

**IS IT POSSIBLE FOR INDIA TO INCORPORATE THE ESSENCE OF
PROSTITUTION INTO ITS LEGAL TAPESTRY? THE QUESTION OF ITS REAL
LEGITIMACY REMAINS UNANSWERED**

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ABSTRACT

Laws for merely namesake, are no laws at all. These black-and-white letters are framed so that we can use these letters to paint a vivid image of a picturesque society. If we devoid these letters of implementation and recognition then we would be left with a skeleton having no flesh and blood. Prostitution is just a subject in our country but not a subject matter. It is not illegal entirely but at the cost of its lost identity. Our country has progressed—from Pagers to iPads. However, this particular splotch has grown darker and darker ever since. The beautification of paradise is a no-brainer. The beautification of a cursed witch is yet a task. We need to spare our valuable energy, time and resources for the betterment of this particular sector. Avoidance of a genetic issue that will become increasingly haunting every succeeding generation would demonstrate our ineffectiveness as a responsible ancestor.

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In an unpretentious manner, prostitution is a business of engaging in intercourse—or related activity—for money. Now, when we trifurcate the entire definition, we get three elements:

1. The business deals in a particular service. It can be further bifurcated into two sides –
 - A. The giver of a service of prostitution (say, G)
 - B. The taker of the service (say, T)
2. Intercourse - It becomes a consideration for the taker.
3. Money - It becomes a consideration for the giver.

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Moreover, prostitution has five of the six essentials of a valid contract, the only exception being the intention to create legal relations:

- Offer;
- Acceptance;
- Consideration;
- Legality and capacity—the exception being when the minors and children are engaged in this job;
- Certainty.

Prostitution is a form of trade that is pursued by many—from both sides— but recognized by none. T goes to the premises—the brothel— of G because of several reasons:

- To quench physical thirst.
- To feel the warmth of a fellow human being.
- To regain emotional stability that might be lacking.
- To have a touch of beauty that varies from person to person.
- To explore the physical capabilities and to further improve oneself.
- To gain reassurance that might be desired but was unavailable till the meetings.
- To ease down the sexual tension that might be present in the person's body.

Physical need is a conspicuous part of one's life. We cannot think of our sanity by eliminating the call of our aroused bodies. There are times when we need to satisfy ourselves with the help of some other person. From the olden days, happenings related to procreation and the excitement we get through them have been a significant part of our lives. Prostitution is a healthy mechanism through which one justifies bodily hunger. Let us try to understand this rudimentary necessity in our lives using two case scenarios:

1. A is an unmarried 29-year-old adult. A does not have a girlfriend because of his shy, coy and timid personality. He is neither rich nor very fine-looking to impress a girl. Like any other normal adult, his body functions in a set manner. He has desires and needs for bodily fulfilment.

B is a married man. Although he has a wife, he is not physically drenched because of constant clashes between them. B tries a lot to get close to his wife but one way or the other things never go the way they should go. He is emotionally and physically drained because of the endless skirmishes and distance between them in the bedroom respectively.

Now, when we analyse the mental facilities of A and B, we get a clear picture that both of them are unhappy and truly dejected beings. Howsoever their professional life is, their personal life is quite doomed. They are demotivated and sulked. Just like A and B, we have numerous stars in the sky. Sexual health is a blot in our country. We refrain from mentioning “such” things in front of our kids. We do not want our kids to become aware of who they are. Everybody loves the products—kids—but nobody wants to talk about the procedure—intercourse. There is a sunglass with a tag—S**. Anything and everything that we see from that sunglass is dark, immoral, unjustifiable, insignificant, evil, harsh and ‘*something which should not be talked about*’.

Prostitution, as a concept, needs some awareness and voices. How would we ever be able to implement and frame laws when we shy away from speaking in the Parliament about it? We frame laws for the betterment of our healthcare system, our military requirements and our educational system. However, what about the deteriorating condition of the health of our prostitutes in the country? Why do not we need to talk about serious diseases like all forms of STDs (Sexually Transmitted Diseases) and AIDS (**Acquired Immune Deficiency Syndrome**) that affect prostitutes? Why we are not moved to see their plight? Why don't we need to talk about the defence and protection of our prostitutes from violent and ungrateful T? Why don't we make laws for educating prostitutes regarding s**-ed and other health measures? Education is not readily available for prostitutes and their children. It has proved to be an uphill task for them to enjoy the right to education.

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After picturing all the ideal case scenarios, let us try to gauge the ground realities. From the giver's end—a woman/girl in the role of a prostitute—the world is a grim and stern place. A girl engages in prostitution because of an inexhaustible number of reasons:

- Unbearable family pressure;
- Weak social and financial status;
- Absence of regulatory parental love and control;
- Betrayal by some trusted person who ended up trafficking her to a brothel;
- Lack of awareness and educational background.

The drive for providing “*roti, kapda, and makaan*”—food, clothes and shelter—to oneself and at times, one's family leads one to engage *in such* heart and body-wrenching business practices. Nobody wants to sell her body till the grumbling call of the stomach. It is the heat of the

stomach that makes our hearts cold. We become willing to trade our bodies in exchange for a slowdown of the interminable tears of our loved ones. We do not engage in the business of bodies for habitual fun or amusement purposes. It is a consequence of our helplessness. Morality is the distinction between what is presumed—by society—to be right and wrong. How can society judge what is right for one's old, starving and sick mother? How can society judge what is right for one's 6-year-old sister who is unable to go to school because of the paucity of funds? How can society judge what is right for a girl who has responsibilities of the entire household at a tender age and who has to give the monthly rent to the landlord?

What may be right for you, may not be right for me. There is certainly no way through which we can justify the activity of prostitution. We are just trying to justify the reasons why a person ends up being a prostitute for her family and life.

From time immemorial, *roti, kapda, and makaan* have been the most indispensable essentials of a person's life. One cannot imagine oneself without these basic nuts and bolts. We remain very uncanny for all the things, people, creatures, beings, etc. It is a human instinct that fails to register anything new. New things create discomfort. Discomfort gives rise to uneasiness. Uneasiness clogs our minds. Clogged minds make distorted judgements. Our mind is the seat of all our emotions. We feel through our minds. Once the mind gets perturbed, we become inept to feel others—sympathy; or more accurately, feel like others. Empathy is quite an underrated human emotion. Can we take a while to keep all such stronger emotions like love, hatred or sadness aside and feel like a human being?

Just because prostitution is an activity divergent from our natural course of actions and life, this said reason cannot make it a *wrong* activity as a whole. The nitty-gritty of it is very complex. We are brilliant judges of the actions and lives of our fellow individuals. However, before being a judge, let us try to be a human first. The environment may not become a reason for your excuse for an act but compulsion out of necessity is. If one has a home to feed by letting other people feed on her body, then the trade-off is fairly simple. Our body is a home to our mind and spirit, nonetheless, if our mind is flooded with the tears of our family members and our spirit is crippled to see our bed-ridden father at home, then using this body as means does justify the end. From the comfort of our homes, we cannot make laws for the people who are living pole-opposite lives from us. We need relatability, even though it is hardly possible. Sensing their plight is the very first step.

Unemployment, illiteracy, poverty, failure of family structures, etc. are some of the reasons for the prevalence of prostitution in our country. Prostitution is just a mere branch; the above-stated phenomenon is its roots. Until the roots are obliterated or treated and tamed, prostitution is not going to be eradicated any time soon. We need to take cognisance and wake up to smell the coffee.

In India, prostitutes face a huge number of hardships in their day-to-day lives like:

- They do receive a regular or decided consideration in exchange for the service.
- There is a third party—known as an agent—involved that coerces a girl to go in for prostitution.
- Many takers of the service violate the set boundary and exert dominance, pressure and violence on the givers.
- Prostitutes are often disrespected, assaulted and humiliated in a social and public setting based on what they do. They do not have valid social recognition.
- Many a time, prostitutes undergo several bodily injuries by their takers.
- Even while being a part of all the fundamental rights, they are devoid of the unrestrained expression and fulfilment of such rights.

Although prostitution is not barred under any law in our country, it does not have enough valid guidelines, procedures and set amenities for its proper functioning. We need to make laws so that prostitutes are not exploited like menial objects. Just like any other profession, prostitution needs a board that takes care of the chores of the business. Polio was a disease. To curb its spread, we conscientiously worked in unity to get rid of it. Prostitution is tainted and predominant because to treat a patient, we need to live with the patient having the specific disease.

Laws ensure the impartiality, workability and reliability of a profession. We should neither promote prostitution nor expect its functionality in the long run. However, we all know that it is a part of existing society and it has been a part of us for a very long age now. Prostitution demands attention and constant toil from the lawmakers for its healthy removal. We need to treat our society of prostitution by appropriate legislation and supervisory systems. The unaccountability of authorities, governments and lawmakers cannot be the reason for us becoming complacent about the present situation at hand. There are three possible scenarios:

- We embargo and make prostitution illegal as a whole. However, the real issues will remain untouched. Unless and until the root causes are dealt with, we will not be able to wipe prostitution off. We need to solve the real causes of why a girl is forced or made to become a prostitute. We should start addressing the whys and hows rather than running after the whats.
- We are not stating that prostitution is illegal, nor we are making prostitution progressive laws for its early removal.
- We make such laws that slowly and steadily work for their elimination from society.

Immorality is a concept that is majoritarian and subjective and it does not give a vivid picture of the sentiments of the minority. Why do we have to see prostitution from the perception of morality? Why do not we understand a simple situation that morality is a singularity that changes from time to time and person to person? There was a time, not very far ago, in India when working outside and earning bread for the family were considered immoral for women. The idea of morality cannot be the objective and sole criterion to judge the validity of prostitution. What may be immoral for a country like India may not be immoral for a country like Cambodia where the law of the country does not prohibit the existence of zones in which prostitution is exercised. The law protects those who exercise prostitution with public health measures, but at the same time imposes on the state the duty to promote the rehabilitation of those working as sex workers.¹

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¹ PrpCon.org, 'Countries and Their Prostitution Policies' (ProCon.org, 23 April 2018)
<<https://prostitution.procon.org/countries-and-their-prostitution-policies/>> accessed 18 September 2023