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Prostitution – A Legal Analysis

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Introduction

Prostitution is the oldest profession in India. A common misconception is that prostitution is illegal in India, rather prostitution is legal but prostitution, owning and running a brothel is illegal. Mumbai, Delhi and Kolkata are the biggest cities in India where brothels operate illegally. The following activities are punishable under current law: providing prostitution in public places, engaging in prostitution in hotels, owning a brothel prostitution, enabling prostitution by arranging for a sex worker, Arrange sex with a client. Currently, prostitution is legalized in Austria, some Australian states, New Zealand, Canada, Belgium and Brazil. In India, prostitution is not specifically illegal or regulated. Related work such as owning or working in a brothel, prostitution and organized sex work is made illegal by the Immoral Traffic (Prevention) Act 1956 (ITPA), colloquially known as SITA (hereafter the same). In this law, prostitution is called "sexual exploitation". However, the law does not recognize men who have taken up prostitution. Prostitutes often need health care because of the stigma associated with prostitution. This includes unwanted pregnancy, HIV/AIDS and other sexually transmitted diseases among prostitutes. Thus, regulation of prostitution and brothels helps curb this menace

Drops of history on prostitutes

Prostitutes were known as "Devadasi" who dedicated their entire lives to the devotion of Lord Krishna. Some religious beliefs, as a rule, Devadasis consider gods as husbands and thus cannot marry other people. Later they were called Nagarvadhu or city wife and were invited

by the kingdoms and the rich to dance and sing.

As historical scholars have shown, Devadases were treated with respect and reverence by royal families before British rule. No man, including kings and moguls, will even touch them. But it ended when the British entered the country. Devadasis began performing his art in front of British officers and a one-night stand began. The British started inviting these artists for sexual pleasure and that made them ready for prostitution in a country like India. During the British rule, the evolution of Devadas into prostitution led to the decline of dances in the temple. As time passed during the British rule, the economy of India was depleted and most of the people could not meet their basic income. Then the women started selling their bodies to the British for money.

In the late 16th and 17th centuries, when certain parts of India were a Portuguese province, Japanese women were captured and taken to India as sex slaves. Another example of the widespread use of women as sex workers can be seen during Company Rule in India. The army built brothels for its soldiers in many parts of India. The brothels used the women and girls of the town and were legally paid by the army.

Current situation of prostitution

In the Indian context, prostitution is not specifically illegal because it is not specifically stated that prostitution is punishable by law, but only some of the activities related to prostitution such as brothels, luring, human trafficking and prostitution are punishable offenses in India. to immoral traffic. PREVENTION) ACT, (1956). For example, panhandling is punishable by law, but

receiving money for sex with consent and without prior request may not be illegal in India. This includes certain activities which were prohibited under the Immoral Traffic (Prevention) Act, 1956 (ITPA) such as prostitution, prostitution, running a brothel etc. In 2011, the court case Budhadev Karmaskar vs. State of West Bengal to the Supreme Court (SCC) that sex workers have the right to human dignity under Article 21 of the Constitution, which guarantees the right to life and livelihood. With this decision, the Supreme Court constituted a panel to prepare a report on the rights of sex workers in India. In 2016, the Center informed the Audit Committee that the panel's recommendations had been incorporated into the draft legislation. However, no law has been passed since then.

Law related to prostitution

The ITPA defines "prostitution" as the sexual exploitation or exploitation of a woman for financial gain, and a "prostitute" is a person who receives that commercial advantage. The Indian Penal Code of 1860 also deals with prostitution but is limited to child prostitution. However, it aims to combat activities such as kidnapping in general, kidnapping for seduction and sex, bringing a foreign girl for sex, etc.

In addition, article 23 paragraph 1 of the Constitution prohibits trafficking in people, beggars, etc. forced labor Article 23(2) provides that a breach of this condition is an offense punishable by law. Section 2 (f) of the Immoral Traffic in Persons Act (1956) defines "prostitution" as the sexual exploitation or abuse of persons for any commercial purpose. Indian Penal Code 1860 Sections 372 and 373 also apply to prostitution but it is limited to child prostitution only. Although Sections 366A, 366B, 370A of the IPC deal with punishments for giving birth to a minor girl, importing a girl from abroad for sex and exploitation of a trafficked person. Therefore, according to the laws of the penal code, is quite related to prostitution.

The constitutionality of that Act was challenged in State of Uttar Pradesh Vs. Kaushalya. In this case, several prostitutes were forced to move out of their residence to maintain the goodwill of the city of Kanpur. The Allahabad High Court held that Section 20 of the Act abridged the fundamental rights of the respondents under Articles 14 and 19 (1) (d) and (e) of the constitution. The law was held to be constitutionally valid because there was an intelligible difference between a prostitute and a nuisance. The law also conforms to the desired objective, ie. maintaining order and harmony in society.

This law reduces the prevention of prostitution of women and girls and to achieve the public goal. to save fallen women and girls and to end prostitution and to give those fallen victims every opportunity to become decent members of society. The purpose of the law is to criminalize the aforementioned acts comparable to prostitution and to authorize the police to remove them, close brothels and take them to rehabilitation facilities. This empowers the central government to constitute a special court to deal with offenses under this Act.

Recent supreme court Judgements

The Supreme Court of India recently noted that "sex work is a profession" like any other, and the police should not harass sex workers. "Sex workers have the right to equal protection of the law. Penal laws must be applied equally in all cases based on 'age' and 'consent'. If it is clear that the sex worker is of legal age and is participating with consent, the police must to refrain from interfering or engaging in any criminal activity," the court ruled. The decision of the Court is a landmark because it respects the human dignity of sex workers, allowing sex workers to benefit from the same benefits and services like other citizen.

It should be noted that sex work or prostitution is not illegal in India, but trafficking for sexual exploitation is a crime under Indian law. Sex work as an organized business involving

pimping, luring, exploitation and renting property for sex work are all punishable under the Indian Penal Code (IPC) and Immoral Trafficking in Persons Act (ITPA). Since the recent decision caused a lot of noise, activists fighting the trade for sexual exploitation explained that the ruling does not legalize the "flesh trade" of brothels. Its purpose is to protect sex workers (prostitutes) and not those who live or profit from the sex trade, such as brothel owners and traffickers, who can be prosecuted.

Panel of three judges led by judge L. Nageswara Rao said that sex workers have an equal right to a dignified life under Article 21 of the Constitution of India. The court expressed concern about the "cruel and violent" way in which sex workers are treated by the police, saying that sex workers "are a class whose rights are not recognized." The police and other law enforcement agencies should be aware of the rights of sex workers, who are also guaranteed all basic human rights and other rights for all citizens in the constitution.

Rishikant, a long-time activist with the anti-trafficking NGO Shakti Vahin, told The Diplomat that "there is a need for clarity or openness about sex work and sex trafficking. Where there is a question about the consent of a woman who is forced to engage in prostitution and has no a place to talk." Rishikant warns that vested interests, such as brothel owners, will deliberately spread false information about the verdict. "They are threatening sex workers with surrender, saying that now even the court has said that the police cannot interfere in the treatment of sex workers. This is factually wrong," he says.

Based on the recommendations of a previously adjudicated panel on the welfare of sex workers, the Supreme Court ordered the police not to separate a child from its mother simply because she is a sex worker. If a minor is found in a brothel, it cannot be assumed that the child was trafficked. "Sex workers and their children are subject to basic protections of human dignity and dignity," the court noted.

Tapati Bhowmick of Sanlap, who works with trafficked women and their children, but do not agree that the children of sex workers remain in brothels. "For 30 years, we've been running a shelter for the children of sex workers because the mothers of sex workers wanted to keep their daughters away from brothels. It's not a safe place for children and teenagers who are vulnerable to abuse and harassment," says Bhowmick.

According to child welfare standards, a brothel is not a safe place for a child in need of care and protection. During the COVID-19 pandemic, when brothels were closed, there were several cases of underage children being forced into sex work. Activists disagree with the decriminalization of the sex trade. Some argue that legalizing it and removing restrictions will open the doors to the exploitation of vulnerable women and children, while others argue that legalizing the sex trade will give sex workers dignity and human rights.

It is important that only through attacks by the police and anti-trafficking organizations are trafficked minors rescued and then rehabilitated. The court also ordered state governments to conduct an inquiry into asylums so that the cases of adult women who do not want to stay there can be reviewed and released. Although the court's guidelines are well-intentioned, they can be harmful to sex workers, activists noted; like leaving minor children with their mothers in brothels.

Punishable activity under Immoral traffic act

The Immoral Traffic (Prevention) Act, 1956 makes the following acts illegal and imposes severe penalties: Whoever keeps or conducts a brothel or assists in maintaining or conducting it, shall be punished with imprisonment for not less than one term. . per annum which may extend to three years and with fine which may extend to two thousand rupees. Whoever lives on the income of a prostitute shall be punished with imprisonment which may extend up to two

years or with a fine which may extend up to two thousand rupees or with both.

For luring, procuring or abducting a girl to prostitution is punished with imprisonment for not less than seven years which may extend up to fourteen years and with a fine which may extend up to two thousand rupees. Anyone who keeps girls in brothels should be punished with severe imprisonment for not less than seven years, which may extend to ten years. If anyone engages in prostitution within two hundred meters of any public place such as a school, hostel, hospital, temples etc. punishable by imprisonment of up to three months. If such a crime is committed against a minor, the penalty is seven years' imprisonment, which may extend to ten years.

An aspiring prostitute is punishable with imprisonment for a term which may extend to six months or a fine of five hundred rupees on a first conviction and with imprisonment for a term which may extend to one year and a fine of five hundred rupees on a second Conviction. If someone causes or contributes to attracting a girl for prostitution, he is punished by imprisonment of at least seven years, which may extend to life imprisonment.

List of benefits of legalization of prostitution.

Improve the situation of sex workers - We clearly see that countries that have legalized it have only helped to improve the situation of sex workers. Studies conducted in countries where prostitution has been legalized have produced positive results that show that violence and the spread of disease have decreased to a great extent.

Reducing Human Trafficking - The biggest concern with legalizing prostitution is that it will lead to an increase in human trafficking. I would say the opposite results if prostitution is legalized without restrictions, such as criminalizing the third parties involved. The government must actively work with the community to ensure that there are no cases of trafficking of prostitutes. Newland is a leading

example that achieved the goal of no human trafficking after legalizing prostitution.

The government has a stronger network to help the government, such as sex workers, pimps, brothel owners, etc. They all work with the government and never do any illegal work that would get them fired or get their license revoked.

Empowerment of sex workers - Legalizing prostitution increases the power of sex workers. They gain the courage to go to the police if their rights are violated. Unlike what happens now, when sex workers go to the police station to report rape or a client who does not pay their dues, the police do not take them seriously because they know that prostitution is not a real profession. recognized and it is still taboo in society.

Improving the health of sex workers - Legalizing prostitution helps sex workers live healthy lives. Legalization helps sex workers fight for their right to engage only in safe sex, that is, to have sex with a condom or other protection. Legalization helps sex workers regularly test their safety and that of their clients. It helps reduce sexually transmitted diseases. Sex workers in Nevada undergo monthly STD testing. Nevada also requires condoms for each gender in brothels.

Taxes instead of bribes - Prostitution is considered a crime once it is legalized. It is considered a profession where people work for a living like any other profession. We are all aware of the bribery culture. Sex workers must regularly pay bribes to work. Dennis Hof says, "When a consumer has a choice between a legal place of business and illegal criminal activity, they go to a legal place. That's because they know they won't have a problem there." It will also generate income.

Reduce the participation of minors in prostitution - with legalization, because human trafficking reduces the participation of minors. Every sex worker has a license to help keep

records with the government. No one can work without a permit and under a certain age.

Reduction in Rape - There are several studies available that have shown that the legalization of prostitution has an enormous effect on the reduction of rape. This reduces rape cases to a great extent. In Rhode Island, the number of rape cases dropped to 39 after prostitution was legalized.

Right to choose - sex workers have the right to choose who they want to provide services to. Just as lawyers enjoy the freedom to choose the cause they want to fight, so does a gender worker have the freedom to choose their client. Now they get abusive clients and have no choice or recourse due to restrictions.

Conclusion

Finally, it can be concluded from the analysis that there is no special treatment for such a problem as prostitution, for example its criminalization, decriminalization or sanction. Based on previous research, it is hard to deny the fact that legalizing prostitution has both negative and positive effects. Therefore, to solve this problem, it is not enough to give legal qualification to prostitution, but to manage it in our country, a uniform law must be prepared. Because regulating prostitution helps protect sex workers and their children from exploitation. In addition to ensuring the health protection of sex workers and society as a whole. Henceforth, rules and regulations should be made to regulate this area.

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