



PROSTITUTION IN INDIA: SHOULD IT BE LEGALIZED?

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PROSTITUTION IN INDIA: SHOULD IT BE LEGALIZED?

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ABSTRACT

Prostitution, also known as the white slavery business has its roots in India in some form for thousands of years. It is the oldest recognized profession in the world, the inception of which cannot even be traced. While morality and legality of prostitution have been ambiguous since the day of her independence, India is home to the second-highest number of prostitutes all over the world. Additionally, India ranks the highest in terms of trafficking of women and girls. This paper delves into the brief introduction of prostitution in India and its historical background. Then, the paper overviews the existing legal statutes in India and compares them with few specific

countries. Further, efforts have been made to discuss aspects of legalization in detail, and why it needs to be decriminalized while also looking at the problems that lie underneath, subsequently providing viable recommendations.

Key Words: prostitutes, prostitution, legalization, trafficking, decriminalization, India

INTRODUCTION

Purely from the angle of economic return, the hard question is not why so many women become prostitutes, but why so few of them do.¹

During Durga Puja celebrations in Bengal, amongst the eighteen types of soils collected to bathe the divinity in, one variety comes from *nishiddho pallis*, a prostitute's door, and is called '*punya maati*'. *Punya Maati* is considered pure and this is an acknowledgment to the prostitute who consumes the carnal desires and poison of the society and at whose doorstep a man loses his virtues and purity.² According to vedas, *vaishyas* (prostitutes) form one of the nine classes of women

¹ David M. Heer , Kingsley Davis: A Biography and Selections from His Writings, Page 130

² Brijesh Kalappa, An argument for legalizing prostitution,

<https://timesofindia.indiatimes.com/blogs/emphasis/should-prostitution-be-legalized/>

worshipped as Goddess Durga. But when we try to enumerate various professions and their prospects, to say prostitution as a profession lacks sheer dignity, will be an understatement. Parents would want their daughters to pursue any profession but prostitution, as it is only seen in the light of a deviant and undesirable part of the society, and a prostitute is looked down upon as a sinner. Somewhere between these two stark contrasting facts lies the question: 'What is Prostitution? Should India legalize it?'

Prostitution, also known as 'the white slavery' business is the oldest recognized profession which is being practiced since the inception of the world as we know it today. For the most part, prostitution is characterized as indiscriminate intercourse for recruit (other than spouse) whether in money or in kind.³ The most widely accepted definition of prostitution is given in the encyclopaedia of social science⁴ as "the practice in which a female offers her body for promiscuous sexual intercourse for hire etc." According to P. Ramanatha Aiyar's Law Dictionary⁵, prostitution stands for the sexual abuse or exploitation

of individuals for some commercial purpose. Also, a prostitute is a woman and by profession whose business is to let out her body on hire to all the customers who visit her for the same purpose. According to section 2(f) of the Immoral Traffic (Prevention) Act⁶, read with Section 372 of the IPC⁷, prostitution is an act of offering a female's body's attributes for sexual intercourse in exchange in money.

Clouds on moral and ethical aspects of prostitution and its legal status have been hovering ever since India got its independence. India never had a clear perspective on prostitution. Prostitutes have always been subject to harassment, social stigma, and poverty. On one hand, we have the lengthiest constitution in the world that comprehensively provides for the right to live with dignity and equality; and without any discrimination, allows the practice of any profession, and gives equal and easy access to justice. We also have a few statutes specifically legislating prostitution and trafficking. Yet, on the other hand, India has over 3 million people involved in sex work, next only to China⁸ - almost 25-40% of them are prostitutes.⁹ India has a sex

³ John Philip Jenkins, Britannica Encyclopedia, <https://www.britannica.com/topic/prostitution>

⁴ Edwin Robert Anderson Seligman & Alvin Saunders Johnson, Encyclopaedia of the Social Sciences (16th Edn 1967)

⁵ P Ramanatha Aiyar, Concise Law Dictionary, 7th Edn, 9789389991079

⁶ Section 2(f), The Immoral Traffic (Prevention) Act, 1956

⁷ Section 372, Indian Penal Code, 1860

⁸ Number of Prostitutes by Country, <https://havoscope.com/number-of-prostitutes/>

⁹ Phase 3 Program, National AIDS Control Organisation

trade with a net worth of \$8.4 billion, which translates to over ₹62,000 crores¹⁰, has the highest number of people getting affected due to child and women trafficking and 95% of these women are forced into prostitution. This sense of extreme heterogeneity between how the lawmakers perceive the problem of prostitution and its ground reality is quite surprising, considering its long history in the country and therefore it poses several questions that need answering. Are the laws inadequate? Or is the implementation corrupt? Can India take inspiration from other countries that have tackled this problem better? This paper will delve into these questions and try to answer them.

HISTORICAL EVOLUTION OF PROSTITUTION IN INDIA

"From time immemorial Indian poets have sung praises of the 'public woman', the professional entertainer. The epics give us a colorful description of her intimate connection with royal splendor. The Puranas highlight her auspicious presence as a symbol of good luck. Buddhist literature also testifies to the high esteem in which she was held in society. She appears through the ages in different incarnations -

from apsara in divine form to ganika, devdasi, nartika [ordinary dancer], kanchani, tawaif, and the nautch girl."¹¹

As the above lines beautifully depict, the mention of women offering public service has been there since ancient times. Our mythological epics have romanticized the idea of Urvashis, Menakas, and Rambhas. Indra used these beautiful women to seduce other men for different reasons. There are mentions of apsaras, courtesans, young maids in Rigveda, which is considered the oldest literature text in Hinduism and it is quite possible that women enjoyed such position before that too¹². These women were not only beautiful but possessed several talents. Vedas also describe a section of women who, either because they could not find suitable husbands, or because of early widowhood, unsatisfactory married life, or other social pressures especially if they had been violated, abducted, or forcibly enjoyed and so denied an honorable status in society, or had been given away as gifts in religious rituals were frequently forced to take up prostitution as a profession. Such women were known as 'sadharani', 'varangana', 'varastri', 'varaivdhu', and 'vararnuk' which loosely translates into not belonging to one man.

¹⁰ Prostitution Revenue By Country, <https://havocscope.com/prostitution-revenue-by-country/>

¹¹ Pran Neville, Nautch Girls Of The Raj, 1st Edn

¹² Sukumari Bhattacharji, *Prostitution in Ancient India*, 15 SOCIAL SCIENTIST 32, 32-34 (1987)

The earliest mention of prostitution as we know it today is in early texts of Buddhism literature. Although Vedas and other ancient Hindu literature overtly mentioned women offering public services, it was Buddhist texts that mentioned them as professionals. And it was Buddhist texts that for the first time described prostitution obscenely.¹³ Before that, such women generally enjoyed a respectable status. Kautilya in Arthashastra wrote that prostitutes must have attainments of writing, arithmetic, the arts, singing, playing musical instruments, drums, chess, dice, eight board chess, instant verse-making, Prakrite and Apabhramsa poetry, proficiency in the science of perfume making, jewelry, dressing up, knowledge of the signs of good or bad men and women, horses, elephants, cooks, rams, umbrellas, rods, swords, jewels, gems which antidote poison, architecture, camps and canopies, phalanx arrangement, fighting, fencing, shooting arrows, ability to interpret omens, etc. Altogether seventy-two arts and sciences were to be mastered by her.¹⁴

In Mughal period, highly skilled and sophisticated courtesans known as tawaifs catered to the needs of Kings apart from contributing to music and dance. And in

South India, women known as Devadasis used to submit themselves and their bodies entirely to the devotion of Lord Krishna. Devadasis used to consider the gods to be their husbands and hence they never married any other men during their lifetime. These women were highly respected. But it all changed with the coming of colonial rule in India.

After the advent of the Britishers, the practice of Devadasi started degrading. It didn't remain as respectful. The Devadasis started performing for British officers who got attracted to them. Britishers couldn't understand the intricacies and complexities related to devadasis and simply termed them as 'Nautch Girls' (Girls who danced) and called them for satisfying their sexual pleasures. During the early 1850s, the British could see prostitution as a necessary evil to satiate the "sexual desires" of their troops and hence, sought to regulate the practice by issuing an order that a class of Indian women should be available for the soldiers, and this is how the brothel system and the red light areas were established. This ultimately led to the inception of the organized world of prostitution in Indian Society.

¹³ Vijaya Ramaswamy, *Women and Work in Precolonial India: A Reader*, 2016

¹⁴ *id*

Almost two centuries later, reasons have changed, situations of the women have changed more for worse than better, however, one thing has remained constant i.e. prostitution is still prevalent and is seen as a subjugated profession. Major reasons for prostitution flourishing are-

- **Abduction:** Most common reason for prostitution in India, a lot of women and minors are abducted either forcibly or with a fake pretense of work or marriage and subsequently, they are forced into the world of prostitution. Abduction accounts for 35% of total prostitution in the country.¹⁵
 - **Rape:** Social stigma attached to Rape is severe in India, society repudiates accepting the victims and at times they don't get support from their family and are forced to choose prostitution. Around 6% of the prostitutes are raped prior to entering into brothels and at times are subjected to incest.¹⁶
 - **Widowed at Early Age:** Virginitly is a sign of chastity in India, and if a woman, unfortunately, becomes a widow at a young age she outlives her
- purpose. Social stigma again forces such young women to choose brothels.
- **Children of Women in Prostitution:** Prostitution is seen from such heinous eyes that inevitably the social stigma gets attached to children of prostitutes and such children invariably become part of prostitution.
 - **Trafficking from Other Countries:** A large number of women are trafficked into India from Bangladesh, Nepal, and Myanmar most of who are minors and then forced into the world of organized prostitution.
 - **Poverty:** In India, the underlying reason behind prostitution is either social stigma or poverty. Approx 40% of the Indian population is stricken with poverty. When seen in the context of the population of India, it is a significant number and in a patriarchal setup, women are often at the receiving end and choose prostitution to survive.

¹⁵ Dr. Tulsing sonwani, Prostitution In Indian Society: Issues, Trends And Rehabilitation

¹⁶ *id*

LEGAL STATUS OF PROSTITUTION IN INDIA

The first modern act to mention prostitution was Cantonment Act¹⁷ in the British Era which provided for twelve to fifteen women for each regiment of Army and these women were kept at brothels called 'Chaklas'.¹⁸ Two other statutes concerning Prostitution in India pre-independence were the Contagious Diseases Act, 1868 (now repealed) and the Bengal Suppression of Immoral Traffic Act¹⁹. Post-independence, the legal status of prostitution has been vague more so morally than legally.

Indian Constitution²⁰ comprehensively elucidates fundamental rights in its part III that apply to every citizen of the nation.

- Article 14 lays down equality before law, whereas Article 15 lays down that there shall be no discrimination done on the basis of sex, caste, race, religion, or place of birth. The Supreme Court has more than once confirmed that prostitutes too fall within the purview of this Article.²¹
- Article 21 lays down the right to personal liberty and life with dignity and that no one should be deprived of it. The Supreme Court has observed that prostitutes are entitled to a right to life too and instructed the State to provide recommendations on "*the rehabilitation of sex workers who wish to leave sex work of their own volition and to provide conducive conditions for sex workers who wish to continue working as sex workers*" in accordance with Article 21 of the Constitution.²² The Supreme Court also stated that the Right to health and medical aid of sex workers falls within the ambit of Article 21²³.
- Article 23 prohibits trafficking and also provides for punishment for the same.
- Article 32 ensures easy access to justice by approaching the Supreme Court if someone's fundamental rights are infringed and Article 39A provides for legal aid to poor and women.

¹⁷ Cantonment Act, 1864

¹⁸ Bhandari, Sudhanshu, Prostitution in Colonial India,

<http://www.mainstreamweekly.net/article2142.html>

¹⁹ Bengal Suppression of Immoral Traffic Act, 1933

²⁰ The *Constitution of India*, 1950

²¹ Gaurav Jain v Union of India, (1997) 8 SCC 114; Smt. Kaushailiya vs State on 17 November, AIR 1963 All 71

²² Budhadev Karmaskar v. State of West Bengal (2011) 11 SCC 538

²³ Unni Krishnan, J.P. vs. State of A.P., (1993) 1 SCC 645

Further, Directive Principles of State Policy in the constitution puts the obligation on the State to form its strategies such that it ensures both men and women have an equal right to satisfactory methods for livelihood²⁴, that wellbeing, health, and strength of workers are not abused²⁵, and promotion of education and economic interests of weaker sections of society ensuring their protection from social injustice and exploitation.²⁶

On paper, it seems like all the aspects are covered, however, the ground reality shows a completely different picture. Sex workers have always been marginalized and discriminated against. There is no dignity attached to their lives and lack of knowledge and education means they rarely approach the legal system and when they do they are subjected to prejudice about their reputation. Similarly, the criminal offenses related to prostitution are adequately covered in IPC²⁷. There are definitions and punishments for sexual harassment²⁸, rape²⁹, kidnapping and abduction³⁰ and there are at least 20 sections dealing with

trafficking³¹ but again it's the faulty and prejudiced implementation that renders all these provisions ineffective. The police don't take the complaints instead reprimand the complainant to stop indulging in sex work. Pertaining to their situation, people in power often take advantage of prostitutes. Moreover, these provisions however comprehensive, do not deal specifically with the issue of prostitution.

The Immoral Traffic (Suppression) Act (SITA)³²:

United Nations in 1951 made a declaration regarding suppression of trafficking.³³ This led to the enactment of The Immoral Traffic(Suppression) Act (SITA). Section 2(e) of the Act defines a "Prostitute" as a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind. While Section 2(f) defines "Prostitution" as the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind. The subsequent sections

²⁴ Article 39A, Constitution of India, 1950

²⁵ Article 39 (e), Constitution of India, 1950

²⁶ Article 46, Constitution of India, 1950

²⁷ Indian Penal Code, 1860

²⁸ Section 354, 354A, Indian Penal Code, 1860

²⁹ Section 375, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E, Indian Penal Code, 1860

³⁰ Section 359-363, 366A, 366B, Indian Penal Code, 1860

³¹ Section 293, 294, 317, 339, 340, 341, 342, 359, 361, 362, 363, 365, and 366, 370, 371, 372, 373, 375, 376,

496, 498, 506, 509, 511, Indian Penal Code, 1860.

³² The Immoral Traffic(Suppression) Act (SITA), 1956

³³ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 25th July 1951

of the Act state punishment for various players related to Prostitution.

This Act allowed prostitutes to practice their trade, but that has to be in private. In public, however, prostitutes cannot state their profession, they cannot advertise to or solicit their clients. Any kind of organized prostitution is strictly prohibited including Brothels³⁴, Pimping³⁵, Prostitution Rings³⁶, Babus and Traffickers. Even the customers can be punished under the code. And if a prostitute wants to rehabilitate, the acts allows that too³⁷ albeit it doesn't clearly define how.

Surprisingly, while the definitions of "Prostitute" and "Prostitution" remain exhaustible, the scope of punishments however seems inexhaustible. And because the definitions have a limited scope, the prostitutes also fall prey to police atrocities under IPC in offenses like Obscenity, Public Indecency, and Nuisance among others.

In 1986, an amendment to the act known as The Immoral Traffic (Prevention) Act³⁸, or ITPA, also called the Prevention of

Immoral Trafficking Act (PITA) came into force. These laws were planned as methods for restricting and in the long run abrogating prostitution in India step by step condemning different parts of sex work.³⁹ In fact in one such case, the Gujarat High court refused to identify prostitution as legitimate profession reasoning that otherwise it will encourage prostitution and trafficking⁴⁰.

The amendment defined "prostitution" as the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly. While the new definition had a wider scope, however, it did not define anything clearly and the definition could be construed as per convenience. The definition of major changed from twenty-one years to eighteen years. Whereas it was considered as a major amendment to the original act, the rest of The Immoral Traffic (Prevention) Act remained practically the same. There is too much emphasis on the element of morality while it is obscure on legality.

³⁴ Section 3, The Immoral Traffic(Suppression) Act (SITA), 1956

³⁵ Section 4(2), The Immoral Traffic(Suppression) Act (SITA), 1956

³⁶ Section 6, The Immoral Traffic(Suppression) Act (SITA), 1956

³⁷ Section 13 &19, The Immoral Traffic(Suppression) Act (SITA), 1956

³⁸ The Immoral Traffic (Prevention) Act, 1986

³⁹ Ratnamala and Another V. Respondent AIR 1962 Madras 31.

⁴⁰ Sahyog Mahila Mandal V. State of Gujarat (2002) 2 GRL 1764

INTERNATIONAL LEGAL

PERSPECTIVE:

At the moment, many countries have legalized the commercial sex trade⁴¹. The countries where prostitution is legal include the Netherlands, New Zealand, parts of Australia, Bangladesh (male prostitution is banned here), and many others. There are different levels of regulation and although some levels are legal, others might be illegal depending upon the laws of the country. The countries may adopt decriminalization (everything is legal), legalization (everything regulated), abolitionism (everything is illegal apart from selling sex), or prohibition (everything is deemed to be illegal). Understanding how the different systems work shall help in understanding the pros and cons of each step and regulation imposed by the legislation, and what shall be projected in reality after implementing the same.

NETHERLANDS

Prostitution became legal in the Netherlands in the year 2000, with the introduction of a new law regulating the

same⁴². In the city of Amsterdam, there have been significant changes induced in the following years. The red light district has become a highlighted spot for the city. The prostitutes in Amsterdam are identified as independent and have to be registered with the Chamber of Commerce. They need to pay income tax after registration to legally perform their work. The legal age to be eligible for prostitution is 18. Legalization has impacted the country both positively as well as negatively and therefore the debate of regulating the same has henceforth arisen again in recent times and is being deliberated upon⁴³.

One of the most important aspects of the changes introduced by the legislation includes more autonomy and safety to the sex workers due to the elimination of middlemen by working in secured surroundings with policemen patrolling the area and cameras and alarms all around. Medical facilities are also provided to these workers, for they are encouraged to go for a check-up every three months. Clean linen and towels are provided, and girls have access to unlimited free STD checks⁴⁴.

⁴¹ Countries and Their Prostitution Policies, <https://prostitution.procon.org/countries-and-their-prostitution-policies/>, (last visited 15 Aug 2021).

⁴² Prostitution in Amsterdam, <https://www.amsterdam.info/prostitution/>, (last visited 15 Aug 2021).

⁴³ Wetsvoorstel Regulering Prostitutie en Bestrijding Misstanden Sexbranch (a proposed law for the regulation of prostitution and control of abuses in the sex industry)

⁴⁴ The Audacity of Tolerance: A Critical Analysis of Legalized Prostitution in Amsterdam's Red

Despite the given advantages, the sex workers are vulnerable to choose the illegal path, as registration compromises their privacy, including other factors of stigmas. High rents and heavy competition due to the influx of migrant workers means they often have to work more than they want to, sometimes up to 16 hours a day. This creates an environment where a prostitute has to perform the acts that they normally would not do and also increase the chances of sexually transmitted diseases⁴⁵.

Certain policy changes demanded by the workers in the industry include a greater degree of government control that can help regulate high rents, offering workers a less exploitative environment and increased income. Government-funded educational programs aimed at raising awareness of other potential careers and opportunities available shall also benefit the workers. Necessary resources and space to practice should also be provided to these workers⁴⁶. More cooperation is required between the licensed owner of sex clubs and window brothels, the government organizations like

the labour union, and the prostitutes themselves.

AUSTRALIA

In 2016, the Joint United Nations Programme on HIV/AIDS⁴⁷ estimated that Australia has 20,500 sex workers across the country. Each state and territory has its laws regarding prostitution. Eastern Australian states and territories are more liberalized as compared to Western Australia. The laws in Australia have also impacted the laws in New Zealand regarding sex work.

There have been certain advantages of decriminalization of the same⁴⁸. Police brutality and corruption have substantially been reduced. Earlier, police used to act like pimps and took sexual favors. Reporting of incidence of crimes to the police also increased. There is no reported increase in sex trafficking after the legalization of the same. It also debunks the fact that legalization or decriminalization of prostitution does not control the sex industry, but expands it. However, it will be

Light District,
https://www.humanityinaction.org/knowledge_detail/the-audacity-of-tolerance-a-critical-analysis-of-legalized-prostitution-in-amsterdams-red-light-district/, (last visited 15 Aug 2021).

⁴⁵ Ibid, footnote 46.

⁴⁶ Ibid, footnote 46.

⁴⁷ HIV and AIDS Estimates,
<https://www.unaids.org/en/regionscountries/countries/australia>, (last visited 15 Aug 2021).

⁴⁸ Arnot, A. (2002). The legalization of the sex industry in the State of Victoria, Australia: the impact of prostitution law reform on the working and private lives of women in the legal Victorian sex industry, Masters Research thesis, Department of Criminology, University of Melbourne.
https://minerva-access.unimelb.edu.au/bitstream/handle/11343/38799/65917_00000307_01_Arnot.pdf?sequence=1&isAllowed=y,

incorrect to say the legalization increases clandestine, illegal, and street prostitution in the Australian context. Since a licensing framework by its intention divides the industry into illegal and legal operations, it makes sex industry operations illegal. It is not an outcome of legalization but the outcome of an over-restrictive licensing model⁴⁹.

Talking about Victoria, it has been documented in research that the level of health and safety improved after the legalization. The use of condoms increased (with the advent of HIV) and the parlours had to comply with the regulations to stay in business. Since the new laws made it mandatory to produce certificates of attendance for medical examinations to the management of the business, the workers who did not go for regular checkups had to do so now. The training and awareness given to these workers are important factors in preserving their health. The new legislation also added to the safety of these workers as alarm systems were now mandatory in brothels and communication systems in case of escorts. It also increased as the workers were willing to report crimes

committed against them after the legalization⁵⁰.

To think of why these people are stuck in sex work, the pay scale for uneducated people is less and other jobs do not incentivize them enough. Further, the stigma revolving around the profession deters them to seek other jobs, as they are afraid their employers might find out what their previous livelihood was⁵¹. Another disadvantage of legalization is that the owners and management have much larger control over the place these workers were working in; there was a decrease in the pay scale and an increase in instances of being fired. It also gave the client much more control over which worker would get more business rather than the situation before the legalization, where the workers would take turns to get clients. This increased the competition among the workers themselves and made it much more difficult to meet ends⁵².

NEW ZEALAND

The laws in New Zealand are one of the most liberal in the world⁵³. They have been working towards the welfare of sex workers

⁴⁹ The Australian response to "10 Reasons for Not Legalizing Prostitution"
https://scarletalliance.org.au/issues/swedish_model/10reasons_07, (last visited 15 Aug 2021).

⁵⁰ Ibid, footnote 50, pages 50-70

⁵¹ Ibid, footnote 50, pages 100-102

⁵² Ibid, footnote 50, pages 80-96

⁵³ Ex-sex worker made a dame in New Zealand honors list,
<https://www.france24.com/en/20180604-ex-sex-worker-made-dame-new-zealand-honours-list>, (last visited 15 Aug 2021).

and have helped them in significant manners. The legal aspects include brothel-keeping, living off the proceeds of someone else's prostitution, and street solicitation. This was legalized through the Prostitution Reform Act, 2003, (referred to as PRA hereinafter). Prior to this, the industry was regulated through Massage Parlours Act, 1978, which prohibited solicitation in public places, and since massage parlors were defined to be public places, it became difficult for the workers to operate, as the police would arrest those who came disguised as clients. The new model has created worldwide interest and has been looked up for inspiration, whenever there is a need to reform.

Some significant features of the systems include the distinction between voluntary and involuntary prostitution. This has been a very significant step in securing the safety of the sex workers. It remains a crime to force someone to provide sexual services in exchange for money⁵⁴. Sex work is prohibited for the people who come on temporary visas and investment in sex work is prohibited. A further major feature is that

aggrieved people regarding any aspect of prostitution can resolve the disputes in the Disputes Tribunal as the contracts can be contested, and the employment disputes can be referred to the Labour Inspectorate and Mediation Service. While advertising is prohibited, print media is restricted. Prostitution is recognized as a legitimate work but is not promoted. Workplace safety and health rules developed in consultation with the Prostitutes' Collective apply to sex work and practice and promotion of safe sexual practices are mandatory.

Five years later while ascertaining the efficacy of the system, Prostitution Law Review Committee concluded that the sex industry has not increased in size and many of the social evils predicted by some who opposed the decriminalization of the sex industry have not been experienced⁵⁵. Overall, the PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously.⁵⁶

Quantitative and qualitative methods found that over 90% of sex workers believed the

⁵⁴ Prostitution Reform Act, 2003, Section 16, Public Act No. 28 of 2003, NZ.

⁵⁵ Gillian Abel, Lisa Fitzgerald, Cheryl Brunton, *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers*, (Nov 2007), <https://www.otago.ac.nz/christchurch/otago018607.pdf>

⁵⁶ Decriminalising sex work in New Zealand: its history and impact, <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/decriminalising-sex-work-in-new-zealand-its-history-and-impact/>, (last visited 15 Aug 2021).

PRA gave them employment, legal, and health and safety rights. A substantial 64% found it easier to refuse clients. Significantly, 57% said police attitudes to sex workers changed for the better.⁵⁷ The new legislation also helped create better relationships between the workers and police workers. The focus shifted from the sex worker being a criminal to the rights, health, and safety of these workers.

WHAT INDIA CAN LEARN FROM THESE FINDINGS

Taking examples of the above-mentioned countries which have already legalized and/or regulated prostitution, we find that whereas there is a definite improvement in existing problems ranging from health care to security to labor rights, there arose new challenges and complexities after getting the nod from the law. Whereas the legal status of these sex workers improved, the stigma surrounding the profession is too difficult to eradicate and even after introducing policy changes, prostitutes are still treated as second-class citizens.

An area of concern is that after legalization, instances of trafficking and child prostitution may see a significant rise. Further, the risk of attracting young girls to

this profession is significantly increased; therefore, the focus should be on rehabilitation and welfare of the sex workers and not advertising the profession. The state should take steps to regulate the same, taking away the power from the pimps and middlemen and having more control over the activities, and ensuring the welfare of these people.

Although regulating the sex trade will have both positive and negative repercussions as no change will be completely effective unless society becomes accepting of it, the state shall endeavor in direction of their welfare. Marginalization of prostitutes might not stop anytime soon however, regulating the trade and trying to reduce social stigma shall help in the increase in the reporting of crimes against these workers, shall also help them seek new opportunities outside this trade.

Another aspect learned is that different laws work differently according to the culture and ideology of the country and therefore assuming that just because a particular law succeeded in a country it will also succeed in India or vice versa will not hold true. Making any such law or the lack of it has to be determined with respect to popular

⁵⁷ Christchurch School of Medicine (CSM) tasked with an independent review by the Prostitution Law Review Committee

notions and ideologies of its people and to bring any changes society needs to be more accepting.

**PROSTITUTION: SHOULD IT
BE LEGALIZED?
DISCUSSIONS AND
SUGGESTIONS**

Prostitution is the oldest known profession in the world for a reason. Women providing public services regardless of their position and respect in society have always been an object of ravishment and desire of men since time immemorial and with the evolution of time, the condition of such women have only spiraled for worse. The social stigma and taboo attached are so severe that today prostitutes are perhaps the most forsaken race and it has become so deeply rooted in society that it cannot be abolished overnight and has become a necessary evil.

We must acknowledge that prostitutes are the victims and not the offenders. The prostitutes are constantly subjected to poisons of society, violence, sexual abuse, mental harassment, and strong prejudice in every stratum of society. In an independent survey, over 85% of the prostitutes

confirmed that they have been subject to sexual atrocities and/or felt a threat to their life at some point in some way. In the case of *Budhadev Karmaskar v. State of West Bengal*⁵⁸, the Supreme Court also said that prostitutes must be seen as the victims of society and not otherwise. The moot point therefore should be the upliftment of prostitutes and one school of thought is that legalization could be the way forward.

Apart from giving a prostitute freedom to use her body according to her prerogative, it also has several other benefits. Firstly, it will allow the Government to keep track of the numbers of sex workers in the country more efficiently and in turn, these workers will benefit from different Government Schemes. Then prostitutes will also get easy access to medical facilities for STIs and other issues. Further, prostitutes will also benefit from basic labor laws that will ensure healthy working conditions and also allow them to form unions and associations and in turn, Government can tax this \$8 billion trade. Furthermore, legalizing prostitution will decrease clandestine, hidden, illegal, and street prostitution. Another benefit will be that prostitutes are easy targets for crimes against them because perpetrators know it is easier to get

⁵⁸ [(2011) 11 SCC 538]

away however, with legalization this aspect will be controlled.

Whereas legalization seems like a viable option and it's a beautiful thought that women should be in charge of their bodies. In 2009, the Supreme Court too posed a question to the Government. "If prostitution is the oldest profession in the world, and you have not been able to curb it till now, why not simply legalize it?"⁵⁹ However, the ground reality is far more different. We are a conservative society with thousands of cultures, millions of ideologies, and billions of people. Women are still considered the vulnerable gender and their respect in society depends upon how pure they are. Prostitutes will not be seen with the same respect and dignity as ordinary people that is precisely why a lot of them work surreptitiously but legalization will force them out of the shadows and this will only worsen their condition. A lot of prostitutes are either underage or have been illegally trafficked into the country and therefore they can't produce their ID, legalization will lead them to be further marginalized. Further, while the term "prostitution" has come from prostitutes, they are merely pawns in this organized crime. It is the Pimps, the Middlemen, and the Traffickers who hold the power and control prostitutes.

Legalizing prostitution will only give more power to them and this will eventually lead to an increase in trafficking and forcible prostitution as seen in the case of the Netherlands. The policemen provide no respite either. Pertaining to the inexhaustible ways in which they can threaten to incriminate prostitutes, they exploit the prostitutes. The police constitute the most prominent section that commits sexual atrocities on prostitutes and also act as middlemen.

Keeping labor laws in perspective, there are inevitable questions of legal complexities. How to regulate fair working conditions for everyone? Currently, there is a huge discrepancy in their working conditions. While a powerful and highly sought-after prostitute can afford to choose her clients and charge a higher fee, a young and beautiful prostitute could be having sex 8-10 times a day and at a very minimal charge. They get off days only when they menstruate. But do we ascertain if she is in the trade voluntary and not being forced? Another aspect that needs attention is the working hours and number of clients in a given working day. How to tell someone to have sex a particular time a day when everyone has a different body? What about

⁵⁹ Bachpan Bachao Andolan vs. Union of India, [AIR (2011)]

the mental health of the prostitute? Therefore, the aspect of legalization is not the wisest.

Another school of thought is decriminalizing and proper implementation of existing laws, with which the authors assent with. Decriminalising will essentially mean that more than 8,00,000 prostitutes are free of legal incrimination while the authors feel with proper implementation, the existing laws can prove to be adequate. However, it has to be ensured that-

- The middlemen committing atrocities over prostitutes are strictly punished.
- The policemen do not abuse their power and exploit the prostitutes.
- The rehabilitation program by the government is upgraded to such an extent that it can accommodate the enormous number of rescued victims so that they do not have to return to prostitution due to compulsion.
- Such women are given an option of alternate occupation for a living.
- Children of these women are given the opportunity of education and overall development.
- A certain level of health and security standards should be

maintained in the places they work, providing them with clean towels and linens, condoms, and any other thing they might require, and regular STI checkups are mandated.

- The mental health of the prostitutes is taken care of.
- Though the focus should be on the rehabilitation of the women and men stuck in this loophole, consideration for the possibility of women voluntarily choosing prostitution as a means of livelihood should be there too.

For the above changes to take place there needs to be a complete overhaul of the existing infrastructure of the society. Prostitutes need to be encouraged and educated properly about their rights and duties and what they can do during emergencies. Their perspective must be taken into account and incorporated in policy changes that will help them. There needs to be special programs and workshops for proper gender sensitization of the people concerned with the protection of their rights. And there needs to be a constant endeavor for a change in society. It is important to understand that whatever steps are to be taken, they should be taken with keeping the human rights of the

prostitutes in mind⁶⁰. Incorporating an open-minded and holistic approach towards the same shall lead to positive results since there is a big negative connotation regarding sex work in our society.

CONCLUSION

Prostitution so deep-rooted in society that it is practically impossible to abolish it and it has to be accepted as a necessary evil. And analysing the countries that have legalized prostitution, isn't the most ideal approach in handling the important issue of prostitution. In India, with such different cultural fixings, a few laws will not make prostitutes acceptable in society and will be exploited nevertheless. Rather, the authors conclude that a more sagacious approach would be to decriminalize prostitutes and ensure that all the laws that exist already are implemented without any corruption or prejudice. Incorporating a holistic approach will bring about a positive change.

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https://www.unaids.org/en/resources/presscentre/featurestories/2017/june/20170602_sexwork



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