



## Legalisation of Prostitution in India: Is it a Blessing or Curse?

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### Abstract

*Prostitution is the act or practice of engaging in sexual activity for self-sustenance or other economic as well as social reasons. This has become an occupation in which an individual sells sex in a debauched as well as emotionally indifferent manner. It is also known as “sex work”, which has a long history in India, it was the ancient period when prostitution was started, however, the profession was not even accepted as well as permissible in Indian society. In ancient times, women were unwantingly forced to get involved in this profession by the respective people of the society even most of the time by their family members although most of the time they were not even women, they were girls before hitting the age of puberty. Prostitution is an age-old phenomenon in Indian history. This paper showcases all the obstacles as well as challenges faced by prostitutes despite demanding the legalisation of prostitution. This paper is the link between how the women who were indulged in the profession associated with cruelty, differentiation as well and manipulation became able to demand for legalisation of their profession.*

**Keywords:** Prostitution, cause – types, Legalisation, Development goals.

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### Introduction

Prostitution is utilisation as well as commercialisation of women’s bodies for self-reliance that has been mentioned in human civilization for centuries together.<sup>2</sup> Prostitution is Sociologically defined as “*an occupation in which an individual sells sex in a promiscuous and emotionally different manner*”. This definition is divided into four parts. These are:

- an occupation
- an act of selling
- a sexual exchange
- a promiscuous and emotionally indifferent activity.

The term “Prostitution” originated from the Latin word “*Prostibula*” or “*Proveda*”.

Ransom House of Dictionary, 1981 defined Prostitution as “*The act or practice of indulging in sexual activity for monetary gain*”.

Prevention of Immoral Traffic Act, 1956 defines “*Prostitution is sexual abuse as exploitation of individual for commercial reasons or deliberation in wealth or some other sort, and the word prostitute shall be constructed accordingly*”.

Well, the problem of sex workers is not new in India. It’s been continued from the ancient period. For most of the women who were indulged with prostitution, there was always a force of the respected as well as known people of the society. The survivors of the prostitution were poor,

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<sup>2</sup> Agrawal, A., 2020. *Chaste Wives and Prostitute Sisters: Patriarchy and Prostitution among the Bedias of India*. Taylor & Francis.

uneducated, and uniformed members of society who were the intended audience for the sexual slavery, they were exploited by the rich people of the society.

In present days, not only women but also transgenders have become part of the profession either because of having a lack of financial support from the family or to bring a healthy, sometimes luxurious lifestyle to their families.

### **Historical Background**

Prostitution has become a part of India since the time of the Vedas and continued during British Rule. While going through the historical background of how prostitution became a part of our country, we can surely notice the disclosure in the Rig-Veda that indicates the presence of sex trafficking during that period. As per Rig Veda, some women have been shared by several men forcefully. The practice of having “two brides” which was also known as “Nagarvadus” was also popular in the ancient period.

During the Mughal period or Muslim era, prostitution existed very commonly or happened often although it was not regarded as a source of revenue for the Government. The great Mughal Emperor, Akbar had a separate quarter for prostitutes which was also known as “*Shaitanpura*”. Under his reign, young boys were sent to “*Shaitanpura*” to learn and observe enjoyable intimation between two human beings and the mannerisms of the high society. With the demolishing of the Mughal period, nothing much changed the situation of the prostitutes with the arrival of the British. Although prostitution persisted in society like before.

Particularly Nawabs, Zamindars, Rajas, the other members of the high society enjoyed the prostitution culture. The arrival of the British increased the number of prostitutes in their profession to satisfy the British soldier's carnal pleasure “Lal- bazars” or “Red light areas” were built into temporary military living quarters. Prostitutes were often asked to perform “*Mujras*” in front of the people. “*Mujra*” is a dance form performed by the prostitutes.<sup>3</sup>

Women as well as girls were forcefully sent to the Red-light areas at the very beginning stage of their lives, although they had no choice but to get rid of the place to make themselves free. In India, some red-light areas are well known for their historical backgrounds. Like “Kamathipura” the famous and largest red-light area of Mumbai which is known for the Mafia Queen “Gangubai Kathiawadi” as her movements towards the betterment of sex workers as well as orphans. Before becoming the Mafia Queen of Mumbai with the unconditional support of Hussain Zaidi, she worked as a prostitute in Kathiawadi after being sold by her beloved one Ramnik Lal at just Rs.500 in Kathiawadi Mumbai as she ran with him from her family in Gujrat to become a Bollywood actress at the age of 16. However, her life became completely changed when she started working as a prostitute. Despite bearing all the obstacles, she was determined to bring a healthy lifestyle to the sex workers in Kamathipura. The film “Gangubai Kathiawadi” was based upon her biography which represented the sinful sexual business as well as the cruel behaviour of the people towards the sex workers.

There is another famous and largest red-light area in West Bengal named “Sonagachi” which means “Tree of Gold”. The dark lanes of Sonagachi shine bright when the sun sets down, popping

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<sup>3</sup>Ramachandran V. Ethnography at an Intersection: Law, Anti-Trafficking NGO's, and Prostitution in India, Law & Social Inquiry, (2023); 48(1):67-88. doi:10.1017/lis.2

up with bright clothes, and heavy makeup of numerous women standing in the doorway of their houses, waiting for men who are ready to pay them for having carnal pleasure with them. In Sonagachi, the sex trade has been passed down for generations, with women of all ages belonging to the same family, who were here to offer their bodies for service or to entertain the people for a certain amount of money. The different generations of women work here to establish their businesses and nowadays this place is full of human trafficking, rapes, and forceful work to earn a livelihood.

### **Literature Review**

The Prevention of Immoral Traffic Act, 1956<sup>4</sup> gives us the definitions of prostitution it also lays down the situation, and circumstances under which a girl or woman can become a prostitute. It also states the provision for punishment in case the conditions are breached or not implemented. The Bengal Suppressions of Immoral Trafficking Act, 1933,<sup>5</sup> states the way of living of the prostitutes as well as restricts prostitution in the state of West Bengal. As per the prostitution policy, the intention and reality in regulating the sex trade lays down the obstacles as well as the challenges faced by them including the framing of effective policies concerning prostitution.

### **Research Questions**

- The questions that are asked within the paper are as follows:
- What is the status or position of the prostitutes in India?
- What laws have been taken by the Indian government to protect the status of prostitutes in society?
- What is the potential effect of the legalisation on the exploitation of women in the name of Prostitution?

### **Research Objective**

- The research involves an elaboration about the status or position of prostitutes in Indian society.
- To examine the status of Prostitution in India
- To describe the effects of legalising prostitution in India
- To suggest policies as well as regulations relating to prostitution in India.

### **Hypothesis**

- The position of the prostitutes is in a condition.
- Legalisation of prostitution will surely save their lives as well as it will reduce the forceful slavery of prostitution.
- Legalisation of prostitution will develop the government's goals.<sup>6</sup>

### **Causes and Types of Prostitution**

Some causes of prostitution are:

1. Economic factors: Poverty is one of the major reasons why the number of prostitutes increases day by day. Poor women are ill-treated and not capable enough of earning money

<sup>4</sup> The Prevention of Immoral Traffic Act, 1956, No. 104, Acts of Parliament, 1956 (India)

<sup>5</sup> The Bengal Suppressions of Immoral Trafficking Act, 1933, Bengal Act 6 of 1933 (India)

<sup>6</sup> Janice C. Raymond Prostitution on Demand: Legalizing Buyers as Sexual Customers, 10(10) VIOLENCE AGAINST WOMEN 1156(2004)

through working in such situations they have no choice except to get their selves involved in Prostitution for self-sustenance. Also, most females who work in bars, and the hotel industry are at an immature age, they are provoked by lust seekers and therefore, end up in prostitution.

2. **Biological factors:** Not every time sex workers forcefully indulge their selves in Prostitution. Sometimes, there is a biological factor or reason behind it. A girl born with defective sex organs or overactive glands may feel compelled to seek sexual gratification in a manner to engage in Prostitution.
3. **Religion and cultural factors:** Another important reason why a girl or woman chooses to become a prostitute is her religious and cultural factors. There are many countries in the world where the family members of the girl push her forcefully to become part of the temple or any religious aspect according to their family members and countries people as they are serving their lives, especially to the people who are the messengers of God.<sup>7</sup>
4. **Social factors:**
  - **Family pressure:** The major social cause of indulging in the prostitution of women is family pressure or not having any family. An orphan girl child who doesn't have any option to earn money for self-sustenance becomes a prostitute.
  - **Peer pressure:** peer pressure is another major reason why girls often choose to become prostitutes as they are adopting and learning things from the circumstances, they are living in.
  - **Marital factors:** When the marriage is broken or a woman becomes a widow after the death of the husband, she is forbidden to remarry in many Hindu societies. However, to fulfill their physical desire, she is likely to self-abuse as they are poor substitutes for having carnal pleasure.
  - **Illegitimate motherhood:** When the rumour or news is being spread in society that a woman has an illegal child nobody wants to marry them however everyone wants them physically. In such situations, some women desperately prefer to become regular prostitutes.
  - **Love affair:** women at an immature age of life get influenced by the person whom they think their beloved ones. They are concerned by their words to marry them and run out with them from their family to the unknown places. Later most of the situations the boy whom she trusts blindly sells her in the prostitution houses in terms of money.

### **Types of Sex- workers:**

There are 25 types of sex workers who are unrecognized. These are:

- Street prostitution
- Brothel
- Escort
- Private prostitutes

<sup>7</sup> Dasgupta, S., 2019. Of Raids and Returns: Sex work movement, police oppression, and the politics of the ordinary in Sonagachi, India. *Anti-trafficking review*, (12), pp.127-139.

- Window or doorway
- Clubs – pubs- bar- karaoke bar, dance hall prostitutes
- Door knock or hotel prostitutes
- Other all–men venues
- Transport (ship, truck, train) prostitutes
- Bandage and discipline prostitutes
- Lap dancers
- Massage parlour
- Travelling entertainers
- Beer girls
- Street vendors and traders
- Opportunistic prostitutes
- Female libre
- Individual arrangements
- Swingers clubs
- Gelsha
- Sex for drugs
- Beachboys, bumsters and gigolos
- Survival sex

These were the types of prostitutes recognised in our country. However, in India, female prostitutes are given more priority than male prostitutes as well as gay, lesbian, and trans.

### **Problems of Prostitutes (Health, Exploitation, Violence)**

From the ancient period to the present time sex workers are facing a lot of social, economic, and physical problems. To satisfy clients they get intimidated by a lot of people to get such an amount of money. Not only in India but also in different countries they are facing a lot of problems especially when they suffer from various health issues like STIs, HIV, Syphilis etc.

As they have to intimate with so many different partners, they have a greater risk of getting Sexually Transmitted Infections (STIs) than other people. In such situations, they want to protect their selves during the time of intimation but their client may refuse.

Sex workers get exploited by their clients before getting intimated even though they used to torture them physically by becoming violent with them before getting intimated. If a prostitute having a womb gets an STI and is treated like anyone who has a womb, that STI may lead to Cancer or infertility, such as herpes, syphilis greatly increases the chance of becoming infected with HIV.

Some people blame sex workers for spreading such death-causing diseases. Even though they try to practice safe intimation, they face unexpected pregnancies because of the carelessness of their partners.

### **Why Prostitution should be legalised?**

1. Legalisation may protect minors: As per the researchers' recommendation, it should be legalised in India so that minors can be protected. As per the survey records, there are 10 million children engaged with prostitution which has become a major part of the country.

2. Reduction in spread of death diseases: Legalisation of prostitution would surely conduct regular health checkups of the sex workers which would surely reduce the spread of death-causing diseases like HIV, STIs, etc.
3. Reduction of rapes, sexual assault: If prostitution becomes legal in India, people who want to satisfy their physical needs and wants to fulfill their desire can easily resort to prostitutes rather than committing rape or cruelly assaulting women.

### **Work accordingly to the concern of Prostitutes:**

Legalisation of prostitutes reduces the forceful work pressure on them. The entire prostitution industry will come under the sphere of legal control which will protect the sex workers. Also, a legal system in the workplace will check criminal behaviour and significantly reduce the smuggling and slavery of women and children.

Rights of the sex workers are protected: Rights of the sex workers will be protected after the legalisation of the prostitution. When a sex worker is physically assaulted or not paid properly, he/she will have the right to complain about the same and it gets redressed.

### **Laws and Provisions Related to Prostitution**

In India, prostitution is legalised through the provisions that are re-discussed below:

- The Constitution of India
- Article 19(1)(g) of the Indian Constitution states the Right to Profession according to which every individual has the right to choose any profession.
- Article 14 of the Indian Constitution states “equality before law” and “equal protection of law” which elaborates that every individual shall be treated equally as well as given equal protection no matter what the situation, irrespective of their gender.
- Article 21 of the Indian Constitution elaborates “Right to Life and Personal Liberty” which states that every individual has their right to life as well as personal liberty, which cannot be infringed by anyone due to any reason whether the person is a prostitute or a normal people of the country.

#### **The Indian Penal Code, 1860<sup>8</sup>**

There are almost 20 provisions in the IPC that prevent human trafficking as well as state that human trafficking is a punishable offence majority of which deals with wrongful confinement post-abduction, abduction for illicit intercourse, etc.

#### **The Immoral Trafficking (Prevention) Act, 1956<sup>9</sup>**

The Act deals with the provisions relating to the prevention of the human trafficking of sex workers. The act does not prevent prostitution as an occupation although it deals with all the criminal activities related to prostitution.

### **Role of the Judiciary**

In 2022 the Supreme Court bench of three judges declared a landmark decision that implies sex work or prostitution as an occupation as stated that sex workers do have the right to integrity as well as equal protection from the law.<sup>10</sup> The Apex court also declared that the person who wants to

<sup>8</sup> The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

<sup>9</sup> The Immoral Trafficking (Prevention) Act, 1956, No. Acts of Parliament, 1956 (India)

<sup>10</sup> Jean D. Cunha, Prostitution, Laws: Ideological Dimensions and Enforcement Practices, 27(17) ECONOMIC AND

indulge him or herself in prostitution is not illegal that states “voluntary sex” is not illegal or prohibited and they issued commendable guidelines about whenever any sex workers or prostitutes want to lodge any complaints about any person the police have to take actions as well as will have equally give them protection without judging them. The Court also declared that “prostitution “can be an income source from a legal perspective. Before 2022 prostitution was not legal in India however, after the decision of the Apex court prostitutes can live their lives with respect as well as freedom.

### **Impacts of legalising Prostitution**

- The rights of the sex workers are protected.
- The children of the sex workers are getting more opportunities after legalising of prostitution.
- Legalisation of the prostitution has also decreased the forceful work of them.
- Legalisation of prostitution has good as well as bad impacts too, it increases human trafficking.
- Prostitution increases human trafficking
- Human trafficking is an organized crime and a modern type of slavery. Legalisation of prostitution increases trafficking of the prostitutes, especially girl children.
- Trafficked prostitutes or sex workers from a higher equilibrium compared to other forms of prostitutes increased. This has a bad impact on the poor, uneducated girls who because of their lack of economic resources, easily influenced them to make some money.

### **Recommendations**

Legalisation of prostitution prevents gender inequality. Although it supports the working capabilities of the individuals. It brings peace in society as it decreases the criminal activities related to prostitution also it brings peace in sex workers' lives. It also helps to fulfill social and economic goals through a lot of policies.

### **Conclusion**

There are a lot of debates stating about prostitution shall be legalised or not. It has good as well as bad impact too. As per many researchers' opinion prostitution should be legalised as prostitutes' conditions in India are in very condition. Legalisation will surely help them to live respectfully in their profession, their rights will be protected, and they will be provided equal protection like normal people. However, there are other opinions too. Some experts say that the legalisation of prostitution increases human trafficking. It increases the evil side of the country. According to them, prostitution or sex workers are misguiding our youth, they are provoking as well as influencing youth towards sexuality as they are our country's future. Well, legalisation of prostitution is a blessing as well as a curse too.

Legalisation of prostitution is not enough to reduce the evil side of society. They also need equality in social behaviour, equal protection to protect their lives, and most importantly opportunities for their children to make their future bright. Our Government shall provide them with better opportunities to make their children educated so that they can become self-dependent. They shall be given equal protection from the police whether treating them worse or judging them. Even though they shall be provided regular health checkups to keep their physical health fit. Lastly, they shall be

provided with policies to make their future bright.

**CITE THIS ARTICLE:** Tania Sarkar,  
Legalisation of Prostitution in India: Is it a  
Blessing or Curse?, *Justice and Law  
Bulletin*, 2(2), pp. 61-68, (2023).