

LEGALIZATION OF PROSTITUTION – AN UNSPOKEN TABOO

Devayani Shukla* Shreya Sharma* Nikaiah Maria Fonseca Da Silva*

ABSTRACT

One of the oldest occupations is prostitution, which was once encouraged in the guise of religious practise but is today harshly condemned by society. The idea of prostitution has become such a huge taboo in the world that no one ever speaks of prostitution except when attacking it. In today's world, when vulnerable women are trying to earn a livelihood, society should not burden women with the ill aspects of prostitution and add to their misery. This study investigates the connection between prostitution and the exploitation, violence, and abuse of sex workers. It also considers the potential effects of legalizing and regulating prostitution. Governments passed a number of laws pertaining to prostitution both after and before independence, and the legalisation of prostitution has been the subject of innumerable books and essays. While these works focus on a more general subject, this research study examines two particular elements. Prostitution will always be around, whether it is legalized or not. It is, therefore, preferable to address the current problem and possibly come up with solutions for the difficulties that women and children involved in prostitution face. The researcher aims to find the different aspects of legalizing prostitution in India and whether legalizing it would, in the literal sense, help women in a judgmental and patriarchal society like India, where many constraints are imposed on women. Through this paper, the researcher aims to make the topic of Prostitution comfortable that can be talked about openly without any remarks or criticism.

Keywords: Prostitution, Legalisation, Profession, Taboo, Exploitation.

INTRODUCTION

“Slavery still exists, but now it applies to women, and its name is prostitution” - A quote by Victor Hugo provides us with an overview of what Prostitution is.

Prostitution is a practice where a woman is paid for the services she provides in terms of sexual intercourse. It is not always the women getting paid and the male being the client.

*BA LLB, FIRST YEAR, SYMBIOSIS LAW SCHOOL, HYDERABAD.

*BA LLB, FIRST YEAR, SYMBIOSIS LAW SCHOOL, HYDERABAD.

*BA LLB, FIRST YEAR, SYMBIOSIS LAW SCHOOL, HYDERABAD.

Some males engage themselves in the business of Prostitution. Individuals who offer sex in exchange for a monetary benefit are called prostitutes. *Prostitution* is also defined as an individual selling one's body to earn a living. The word Prostitution, in its literal sense, talks about the plight of a woman. It is a reality, and the nation and society must acknowledge it as one. Since prostitution satisfies basic human desires in exchange for money and is thought to be as old as civilization itself, it is regarded as the oldest vocation in the world. Though it was called 'Devdasi,' the objective was the same, and the reality was hidden under the hypocrisy of the religious minds. Today, the same religious minds call it immoral and frown upon the idea of Prostitution being considered a profession.

In a patriarchal society like India, women have to fight even for the most basic rights. Being a prostitute does not become feasible, which is already considered a big taboo. In a country where women are subjected to a fundamental right violation, one can only ascertain the fight a prostitute fights to survive the very judgemental society. Prostitution is considered an uncourteous phenomenon where a woman has stooped so low that she uses her body to earn a living. There have been many approaches regarding the reason behind Prostitution, but none has captured its true essence. Women are forced into the profession because they have no alternative. It is because they are financially vulnerable. Statistics show that many women prostitutes are from the poor, illiterate, and ignored section of society¹. Since the women feel financially helpless, they find Prostitution as their only option to survive.

Prostitution should be dealt with as any other profession would. Legalizing Prostitution and forming specific laws protecting the legal rights of prostitutes is much needed in the country. Through this profession, the immoral trafficking of women and children is reduced in number². Laws about the rights of prostitutes will help not only them but their future generations as well. Every individual has a right to choose whatever profession the individual sees fit. The same principle should be applied to prostitutes.

¹Tambe A, 'Different Issues/Different Voices: Organization of Women in Prostitution in India' [2008] Prostitution and Beyond: An Analysis of Sex Work in India 73

²Kara S, 'Eliminating Sex Trafficking in India' (*Dasara.org*, November 2013) <<https://www.dasara.org/assets/uploads/resources/Zero%20Traffick%20-%20Eliminating%20Sex%20Trafficking%20in%20India.pdf>> accessed 14 July 2023

RESEARCH QUESTIONS

1. Is it ethical to use one's body to earn a living?
2. Should the laws be concerned with supervising prostitution and consider it moral?
3. What impact does legalization have on the abuse of women for prostitution?

OBJECTIVES OF THE STUDY

1. To analyze the Indian Legal Framework related to Prostitution
2. To examine the inadequacies of the ITPA and the issues with law enforcement.
3. To closely examine the socioeconomic standing of children born to prostitutes
4. To assess the Ethical dilemma a woman has to go through while choosing Prostitution as a profession.

HYPOTHESIS

- Prostitution is ethical because it gives validation to the profession of women who are brave enough to put themselves out there and earn a living amidst all the criticism.
- For the acknowledgment and respect of those who engage in sex work to live comfortably, prostitution must be approached in a way that successfully recognizes women's vulnerability as human beings.

SIGNIFICANCE OF THE STUDY

Prostitution has long been a practice in India. There have recently been a lot of people who want it to be recognized as a standard and respectable career. India is home to prostitution networks, frequently linked to male sexual assault and human trafficking. The associated prostitutes encounter societal isolation due to the stigmatisation, and their fundamental human rights are occasionally infringed upon. The elimination of health problems like STIs and unwanted pregnancies is also associated with legalising prostitution in India.

Professors, attorneys, and students who wish to conduct further research on prostitution will find this study to be useful because it is an area of society that requires additional

investigation and the perspectives of the aforementioned groups. It will educate lay readers about sex workers' lives, help them understand prostitution from the victim's perspective, and hopefully help to eradicate the stigma.

SCOPE AND LIMITATION OF THE STUDY

The researcher wants to investigate India's legalisation of prostitution. Every Indian state is covered, and there are numerous recommendations. Because the investigation also covers the history of prostitution, the timeline is equally comprehensive. But the study doesn't cover how legalising prostitution will impact the welfare of sex workers, society at large, etc. It also decides to ignore the legal status of prostitution in other countries.

RESEARCH METHODOLOGY

To write this research paper, several tools and ways to evaluate the subject matter of the study critically. The research paper aims to examine the conditions of prostitutes/sex workers in India before and after the implementation of legislation for its legalization. The researchers have adopted a mixed research methodology in which qualitative information, i.e., mainly subjective, and quantitative information, i.e., primary objective, have been utilized to arrive at conclusions. The research emphasizes examining the ethical aspect of prostitution as a profession and answering the research questions mentioned above.

SOURCES OF DATA

The data sources used to write the research paper are classified into primary and secondary sources. The primary source of information is the book '*Mafia Queens Of Mumbai* written by Hussain Zaidi' and '*The Immoral Traffic(Act)*' while the secondary sources include research articles, case laws, and journal articles. The secondary sources provide additional information for further reliance.

REVIEW OF LITERATURE

The following journal articles, novels and other publications have been used to study certain aspects of prostitution and its impact on women:-

“**The Immoral Traffic (Prevention) Act, 1956**”³, which defines prostitution and stipulates the circumstances in which it may be engaged, is the primary source of information. Additionally, it includes the punishment guidelines if the terms are broken. This has been used as the basis for the researcher's analysis of the prostitution situation in India. The Bengal government's “**Bengal Suppression of Immoral Traffic Act**”⁴, passed in 1933, is comparable to the ITPA in scope. It places limitations on prostitution in the Bengal state.

The stigma, inconsistencies, and challenges in creating effective prostitution legislation are examined in the book “**Designing Prostitution Policy: Intention and Reality in Regulating the Sex Trade**.”⁵ It also looks at regional and municipal policy regulation. The goal of the current study is to help India apply the benefits of the procedures by analysing the national policies of Austria and the Netherlands.

The crime and women's empowerment themes of “**Mafia Queens of Mumbai**”⁶ are combined. The author of the book is Hussain Zaidi. The novel's plot centres on the lives of 13 women who were active members of Mumbai's underworld and engaged in various criminal activities. The narrative of the Mafia Queens of Mumbai is based on actual Mumbai happenings. The book's plot is based on the life of Kamathipura native Gangubai. She was forced to engage in prostitution as a young girl and eventually decided to embrace her fate. She gradually ascends to the position of Kamthipura matriarch. The storyline demonstrates how a woman may succeed where men fail and take control of an enterprise.

“**For Debate: Should Prostitution Be Legalized and Regulated?**”⁷ is one of the research and social science papers that discusses the legalisation of prostitution in light of the existing health problems. The main goal of this study is to assess the transmission of diseases like AIDS and other STDs by sex workers and their clients.

“**Protection of Sex Workers**”⁸ investigates how inadequate prostitution laws and regulations can lead to the exploitation and abuse of sex workers. This highlights the importance of

³ The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).

⁴ Bengal Suppression of Immoral Traffic Act, 1933, No. 6, Acts of Bengal State Legislature, 1933 (India).

⁵ Altink S, Amesberger H, and Wagenaar H, *Designing Prostitution Policy - Intention and Reality in Regulating the Sex* (Policy Press 2017)

⁶ Zaidi SH, Borges J and Bharadwaj V, *The Mafia Queens of Mumbai: Stories of Women from the Ganglands* (Tranquebar Press 2011)

⁷ Jones CJS, ‘For Debate: Should Prostitution Be Legalised and Regulated?’ (*BMJ (Clinical research ed.)*, 28 April 2007) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1857755/>> accessed 16 July 2023

⁸ Goodyear MDE and Cusick L, ‘Protection of Sex Workers’ (*BMJ (Clinical research ed.)*, 13 January 2007) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1767242/>> accessed 16 July 2023

prostitution regulation and lends credence to the existing findings. This article specifically looks at prostitution that takes place in the UK. In the context of Indian society and the emergence of AIDS, it is possible to comprehend the negative effects of criminalising prostitution.

THE ETHICAL ASPECT OF PROSTITUTION

Prostitution cannot be deemed immoral because it is a trade akin to many other jobs in society. The right to sell one's sexual services is just as much of a right as the right to sell one's labour in any of its numerous other forms, neither more nor less important⁹. In essence, paying for sex is like paying for a service, except that the prostitute hasn't sold "her body," just limited access to it, which isn't necessarily immoral. Prostitution is ethical even though it may not seem so on the surface. Society has to accept the fact that prostitution is here to stay, and the community has to take prostitution as a profession and respect it as one.

Is it Ethical to use one's body to earn a living?

In a patriarchal society like India, women are subjected to discrimination and abuse, where women are expected to abide by specific rules, where women are given a set of rules following which women can become the *ideal women*, and where women have to fight for basic fundamental rights, The rights of a prostitute are out of the question.

Prostitution is seen as a social evil and frowned upon by society. Many sections in society, including religious monks and feminists, consider prostitution a critical factor. Holy monks frown upon the idea of a woman using her body to earn a living, and feminists find prostitution a setback for all the women who have fought so hard for their rights because women are subjected to violence and rape. Both sections of society may disagree on many other things but considering prostitution illegal is one aspect they both strongly agree on. It is believed that legalising will do more harm than good to society as it spreads STDs, and legalising the profession will only make people force women into work.

The feminists argue that prostitution is degrading to women, and they consider it violence towards women. They say that exchanging sex for money severely affects women's mental health and that legalising it would be bad for women. Prostitution and illegal trafficking of women and children are two different aspects. Trafficking of women and children is a serious

⁹ Vikaram PT, *Prostitution in India* (Indian Journal of Social Work 1982)

crime and should be dealt with with severe laws. Women being forced into working as prostitutes is a heinous crime and should be dealt with seriously.

The society argues that women should not stoop so low that they start working as sex workers to earn a living because, according to society, prostitution is a social taboo and is demoralising to the community, and it is argued that prostitution affects the dignity of life of women.

But society, religious monks and feminists fail to recognise that women are not in the profession for the fun of it or the pleasure of the profession. Women get into the profession because they are financially vulnerable and often come from the sections of society that are ignored and illiterate, and since they find themselves helpless. With no alternative, they get into the profession of prostitution. Legalising Prostitution will change the double standards of the society that is now much concerned with prostitution as 'morally degrading' when the same society uses obscene words towards women¹⁰. The idea of prostitution may be ethically degrading, but society has to acknowledge the fact that prostitution is going to stay around for a long time, even though there are many laws that ban it altogether. The practice will occur one way or another, which would cause more physical and mental harm to the women. They are people in society that believe that society should not let its personal feelings of prostitution being a social evil stop the Government from making laws to regulate prostitution.

Prostitution seems to be ethically wrong on the surface. But, when one type of research and dives deep into the aspect and finds the reason behind prostitution and the benefits of prostitution¹¹, it will not seem ethically wrong and realise that considering prostitution as a profession will only benefit the women financially and mentally. Women already go through a lot physically and mentally, so society has no right to put the burden on women by constantly criticizing them about the job. Instead, society should support the women who are in the profession by providing them with appropriate laws governing the job and rights protecting the interests of women.

¹⁰ Wad M and Jadhav S, 'The Legal Framework of Prostitution in India' [2008] *Prostitution and Beyond: An Analysis of Sex Work in India* 207

¹¹ Sahni R, Shankar VK and Apte H, *Prostitution and beyond: An Analysis of Sex Work in India* (SAGE Publications 2008)

Prostitution is considered taboo, but the researcher believes it should receive the same amount of validation as other professions. When the sexual relationship between two people is consensual, and one of them is getting paid, society has no right to dig its nose between them, invading their right to privacy. As long as no one is getting hurt or doing something illegal, society should mind its own business and dive into how one earns a livelihood.

Ethical status of children born out of Prostitution

It is inconceivable to believe that "prostitution" will ever be abolished in India, given that it has existed from the dawn of time and is seen as a potentially harmful profession that might undermine the foundation of marriage and societal connections. Sex workers are not even faintly considered to be human because of such tainted mindsets, and their most fundamental needs & necessities are not recognised or given any place in any regulation. For these reasons, sex workers are vulnerable to all forms of violence, and in some cases, if a woman falls pregnant, the child bears the consequences and is not spared. Whether through coercion or out of the free will, every effort is taken to ensure that the child suffers the same destiny as the mother. The previous study concentrated on the prejudice and bias these children experience in society and how their families and the community mistreat them. Without their fault, their birth is seen as a burden.

Justice cannot be based on society's viewpoint because morality and immorality are only perspectives about a person, thing, or situation. Although it is morally wrong to mistreat or abuse a child because of their birth, society frequently condones such behaviour. Prostitution is a social problem that has always existed and will continue to exist as long as laws prohibit it. Therefore, legal constraints must be lifted in order to ensure these children's healthy development.

No matter how efficient, well-thought-out, and excellent the legislation, the conditions and suffering of these children will not end until every member of society learns to feel the pain of others. This is because society has a more significant impact on how these kids live their lives. Another problem is the total lack of efficient legal execution. Cultural elements also influence the majority of Indian laws; therefore, until the law transcends these cultural influences and pursues justice, little can be done to safeguard the well-being of these children. So, the first step in admitting these kids' existence is to ensure they aren't being

exploited in any way. The right to life and dignity of every person must be upheld by society and all parties simultaneously.

A child born in a brothel does not typically have a conventional childhood. A child needs a nurturing, secure environment where they can live freely and are provided with all the tools they require to develop and learn. Sadly, these benefits are not available to children who reside in bagnios¹². According to observations, many of the children there don't know who their father is because their mothers don't want to tell them. As a result, the child grows up in an environment where they cannot get guidance and support from their parents. They never get the chance to encounter the values, affection, and compassion that a child in a conventional family would have. The atmosphere in which these kids are raised is very toxic and traumatising, and the brothel is the centre of their universe.

Children born in brothels are exposed to prejudice because of where they were born and the occupations of their mothers. Because they were born in a brothel, no child should be denied their fundamental rights. Education is one of these rights because it is essential to progress. Another right is the right to survive, which includes access to food and nutrition and recognition. These kids are denied their “Right to health under Article 21” itself. the right to defend against unfavourable and undesired facets of society. These are the fundamental rights that each and every child should have.

The Immoral Traffic (Prevention) Act of 1956 provides protection for parents who work in brothels with their children. However, this law did not only have the offspring of prostitutes in mind To tackle the problem of child trafficking, the Lok Sabha enacted the Immoral Traffic (Prevention) Amendment Billin 2018¹³. The well-being of children is the main focus of Directive Principles of State Policy Articles 39(e) and (f)¹⁴. The first item aims to shield men, women, and children from abuse, while the second encourages giving kids a chance to mature and flourish in a secure setting.

In *Gaurav Jain v. Union of India*,¹⁵ the Supreme Court recognised the right of children of sex workers to equality of opportunity, dignity, protection, care, and rehabilitation and held that

¹² Sinha S, 'Ethical and Safety Issues in Doing Sex Work Research: Reflections from a Field-Based Ethnographic Study in Kolkata, India' (2016) 27 Qualitative Health Research 893

¹³ The Immoral Traffic (Prevention) Amendment Bill, 2018

¹⁴ The Indian Constitution Act 1950, Articles 39(e) and 39(f)

¹⁵ *Gaurav Jain v. Union of India* 1990 AIR 292, 1989 SCR Supl. (2) 173, 1990 SCC Supl. 709 JT, 1989 (4) 315, 1989 SCALE (2)1126

these are essential elements to ensuring their social integration and the ability to live lives free from stigma. The Tribunal also provided comprehensive guidelines for establishing a commission that would create a thorough reintegration strategy for kids born in brothels and those who were the victims of juvenile trafficking. In this case, the court acknowledged the children's rights and declared that the red light and brothel districts' surroundings and environment were unhealthy for kids.

The Supreme Court determined that the current sex workers and their children's rehabilitation legislation had not produced the anticipated results when it heard the case *Vishal Jeet v. Union of India*.¹⁶ Thus, to ensure these provisions are carried out, the Central and State governments must assess them. The court ordered severe and swift legal action against the exploiters, including those traffickers, pimps, and brothel owners, to safeguard the victims' safety. To run rehabilitation facilities efficiently, the Court also created guidelines for establishing a Zonal Advisory Committee.

EFFECTS OF LEGALISATION AND LAWS RELATED TO PROSTITUTION

In modern society, some people believe that prostitution is a vice in and of itself, while others openly support its acceptance in society. Legalizing prostitution will protect women from abuse and exploitation. While it is not expressly stipulated in the law that prostitution is illegal, some behaviours associated with prostitutes, such as operating brothels, solicitation, trafficking, and pimping, are all prohibited in India. Our Indian Constitution guarantees the fundamental rights to all people, including sex workers, who are consequently qualified to exercise those rights.¹⁷ The Immoral Traffic (Prevention) Act, 1956¹⁸ is the law that predominantly addresses prostitutes in India. This law makes some prostitution-related behaviours illegal.

¹⁶ Vishal Jeet v. Union of India (1990) AIR 1412 1990 SCR (2) 861 1990 SCC (3) 318 JT 1990 (2) 354 1990 SCALE (1)874

¹⁷ Kaushik Z, 'Legal Interpretations of Prostitution: Cases and Judgements' [2008] Prostitution and Beyond: An Analysis of Sex Work in India 221

¹⁸ The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).

What impact does legalisation have on the exploitation of women for prostitution?

The consequences of legalising prostitution have been taken into account on a moral, medical, and legal level. Prostitution that occurs privately and on an individual basis is legal in India, as previously mentioned. Government control over brothels and related enterprises is necessary in order to regulate prostitution. Despite the fact that there are laws against running brothels and pimping, these enterprises nonetheless exist and exploit women. Police raids aren't always successful because the brothel owners bribe the officers. Supply and demand are definitely to fault for this. If the government takes over these brothels, supply and demand will be balanced, and middlemen won't be required either.

In order for prostitutes to support themselves and keep from being discovered by the general population, they must be allowed to practise their trade surreptitiously. Once prostitution is legalised, its regulation will be easier to understand. As a result, fewer girls and kids will be forced into prostitution. Under the current system, it is difficult to tell whether the women have consented to engage in prostitution. Making prostitution illegal will benefit victims and make it simpler to control criminal behaviour. By regulating prostitution, it is possible to stop the trade for underage girls and stop paedophilia. In the industry of sex work, legalization or regulation is a crucial principle. The paid sex industry, according to this system, has always existed and will continue to live in the future. Prostitutes should be registered with government agencies after passing a medical exam for sexually transmitted diseases, which allows them to work. Officials could only register a person after confirming their age and the medical assessment results.

Some advantages of legalization may include proper legal redress in cases of rape/sexual assault and the provision of legal status to children born from prostitution. The legalization and regulation of prostitution could help to make the commercial sex industry a safer and healthier place to work¹⁹. This will also help to reduce diseases and violent incidents. On the other hand, legalizing prostitution may be misinterpreted as promoting prostitution²⁰. This could provide access to quick profits for prostitutes and motivate more women to engage in prostitution. This has the potential to be a profitable industry for the government. As a result,

¹⁹ Scoular J and Sanders T, *Regulating Sex/Work: From Crime Control to Neo-Liberalism?* (Wiley-Blackwell 2010)

²⁰ Kowlgi A and Hugar V, 'Ethnographic Profile of Female Sex Workers of Dharwad, Karnataka' [2008] *Prostitution and Beyond: An Analysis of Sex Work in India* 144

rules must be strict in order to regulate this industry and prevent it from becoming legitimized.

The owners of the brothel reward their patrons with more cash in return for permitting them to commit severe crimes against the prostitutes, including sexual assault. Prostitutes have very little opportunity for relief or escape from this form of violence. By replacing these awful intermediaries, government oversight will do wonders in lowering the atrocities done against women in the name of prostitution. Of course, taking these measures won't completely eradicate women's exploitation. Law enforcement must actively dismantle any active illegal networks in addition to regulating them. According to the administration, there should never be police corruption. With this kind of prostitution regulation, social ills like exploitation and violence in the sex industry could be greatly diminished.

What are India's laws governing prostitution?

Prostitution laws and conditions are generally evolving globally, reflecting divergent judgments. When it comes to prostitution, there are three different types of nations.

- Where prostitution is prohibited and against the law, such as in Kenya, Morocco, Afghanistan, etc.
- Where prostitution is permitted, but only in select countries, such as India, Canada, France, etc.
- In countries with appropriate legal regulations, such as New Zealand, Australia, Austria, the Netherlands, etc., prostitution is permitted.

Prostitution is partially allowed in India. Although private prostitution is permitted, solicitation and organised prostitution, such as running a brothel, are not. Outside of open areas, prostitution is practised. Only female prostitution is tolerated in India. It is challenging to determine how widespread prostitution is because it is a covert industry with racket-like organisations like brothels. Although it is technically illegal to run a brothel, the government does little to track them down and shut down the sex business.

The Indian Constitution of 1950²¹, the Indian Penal Code of 1860²², and the Immoral Traffic (Prevention) Act of 1956²³ all have provisions governing prostitution in India. Even though it

²¹ The Indian Constitution 1950

²² The Indian Penal Code 1860

is not specifically declared, prostitution is illegal in India. This legislation forbids some actions related to prostitution, including running brothels, soliciting, trafficking, and pimping. Prostitution is defined as the sexual exploitation or abuse of any individual for commercial purposes in Section 2(f) of the Immoral Trafficking Act (1956)²⁴. Sections 372 and 373 of the Indian Penal Code of 1860²⁵ address prostitution, but only in relation to child prostitution.

Our Indian Constitution guarantees the fundamental rights to all people, including sex workers, who are consequently qualified to exercise those rights. The *Budhadev Karmaskar v. State of West Bengal*²⁶ case clarified that a prostitute has access to the Right to life guaranteed by Article 21 of the Indian Constitution²⁷.

- *State of Uttar Pradesh v. Kaushalya*²⁸

The Immoral Traffic (Prevention) Act's constitutionality was contested in this case before the High Court in Allahabad. To preserve public order, a group of prostitutes were requested to leave the grounds of a residence in Kanpur. The identical was contested in court. It was argued that Section 20²⁹ of this Act violates Articles 21³⁰ and 19(1)(d)³¹ and 19(1)³² of the Constitution. The statute is nevertheless constitutionally lawful, according to the Supreme Court, because there is an understandable distinction between a prostitute and a person who is producing a public nuisance. It was mentioned that the statute intends to stop female prostitution and trafficking while also rehabilitating the victims so they can rejoin society.

This ITPA³³ does not outright forbid or criminalise prostitution or the job of sex workers, but it does make certain related behaviours illegal. Prostitution is problematic for sex workers to partake in since every third party involved in this profession is punishable. The researcher claims that this Act flagrantly violates Articles 19 and 14³⁴ of the Indian Constitution by making it challenging for sex workers to engage in their line of business without being

²³ The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).

²⁴ The Immoral Traffic (Prevention) Act, 1956 s 2(f)

²⁵ The Indian Penal Code 1860, ss 372, 373

²⁶ *Budhadev Karmaskar v. State of West Bengal* JT 2011 (8) SC 289, 2011 (8) SCALE 155

²⁷ The Indian Constitution 1950, Article 21

²⁸ *State of Uttar Pradesh v. Kaushalya* AIR 1964 SC 416

²⁹ The Immoral Traffic (Prevention) Act, 1956 s 20

³⁰ The Indian Constitution 1950, Article 21

³¹ The Indian Constitution 1950, Article 19(1)(d)

³² The Indian Constitution 1950, Article 19(1)

³³ The Immoral Traffic (Prevention) Act, 1956

³⁴ The Indian Constitution 1950, Articles 19 and 14

concerned about being discovered. The ITPA³⁵ seems more focused on eradicating prostitution than it is on keeping an eye on immoral human trafficking. Such laws have only increased the difficulty, vulnerability, and danger of sex workers' jobs. This is an entirely wrong way to handle this line of work; instead of making their lives simpler, the government has made them worse. No country has been able to completely eliminate prostitution using laws.

Consider for a second that there are no laws prohibiting sex workers from looking for clients. She can converse with the client in public without being concerned about being detained by law enforcement. Here, the lady is safe and able to notify the police if something goes wrong, such as when a client uses force against her or doesn't pay her fees as a professional.

However, in this situation, when legal restrictions prevent the implementation of these standards, the system has instilled in the clients a dread of punishment. Clients prefer to meet the sex worker in a discreet, remote spot rather than in a public place to avoid the authorities. It would be simple for the customer to commit a crime in these circumstances.

Should prostitution be regulated by the law and be seen as moral?

The laws should be concerned with supervising prostitution and consider it moral. However, there should be laws that serve and protect the interests of the prostitutes and the children born out of prostitution. It was held in the case of *Budhadev Karmaskar v. State of West Bengal*³⁶ that, under Article 21 of the Constitution of India³⁷, even prostitutes have the right to live a dignified life. They enter this field not for physical pleasure but because they are financially vulnerable. The Supreme Court proposed that the state and federal governments should establish rehabilitation centres to teach these women job skills so that they can earn a living and no longer need to work as prostitutes if they use these methods.

In the recent judgment passed by the Bombay High Court, in the case of *Petitioners v. The State of Maharashtra*³⁸, the release of three sex workers who were unwillingly detained in a correctional institute was ordered. The court stated that women have the right to choose the type of work they want and that the Immoral Traffic Act does not penalize prostitution, only

³⁵ *Ibid*

³⁶ *Budhadev Karmaskar v. State of West Bengal* JT 2011 (8) SC 289, 2011 (8) SCALE 155

³⁷ The Indian Constitution 1950, Article 21

³⁸ *Petitioners V. The state of Maharastra* 1961 AIR 884, 1961 SCR (3) 423.

its incitement in public or exploitation for financial gain. The court ruled that because the victims are not being prosecuted, they do not need to be detained in a correctional facility.

The court ruled that no provision in the Immoral Traffic (Prevention) Act criminalizes prostitution. Only sexual exploitation or the participation of traffickers who seek monetary gain from it is punishable. Prostitution in public is prohibited under Section 7³⁹, and soliciting clients is prohibited under Section 8 of the above-mentioned legislation. This was stated in the case of *Kumari Sangeeta v. State of Delhi and Ors*⁴⁰.

It is essential that the State and Central Governments form advisory committees to help fight the social evil of trafficking. The number of women and children who are trafficked needs to be taken into account, as this is a major socio-economic problem. “The Supreme Court of India”, in the case of *Vishal Jeet v. Union of India*⁴¹, instructed a study to be conducted to determine the causes and effects of this issue due to the statistics of trafficking. It invited various people to serve on these advisory committees and make recommendations on how to end child prostitution.

The police raided a red light district and rescued several minor girls in the *Munni v. State of Maharashtra*⁴² case. The Bombay High Court discussed the importance of emotionally and psychologically protecting young children, particularly girls, so they do not fall into the vicious trap of trafficking. It emphasized the importance of the Child Welfare Committee playing a significant role in assisting the rehabilitation and protection of “children in need of care and protection” in this regard. It highlighted the importance of child-friendly corrective measures if a child strays and must be brought back into the safety net.

To sum up, everything that has been stated so far, The laws enacted by the state and the court’s judgments, are concerned with supervising prostitution and considering it moral. If not for these laws and judgments, the social conditions of sex workers would deteriorate to extreme levels and would cause significant problems in our society.

³⁹ The Immoral Traffic (Prevention) Act, 1956 s 7

⁴⁰ *Kumari Sangeeta v Union of India* 1995 CriLJ 3923

⁴¹ *Vishal Jeet v. Union of India* (1990) AIR 1412 1990 SCR (2) 861 1990 SCC (3) 318 JT 1990 (2) 354 1990 SCALE (1)874

⁴² *Munni v. State of Maharashtra* Criminal Writ Petition No. 227/2011

THE IMPACT ON THE ECONOMY DUE TO THE LEGALISATION OF PROSTITUTION

Although several social scientists have studied prostitution, economists have paid less attention to the "world's oldest profession." However, this has changed due to the growing number of data sets available online and the implementation of new surveys, which have allowed researchers to gather insightful economic information that may aid policymakers in establishing prostitution-related guidelines. One of the least understood professions; is prostitution, yet seems to have all the characteristics of traditional markets, including prices, supply and demand concerns, a range of organisational structures, and policy implications. They serve as the foundation of economic analysis. With more data available, economists may now develop more accurate ideas and comprehend how the sex industry is structured.

According to international data, the sex industry has contributed to the country's higher growth index. The Netherlands has seen a noticeable increase in prostitution earnings, which now accounts for \$800 million, or 0.4% of their GDP. The thriving sex tourism industry deserves credit for this. Having said that, Bangladesh's contribution to the national GDP from the time the business was legalised only amounted to 0.0001%, or \$24 million. This gap results from the two countries' contextual elements being very different from one another. The individual financial gains of a prostitute in Bangladesh are, in fact, comparatively higher than those of any full-time occupation, but a strong social stigma associated with prostitution, which is concentrated among women who are either BPL or Trafficked, negates the industry's relative expansion. Mapping this trend on India (using the Netherlands model, which assumed a comparable goal of law enforcement to that of India) reveals that the prostitute sector, with \$8.5 billion in yearly revenue, adds up to 0.03% of the country's total GDP. Although it is also crucial to consider the taxes that prostitutes will be required to pay and the jobs that will be created for the supporting economies, this percentage contribution is comparatively insignificant compared to the current situation because it would remain concentrated in a small area.

CONCLUSION AND SUGGESTIONS

“Gloria Allred,” said, “Why is it immoral to be paid for an act that is perfectly legal if done for free?” The act of participating in any sexual activity for the aim of financial gain is known as prostitution. Even though prostitution is one of society's oldest occupations, both the practise and the people who engage in it have always been despised and regarded as shameful by our culture. In some instances, the sex industry can be violent and oppressive. This activity has been the subject of numerous disputes that have seriously disrupted society as a whole. This research paper examines the economic, legal, and ethical implications of legalising prostitution. Prostitution legalisation has both advantages and disadvantages. A thorough analysis has led to the conclusion that the state should legalise sex work and establish a regulatory body to oversee the laws that are passed. India's prostitution regulations are woefully deficient and riddled with flaws. Hence it is essential for a uniform law to be made to have a straightforward approach in such cases. If traffickers or their clients abuse prostitutes, they have few legal options. This is because they fear being harassed or arrested if they approach law enforcement. Victims of the sex labour industry are also afraid to seek rehabilitation in government-run "protection homes". It is imperative to spread awareness and sensitize our society about the rights of sex workers and their children. The appropriate implementation of the laws by the government and the laws created by our lawmakers shall only function if our society accepts the occupation⁴³. It is vital that laws without any loopholes should be implemented to safeguard the interests of sex workers and their children and to prevent their exploitation.

⁴³ Farmer A and Horowitz AW, ‘Prostitutes, Pimps, and Brothels: Intermediaries, Information ... - JSTOR’ (*Jstor*, January 2013) <<https://www.jstor.org/stable/23809682?read-now=1>> accessed 14 July 2023