

PROSTITUTION BEING LEGAL IN INDIA

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ABSTRACT

Prostitution is a contentious issue in India, with many conflicting opinions about its legality and morality. Despite being illegal under the Immoral Traffic (Prevention) Act, prostitution continues to thrive in India, particularly in urban areas, where sex workers often face exploitation, abuse, and violence. In recent years, there have been debates about legalizing prostitution in India, with advocates arguing that it would help protect sex workers from exploitation and improve their living conditions. They also argue that legalization would help regulate the industry, reduce human trafficking and the spread of sexually transmitted diseases. Opponents, however, argue that prostitution is a violation of human dignity and promotes the objectification of women. They also argue that legalizing prostitution would increase the demand for it, leading to more exploitation and trafficking. Currently, prostitution remains illegal in India, but there are efforts to decriminalize it or provide a legal framework for sex work. Some Indian states have taken steps towards this, such as the state of Maharashtra, which has set up a regulatory board to oversee the functioning of brothels and protect the rights of sex workers. In conclusion, the debate on legalizing prostitution in India remains unresolved. While advocates argue that it could provide better protection and regulation for sex workers, opponents argue that it goes against basic human values and dignity

Keywords: Prostitution, Profession, Fundamental Rights, Violation, Article 19, Human Rights.

INTRODUCTION

Prostitution has been a deeply debated and controversial topic for centuries. The practice of engaging in sexual activities in exchange for money or goods exists in almost every society, regardless of legal status. Recognizing prostitution as a legal profession is a complex issue that elicits passionate arguments from both proponents and opponents. In this introduction,

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we will explore some key points supporting the legalization of prostitution and shed light on the potential benefits it can bring to individuals and society as a whole.

Acknowledging Individual Agency and Choice One of the key arguments supporting the legalization of prostitution is the recognition of individual agency and their perspective. It asserts that adults have the right to make decisions about their bodies and engage in consensual transactions. By legalizing prostitution, society acknowledges that individuals should have the freedom to pursue this occupation if they so choose, without fear of criminalization or stigma.

The debate over legalizing prostitution as a profession is complex and multifaceted, with valid arguments on both sides. By legalizing and regulating prostitution, societies can prioritize the safety, well-being, and rights of sex workers. A legal framework allows for the implementation of safeguards, combating human trafficking, providing access to support systems, and generating economic benefits. Ultimately, the recognition of prostitution as a legal profession can foster a more inclusive and compassionate society, where individuals are protected and empowered to make choices about their bodies and lives.

FUNDAMENTAL RIGHTS UNDER INDIAN CONSTITUTION

Fundamental rights are loved element of part III of the Indian Constitution which turned into followed on 26th November 1949. These fundamental rights assure that each citizen of this nation can live an existence peaceful existence in the course of the territory of India and these rights had been protected in the constitution for ease and are essential for the development of each character. People of all races, religions, castes, or intercourse; have been given the right to move to the High Court or the Supreme Court for the enforcement of those rights. These Fundamental rights are divided into seven categories that are covered from Article 12 to Article 35 of the Constitution. Article 19(1) (g) gives the essential right to the citizens to practice any career or to do any business. The Hon'ble Supreme Court in. *Vishaka v. State of Rajasthan* (1997)¹ has discovered that the sexual harassment of working women in places of work violates the essential right beneath Article 19(1) (g). In this situation, complete guidelines and binding guidelines have been issued by way of the courtroom to prevent the incidents of sexual harassment of girls at offices in both the public and private sectors.

¹ *Vishaka v. State of Rajasthan* AIR [1997] SC 3011

Personal Liberty

A.K. Gopalan vs. State of Madras² court docket held that simplest situations keep in mind as a violation of personal liberty 1. Physical restrain (Body of Person) 2. In the case of brotherly love, this is a slender interpretation. But, inside the Menaka Gandhi case (1978),³ the ideally suited court docket overruled its judgment by way of taking a wider interpretation of Article 21. That courtroom says that any law which has infringed non-public liberty has to bypass three procedures -

- Reasonability,
- Fairness and
- Justiciable (Explain in the due procedure of law) Life' in Article 21 of the Constitution isn't always simply the act of breathing. It does now not merely animal life or endured drudgery through lifestyles. It has a great deal wider such as the right to live with human dignity, the Right to livelihood, health, pollutants-free air, and many others.

The right to life is fundamental to our existence as human beings.⁴ It encompasses all the aspects of life that give it meaning, completeness, and value. It is the Constitution's most broadly interpreted article, encompassing the basic necessities and minimum requirements for an individual's well-being. This right protects against the deprivation of these rights except through lawful processes. It is not limited to citizens alone but extends to all individuals, including foreigners, as it is vital to democracy. However, claiming this right does not entitle a foreigner to the right to reside and settle in India, as specified in Article 19(1) (e). Article 21 serves as a foundation for understanding the concept of the "right to life" as interpreted by the judiciary. It also addresses violations related to bodily integrity, reputation, and equality, ~~which fall under the purview of the right to life and the right to live with dignity.~~

The right to life is undoubtedly the most important of all rights, as it forms the basis for the existence of other rights. Without the right to life, no other fundamental rights would hold any value or utility. Interpreting Article 21 in its original sense would have negated the significance of the entire set of Fundamental Rights

² A.K. Gopalan v. State of Madras AIR [1950] SC 27

³ Meneka Gandhi V. Union of India AIR [1978] SC 597; (1978) 1 SSC 248

⁴ Article 21 of the Indian Constitution

This section will explore how the Supreme Court of India has interpreted and applied the right to life. Article 21 of the Constitution of India, 1950, states that everyone has the right to life, liberty, and personal security.

PROSTITUTION

The practice of engaging in relatively indiscriminate sexual activity with the motive of exchanging immediate payment or other valuables is called prostitution. Prostitution can be male, female or homosexual or heterosexual, or transgender but from history, most of the prostitutes have been women and most clients are men. Prostitution is practiced since the ancient period. It can be considered 'the oldest profession' along with hunting. Indian history shows that prostitution was in the profession since the Brahmana period. The prostitutes were called Veshya at that time and it spectates that they were kept for the ministers and traders who were far away from their home wives.

LEGAL FRAMEWORK OF PROSTITUTION IN INDIA

Prostitution isn't illegal in India. Well, no longer technically. Nowhere is it written that prostitution itself is illegal, though the core activities associated with it are? These consist of but aren't constrained to proudly owning brothels (Any place with greater than two sex people), curb-crawling, offering intercourse in a public vicinity, searching for sexual favors in exchange for cash in a public area, illicit **sports in motels, and pandering. This places a number of regulations (edit: near-complete restrictions) on** and around this discipline of labor. The Immoral Traffic (Suppression) Act, also known as SITA, was enacted in 1956. This legislation permits prostitutes to engage in their profession in private but prohibits them from conducting their business openly. However, Indian laws do not consider the exchange of money for sex as prostitution. According to the law, clients can be arrested if they engage in any sexual activity in public. While individuals may engage in consensual sex work, women are prohibited from doing so within a 200-yard radius of a public place. Sex workers are not protected under standard labor laws, but they still possess the rights afforded to any citizen and are entitled to rescue and rehabilitation if they choose to seek it (although society's perspective plays a role in determining the appropriate use of these rights).

ISSUES AND CHALLENGES FACED BY SEX WORKERS IN INDIA

- Sex workers have no legal protections, and their criminalization makes them targets of prejudice.
- These people are despised, have no place in society, and are frequently treated cruelly by their landlords or even the law.
- Their combat to be given the identical human, fitness, and exertions rights as others, keep as they're now not deemed as falling under the equal category as different workers.
- Abuse and Exploitation.
- In most instances, sex workers are uncovered to a slew of abuses that vary from physical to mental assaults.
- They could face harassment from clients, their circle of relatives participants, the network, or even from those who are to uphold the law.

CRITICISM AND LIMITATIONS

Recognizing prostitution as a profession is a controversial topic that has been debated in many countries and jurisdictions around the world. Prostitution is the practise of providing sexual services in exchange for cash or other rewards, and it has been traditionally stigmatized and criminalized in many societies. Supporters of legalizing prostitution as a profession contend that doing so would give sex workers access to legal rights and medical care, social services, and legal recourse in case of abuse or exploitation. They contend that sexual labour is a legal kind of employment and that those who engage in it ought to be accorded the same rights and safeguards as other workers.

Opponents of recognizing prostitution as a profession argue that it perpetuates the objectification and exploitation of women and reinforces patriarchal power structures. They also argue that it sends a harmful message that prostitution is an acceptable form of work, rather than addressing the root causes of prostitution, such as poverty, inequality, and gender-based violence. Those who support the recognition of prostitution as a profession believe that it would improve the working conditions of sex workers and provide them with better legal protections. They argue that many sex workers are forced into prostitution due to economic or social circumstances and that recognizing their work as a profession would allow them to access healthcare, social services, and legal protections that would help to reduce the risk of

exploitation. However, opponents of recognizing prostitution as a profession argue that it would normalize and legitimize the exploitation of women and undermine efforts to combat human trafficking and other forms of sexual exploitation. The question of recognizing prostitution as a profession is a complex and contentious issue with valid arguments on both sides. Ultimately, any decision should prioritize the safety, health, and well-being of sex workers and seek to address the underlying social and economic factors that drive people into prostitution.

Is Legal Prostitution an Aspect of Sexual Liberation?

Prostitution, Humanism, and a Woman's Choice" explained: "Feminism has always supported women's right to pursue their own interests. In the boardrooms, the bedrooms, and the courts, women have made significant progress. However, there is still a long way to go. It has been challenging for women to achieve complete liberation because of negative attitudes around sexuality in particular. However, things are starting to change slowly owing to feminists, prostitution advocates, and their allies. Women can only be genuinely free when their sexual and personal preferences are safeguarded and respected.)⁶Annie "Whores endure in the face of fierce prejudice... Whores help people explore their sexual desires... Whores explore their sexual desires... Whores are not afraid of sex... Whores are rebelling against the absurd, patriarchal, sex-negative laws against their profession and are fighting for the legal right to receive financial compensation for their valuable work."

Everyone has the right to define sexuality as they see fit, therefore there is nothing wrong with defending the idea that romance and sexuality should go hand in hand. Sexual ideology becomes sexual oppression when a dominant institution imposes its model on a marginalized institution. Homophobia is an example of this that is not unusual. Once we realize that the persecution of sex workers is closely linked to the persecution of other sexual minorities, it is not surprising that gay, lesbian, bisexual, and trans people have historically been persecuted alongside prostitutes in so-called "vice sweeps" or that lesbians and female sex workers were grouped together as "sinful ladies" and interned during the Nazi era.

CASE LAWS

1]Budhadev Karmaskar vs. State of West Bengal⁵

⁵ Budhadev Karmaskar vs. State of West Bengal CRIMINAL APPELLATE NO.135 OF 2010

A significant ruling in the case of *Budhadev Karmaskar v. State of West Bengal* cleared the path for the protection of the rights of workers who engage in sexual activity. This case brought the vulnerability of sex workers and the associated social stigma to light. This decision maintains the affected employees' constitutionally guaranteed right to a dignified existence as outlined in Article 21 of the Indian Constitution. This case forced the Supreme Court to develop guidelines to address the issue of sex workers in order to reduce the likelihood of any such mishaps. Additionally, it raised awareness among the broader public that persons who engage in sexual activity aren't merely unimportant commodities and shouldn't be denigrated because of their profession. The liaisons are additionally humans, and they are deserving of the same freedoms and advantages as other members of society. The facts of the *Budhadev Karmaskar v. Govt. State of West Bengal* case show that on the terrible night of September 17, 1999, at around 9.15 p.m., a 45-year-old sex worker named Mrs. Chai Rani Pal alias Buri was brutally murdered at a red light district in Jogen Datta Lane's Conscience. He resided in a three-story apartment in Kolkata's high-crime Jogen Dattalen neighbourhood. The dead was dozing off in front of her second-floor room, close to the stairway, just before the event. There was a loud quarrel when the accused entered the second story and fell on the deceased. accused of having severe bleeding. He sat down, the accused grabbed his hair, and then he pressed his head against the wall. He began bleeding from his head, nose, and ears as a result. One of the witnesses, Asha Khatun, a maid who was on the second floor when the incident occurred, gave the warning. At the scene of the incident, other prisoners gathered and witnessed the accused viciously hitting the victim. The accused pushed and punched onlookers before immediately removing the victim from the scene as soon as the protest was raised. In Jogen Dattalen, police detained the suspect at around 2.15 am. After being transferred to the hospital, the victim was declared dead.

Order of the court in *Budhadev Karmaskar vs. State of West Bengal*

The Humble High Court of Calcutta dismissed the appeal in the current case. The court rejected the appellant's argument that, in accordance with Section 164 of the Code of Criminal Procedure, 1973, the statement of the eye-witness, Asha Khatun, should not be used to replace her absence from the cross-examination. The eyewitness's testimony was given fair weight by the court because it provided a detailed account of the accused's act.

https://main.sci.gov.in/supremecourt/2007/37388/37388_2007_5_1_32160_Order_14-Dec-2021.pdf

- The assertion that there was animosity between the accused and the deceased and that they frequently used to argue was also supported by Asha Khatun, an eyewitness, in her statement. Additionally, it was demonstrated that the defendant tripped over the deceased, who was dozing next to the.
- The court was of the view that the grave injuries that were inflicted by the accused were further corroborated with the help of the post-mortem report prepared by the attending physician. It was proved that the injuries inflicted by the accused were grave enough to cause the death of the deceased in the ordinary course of nature.
- The defense's case was nothing but denial, and the court expressed its displeasure that there was no explanation for why the accused's left eye was injured.

This historic decision is a shocking illustration of how sex offenders are tortured and killed by evil individuals who treat them like ordinary commodities. It sends the message that such brutal behavior is not acceptable in a civilized society. This instance brings to light the terrible situation of the prostitutes, who paint not because of the pleasure they derive from it but rather because of their need for money. It doesn't matter that their line of work has a social stigma since implying that they do not have the right to be treated with respect. Every individual enjoys the fundamental right to life and private liberty under Article 21 of the Indian Constitution. It no longer refers to merely animal life. But because of the traditional societal mindset, it will be all but impossible.

Bhudhadev Karmaskar was found guilty by the trial court and given a life sentence under section 302 of the IPC.

2] GAURAV JAIN V. UNION OF INDIA⁶

In this instance, the Petitioner—who was a suggestion—filed a Public Interest Litigation (PIL) with the Supreme Court of India. A piece of writing titled "A Red Light Trap: Society Gives no Chance to Prostitutes' Offspring" which was published on July 11, 1988, in the magazine "India Today," prompted Gaurav Jain to launch the petition. In the petition, he had asked for the issuance of a proper writ ordering the establishment of excellent educational facilities for children of prostitutes (referred to as "fallen ladies" by the Court throughout the judgment), up to the age of 16, in order to keep them from becoming concerned with the wicked and unethical way of life. However, The Court, however, overruled a directive on

⁶ Gaurav Jain V. Union Of India [1998](3) All Mr 433(S.C.)<https://main.sci.gov.in/jonew/judis/13924.pdf>

November 15, 1989. According to the judgment, the Apex Court changed its mind and now believes that creating unique academic institutions and hostels could separate the prostitutes' communities.

children, which may be for both their own well-being and the well of society as a whole. Although the Court rejected the request for separate hostels and schools, it did note that adequate housing in correctional complex houses and hostels was necessary to aid in the separation of children of prostitutes from their mothers. A committee made up of four solicitors and three social workers was formed by the Supreme Court to investigate the situation and recommend the best course of action. The Committee, whose chairperson is Shri V. C. Mahajan, as its chairman, looked examined how government organizations operated. The Committee's report is provided below:

The focus was on both, recognized red light areas as well as areas that were not recognized.

- According to the report, it was due to poverty that families were sending their children for prostitution.
- It stated that destitution, social intolerance, family customs, poor health, desolation, and lack of alternate livelihood sources were the main reasons why the women were not willing to give up prostitution.
- It also stressed the role of NGOs in the reestablishment and education of the children of prostitutes.

JUDGEMENT

The Court includes provided detailed instructions on how to save and reintegrate prostitutes and their children into society. These instructions: It was suggested that the prostitution-related women were no longer criminals and should instead be seen as victims of their unfavorable socioeconomic circumstances. It placed a strong emphasis on fostering girls' economic independence through employment and vocational training. For the children's protection and rehabilitation, the Court ordered the construction of stripling cottages. It instructed the formation of a committee to investigate the situation and develop plans for the victims' uplift. The second justice, Justice Wadhwa, disagreed with Justice Ramaswamy's viewpoint on one matter, though. When he discovered that within the gift box, a problem arose. Inside the petition, the focus shifted from ending prostitution and prostitute rehabilitation to the rehabilitation of the children of prostitutes. Following this decision, an

evaluation petition was filed, and the case was moved to a three-choice bench that was larger than the bench in the original case. The first judgment regarding the guidelines created for the elimination of prostitution was overturned by the decision inside the overview petition. But the recommendations made for the children of prostitutes in the first case were also upheld in the review petition.

ANALYSIS

Sex workers in India face a variety of challenges, partly due to a lack of adequate awareness of their rights. The cases I mentioned above point all the way to the courts recognizing that sex work should be commercialized. *Budhadev Karmaskar v. The State of West Bengal* case was the first case where the courts and the state discussed the plight of sex workers and enacted a bill on their rights. There are certain provisions of the Prevention of Immoral Trafficking Prevention Act, 1956, which are totally inappropriate for the right to work in India which by the way is a fundamental right of Indian citizens. A request for dry rations to be given to sex workers recognized by the National AIDS Control Organization [NACO] was made in 2020 by Durbar Mahila Samnwaya. and does not require proof of identity. For example, we need to look at situations such as sex workers who are not yet certified human beings and whose work is criticized by us as a society and not accepted. If prostitution is legally recognized as a legitimate profession, and sex workers are adequately paid employees, many (if not all) of the negative aspects of the trade can be eliminated as legal possibilities for work without fear of torture for their work. They would have the bodies and privileges of all masters. In my opinion, control over your flesh and blood is a basic human right and should not even be discussed. Prostitution cannot be tolerated, nor does it need to be regulated like a CA is financially sound and charges for their services, the chefs are skilled in cooking and charge for their meals, and have their services.

CONCLUSION

They need to understand loudly and clearly that only women own their bodies and have the unquestionable right to decide what to do with them, as long as they don't physically harm anyone and they get to decide what someone else does with their bodies stop the bodies, stay busy with their bodies. If you hate the job so much, don't be a client and take advantage of them by paying for their services. All are entitled to fundamental human rights and privileges on their own, without regard to sex, color, race, or occupation. And, Live and let Live!