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THE LEGALITY OF PROSTITUTION AND ITS DEVELOPMENT IN INDIA

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ABSTRACT

Prostitution is also a taboo in India just like LGBTQ, Sex etc. The sex Industry in India is also growing at a very fast rate and according to a report from UNAIDS in 2016, 657,829 people were working as prostitutes in India. But it is also considered evil for society by many people in India and sex workers did not have a very good image in Indian society. Prostitution as a profession existed in our society for a very long time and it is a false impression about it that it is illegal. It's not illegal, the activities related to it like managing brothels, pimping, trafficking of minor girls etc. are illegal and punishable under the Immoral Trafficking (Prevention) Act, of 1956. Through this article, we will study its meaning, how it emerges in Indian society, what leads people to adopt it as a profession and so on. Further, in this paper, I have also discussed the legal aspects of prostitution i.e. whether it is legal or not and what the laws related to it and tried to explain it with relevant case laws. In the end, based on my understanding, I have concluded whether it should be legalized or not.

Keywords: prostitution, LGBTQ, brothels, pimping, taboo, prostitutes

I. Introduction

Whenever Prostitution is talked about in India, most people say that it is wrong or it should not be practised by describing it as unethical while some people justify it by taking the defence of Article 19⁶³ and article 21⁶⁴. Whatever it may be, one thing is certainly most of the people, who

choose prostitution as a means of earning their living, do so because of some or other economic compulsion. Further in this paper, we will talk about the legal aspects of prostitution and we will see if prostitution is legal in India or not, along with that we will also look into the laws that are dealing with this. But firstly let's understand the meaning of the word 'prostitution'.

Prostitution is the service of providing sexual services for money and the person who associates herself/himself with this or involves in this is referred to as a prostitute. It transpires in a miscellany of structures and its legal status changes from state to state, country to country and also from place to area within a nation, stretched out from being a ratified or unenforced wrongdoing to an unregulated profession to an administered profession. Pornography and any other sexual entertainment are also the part of sex business along with prostitution. The institutions where prostitution is practised are referred to as Brothels. The laws and circumstances related to prostitution commonly change all around the world which reflects the contrary conclusions. Some people view it as morally incorrect or abusive towards women and some people find it a helping hand to the crime of human trafficking.

While studying the issue of prostitution, there is also one question which also comes to our mind whether can men be also sex workers. Generally, we have seen men as clients and women as prostitutes but things have changed in the 21st century. According to a report

⁶³ Article 19 in The Constitution Of India 1949

⁶⁴ Article 21 in The Constitution Of India 1949

published by BBC⁶⁵ on 7th January 2008, the population of male prostitutes was also rising in India. Not only males, but transgender are also working in this profession nowadays. The report also says that when there is no female client then they provide their services to male clients also. Gigolo is the term used for male prostitutes.

II. Historical Background

Traces of prostitution, or to be precise, adaptations of it were seen between the 16th-20th century, known as "Devdasi" and "Tawaif". Devdasi devotes their entire life to the worship of Lord Krishna. Devdasis thought god of as their husband and they were restricted to marry another man in their life, as per their religious belief. Terms like Bride of town (Nagar vadhu) were used by people and later, they were called by kings and other nobles for singing and dancing. Tawaif was also similar to Devdasi except for the fact that Devdasi worshipped lord Krishna while Tawaif was only a courtesan during the Mughal period.

According to historians Devdasis were viewed with respect and courtesy by the king and his family, before the advent of the Britishers in India. No person, including the royal family members, laid a finger on them without their permission. But when the British came to India, this came to an end and Devdasis started performing in front of the officials, leading to the dawn of one-night stands. The officials of the British government started calling them for the delectation and sexual joys, leading to the start of prostitution in India. After this, Devdasis were impelled into the business of prostitution and as a result, they were banned from dancing on the premises of temples. Over time, the Indian economy started getting depleted and many people were unable to meet the basic requirements for day-to-day life (livelihood). Therefore, to achieve a basic livelihood for their families, women started providing sexual services in return for money.

In the late 16th and 17th centuries, when provinces like Goa were under the control of the Portuguese, women from Japan were caught and brought to India for being slaves. Britishers also established brothels in many parts of the Indian subcontinent, and the prostitutes for these brothels were recruited from rural families. Though the Cantonment act of 1864⁶⁶ was introduced to regulate and control the structure of prostitution in India but still, it allows prostitution in the military and 19th and 20th-century women from Japan and Europe were bought in India to serve the soldiers of the British army and local Indian men.

III. Reasons for Adopting it as a Profession

In my opinion, there could be thousands of reasons that force women to get into the business of prostitution but the two important reasons that compel women to adopt it as a profession are unemployment and poverty. Many women in rural areas fall victim to fraudulent intermediaries or agents who deceive them by giving false promises and assurance of a better life and job, and when they agree to come with them then they sell them in brothels. If you ask what is the significant explanation that brings women into this business, the answer would be poverty. The rise of poverty has led many women to adopt prostitution as a profession including young people who see prostitution as a fleet-footed method to achieve their necessities of life.

Another reason which compels women to take this as a profession is lacking resources. According to one research conducted by the Sanlaap, a non-governmental organization, concludes that majority of prostitutes are involved in this business to support themselves and their children. There might be few who choose this profession in accordance with their will but many women choose this as a need due to various factors i.e. they have been disabandoned by their husbands, rape victims etc. All Bengal Women's Union conducted a survey

⁶⁵BBC NEWS, http://news.bbc.co.uk/2/hi/south_asia/7159759.stm (last visited Feb. 24, 2023).

⁶⁶ INDIACODE, https://www.indiacode.nic.in/repealed-act/repealed_act_documents/A1864-22.pdf (last visited Feb 24, 2023).

in which they asked how any of them were involved in this business by their self-will. Out of 160, 23 women were there who were working by their own will and the rest were working out of necessity.

Many women also enter into this profession after the occurrence of rape (around 6%). The rape victims adopt this profession by the shame or stigma foisted on them by people in society who believe that women are responsible for rape and put all blame on the women. Even the family doesn't support the victims in these situations and they are left with no other options to get involved in this business.

Apart from the above mention reasons, there are many more which lead women or young girls to dive into this dark world. The Chukri system (practised in Bengal), and the tradition of the Bachara tribe are some of the other reasons.

IV. **Is Prostitution Legal in India?**

When it comes to the legalization of prostitution, there are three types of countries:

- First is where prostitution is illegal and not allowed. Example Afghanistan, Kenya etc.
- Second where prostitution is allowed with some restrictions and limitations. Example France, Canada etc.
- Third where prostitution is fully legalized by the government. Example Austria, Netherlands etc.

But when it comes to India, the question arises that whether it is legal or not and if it is legal then what are the laws related to it? In India, it is not completely illegal but activities like soliciting, running brothels etc. (which are related to it) are illegal and considered an offence under Immoral Traffic (Prevention) Act, 1956⁶⁷. For example, if an individual is involved in pimping then she/he will be punished by the law but if a person is receiving money in

exchange for sex (with the consent of another person) then it is not illegal.

What is legal and what is not, we can only decide by looking into the laws related to it, so let's discuss the laws related to prostitution in India:

A. Laws Related to Prostitution

Section 2(f) of the Immoral Trafficking Act, of 1956 gives the definition of prostitution. It states that "prostitution" means the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly.⁶⁸ Several sections of I.P.C deal with prostitution but their scope is quite limited i.e. importation of women from foreign, procreation of minors etc. Sections of I.P.C related to it are 366A⁶⁹, 366B⁷⁰, 370A⁷¹, 372⁷² and 373⁷³.

Section 3-8 of the Immoral Trafficking (Prevention) Act, of 1956 put some restrictions on prostitution and penalizes certain activities related to it. For example sec. 3 this act states that you can't keep a brothel and if you do, you have to bear the punishment for it. The constitution of India also prohibits the trafficking of human beings under article 23⁷⁴. In the case of Raj Bahadur v/s Legal Remembrancer, it was stated that "*Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them. 'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral" or other purposes.*"⁷⁵

⁶⁷ INDIACODE, https://www.indiacode.nic.in/bitstream/123456789/15378/1/the_immoral_traffic_%28prevention%29_act%2C_1956.pdf (last visited Feb 25, 2023).

⁶⁸ Immoral Traffic (Prevention) Act, 1956, § 2, No. 104, Acts of Parliament, 1956 (India).

⁶⁹ INDIANKANOON, <https://indiankanoon.org/doc/1559723/> (last visited on Feb 25, 2023).

⁷⁰ *ibid*, <https://indiankanoon.org/doc/1371751/> (last visited on Feb 25, 2023).

⁷¹ DEVGAN, <https://devgan.in/ipc/section/370A/> (last visited on Feb 25, 2023).

⁷² INDIANKANOON, <https://indiankanoon.org/doc/1938563/> (last visited on Feb 25, 2023).

⁷³ *ibid*, <https://indiankanoon.org/doc/530949/> (last visited on Feb 25, 2023).

⁷⁴ Article 23 in The Constitution Of India 1949.

⁷⁵ Raj Bahadur vs Legal Remembrancer, AIR 1953 Cal 522.



Also in the case of *Budhadev Karmaskar v/ State of West Bengal*⁷⁶, Supreme Court asked the government to run vocational training programmes for sex workers so that they can earn their livelihood by using that skill instead of selling their bodies. And in the latest judgement of this case, which came on 19th May 2022, Supreme Court recognizes sex work as a profession.

V. Good or Bad for Society: Conclusion

Till now we have studied a lot about prostitution, its background, laws related to it, and reasons for pursuing it as a profession. But still, a lot of you have one question in mind whether it is good for society or not. The people in the world have been divided into two groups of different opinions, as we have talked about in the introduction para. If we legalize prostitution in India, then there are many things which work for the betterment and upliftment of their lives like, they will get labour rights, they will have respect in our society, no one is forced to get into this profession, they will go to the police station without any hesitation or fear. On the other side, if we penalize prostitution in India then it will reduce the trafficking of young or minor girls, and many more women could get into this business seeing it as a way of easy money which is not good for society.

In my opinion, firstly, the government has to address it rather than just ignore it or make uncompleted laws. Prostitution in our society exists for a very long time and it is not easy to pull it out of it. If the Government wants to penalize it then they should make strict laws regarding it and also provide some alternatives or job opportunities to the sex worker who will be unemployed after its penalization. And if they want to legalize it then also there should be rules and regulations regarding the rights of prostitutes, their age limit and so on. Whether it be legalised or criminalised that's totally up to the government.

As far as the question is concerned, whether it is good or bad for society is totally up to you, if look at it from the point of view of morality or ethics you may find it inappropriate but if you look at it from the constitutional or neutral point of view you may find it incorrupt or sinless.

VI. References

- i. Akash Khan, *Legal aspects related to prostitution in India*, blog.ipleaders (Feb 25, 2023, 1:54 PM), <https://blog.ipleaders.in/legal-aspects-related-to-prostitution-in-india/>
- ii. Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).
- iii. Prachi Darji, *Prostitution in India*, myadvo (Feb 25, 2023, 11:23 AM), <https://www.myadvo.in/blog/prostitution-in-india-read-its-causes-legality-and-law/>
- iv. Raj Bahadur vs Legal Remembrancer, AIR 1953 Cal 522.
- v. *Budhadev Karmaskar vs State Of West Bengal* on 14 February 2011.
- vi. INDIACODE, https://www.indiacode.nic.in/bitstream/123456789/15378/1/the_immoral_traffic_%28prevention%29_act%2C_1956.pdf (last visited Feb 25, 2023).
- vii. Prostitution in India. (2023, February 16). In *Wikipedia*. https://en.wikipedia.org/wiki/Prostitution_in_India.

⁷⁶ *Budhadev Karmaskar vs State Of West Bengal* on 14 February 2011.