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# Shedding Light on the Conspicuous Issue of Prostitutes in India from a Feminist Perspective

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## ABSTRACT

*Prostitution is perceived as a social vermin and disruptor of the social structure without being sympathetic to the fact that they emerged because of brutal socio-economic conditions. Historically woman is treated as a man's ward and dependent on him. Every woman was possessed by a man; however, the sexual desires of myriad women may be left unnoticed. Moreover, her dependency leads to her abuse and bolsters her urge to be economically independent. Liberal feminists see prostitution as a way out by providing her autonomy in different dimensions. Prostitution is often lampooned on the ground that it gives room for human trafficking, but this notion can be countered with the presence of various legal instruments that provide for its abolition. Prostitutes are often subjected to violence and abuse, with vague laws adding to the woes, which give no space for consensual sex work. Consensual sex work can be perceived as a women's right to self-determination, which involves the expression of her autonomy both sexually and economically. It allows women to make choices in relation to their sexuality and opens avenues for economic liberation. The Supreme Court of India's recognition of prostitution as a profession and legalising voluntary sex work can be harbingered as a significant step in the fight for the rights of prostitutes continuing for ages.*

**Keywords:** *Prostitution, right to self-determination, sexual autonomy, economic liberation.*

## I. INTRODUCTION

The relations between the two sexes have varied immensely in various timelines and across various civilisations; still, recognition of a family as a nuclear unit<sup>2</sup> consisting of a man, a woman, and children has been dominant. Traditionally prostitutes have been seen through the glasses as a “symbol of sin, disrupting this much-accepted social structure. This view prevailed in most parts of the world for most of the time”<sup>3</sup>.

With respect to India, the earliest mention of prostitution is found in Rigveda. Extramarital love

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<sup>2</sup> Ringdal, N.J. (2005) *Love for sale: A world history of prostitution*. New York: Grove Press.

<sup>3</sup> *Id.*

is common in the earliest Vedic literature, but the line demarcating the difference between extramarital affairs and prostitution is the regular payment of favours. “Extramarital love can often be voluntary and unpaid and as long as restricted to a particular person can’t be regarded as a profession.”<sup>4</sup> Historically prostitutes in India can be perceived to primarily arise from “a group of women who, either because they could not find suitable husbands, or because of early widowhood, an unhappy marriage, or other social pressures, especially if they had been violated, kidnapped, or raped and were thus denied an honourable status in society, or had been given away as gifts in religious or secular events”<sup>5</sup>. Any woman who found herself in any unique situation like this often opted for prostitution.

## II. ITS EMERGENCE

Sex work is not treated as a profession but is viewed as a filthy and immoral lifestyle threatening to corrupt the “innocent” public. This argument primarily lies on the ethical character of prostitution rather than focusing on its social or legal issues. On segregating the ethical character, we conclude that “prostitution is generally innocuous and even can be a benign practice”<sup>6</sup> preserving the sanctity of society. Two notions about the emergence of prostitution have gained prominence; firstly, it arose from the section of women who remained unsatisfied in their married life and hence opted for prostitution, and secondly, the women who were victims of numerous social and economic conditions.

Prostitution presumably emerged with the “advent of strict marriage rules, especially with the abolition of polyandry”<sup>7</sup>. With the predominance of settled agricultural communities, women lost their social mobility and sense of freedom. She became a man’s protectorate and a means of enjoyment. Whether as an unmarried girl, a wife, or a widow, she belonged to some man. With the concept of widow remarriage and divorce still in nascence, it may be the case that her sexual desires may not be fulfilled. Prostitution gave her a way out by providing her “sexual leisure or entertainment without long-term obligations and emotional attachment”<sup>8</sup>. “A young widow or an unsatisfied married woman could perhaps pick her partner and announce her price”<sup>9</sup> in exchange for sexual favours.

Another major reason behind the emergence of prostitution lies in the socio-economic structure

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<sup>4</sup> Bhattacharji, S. (1987) “Prostitution in ancient India,” *Social Scientist*, 15(2), p. 32. Available at: <https://doi.org/10.2307/3520437>.

<sup>5</sup> *Id.*

<sup>6</sup> Settegast, S. (2018) “Prostitution and the good of sex,” *Social Theory and Practice*, 44(3), pp. 377–403. Available at: <https://doi.org/10.5840/soctheorpract201862040>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

of our society. Historically women are defined by their men with their main function to provide him comfort and sexual satisfaction in return for economic security. Classically women are seen through the glasses only in the roles of wife and mother, thereby minimising the scope of desirable jobs. This preconceived notion leads to the absence of proper training or preparation given to men, which virtually renders it impossible to make a decent living. Poor or women without husbands often break away from this stereotype by choosing prostitution. With the wide prevalence of polygamy and want for a male child, women were often abandoned by their husbands and chose prostitution for their sustenance, granting them economic security.

For prostitutes, customers became a viable source of economic security and promised them independent livelihood. Jargon such as “*varangana, varastri, varaiadhu and vararnukya* signify”<sup>10</sup> that prostitutes are not a responsibility of a single man as ordinarily conceived and can look after themselves, gradually prostitutes became the sole division of women who were under their own tutelage became their own breadwinners.

### III. THE IGNORED MISERY OF PROSTITUTES IN INDIA

“Prostitution is still considered a taboo in India”<sup>11</sup> with many countries “Germany, Austria, Turkey” and many others legalising voluntary prostitution. In general, women who venture into prostitution are either believed to be sex-crazed or perceived as criminals, and due to this stigma, both sex workers and their families are denied basic rights, and as a result, women cannot access quality healthcare and are frequently the targets of abuse, violence, and exploitation by police and other government agents, while their kids experience harassment in both the workplace and at school. “The stigmatisation and marginalisation of sex workers in Indian society are to blame for the physical and sexual abuse, poor health, and financial exploitation that are frequently associated with sex work. People who work in the sex industry are not only more likely to experience violence, but they are also less likely to receive police protection—often the very people who do the assault”<sup>12</sup>. “Police officers are also infamous for falsely alleging workers of solicitation, and then demand for bribes or free sex”<sup>13</sup>. The stigma associated with prostitution frequently restricts women from accessing good healthcare, which prevents them from taking preventive or curative medical care. Sex workers are frequently perceived as pivotal to the transmission of

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<sup>10</sup> *Id.*

<sup>11</sup> Darji, P. (2019) *Prostitution in India, myadvo*. Available at: <https://www.myadvo.in/blog/prostitution-in-india-read-its-causes-legality-and-law/>.

<sup>12</sup> *Rights and Issues of People Involved in Prostitution and Sex Work in India*. rep. The Office of the United Nations High Commissioner for Human Rights. Available at: [https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session1/IN/SANGRAM\\_IND\\_UPR\\_S1\\_2008\\_SampadaGraminMahilaSanstha\\_uprsubmission\\_JOINT.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session1/IN/SANGRAM_IND_UPR_S1_2008_SampadaGraminMahilaSanstha_uprsubmission_JOINT.pdf).

<sup>13</sup> *Id.*

diseases such as HIV/AIDS, leading to stigma and outcast by society or are viewed as women in need of rescue and rehabilitation.

#### **IV. PROSTITUTION- THE CHILD OF SOCIO-ECONOMIC CONDITIONS AND A PATRIARCHAL MINDSET**

Prostitution is the child of the socio-economic conditions of society and the ideology that women exist only to fulfil the needs of a man. A woman's decision to enter prostitution may represent her personal choice by asserting her independence in a normally male-dominated society. Liberal feminists argue that prostitution can be seen as the remedy of "social inequality and empower women as a class"<sup>14</sup> by "committing autonomy, individualism, and equality"<sup>15</sup>.

*Prostitution, when seen through the glasses of feminism.*

Much divergence can be seen between prostitute's rights groups and radical feminists over prostitution reform, the stem of which can be recognised as the thin line of difference between consent and coercion. While the former sees prostitutes as "women doing dignified work, the latter assumes prostitutes as victims of coercion in society." The antifeminists, in contrast, consider "prostitution obscene, immoral, or offensive", calling out for its eradication. It is an obvious irony that both radical feminists and anti-feminists consider prostitution bad without being sympathetic to women's sexual feelings and their desire for economic independence.

The plausible reasons behind sex "are procreation, the expression of romance, and sexual enjoyment"<sup>16</sup>. Prostitution can be viewed as casual sex, which rules out the possibility of both the procreative and romantic views. Prostitution characteristically aims to serve sexual enjoyment by providing pleasant bodily sensations and charging money in lieu of it. It can be seen as an expression of a woman's right to self-determination, both sexually and economically.<sup>17</sup> A self-determined action is one that is under the control of an individual<sup>18</sup> and is "coveted, voluntary, and done consciously by the doer"<sup>19</sup>. Self-determination can be understood in several ways, including freedom and willingness<sup>20</sup>. Choosing prostitution as one's profession connotes her freedom of sexual autonomy and freedom to choose a way of

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<sup>14</sup> Freeman, J. (1990) "The Feminist Debate over Prostitution Reform: Prostitutes' Rights Groups, Radical Feminists, and the (Im)possibility of Consent," *Berkeley Women's LJ*, 5(75). Available at: <https://lawcat.berkeley.edu/record/1113661?ln=en>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Reanda, L. (1991) "Prostitution as a human rights question: Problems and prospects of united nations action," *Human Rights Quarterly*, 13(2), p. 202. Available at: <https://doi.org/10.2307/762660>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

earning her living which is traditionally vested only with men.

Sexual self-determination is primarily concerned with decision-making processes in connection to the various aspects of sexuality<sup>21</sup>. This right is also an inalienable part of legal instruments such as the “Declaration of Sexual Rights of the World Association for Sexual Health”<sup>22</sup> and Article 21 of the Indian Constitution. Prostitution is primarily concerned with the hedonic view of sex. Traditionally prostitutes arose from that section of women who remained unsatisfied in their sexual life. Individuals expect sex to be spontaneous, intense, and enjoyable, but this may not happen in every case. Sexual enjoyment is one of the results of sexual activity and acts as an incentive to pursue sexual activity. Therefore, it becomes mandatory for sex to be enjoyable. Prostitution fulfils this unfulfilled desire of women.

Keeping in mind that married women are not provided with many rights and are considered a man’s property, prostitutes are that section of women who refuse to accept this controlling lifestyle and should be seen as governing their lives on their own<sup>23</sup>. Traditionally women are dependent on men economically and are often abused and subjected to violence. Prostitution offers women a source of livelihood, making them financially independent. This economic security helps them ameliorate their living conditions and bolsters them in shaping their lives. Increased economic security also diminishes instances of violence and abuse and also defies the notion that women are a burden and should only be restricted to housework and rearing children. Prostitutes are often deemed evil, cruel women who become prostitutes because of their hatred for men, and through their profession, they can dominate and exploit them. A misconception about prostitution that prevails is that it is easy to work, similar to the delusion that cleaning the house or raising children is easy or no work. This is a blatantly incorrect statement and is a tiring and hard means of making a living both physically and mentally due to the intense physical touch and mental impairment involved.

## **V. COUNTERING THE CONCERNS AGAINST PROSTITUTION- A CASE FOR VOLUNTARY PROSTITUTION**

The stigma associated with prostitution can be blamed on the abolitionist laws formed to counter it. These laws perceive prostitution only as dirty marshland and ignore the possibility of treating it

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<sup>21</sup> Skuban Eiseler, T. (2022) “Sexual self-determination of individuals with intellectual disabilities—a possible philosophical conceptualization and resulting practical challenges,” *International Journal of Environmental Research and Public Health*, 19(19), p. 12595. Available at: <https://doi.org/10.3390/ijerph191912595>.

<sup>22</sup> *Id.*

<sup>23</sup> Karlebach, N.J. (2008) “Recognizing Women’s Worth: The Human Rights Argument for Ending Prostitution in India,” *BC Third World LJ*, 28(483). Available at: <https://lira.bc.edu/work/ns/8e83f020-95c4-4e7b-b717-adeab64c5311>.

as a profession. These laws view prostitutes as only victims of human trafficking, giving no room for voluntary sex work.

Forced prostitution is often seen “as a type of slavery and regarded as a serious violation of human rights of women”<sup>24</sup>. It is seen as the most prevalent form of human trafficking. According to an estimation, “every year, at least 150,000 women and girls are trafficked from South Asian nations to India to work as prostitutes.”<sup>25</sup>. These victims of human trafficking often land up in “such situations due to coercion, cunning deceit, a lack of opportunities for earning a livelihood, or other factors”<sup>26</sup>. Numerous prostitutes are pushed by their family members and relatives when they are minors, often without their consent. This makes them more prone to “sexual violence and economic exploitation”<sup>27</sup>. These double victims of forced prostitution are coerced to live in inhumane conditions with “victimisation by the customers and pimps in their exercise of power over her, and by the discriminatory methods of law enforcement used by the police”<sup>28</sup>.

Since independence, India has incorporated various provisions to counter the vermin of human trafficking. India’s pioneering role can be recognised in “the United Nations General Assembly’s adoption of the Universal Declaration of Human Rights, which affirms every person’s right to life, liberty, and security, in 1948”<sup>29</sup> post-World War II. “Justice, liberty, equality, and respect for human dignity are further promised to the Indian citizens in the Preamble of the 1949 Constitution of India.”<sup>30</sup>. This right also forms the spirit of Part III of the Indian Constitution and is entrusted in “In accordance with Articles 14 and 15, everyone is entitled to equality before the law and equal protection under the law, regardless of sex, religion, or other factors.”<sup>31</sup> respectively. “Article 23 prohibits traffic in human beings and slavery which is also heralded in various provisions of laws including the Minimum Wages Act of 1948, the Code of Criminal Procedure of 1973, the Scheduled Castes and Scheduled Tribes Act of 1989, the Bonded Labor Abolition Act of 1976, the Child Labor Act of 1976, the Minimum Wages Act of 1956, the Protection of Civil Rights Act of 1955, the Protection of Human Rights Act of 1993, the National Commission for Women Act of 1990, and various sections of the Indian

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<sup>24</sup> Reanda supra 14.

<sup>25</sup> Karlebach, N.J. (2008) “Recognizing Women’s Worth: The Human Rights Argument for Ending Prostitution in India,” *BC Third World LJ*, 28(483). Available at: <https://lira.bc.edu/work/ns/8e83f020-95c4-4e7b-b717-adeab64c5311>.

<sup>26</sup> *Id.*

<sup>27</sup> Misra, G., Mahal, A. and Shah, R. (2000) “Protecting the rights of sex workers: The Indian experience,” *Health and Human Rights*, 5(1), p. 88. Available at: <https://doi.org/10.2307/4065224>.

<sup>28</sup> “Prostitution: A Non-Victim Crime?” (1973) *Women Crime and Criminology*, 8(137). Available at: <https://www.jstor.org/stable/42909688>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

Penal Code of 1860”<sup>32</sup> making the case against forced prostitution, even more, stronger; however, these laws do not give room to consensual sex work.

“The Immoral Traffic in Women and Children (Prevention) Act (PITA) of 1986, a reincarnation of the Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA)”<sup>33</sup>, enacted as the consequence of “India’s 1950 commitment to the United Nations International Convention for the Suppression of Traffic in Persons and of the Exploitation of Women”<sup>34</sup>. PITA prohibits “soliciting, seducing, procuring, detaining, brothel keeping, abetment to brothel keeping, renting premises for the purposes of prostitution, living off the earnings of a prostitute”<sup>35</sup>. The powers of the police were also expanded to include “searching a place without a warrant”<sup>36</sup>. PITA is often lampooned as an arbitrary and gender-biased law as it burdens the prostitutes to prove their innocence which is antagonistic to “Article 11 of the Universal Declaration of Human Rights”<sup>37</sup> and “Article 20(3) of the Indian Constitution”<sup>38</sup>. The discriminatory implementation of PITA “against female prostitutes, who are arrested more frequently than pimps, brothel keepers, and procurers”<sup>39</sup>. Stringent regulations like these are imperative to prevent forced prostitution; however, this undermines the right of women who enter this profession voluntarily. Moreover, these “laws do nothing significant to control the presence of prostitution in our society; rather, they reinforce the prostitute’s position as a victim of sexism, poverty, and racism”<sup>40</sup>.

Voluntary prostitution can be perceived as a victimless crime. If sexual activity is taking place between two consenting adults, then where crime exists needs to be considered. The laws governing prostitution perceive it as a social evil. They believe that prostitution can be restrained by punishing the individuals involved in it. Logically both the prostitute and the male customers should be held liable; however, these laws are grounded on the assumption that it is the individual sex worker who should be punished. These laws are infamous for their discriminatory treatment and are only used as a potent tool for women’s oppression.

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<sup>32</sup> *Id.*

<sup>33</sup> Karlebach, N.J. (2008) “Recognizing Women’s Worth: The Human Rights Argument for Ending Prostitution in India,” *BC Third World LJ*, 28(483). Available at: <https://lira.bc.edu/work/ns/8e83f020-95c4-4e7b-b717-adeab64c5311>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> The Universal Declaration of Human Rights 1948, Art. 11.

<sup>38</sup> INDIAN CONSTI. art. 20(3).

<sup>39</sup> Karlebach *supra* 22.

<sup>40</sup> “Prostitution: A Non-Victim Crime?” (1973) *Women Crime and Criminology*, 8(137). Available at: <https://www.jstor.org/stable/42909688>.

## **VI. CONCLUSION- A CALL FOR THE LEGALISATION OF PROSTITUTION**

Prostitution in itself is a tyrannous and torturous profession with social ostracism and subsistence in red-light areas away from the population as its basic attributes. However, it must be considered that the negative effects of prostitution are not inherent to selling sex but rather arise from the external conditions in which sex workers must currently and inevitably practice their trade. The need for a regulatory framework that creates a legislative system that provides them with employment contracts, social benefits, safe working conditions by inspecting and regulating brothels, and overall eliminates harm-causing situations by normalising sex work as a regular profession is highly crucial to subside the plight of sex workers.

The Supreme Court of India's recognition of prostitution as a profession and upholding their right to have a decent and dignified life as others and equal opportunities can be heralded as a milestone in ameliorating their lives as enshrined under Article 21 of the Indian Constitution. The existing laws in India can be seen as arbitrary and vague. The status of prostitution was practically in the doldrums because of these legislations deeming it neither legal nor illegal. The present laws are also ineffective in tackling forced prostitution, in addition to creating obstacles for voluntary prostitution. With this legal development, India has a chance to stand as a model for South Asia in the fight against the exploitation of prostitutes. These guidelines can be heralded as the stepping stone in breaking the stigma that has blanketed this profession for ages. This observation has come in the form of dictations to the police, who owns a large part in the exploitation of prostitutes in India. The honourable court has also cleared the clutter and given clarity over the legal status of prostitution. In India, now voluntary prostitution is legal, but forced sex work is still punishable. This development is commendable as it envisions upholding the dignity and sanctity of prostitutes; however, addressing the implementation of the previous laws and this new development in its entirety is the need of the hour. Firstly, these guidelines are directory in nature and will be fruitful only if implemented and executed with an iron-hand implementation. History should not be repeated, as in the case of Section 66A of the Information Technology Act 2000, which was struck down by the Supreme Court in 2018 but is still rampantly used. Secondly, the plight of the victims of forced prostitution still looms. The existing laws aimed at countering human trafficking are ineffective due to lacunas in implementation. Post-independence numerous legal instruments have been acceded to by India, but the number of victims of human trafficking has only increased. Addressing the issue of sex workers has also become crucial in light of the COVID pandemic, who though they form the backbone of society by maintaining its sanctity, however remain inconspicuous. Various schemes have been introduced by the government to subside the repercussions of the COVID

lockdown felt by different sectors of the industry; however, prostitutes still remain invisible. The recognition of prostitution as a profession can be identified as a giant leap in this battle for the rights of prostitutes, which though conspicuous but remained undermined for ages.

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