV. INDIAN LEGAL FRAMEWORK

The laws overseeing sex add India is involved within the Constitution of India, 1950; the Indian penal code, 1860 and therefore the Immoral Traffic (Prevention) Act, 1956⁵. The Constitution aside from the equality provisions and provisions of freedom of association, Right to life and personal Liberty, guarantees prohibition of trafficking of citizenry and made labour, ensures denial of trafficking of people and constrained work. As mentioned within the preamble of the constitution of India may be a sovereign, socialist, secular, democratic and republic country and equality of status, dignity, and opportunity must be secured for all the citizens of our country. Regardless of gender, caste, religion, status etc. The constitution of India provides surely laws which ensure right to equality, freedom etc., a number of rights ensured under the constitution are:

- a) **Article 14:** Article 14 ensures right to equality under law which suggests that each citizen features a right to equality before law and features a right to measure a life free from discrimination on ant grounds⁶. It provides every citizen with equal opportunities.
- b) **Article 15:** Article 15 of Indian constitution ensures that there shall be no discrimination done on the basis of sex, caste, race, religion or place of birth. It states that state shall not discriminate any citizen on the idea of above mentioned cases.
- c) **Article 21:** Article 21 ensures right to non-public liberty and life. It ensures that there

⁵ Ratnamala and Another v. Respondent 31 AIR Madras (1962).

⁶ Sahyog Mahila Mandal v. State of Gujarat 2 GRL (1764).

shall be nobody who would be deprived of personal liberty and life.

d) **Article 32:** This text ensures that each citizen features a right to approach the Supreme Court for the enforcement of the proper if he/she has been bereft of an equivalent⁷.

e) **Indian penal code, 1860:** As a result of rising crimes like harassment against women there was a replacement section which was added within the Indian penal code within the year 2013 through the crime law (amendment) act, 2013, which enlists the acts constitute offense of harassment and it also imposes punishments/penalties like act committed against women. The person committing any such offense against women are going to be punishable with 1-3 years of imprisonment or fine or both.

f) **Article 354 of IPC:** under the Indian penal code, article 354 states that, when with none consent of the ladies, acts of any kind or physical attack or intentional force are committed to outrage her modesty, then the offender shall be fined or sentenced to 2 years of imprisonment or convicted with both; it ensures punishments and penalties for the offenders who commit crimes against women and sexually abuse them⁸.

G) **Within the chapter of twenty-two of criminal intimidation, insult or annoyance, commission act,:** Any quite words used or intentional gestures to insult the modesty of a women or to harm her privacy in an offense which is cognizable, bailable and trialable by any magistrate and may be punished by way of fine or sentence upto 2 years of imprisonment or with both.

Under Part IV of directive Principles of State Policy: The State is required to coordinate its strategies towards securing, inter Alia, that both men and ladies have an equal right to satisfactory methods for livelihood, that wellbeing, health and strength of workers not be abused, which citizens aren't forced by necessity to enter avocations unsuited for his or her age and strength, promotion of education and economic interests of weaker sections of society, ensuring their protection from social injustice and exploitation, requirement of fostering respect for law of nations and treaty obligation. The Andhra Pradesh Supreme court has observed that these rights and duties are imposed on the citizens also as on an equivalent (Government). The citizens, when, have a right, the duty lies within the state and when the duty is imposed on the citizen, the rights vests with the state (Co-relative rights and duties). The Indian penal code has a minimum of

⁷ Mellisa Farely, Bad for the body , Bad for the heart , 1090(2004)

⁸ 10(10) Robert william, Voilenece against women 1087 (2004)

20 provisions that make trafficking punishable. Most of them affect abduction for illicit intercourse, wrongful confinement after abduction inter-alia. An outsized portion of them affect unlawful intercourse, wrongful confinement after abduction inter alia.

Immoral Traffic (Prevention) Act, 1956

The essential little bit of enactment managing sex work is that the Immoral Traffic (Prevention) Act, 1956 (hereinafter ITPA). The Act primarily makes pimping and different exercises culpable, which provides a business angle to prostitution that's likely to abuse the individual of the prostitute. The Act prohibits commercial activities of flesh but it doesn't prohibit prostitution intrinsically. It's held that so as to prove prostitution a lady or girl is required to point out that she has offered her body for sexual activity for hire⁹. Section 3 of the ITPA provides for punishment of a person who allows or is responsible of the premises, uses such premises or knowingly allows somebody else to use it as a brothel or conducts any activity prohibited by the act. Consistent with this act, even one incident is enough to prove that prostitution was being help during a particular place. Offenses under ITPA are provided from section 3 to section 9 during a few judgments it had been explained that ITPA aimed toward abolishing the commercialized trafficking in women. In one among the cases in Gujarat, The supreme court refused to acknowledge prostitution as a legitimate means of living, this is often because, such recognition by law would give an open invitation for ladies to be trafficked and also recognize such recognition to be misunderstood as a fundamental right. The restrictions which were imposed in section 7 under the Act were held to not be discriminatory. Under the Act if ITPA, a Magistrate features a right to get rid of a prostitute from anywhere for the aim of public good. It's also important to understand that, this act doesn't punish the client whatsoever. This law expresses that prostitutes are permitted to hold out their specialty privately however they cannot do their business within the open. A piece of writing distributed in BBC states that prostitution is illicit in India. Indian laws however don't respect Section 3 provides for discipline for keeping a brothel or allowing premises to be used as a brothel, section 4 provides for punishments for living on the earning of a prostitute, section 5 provides for procuring, inducing or taking persons for the sake of prostitution, section 6 provides for detaining an individual in premises where prostitution is carried on, section 7 provides for punishments for offences regarding prostitution taken place publicly places, section 8 provides for

⁹ Kumar Anuj, [Legalization of prostitution in India- Need of the Hour](http://www.legaldesire.com), (Feb 23, 2020,2:50 PM), www.legaldesire.com

alluring or requesting with end goal of prostitution, section 9 provides for seduction of an individual in custody. Sex reciprocally of money as prostitution. Consistent with laws, customers are often arrested if they enjoy any quite enjoyment in any sexual action publicly. Despite the very fact that trade of sex for cash is allowable on a private limit, a lady can't roll in the hay in inside a traverse of 200 yards of an open place. Sex specialists aren't inside the ambit of ordinary labour laws. In any case, they need every right that might be delighted during a citizen and are entitled to be rescued and rehabilitated if they need to try to so¹⁰.

V. PROBLEMS OF IMPLEMENTATIONS

The main loophole of the act does not lie in the Act but instead lies in the implementation of the Act. The corruption riddled implementation is one of the main impediments in this Act. This is the reason for limited outreach of the laws in our country. This is pretty evident where the attitude of the police and also the judiciary has not been changed¹¹. Through raids, the police arrest the prostitutes instead of the brothel owners. Corrupt officials in law enforcement agencies are widespread. Another problem is the reformative and rehabilitation homes which are provided for these prostitutes are inadequate. These homes are inadequate and cannot accommodate large number of prostitutes who are a victim of crimes. There are shortages of number of homes and the victims are large in number. Hence, this creates a problem and does not provide homes for many of them, driving them again to the same activity and them being a victim of such activities. One of the solutions is that they must increase the number of homes and provide training and development to such victims. They must work on counselling them and providing jobs. The aim of decriminalization is that instead of the sex workers, brothel owners would be held responsible¹².

Through a research made it was found that the number crimes registered are less if compared to the real crimes committed. In simple words, the numbers of crimes are more in number but such crimes reported are very few. This is because many of them are unaware of the rights and laws which exist in our country. Even though some of these are reported, due to high corrupt officials they are not been recorded (Around 60 percent). For this, sensitization of the police is a must. As opined by Justice Ramaswamy in the case of *Gaurav Jain v. Union of India and others* that “women found in flesh trade should be viewed more as victims of socio-

¹⁰ Mohan Ashwati, Legislation of prostitution of India- Pros and Cons, (Feb 23, 2020,2:55 PM) www.womennow.in

¹¹ Legality of prostitution in India, August 11, 2017 www.legalbites.in

¹² The big Debate: Should Prostitution be legalised in India, KYK Editorials, December 30, 2009, www.nazcapictures.com.

economic circumstances and not offender of the society, some police authorities have already set out the process of sensitization towards the sex workers and their treatment.”

VI. SUGGESTIONS

Apart from the advantages of the prostitute's rights, there are several other reasons why prostitution must be penalized. Firstly, they're treated unequally before law. Penalizing prostitution doesn't only confer rights on the prostitutes but also benefits the country in one or the opposite way. Prostitution in our country has been happening since many years. In a country like India, people mostly believe moralistic prejudices, whether supported religion or an idealistic sort of feminism remains silent regarding such issues. Basically, where a woman's responsibility is to require care of the household and her family, sex forms the foremost important a part of her life and her husband's. That's why female prostitution is large in number. Nevertheless, times are now changing, there are laws which consider the illegal trafficking of girls (Immoral tracking (protection) Act, 1956) but not on penalizing prostitution. The countries which criminalize such activities should also take under consideration the impact on people indulging in such activities. It's also important to understand that penalizing prostitution would help many of them to urge out of the trap and therefore the converse would keep them trapped. While prostitution isn't penalized, trafficking takes place. That's when people attempt to run such industries illegally and many people become the victim of trafficking. We also got to understand why prostitutes get killed or why they get assaulted? It's because the criminal features a better chance of escaping justice¹³. On the other hand such people tend to clear the off police by means of paying them huge amount. One economic aspect of legalizing prostitution is that it might benefit the state. In countries like Germany, people are taxed for prostitution. Taxing of prostitution would increase the wealth of the state. When the worth increases, demand for the activity decreases. The dearer the activity, the lesser the demand, When people are charged for such activities, it becomes costlier for them to afford in their day to day activities and hence the demand falls a number of the opposite reasons are explained in short below:

1. **Income:** One among the most reasons why people enjoys prostitution is due to poverty; thanks to poverty they lack education. Lack of education, results in unemployment and for his or her living they indulge themselves in prostitution. Such people are deprived and haven't any other thanks to earn money. Some roll in the hay out

¹³ Mishra Aditya, [Legalizing prostitution in India](http://www.lawmantra.co.in), May 12, 2016, www.lawmantra.co.in

of choice (for their living) and a few of them roll in the hay out of responsibility (to earn for his or her family and earn income. Like, children). The second category people are those that indulge themselves for his or her families and mainly those that don't have a support , as in, husband or parents. And sometimes, they're not paid adequate amount for the service provided. Legalizing prostitution would help prostitutes earn adequate income and satisfy their basic needs. These prices would be fixed and therefore the same would help these prostitutes live a far better life.

2. Rights and duties: Rights are those which have a corresponding duty, they're social, ethical principles of freedom or entitlement. When a freedom is recognized by law it becomes a right. Rights are often moral or legal. Once we say that an individual features a right to try to something, it means no other person features a right to interrupt or stop that person from enjoying that specific right. Here, the previous features a right and therefore the latter features a corresponding duty to not interfere. Legalizing prostitution would confer rights to the prostitutes. With prostitution sanctioned their calling would escape from the shadows of illicitness and enable its labourers to call the police. If still illegal, they might be excessively apprehensive, making it impossible to call any expert and therefore the assault and murder tally would keep it up rising.

3. Health benefits: Legalizing prostitution would make sex workers life better and healthier, consistent with a search held by The BBC, it had been found that when the sex workers request the clients to use condoms, they refuse to try to so and obtain harsh on the workers. This results in unsafe sex thanks to which there's high level of diseases transmitted like HIV/ AIDS and other diseases. Legalizing this is able to make the clients use condoms compulsorily and therefore the sex workers also can get a daily check finished an equivalent. Sex specialists in Nevada got to get a month to month tests for HIV/AIDS and week by week tests for Gonorrhoea and Chlamydia. It likewise requires condoms for all sex in whorehouses; a search conducted in Australia, the prevalence of sexually transmitted sexual infections was 80 times greater in illegal street prostitution than in legally owned brothels. This is often because brothels encourage brothel usage.

4. Taxes: Legalizing wouldn't only benefit the people and therefore the sex workers but also the state. Imposing taxes on brothels would decrease the demand and by this the state would also incur income, it's estimated that prostitution incurs 21 lakh Crore on yearly basis. When the costs are high, the purchasers also decrease and when the demand reduces, there would be fall in such activities. Consistent with Richard Posner, when

taxes are imposed on such activities, the demand for an equivalent decreases. The upper the costs, lower the demand. Consistent with him, evasion or price fixing is that the best solution to criminal offenses. With this, violence would also decrease i.e., trafficking, rape etc.

5. Reducing human trafficking: Legalizing prostitution reduces human trafficking and it also reduces violence against them like, rape, murder, forced sex etc. This will be understood with the assistance of economics. Criminalization of prostitution will lessen intentional prostitution due to danger of conviction. This hazard is additionally for the trafficker however less harsher, as if there should arise an event of an arraignment the casualty bears the criminal punishment yet the trafficker bears just a wage misfortune. Criminalization of prostitution will diminish intentional prostitution which can thusly put an upward weight on value during this manner boosting the trafficker. Subsequently, instead of decreasing human trafficking, criminalization will tend to expand it. Further as prostitution is criminalized, the prostitutes and johns won't tend to report human trafficking dreading prostitution¹⁴.

6. Improving working conditions: Legalizing prostitution would improve the working conditions of sex workers primarily by way of medical facilities, reduction in violence against woman.

7. Protection by the police: Legalizing prostitution would offer police protection in cases of emergencies. Illegal prostitution faces tons of problems. The ladies are into trouble. And these deprived women no resource of help. Providing protection would avoid violence and also protect prostitutes from violent customers. Pimps have illegal prostitutes in their power because these woman are deprived and haven't any resource of help. Also, they are doing not have quick access to health care. On the opposite side, legal prostitutes enjoy health benefits and that they even have better access to other facilities.

VII. CONCLUSION

In India, with diverse societal ingredients, prostitution is typically looked down thanks to the character of the profession. Sex workers sleep in a community formed by their own. Through the course of research, it are often observed that legalizing prostitution would benefit the people, prostitutes also because the state. Though prostitution has been happening in our country since a few years it's still looked down in our society. It might

¹⁴ Moran Rachel, Published by- w.w.Norton & company, New York, London, ISBN no- 978-0-39335198

benefit the prostitutes in some ways like, better health facilities, impose rights and duties on them, the working conditions would be improved etc. It might benefit the state by means of earning income through which the state would have better control over such activities. It also imposes a right the state to possess control over such activities and also by giving them the facility to manage these activities. With penalization, the sex workers' problems are going to be reduced. One among the most crime that's, trafficking would be reduced to an excellent extent. There must even be a distinction made between sex workers who have haunted this profession on their own will and sex workers who are forced to try to this job. Both the sectors must be taken care of and a body of laws must be made governing an equivalent. Sex workers must even be given life assurance and rights and for such rights, prostitution must be penalized. Rather than punishing the prostitutes the brothel owners must be punished as in most of the cases they're liable for the acts of the prostitutes. It's suggested that sex workers must be rehabilitated with the assistance of state and it must be seen that such deprived women need to be given sufficient income and be reallocated to a different sector with proper training and development. After taking international penal framework, the image in India with reference to the legitimate structure and ground substances are going to be considered including problems with deficiency of the lawful system and abuse thereof. The choices of the Supreme Court and different High Courts are getting to be taken a gander at where the issues of sex work are contemplated and addressed. The bearings of the National Human Rights Commission and National Commission for ladies on trafficking and therefore the ITPA will likewise be looked into. The last part will incorporate inquiries of legitimization of business sex work; the impacts of such authorization on our nation, the strategy changes to be brought in if business sex must be sanctioned or if this law need to be fortified resulting in stricter control of the segment; the inquiries of individual rights and customary freedoms of the sex workers including their entitlement to business, deliberate prostitution inter alia. The Conclusion would contain an overview of the problems brought forward within the paper.
