



Legal Perspectives on Prostitution in India: Past and Present

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ABSTRACT: -

Over the course of history, there have always been questions concerning the social, moral, and legal propriety of the term "prostitution." There is never any coercion involved in prostitution; rather, it is sometimes a vocation that is done voluntarily. Trafficking in immoral goods and forced prostitution should be dealt with in a particularly stringent manner. The subject of how the wilful profession of prostitution ought to be addressed legally is one that has not yet been resolved, but it is an important one that has to be answered. This is since the individuals who engage in the wilful profession are majors and do the same with their own agreement, but this also raises questions of morality. In addition to providing a few pointers for potential future courses of action, this article concentrates on the historical and contemporary situation of laws pertaining to prostitution in India, particularly the rights of prostitutes.

Keywords: - prostitution, moral, immoral trafficking, wilful profession, rights of prostitutes.

Introduction: -

In India, prostitution is a stigmatized and under-discussed issue despite its significant impact. According to the Oxford Dictionary, prostitution is the practice of engaging in sexual behaviour for money. Prostitution has been around Prostitution has existed in India for centuries, and its status has evolved throughout time. Prostitution is mentioned in both ancient Indian texts and the works of notable British Indian writers. Prostitution is likewise regulated under Indian law. According to Aristotelian natural law, prostitution is not sinful and should not be considered morally wrong. Therefore, it is advocated to decriminalize the practice. In India, the Immoral Traffic (Prevention) Act of 1956 is the primary law addressing prostitution, which is ironic. Modern Indian laws continue to be unfavourable towards prostitutes. Private prostitution is not legally criminal in India. Clear laws regarding voluntary and deliberate prostitution are becoming increasingly important During the Covid-19 outbreak, prostitutes' livelihoods were threatened, as reported by government and non-government entities. The topic of whether there should be explicit law on a subject has long been disputed due to the ongoing conflict between law and morality, leaving the issue unresolved. The Hart and Fuller Debate provided a clear explanation of the relationship between law and morality.¹

Past and present legal framework for prostitution: -

Catherine Salmon made the reference to prostitution as the earliest profession in the world,² which is according to some accounts. Kamasutra, which dates back to 400 BC, is considered the earliest known work on sex, love, desire, and pleasure. Additionally, topics pertaining to prostitution have been deliberated upon in this Kamasutra. Since the Hindu philosopher and Indian Maharishi Vatsyayana, who authored Kamasutra, is responsible for its composition, prostitution has existed in India. In addition to this, numerous other literary works have addressed the subject of prostitution, including "Kuttanimata" by Damodargupta and "Samayamatrka" by Ksemendra, among others. The provision in Kamasutra for the training of prostitutes for prostitution suggests that prostitution was a firmly established institution, with training programs designed to produce individuals who were equally proficient in prostitution as they were in other reputable occupations. S.C. Banarje presented an argument regarding open and covert prostitution, which is consistent with the fact that prostitution was conducted in public. Since it was conducted openly, it can be deduced that engaging in prostitution without opposition was lawful and entirely acceptable. In ancient Indian society, prostitutes were held in some regard. Artha Satra asserts that prostitutes ought to be treated with humanity. Moreover, Dharma Satra demonstrates that prostitutes were accorded deference. Artha sastra outlines regulations pertaining to prostitution, not against it, but to ensure its correct operation. Artha sastra inquiries about the penalties imposed on prostitutes who disobey the regal command to meet men and who refuse to expose their bodies in exchange for payment. She would be subject to a sanction equal to twice the amount of the money she accepted if she were to deny receiving the funds. In addition, Artha sastra establishes legislation to safeguard the interests of prostitutes

¹ The Hart-Fuller Debate in the Twenty-First Century. (2010). United Kingdom: Bloomsbury Publishing.

² Catherine Salmon, "Evolutionary Insights into prostitution" pg-121.

by delineating the penalties for engaging in extramarital relations with one. As demonstrated in the preceding section, the throne administered and protected prostitutes while treating them with all due respect and dignity.³ And this also shows that prostitution was a legal profession.

Prostitutes have dignity, as evidenced by the Bengali "Durga Pujo" culture. To create an idol of Goddess Durga, soil from a prostitute's courtyard is needed. Prostitutes have historically contributed to money. Arthashastra states that a portion of prostitutes' earnings were considered revenue. Prostitutes have to pay monthly income tax.

Literature was based on real-life events. In Sarat Chandra Chattopadhyay's novel "Srikanto," Srikanto, an upper-class Hindu, falls in love with Rajlakshmi, also known as Piyari Baiji, a prostitute. This indicates that not all individuals in society viewed prostitutes with hatred. Despite Rajlakshmi's status as a prostitute, others respected her and hoped to form a family or marry her. Sarat Chandra Chattopadhyay's novel "Devdas" features Devdas, the son of a Brahmin Zamindar. He has a love affair with a neighbour, Parvati (Devadas calls her Paro), whose father is a Zamindar and her mother comes from a family where daughters are married off for money from the bridegroom's family. This is a form of selling the daughter to the bridegroom's family, and the ultimatum of every marriage is sex. Parvati came from a family that sold their daughters in marriage. Although Devdas and Parvati did not marry, Parvati, who came from a similar lineage, became a Thakur (wife of Thakur) and eventually married Zamindar. This shows that she was welcomed in society. In the same tale, Chandramukhi, a prostitute, falls in love with Devdas, who compares her to his love, 'Parvati'. Finally, Devdas acknowledges Chandramukhi's status as a prostitute. He admitted to having feelings for Chandramukhi.

Rights of prostitutes: -

People who work as prostitutes in India have the same basic rights as everyone else. These include Art. 14 (Right to equality before the law and equal protection of the law); Art. 19 (1)(g) (Right to carry on any profession, occupation, trade or business subject to limitations); Art. 21 (Right to life and personal liberty including the right to live with dignity); and Art. 23 (1) (which prohibits trafficking in persons and beggars along with other people).

Prostitutes also have some rights under the Immoral Traffic (Prevention) Act, 1956. For example, Section 16 of the Act says that prostitutes should be rescued, and Section 21 says that her home should be protected.

In *Budhadev Karmaskar v State of West Bengal*⁴, the Supreme Court of India ruled that sex workers are human persons with the right to life, and cannot be assaulted or murdered. The judgment recognizes that sex workers are forced to engage in prostitution due to poverty and urges the Central and State Governments to establish rehabilitation centres and provide technical and vocational skills, such as sewing, to help them find alternative livelihoods. Section 21 of the Immoral Traffic (Prevention) Act mandates that State Governments establish and manage protective houses through licensing. Appoint a suitable authority to investigate the license application for protective homes. These licenses are non-transferable and only valid for the given term. Section 23 of the Act allows the government to create rules for licensing, managing, and maintaining protection houses and other related things.

Modern Penalties for Prostitution: -

As per the Immoral Traffic (Prevention) Act of 1956, prostitution is defined. According to the definition, prostitution is defined as the commercial exploitation or abuse of individuals for sexual gain; therefore, the term "prostitute" should be defined accordingly. However, the term "prostitute" should encompass individuals who are not merely subjected to sexual abuse or exploitation for financial gain, but also those who intentionally participate in prostitution for commercial benefit, regardless of their gender male, female, or LGBTQ⁵.

The Immoral Traffic (Prevention) Act, 1956 makes it illegal to ask someone to be a prostitute, run a brothel or let others use certain places as brothels (Sec. 3), live off of a prostitute's money (Sec. 4), kidnap or force a girl to be a prostitute (Sec. 6), detain girls in brothels (Sec. 8) or seduce someone in custody for prostitution (Sec. 8). It is also illegal to practice prostitution within 200 meters of any public place.⁶

The Indian Penal Code, 1860 makes it illegal to engage in child prostitution, which includes the act of selling or purchasing minors for the purpose of engaging in prostitution. Under Section 370A, a person is subject to the punishment of rigorous imprisonment for a period of not less than five years in the case of minors and three years in the case of any other person. This punishment is imposed on anyone who engages a minor for the purpose of sexual exploitation, whether they are aware of the fact or have reason to believe that a minor or another person has been trafficked. Under the provisions of Section 372 of the Code, an individual who sells a juvenile for the purpose of prostitution is subject to a minimum sentence of 10 years in jail. For the purpose of prostitution, the act of purchasing a juvenile for the purpose of prostitution is punishable by 10 years in jail under Section 373 of the same Code. With regard to these portions, the explanations indicate that only the trade of minor girls and not boys is being conducted.⁷

³ S.C Banarjee "Crime & Sex in Ancient India" KOTHA PUBLISHERS, pg- 84.

⁴ Available at <https://indiankanoon.org/doc/1302025/>, last seen on 29/3/2024.

⁵ L-Lesbian; G- Gay; B- Bisexual; T- Transgender; Q- Queer or questioning one's sexual identity.

⁶ Immoral Traffic (Prevention) Act of 1956.

⁷ The Indian Penal Code, 1860.

Issues: -

According to the primary Act in India that deals with the issue of prostitution, which is Section 2(f) of the Immoral Traffic (Prevention) Act, 1956, the term "prostitution" refers to the sexual exploitation or abuse of individuals for the purpose of receiving monetary compensation. It is precisely in this area that the issue rests. According to the Act that was passed by our legislature, prostitutes were considered victims. This Act's Section 16 addresses the issue of rescuing those who are considered to be victims, as well as Section 21, which discusses the protection of her house, and so forth. While it is not possible to deny that a significant number of women and girls are coerced into entering this line of work against their choice, it is also not possible to deny that there are women who consciously chose to participate in this profession as their valued occupation. Now, if someone voluntarily engages themselves for the purpose of earning money in exchange for sexual pleasure, then should they be termed prostitutes, sex workers, or anything else, because in such a scenario, there is no exploitation at all? Does it cause the general public to be irritated, which would be considered a public nuisance?⁸ When reading this essay, it is important to keep in mind that the word "prostitute" has been used in every single instance in a manner that is completely devoid of any gender reference. A prostitute can be either a male or a female, and its members can be LGBTQ.

An article that was published on December 5th, 1994 in the "Los Angeles Times" contained an interview with Gloria Allred. In the interview, she posed a question that goes as follows: "Why is it immoral to be paid for an act that is perfectly legal if it is done for free?" There has not yet been a response sent to her inquiry.

On December 5, 1994, the "Los Angeles Times" published an interview with Gloria Allred in which she posed the following question: "Why is it immoral to receive payment for an action that is entirely lawful if performed at no cost?" A response to her inquiry has not yet been provided.

What exactly is meant by the term prostitution? One engages in the practice of prostitution when they offer their own body to another person for the purpose of providing them with sexual pleasure. The other person then pays back the person who offered their body, either monetarily or in kind. The bulk of the time, a girl will provide her body to a boy who will then pay her back. However, there are some instances of prostitution that involve men.

What exactly is a prostitute? To put it simply, a prostitute is someone who despises poverty more than they despise immorality. The act of prostitution, on the other hand, cannot be considered a sin. The British committees report from 1957, which was published by the committee headed by Sir John Wolfenden, recommended that prostitution should be decriminalized. In contrast to Lord Devlin, H.L.A. Hart supported the recommendation of the committee by stating that "a society does not require a shared morality," which was published in the book "Understanding Jurisprudence" by Raymond Wacks. This statement was submitted in support of the recommendation.

Political and legal debates: -

In the year 2006, the Ministry of Women and Child Development introduced a bill with the intention of minimizing the amount of people who are trafficked. Clients of trafficked prostitutes were proposed to be subject to criminal prosecution under the measure. Despite this, it was unable to move forward during the legislative process, and as a result, revisions to the Indian Penal Code were necessary in order to pass legislation that would prohibit human trafficking.⁹

The provisions of the Information Technology and Privacy Act (ITPA) that pertain to living off the earnings of a sex worker are being challenged in court. Additionally, the criminalization of brothels, prostitution around a public place that has been notified, soliciting, and the authority granted to a magistrate to evict sex workers from their homes and prohibit their return are also being challenged. Additional organizations are attempting to persuade parliament to make changes to the statute.¹⁰

Conclusion and Suggestion: -

Although India has penalised sexual exploitation of people for economic purposes, it does not penalise consensual sexual behaviour for commercial purposes, and it has not made it legal in Aruba, Australia, Austria, Belgium, Colombia, Hungary, and other countries. Also, India has not provided a reasonable argument as to why voluntary sex work is wrong, despite the fact that it was totally lawful in ancient India. Also, India lacks any constructive rules to manage Indian prostitution and distinguished persons who are immorally trafficked and dragged into this trade, as well as people who join this field voluntarily. India should enact a constructive law controlling prostitution that treats forced and wilful prostitution differently. Immoral trafficking of people in this profession should be stopped and dealt with strictly, and a systematic approach should be developed to allow those who willfully enter the profession with free consent and, obviously, are major, to conduct their business peacefully and with dignity.

⁸ Section 268 of I.P.C., 1860 defines the term "Public nuisance".

⁹ Hemchhaya De available at. "[Is Consensual Sex Work A Crime?](#)" *The Telegraph*. Calcutta. Archived from [the original](#) on 26 October 2013. last seen on 31/3/2024.

¹⁰ Available at [Sex Workers Meet Law Makers](#) (PDF) (Report). Constitution Club, New Delhi: Lawyers Collective. 1 March 2011. last seen on 4 March 31/3/2024.

Thus, prostitution is a gender-neutral profession, and as far as voluntary and wilful sex is concerned, it is neither an offence punishable by the Immoral Trafficking (Prevention) Act, 1956 (as amended to date), nor a nuisance as defined by Section 268 of the I.P.C., 1860, provided it is practised without jeopardizing the rights of any person in any way, and so it should be freely practised in India with proper precautions and guidelines. Prostitution should be viewed in the same light as the right to a profession, which is a basic right under Article 19 of the Indian Constitution. Every adult in India should be able to freely select their vocation, aided by competent and efficient law.

References: -

1. The Hart-Fuller Debate in the Twenty-First Century. (2010). United Kingdom: Bloomsbury Publishing.
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