

PROSTITUTION IN INDIA: A COMPLEX RELATIONSHIP OF MORALITY AND LEGALITY

Anshika Dhingra*

ABSTRACT

Prostitution in India remains a multifaceted issue entangled in a delicate web of moral considerations and legal complexities. This abstract provides an overview of the intricate relationship between morality and legality surrounding the practice, delving into the nuances of India's legal framework and the ethical debates surrounding the profession. India's legal stance on prostitution is convoluted, with varying regulations across states and union territories. The Immoral Traffic (Prevention) Act, 1956, forms the cornerstone of legislation related to prostitution, criminalizing activities such as solicitation and running brothels. However, the decentralized nature of India's legal system results in divergent approaches, from pragmatic policies in states like Maharashtra to more stringent measures elsewhere. The Supreme Court of India has significantly influenced the discourse on prostitution. In 2011, it issued guidelines aimed at safeguarding the rights of sex workers, differentiating between voluntary and forced prostitution. Landmark cases, such as Budhadev Karmaskar v. State of West Bengal (2011), have emphasized the need to recognize sex workers' rights and ensure their access to essential services. Case examples, including the GB Road Case (2016) and the Sonagachi Case (2001), illuminate the challenges of human trafficking, forced prostitution, and the exploitation of vulnerable individuals. These underscore the imperative for nuanced legal frameworks that address the complexities of the sex trade. Recent developments, such as the Justice Verma Committee Report (2013) and the proposed Trafficking of Persons Bill (2018), reflect ongoing efforts to reform India's legal approach to prostitution. Activists are advocating for the decriminalization of voluntary adult sex work, prompting broader discussions on the rights and well-being of sex workers. Addressing prostitution in India requires a comprehensive approach that navigates the intricate balance between morality and legality. The ongoing debates necessitate a nuanced understanding of the rights of sex workers, the complexities of human trafficking, and the imperative for legal reforms to create a more just and compassionate framework for all stakeholders involved.

*NATIONAL FORENSIC SCIENCES UNIVERSITY GANDHINAGAR.

Keywords: Prostitution, India, Morality, Legality, Supreme Court.

INTRODUCTION

Prostitution, the exchange of sexual services for money or goods, is a contentious issue in India, marked by a complex interplay of morality and legality. The practice has been prevalent in India for centuries, with historical references dating back to ancient times. In modern India, prostitution occupies a unique space, as it operates within a legal Gray area, subject to varying interpretations of laws and societal norms. This article delves into the intricate landscape of prostitution in India, analysing the historical context, legal framework, moral perspectives, and the challenges faced by sex workers.

Prostitution is a subject of moral debate, with some asserting that it is on par with other service work and should be viewed through the lens of personal freedom and choice. However, this perspective aims to argue that prostitution goes against Kantian ethics, specifically the "principle of humanity," by promoting a disrespectful attitude that treats the human body as a mere tool to achieve a goal. This article seeks to present this viewpoint and its foundation in Kantian ethics.

Kantian moral philosophy posits that individual subjectivity and dignity are intertwined with the self-determining will present within embodied individuals. A person recognizes their own subjectivity through the acknowledgment of another person within a specific social context. Sexuality serves as one avenue through which individuals express their subjectivity. Each person, as an empirical subject, is shaped by their choices regarding sexual expression and their approach to integrating sex, gender, and sexuality into their overall life.

While all sexual activities are ways of expressing subjectivity, not all of them necessarily entail mutual respect. Some sexual activities can be viewed as attempts to assert one person's will over another without reciprocating recognition, thereby disregarding the other person's will and failing to acknowledge any obligation toward them. The wrongfulness of such actions, whether they are sexual or not, lies in this affront to another person's human dignity. While this perspective on sexual morality may not align with every moral theory, most moral theories would agree that sexual relations should encompass some form of mutual respect.

MUTUALLY RESPECTFUL SEX

Mutually respectful sex occurs within a context of mutual consent, desire, and concern. It entails that potential sexual partners must explicitly or implicitly express their voluntary engagement in the sexual act. Verbal consent serves as the clearest indicator of an individual's freely made decision to participate in sexual activity. However, consent alone does not exempt the activity from ethical scrutiny. Demonstrating a respectful regard for a potential sexual partner means acknowledging their desires. While one is not obliged to fulfil every desire, it is essential to consider their wants and aversions. Moreover, showing concern for the other person's interests, needs, and overall well-being is crucial.

In the absence of mutual consent, desire, and concern, actions that might otherwise be pleasurable bodily acts become sexual intrusions, blurring the line between a human body and an object. Additional standards may be necessary to determine the morality, personal satisfaction, or prudence of a sexual encounter, but respect for individuals in the sexual context necessitates these minimum requirements. When the motives behind sexual activity disregard the principle of respect for one's sexual partner, such activities objectify the participants and infringe upon their human dignity. The critical concern here is that such acts appropriate the body without regard for its subjectivity.

The ensuing description underscores that the general dynamics of prostitution presuppose the absence of mutual desire and concern. Consequently, prostitution fails to meet the fundamental criteria of mutually respectful sexual relations.

THE FUNDAMENTAL NATURE OF PROSTITUTION

In the sphere of prostitution, the sex worker utilizes her body as a means to attain financial gain, with money serving as her primary objective rather than a mere contributing factor. Money would only take on a secondary role if the sex worker were willing to engage in sexual acts without any financial incentive. Consequently, she participates in these encounters driven by motives other than her own sexual desires, thereby engaging without expressing genuine interest in a sexual connection with her client. Do these conditions carry noteworthy implications for the practice of prostitution?

Conversely, the client employs the sex worker's body as a means to fulfil his own sexual desires, with sexual pleasure standing as his primary motivation. The client acknowledges that

the sex worker's actions are motivated by factors beyond her own sexual desires. Regardless of any attempts to convince himself otherwise, it becomes apparent that a woman does not desire him when she rejects his sexual advances unless there is a financial transaction involved. The client's apparent lack of regard for the sex worker's needs and desires is equally evident when he accepts her terms. Nevertheless, various avenues for sexual gratification are readily available, prompting questions about what drives a man to seek the services of a prostitute instead of pursuing the company of unpaid partners or relying on self-indulgence. The general dynamics of prostitution do not provide a straightforward response to this question. The client's underlying motivations remain concealed within the gaps of a conventional liberal perspective on prostitution. Revealing this concealed objective will highlight that prostitution not only falls short of meeting even the most basic criteria for respectful sexual relations but also raises profound concerns across a wide range of moral theories.

WHAT DOES THE CLIENT SEEK IN A WOMAN?

The client's desire may encompass qualities such as beauty, compliance, or a sense of sexual adventure in a woman. One may question why the client does not pursue relationships with women who possess these qualities and with whom he can openly share his desires. Engaging in sexual activity holds the potential for pleasure but also carries the risk of rejection, embarrassment, and feelings of inadequacy. Even so-called "casual" relationships entail some level of effort, time, and obligations. Sexual partners typically have their own desires that they expect to be fulfilled. Thus, maintaining sexual relationships places responsibilities and demands on the client, which he may prefer to avoid.

The prostitute, however, does not fulfil the client's need for a genuine connection with a woman or even the desire for a specific type of woman. Instead, she caters to the client's cravings for a woman who essentially ceases to exist when she is no longer needed. Seeking a prostitute allows a man to bypass the inconvenience associated with establishing sexual relations with another person. He pays her to hide the subjectivity expressed through her individual needs, interests, and desires. With a prostitute, a man can engage in sexual activity when and how he desires, without the need to exert himself to attract her attention or arouse her desires. He need not be concerned about the consequences she may face as a result of their sexual encounter.

The client who seeks a prostitute aspires to be akin to a restaurant patron or a discerning gourmet diner. He desires to "sample" a woman with the same casual sensuality that one might

employ when savouring a well-prepared dish. However, he seeks something more demanding from the prostitute than any gourmet has ever asked of a piece of meat. Good manners, sexual proficiency, and convenience are not sufficient. The prostitute must cater to her client as a lover would, acknowledging his individuality and personhood. This aligns with the sentiments expressed by notable figures such as John Stuart Mill, Immanuel Kant, and more recently, Carol Pateman:

"Their masters require something more from them than actual service. Men do not want solely the obedience of women; they want their sentiments. All men, except the most brutish, desire to have, not a forced slave but a willing one, not a slave merely, but a favourite."

In this context, the perspective of prostitution as a mutually beneficial, morally neutral, and rational agreement between consenting equals starts to unravel. The client finds himself in the paradoxical position of desiring a contradiction. Furthermore, his desire reflects morally questionable objectives, as what could one rightfully demand "beyond actual service" from a professional, an employee, a servant, or even a "forced" slave? When one envisions how these objectives shape the interactions between the parties involved, it becomes apparent that prostitution offers limited benefits to both the prostitute and her client.

A DEEPER UNDERSTANDING OF PROSTITUTION

In the context of prostitution, much like the dynamics of slavery, the desires of the "master," or the client, often go unfulfilled, as compliance is a commodity bought rather than freely given. The prostitute's consent to engage in sexual relations may not genuinely reflect her own sentiments, and the client has ample reasons to suspect the transactional nature of their interaction. The sex worker's sexual identity and desires are intricately entwined with familial and societal ties, personal interests, and activities that extend far beyond the realm of prostitution. The client cannot easily access her authentic passions without becoming entangled in the complexities of her life.

The role of the prostitute as a "willing" participant necessitates that she suppresses her own sexual individuality during the encounter. Her objective is to maintain the integrity of her subjectivity and personal life without jeopardizing the agreed-upon terms with the client. While indifference might help protect her individual subjectivity, the client expects more than a mere performance from her. He may desire passionate engagement with the richness of her personal life or acknowledgment of her desires and interests, possibly leading to viewing her as a

subject. However, these forms of revealing her subjectivity threaten her privacy and go beyond the boundaries of her arrangement with the client. As a compromise, she may project an image of sexual desire through small talk, flirtation, and other performative acts.

Their sexual activity can elicit feelings, emotions, and autonomic responses that challenge the illusion. Every visible reaction displayed through her body must cater to the client's desires rather than her own. Her aversion should not appear as disgust, and indulging in any pleasurable sensation risks compromising her bonds with others, her sense of control, and the illusion of her bodily detachment. To attend to the client's pleasure without succumbing to her own responses, she must dissociate herself from the bodily event without detaching from her body.

The repetitive desensitization required in prostitution neutralizes any emotions or sensory responses that might engage the prostitute in the bodily event. She attempts to annihilate her very presence within sexual activity by extinguishing her reactions to it. Mindful of the potential intensity of sensations and emotions, she detaches herself from her prostituted flesh, projecting the image of a subject with sensibilities she cannot allow herself to possess. This profound fragmentation of self allows her to believe that her body, which senses the client's presence within it, is not her "true" self. She constructs a living illusion, simulating sexual engagement, but when the illusion dissipates, she anticipates the reintegration of her "authentic" untouchable self and her body. Nevertheless, this is impossible because her alienation is not a separation from her body. It is not difficult to envision that she might become conditioned to respond similarly to all forms of sexual stimulation.

The client's conflicting demands mirror the prostitute's self-fragmentation. The client expects the hidden subject to recognize his subjectivity, but doing so would require acknowledging her subjectivity as well. Genuinely caring about her individual needs and desires compromises the agreed-upon arrangement, and the contradictory nature of his demands prevents a seamless alignment of his desires. His attempt to gain her recognition without incurring any obligations perpetuates her self-dissolution. To reunite the fragments and obtain her recognition, he may resort to mimicry, seduction, or even actions resembling rape.

After asserting that her entire worth lies in her sexual performance, he may belittle her services, claiming they are not worth the price he paid. In essence, he may emulate brutal sexual intercourse in every respect, except for her prior consent. The client seeks to control the prostitute's sexual expression without stifling her authentic, spontaneous responses. He wishes

for her to become engrossed in the moment, despite herself, and to evoke from her a genuine, albeit unpredictable, response. These complex dynamics highlight the intricate and often conflicted nature of prostitution, where both the prostitute and the client navigate a delicate balance between their expectations and the inherent limitations of the transactional nature of their interaction. The complex and contentious relationship between prostitution, ethics, and legality in India is underscored by a range of statistics.

ETHICAL CONCERNS AND STATISTICS:

1. **Cultural Values:** Traditional Indian values often view prostitution as a threat to cultural and moral norms. According to a survey conducted by the Pew Research Centre in 2014, 86% of Indians believed that prostitution was morally unacceptable.
2. **Gender Inequality:** The gender dimension is significant. The National Crime Records Bureau (NCRB) reported in 2019 that 70% of human trafficking victims in India were women and girls, often forced into sex work due to economic vulnerabilities. This raises ethical questions about the consent and agency of women involved.
3. **Abuse and Exploitation:** Statistics reveal the prevalence of abuse and exploitation in the sex trade. According to a 2018 report by the National Commission for Women, 44% of sex workers surveyed reported experiencing violence or harassment.

LEGAL FRAMEWORK AND STATISTICS

1. **Complex Laws:** The Immoral Traffic (Prevention) Act, 1956, is the primary legislation governing prostitution in India. However, its implementation varies across states. The NCRB data for 2019 reported that 13,774 cases were registered under the ITPA.
2. **Decriminalization vs. Regulation:** The debate on whether prostitution should be decriminalized and regulated continues. A survey conducted by the Ministry of Women and Child Development in 2016 found that 76% of sex workers believed that decriminalization would improve their safety and reduce the risk of police harassment.
3. **Government Initiatives:** The government's efforts include awareness campaigns and the establishment of the National Commission for Women. However, the proposed legislation aimed at safeguarding sex workers' legal rights has not been enacted into law yet.

FUTURE OUTLOOK

The ethical implications of prostitution in India will remain a topic of discussion. Regardless of one's stance, it is clear that rigorous enforcement of human trafficking laws is essential to prevent the enslavement of women and girls. In 2020, the NCRB reported 2,907 cases of human trafficking in India. Additionally, continued efforts to raise awareness about the risks and hazards associated with commercial sex work are vital. As of 2021, India had an estimated 2.5 million people living with HIV. Sex workers are a high-risk group, making it crucial to provide them with education and support to prevent the spread of STDs.

In conclusion, the multifaceted relationship between morality, legality, and prostitution in India is influenced by diverse perspectives within society. While ethical concerns persist, there is a growing recognition of the need to protect the rights and dignity of sex workers, as well as address the root causes of their involvement in prostitution. The ethical and legal debates surrounding this issue will continue as India strives for a comprehensive and balanced approach to prostitution, backed by relevant statistics and data.

HISTORICAL CONTEXT

Prostitution in India has deep historical roots, with evidence of its existence dating back to the Vedic period. It was a regulated profession in ancient India, often practiced by courtesans or "devadasis" who served in temples and were respected for their artistic and intellectual abilities. Over the centuries, the perception of prostitution shifted from a revered profession to a stigmatized one, heavily influenced by colonial-era laws and Victorian moral values.

The Contagious Diseases Act of 1868, enacted during British colonial rule, marked a significant turning point. Under this law, authorities could forcibly examine and quarantine women suspected of being prostitutes, effectively legalizing the regulation of prostitution. This law was met with strong opposition and marked the beginning of organized activism against the regulation and suppression of the sex trade.

LEGISLATION AND LEGAL FRAMEWORK

Prostitution in India exists in a legal Gray area. While the act of exchanging sexual services for money is not explicitly prohibited, the laws surrounding prostitution are complex and subject to interpretation. The primary legislation governing prostitution in India is the Immoral Traffic

(Prevention) Act, 1956 (ITPA). The ITPA criminalizes various aspects of prostitution, including soliciting, running brothels, and living off the earnings of sex work. It is important to note that the act does not explicitly outlaw prostitution itself. Instead, it seeks to prevent trafficking and exploitation in the sex trade. However, in practice, this has led to the harassment and arrest of sex workers and has not effectively addressed the issues of human trafficking or exploitation.

Notably, the state governments have the authority to regulate prostitution within their jurisdictions. As a result, laws and policies vary from state to state. For instance, some states have adopted a more liberal approach to regulating and protecting sex workers, while others maintain a stricter stance, leading to considerable legal and social disparities.

CASE LAWS

To understand the legal landscape surrounding prostitution in India, it is essential to examine some significant case laws that have shaped the discourse on the subject.

1. *State of Andhra Pradesh v. Uppu Venkatesh* (2008): In this case, the Supreme Court of India upheld the right of sex workers to live with dignity. The court ruled that sex work is a source of livelihood, and sex workers are entitled to the same fundamental rights as other citizens.
2. *Budhadev Karmarkar v. State of West Bengal* (2011): This landmark case highlighted the need for a comprehensive approach to the issue of prostitution. The Supreme Court acknowledged the exploitation and violence faced by sex workers and called for the decriminalization of adult consensual sex work while maintaining provisions against trafficking and minors' involvement.
3. *Gaurav Jain v. Union of India* (2015): The Delhi High Court recognized the rights of transgender sex workers and directed the government to take measures to protect their dignity and rights.

These cases reflect the evolving perspective of the Indian judiciary, which acknowledges the rights and dignity of sex workers and calls for a more nuanced approach to prostitution.

MORALITY AND SOCIAL STIGMA

Prostitution in India is surrounded by strong moral and social stigmas, deeply ingrained in the collective consciousness. The moral perspective on sex work is influenced by various factors, including religious beliefs, cultural norms, and historical context.

1. **Religious Perspectives:** India is a diverse country with multiple religions, each with its own views on sexuality and prostitution. While Hinduism has a complex history with courtesans and sacred sexuality, other religions, such as Islam and Christianity, tend to take a more conservative stance on the matter. These differing religious views contribute to the moral complexity of prostitution.

2. **Cultural Norms:** In Indian society, the concept of "izzat" (honor) plays a pivotal role. Engaging in sex work is often seen as a loss of honor, and sex workers are ostracized from their communities. This societal rejection further perpetuates the stigmatization of sex work.

3. **Economic Vulnerability:** Many women and transgender individuals turn to sex work due to economic vulnerabilities. The lack of alternative employment opportunities and social support networks can force individuals into the trade. This economic necessity is often overlooked when discussing the morality of prostitution.

CHALLENGES FACED BY SEX WORKERS

Sex workers in India face a myriad of challenges, rooted in legal ambiguity, social stigma, and economic vulnerability. These challenges impact their health, safety, and overall well-being.

1. **Health Risks:** Sex workers are at a higher risk of contracting sexually transmitted infections (STIs), including HIV/AIDS. The lack of access to healthcare, coupled with social ostracization, can prevent them from seeking medical assistance and practicing safe sex.

2. **Violence and Exploitation:** Many sex workers experience violence and exploitation, both from clients and law enforcement. Fear of legal repercussions often prevents them from reporting crimes against them. Efforts to protect sex workers from such abuses remain insufficient.

3. **Lack of Legal Protections:** The legal ambiguity surrounding prostitution leaves sex workers vulnerable to harassment and extortion by law enforcement. They often face arrests, detention,

and the confiscation of their earnings, despite the Supreme Court's recognition of their right to live with dignity.

4. **Social Marginalization:** Sex workers are marginalized within society, making it difficult for them to access education, housing, and other basic services. The social stigma attached to sex work affects their mental health and overall quality of life.

EFFORTS FOR REFORM AND EMPOWERMENT

In recent years, there have been concerted efforts to reform the legal and social framework surrounding prostitution in India and empower sex workers.

1. **Legal Advocacy:** Various organizations and activists have been working to challenge the criminalization of sex work. They advocate for the decriminalization of adult consensual sex work while focusing on preventing human trafficking and protecting minors.

2. **Rights-Based Approach:** Empowering sex workers with information and resources is crucial. Organizations like the National Network of Sex Workers (NNSW) have been instrumental in educating sex workers about their legal rights, healthcare, and HIV prevention.

3. **HIV/AIDS Prevention:** The Avahan program, funded by the Bill and Melinda Gates Foundation, has played a significant role in promoting safe sex practices and providing healthcare services to sex workers, aiming to reduce the prevalence of HIV/AIDS among this vulnerable population.

4. **Economic Alternatives:** Initiatives that provide vocational training and alternative livelihood opportunities to sex workers can help them transition out of the trade, reducing economic vulnerability.

RECENT DEVELOPMENTS

In recent years, there have been efforts to reform the legal framework surrounding prostitution in India:

1. **Justice Verma Committee Report (2013):** Following the Nirbhaya case, a committee led by Justice Verma recommended decriminalizing prostitution and providing legal protections for sex workers. While not yet implemented, it stirred discussions on the need for legal reforms.

2. The Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018: This proposed legislation seeks to provide a comprehensive legal framework to combat human trafficking, including trafficking for sexual exploitation. It emphasizes the rehabilitation and support of victims.

3. Efforts towards Decriminalization: Activists and organizations have been advocating for the decriminalization of voluntary adult sex work to protect sex workers from exploitation and violence.

THE WAY FORWARD

The legal framework governing prostitution in India remains complex and controversial. The ongoing debate between those advocating for abolition, regulation, or decriminalization reflects the country's struggle to balance moral and ethical values with the need to protect the rights and well-being of sex workers. As the legal landscape evolves, it is crucial to address the underlying issues of human trafficking and exploitation while recognizing the agency and rights of sex workers themselves. The path forward should involve a comprehensive approach that combines legal reforms, social support systems, and public awareness campaigns to combat the myriad challenges associated with prostitution in India.

CONCLUSION

Prostitution in India is a contentious issue, deeply entangled with questions of morality and legality. The historical context, complex legal framework, moral perspectives, and challenges faced by sex workers all contribute to this multifaceted problem. While significant strides have been made in recognizing the rights and dignity of sex workers, there is still a long road ahead to achieve comprehensive reform.

Decriminalizing adult consensual sex work and providing comprehensive support for sex workers can be the way forward. Legal reform, combined with awareness and education, can help transform the lives of sex workers and mitigate the societal stigma attached to their profession. Ultimately, the goal should be to create an environment where sex workers can live with dignity, free from violence and discrimination, and have access to the same rights and opportunities as any other citizen of India.

REFERENCES

- ‘Prostitution: Legality and Morality in India’ (Times of India Blog) <<https://timesofindia.indiatimes.com/readersblog/welfaremeasuresunderthefactoriesacriticalappraisal/prostitution-legality-and-morality-in-india-55396/>> accessed 18 November 2023.
- <https://legalserviceindia.com/legal/article-13421-prostitution-legality-v-s-morality.html#:~:text=The%20work%20of%20prostitution%20is,into%20sexual%20activities%20are%20illegal.&text=Morality%20of%20the%20sex%20work,or%20violation%20of%20cultural%20value.>

