

DE JURE NEXUS LAW JOURNAL

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2nd Year, BBA LL.B.**REFORMING PROSTITUTION IN INDIA****ABSTRACT:**

In India prostitution is even though illegal is famous for its brothels some of the biggest run in metropolitan cities like Mumbai, Chennai, Kolkata, and Delhi. The reforms made by the Indian government and rules enacted by them are not at all sufficient little children are being exploited and a lifelong trauma is being inflicted on them, which causes the victim to not even recognize themselves. The POCSO act and other acts enacted by the government is filled with various loopholes and doesn't amend or help the victims.

Police are not able to stop the brothels because of the demand and the trafficking taking place one of the main reasons is because of corruption in the higher levels of government. This research paper will tackle on the issues of prostitution in India, and how can Indian government take help from policies of different countries who have legalized betting in their countries. Commercializing or legalizing prostitution and making it an industry can be beneficial for India as a country and for the benefits of the sex workers.

KEYWORDS:

Prostitution, legality, flesh trade, ITPA Act 1956, IPC

INTRODUCTION:

As per Black Laws Dictionary prostitution has been defined as the “the act or practice of a women permitting a man to engage in sexual intercourse with her for a specific sum of money which will be paid by the man”. In India prostitution has been there for ages during the sixteenth and seventeenth when some parts of India were provinces of Portuguese and Japanese women were caught and brought to India as sex slaves. Further on “whorehouses” were built by the military across numerous regions of India, village women were used to fill up these houses and were paid wholesomely by the military. “Generally, in the previous years men were seen as a client and women working as prostitutes but as per statistics both men, women and transgender are working in this sector”. As per official statistics male prostitutes are at a rise in India, and India is home to worlds largest red market in Asia located in Kolkata. Even though prostitution is illegal in India and after so many acts and reforms how are still India at a rise in the sex market?

ROOT CAUSES OF PROSTITUTION

Only a minimum number of persons get into this flesh trade voluntarily, but the major factors which forces a person to enter this trade of commercial sex is “poverty and “unemployment”. So, the following are the causes of prostitution :-

- Economic disputes in the country i.e., poverty
- Not getting proper employment opportunities from the government
- Unappropriated rehabilitation facilities

Women from backward areas or remote places fall prey to these intermediaries who give these people assurance that decent employment opportunities will be provided to them then later they are sold as sex slaves in the market. What drives these helpless women is the fundamental aspect of poverty. It is a significant factor that explains why people join this business. With the onset of lockdown because of the novel corona virus, many people have lost their livelihood which has in turn increases the poverty rate which drives individual especially the young people of urban areas where they consider this method as a solution which will address their necessities. Urbanization in the recent times has been a factor that has caused the polarization

¹ Prostitution Definition, *Black's Law Dictionary* (11th ed. 2019), available at Westlaw.

of classes, increasing the frequency of joblessness, crime and estrangement which has caused many people including female to adapt to this sadden economic realities.

As per official statistics around 6 percent of women enter this trade after they were victims of trade, sometimes the survivors of sexual assault are victimized by the society because of the Indian stigma and they are blamed for being raped, sometimes not only their society but also their own families deny accepting them. After this, the deferral in judiciary system not getting justice as we can see the “Nirbhaya case the victims got justice after 7 years” after a prolonged period of delayed justice and no help or shelter these victims find solace in the darkness of prostitution. As per other statistics around 8% of young women enter this trade because of cases of incest.

LEGALITY AND REALITY OF PROSTITUTION IN INDIA

The aspect here is a big dilemma the answer can be a “yes” or “No”. Given the Indian context this trade is not explicitly illegal as there is no where mentioned that that prostitution as an act is a punishable offence, but activities related to it are explicitly prohibited. Some of the activities are running brothels, soliciting, trafficking and finally pimping are all punishable offence under “THE IMMORAL TRAFFIC(PREVENTION) ACT 1956”. Let’s take an example to clear the aspect “ For example a man who is committing the act of pimping may be punished under the law but if receiving money for consensual sex that might not be considered as an offence under the Indian Laws. Some section of IPC deals with prostitution. For example, sections 372-273 deals with it but is only restricted to child prostitution. Under section 366A,366B, 370A deals with offences of procreation of minor, girls being imported from foreign lands for the purpose of this industry or exploitation etc. However, IPC laws which are related to this aspect are very limited. Since the act that are enabled by the government doesn’t make prostitution as an activity an offence but all the other activities surrounding it an offence which makes it difficult for the third party to carry out their work, which according me is a direct violation of Article 14 and Article 19 of the Indian Constitution as it makes difficult for the workers to carry out their profession without the fear of being caught by the police. THE IMMORAL TRAFFIC(PREVENTION) ACT 1956 which is enacted is filled with “loopholes” this act states that one can indulge in these activities when they are at a safe distance of 200m

² Akash khan, *Legal aspects related to prostitution in India*, blogpleaders(Aug 10,2022, 12:23 pm), <https://blog.ipleaders.in/legal-aspects-related-to-prostitution-in-india/>
Prostitution in India- Causes, Types and modules for eradication, The lawmatics(Aug 10,2022,12:23pm), <https://thelawmatics.in/prostitution-in-india-causes-types-and-modules-for-eradication/>

from any public place i.e., completely isolated from any public institution in sight. The legal status enacted pushes these people to the margin of society. The main problem associated with this profession is that despite it not being illegal the secretive nature of it portrays it as an illicit activity which shouldn't be done. The government do not provide them with appropriate medical attention because of the poor sexual hygiene many diseases like AIDS,HIV can be caused. The ITPA act has made the life of these workers vulnerable dangerous. The government instead of helping them they are doing the opposite thing. There are many countries where prostitution has been legalized and appropriate laws have been enacted to make the industry a better one and help those workers because there is no country in the world which has been able to stop prostitution by enacting legislations. The reality of the current system is that a fear of punishment has been instilled in the mind of clients. The clients can't meet the workers in open places and meet in dark alleys or away from public institutions to avoid being caught by the police, which easily gives them the opportunity to commit crime with these workers at any moment thus putting their life or security at a risk

RIGHTS OF A SEX WORKER

The Indian constitution gives fundamental right to every citizen residing in India and since the workers being Indian citizens are entitled to these rights. Article 21 of the Indian Constitution which gives the right of "right to live" is a right available to all the prostitutes. This article was emphasized on the famous case of " Budhadev Karmaskar vs State of West Bengal" where the plaintiff was liable for murdering a sex worker in Kolkata in the year 1999. The court held in their judgement that women are indulged in this business not for pleasure but because of poverty. If a woman is giving a opportunity to learn basic vocational or technical training then they can do other jobs instead of indulging in this flesh trade. Thereafter the Supreme Court directed the Central Government and State Governments to give training to these workers across whole parts of the country.

³ Bijayani Mishra, *Why Supreme Court's acknowledgement of sex work as a profession is welcome*, T.I. Express, May 30, 2022
Budhadev Karmaskar vs State of West Bengal, A.I.R.2010 S.C.135(India)

LEAGALIZING PROSTITUTION

This aspect is very debatable in today's context. Some members of the society are believers that prostitution is an evil itself and needs to be cured, but some are believers that it should be legalized for the betterment of the society. With the current laws these activities are conducted in shady places which gives the opportunity to the client to torture the workers, however legalizing it would protect the workers from such harassment or difficulties. Further on since STDS are very common for these workers because of proper sexual hygiene not being imposed, regulations can be made for the mandatory use of condoms or any forms of protection.

Legalizing this industry will give the sex workers equal opportunities which will help them equal right such as educational opportunities for their children, healthcare etc. Licensing prostitution will give the workers some basic education and some necessary training which will give them other sources of income apart from selling their flesh. One major benefit that government will get that they will be able to track the number of workers working in the country and can directly investigate the welfare of these people

But legalizing this industry can also cater some setbacks, one of them being since it's a flesh trade the esteems and dignity of a women will be affected which is morally wrong and not at all admirable. Once it is legalized many people will view it as a profession and indulge in it and many will think its an easy way to earn money, as a result there will be massive growth in this industry.

So, the main advantages of legalizing prostitution are as follows:-

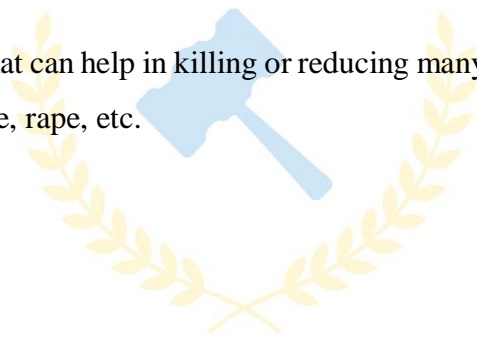
- Improvement in condition of sex workers
- Reduction in trafficking
- Empowerment of sex workers
- Improvement in the health of sex workers
- Taxes instead of bribes
- Minors will be reduced in the business
- Chances of violence, rapes torture etc. will be reduced by a margin
- The workers will have a right of choice

⁴ Yashi Verma, *Legalization Of Prostitution In India*, Legal Service India (August 10,2022, 16:26 pm) , <https://www.legalserviceindia.com/legal/article-3392-legalization-of-prostitution-in-india.html>

CONCLUSION

In a country like India which has high margins of poverty because of unequal distribution of resources and the country being hunger-stricken survival is one of the top priorities for every citizen. India is a democratic nation and its preamble it upheld the value of equality, justice for each Indian citizen, but sex workers are kept out of this per view and are denied these “equal opportunities”. Legalizing prostitution has both negative and positive aspects, just giving it a legal status or validating it in front of court is not sufficient to solve the problems instead a uniform law must be made to govern or administer this industry, a set of rules and regulations must be enacted or sanctioned by the government

It will be progressive step that can help in killing or reducing many social evils such as children being indulged in flesh trade, rape, etc.



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