

## REGULARIZING PROSTITUTION AND ENHANCING THE SOCIO-LEGITIMATE STATUS OF SEX WORKERS IN INDIA

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**Abstract:** Since time immemorial, sex workers in India have been an object of social prejudice and suffered the brunt of being an outcast and amoral creatures whose lives are spent in humiliation and disregard from the morally 'uptight' people of society. The present pitiful condition of the sex workers and their families is calling out to the government and the society to reform and regularize the field. This research paper shall discuss about the journey of sex workers from their glorious history to the present inhuman dwelling. The paper using the aid of various primary sources and mainly secondary sources will focus on identifying prostitution as a profession in India and stopping the violation of sex workers' basic Civil and Human rights. Taking into consideration the relevant provisions and various case precedents, this research paper will try to bring out the problems faced by the sex workers with various methods and suggestions by which it can be regulated for upbringing their social and legal status in the country.

**Key Words:** prostitution, sex workers, regulation, social and legal status

**Introduction:** Prostitution has thrived in almost every country of the world. Being one of the oldest profession, Prostitution has been practiced in India since the emergence of the organized society. It is being practiced till date but the condition of the sex workers and the prostitutes is pitiful in the country. These individuals offering sex for money are subjected to assault, rape, being psychologically intimidated or physically compelled to take part in sex or subjected to sex acts against one's will or any such demonstration that one finds debasing or embarrassing. So regularizing prostitution is the one of the most essential step to upgrade the social and legal status of these individuals.

**History:** The Vedas, the earliest of the famed Indian Literature, refer Prostitution as an organized establishment. The archeological findings from Mohenjodaro provide sturdy evidences to the existence of Prostitution in the old ages. The foremost placing of the figures is probably the bronze, 'Dancing Girl'. It's been steered that this dancing girl is representative of a category of temple dancers and prostitutes like existed in contemporary Middle Eastern Civilization [1].

The existence of temple dancing girls is quite prevalent in Aryan Civilization. Secular Prostitution is often mentioned in Rig Veda. Classics like Vatsayana's 'Kamasutra' written during 250 A.D deals well concerning courtesans. He classifies prostitutes into nine classes, most honored of whom was 'Ganika'. References to dancing girls at the temple could also be found in Kalidasa's 'Meghadoot'. Chapter XXVII, Book II of Arthashastra written during 300 B.C deals with Ganikadyaksha which implies 'Superintendent of Prostitutes' and their duties and privileges. The Prakrit inscriptions written during the reign of Emperor Ashoka contained within the variety of verse mentioned 'Sutanuka', later

frequently used for a temple prostitute. The trend continued even during the reign of Muslim Sultanate in Delhi (1175-1349). Prostitutes were referred to as 'tawaif' indulged in performing arts such as 'mujra'. Jahangir's harem is said to be home for more than 6000 mistresses. After the death of Aurengzeb, the country saw an anarchical period where the standard of morality among Princes and Public men sank to the lowest levels. Prostitutes were now specifically used only for private entertainment.

**Main Causes behind Prostitution:** One can be thrown into the web of prostitution due to (i) Economic causes including poverty and economic distress, (ii) Illegal and Immoral Trafficking Process, (iii) The Government's Attitude, (iv) Old Tradition like Devadasi, (v) view of people about woman as a commodity, (vi) belonging to a family of prostitutes, (vii) Ill treatment by parents, (viii) Bad company, (ix) Social customs, (x) Lack of sex education, (xi) Rape victim, (xii) Early marriage and desertion, (xiii) Lack of recreational facilities, ignorance, and acceptance of prostitution, (xiv) Psychological causes include desire for physical pleasure, greed, and dejection.

**Problems faced by Sex Workers in Present India:** Sex workers and Prostitutes in India face social disgrace and segregation in their everyday life. They even face savagery on account of the shame connected with sex work which in many settings is criminalized and because of separation in light of gender, HIV status or different components. Judiciary is still trying ways to discover approaches to guarantee them an existence with poise. In a few cases, grumblings and complaints with respect to such violations against prostitutes and sex laborers are not enlisted. Police denies to register the FIRs stating to that if one is a Prostitute, how can she be raped! Being in a powerless position they are subjectively halted, subjected to intrusive body

searches or confined by police, self-assertively kept or detained in police headquarters, detention centers and rehabilitation centers without due process. In an investigation conducted by Roma Debabrata for the National Commission for Women in 1997, it was found that police acts as pimp in most of the cases.

Another major issue confronted is the issue of HIV infection and other STDs. While Mumbai and Kolkata are said to be the biggest centers of this trade, over 50% of the sex workers in Mumbai have been found to be HIV positive. Absence of awareness regarding sexual wellbeing and ailments is the significant contributor. Human-rights infringement ought to be considered in conjunction with viciousness against sex laborers.

Studies on Female Sex Workers in India have highlighted their numerous vulnerabilities originating from autonomous solicitation of clients of street-based sex workers that places them at higher dangers of viciousness, assault, and exploitation [2]. Laws and approaches, including ones that criminalize sex work, might build sex workers' weakness to savagery [3].

The living conditions of majority of the sex workers in brothels and red-light zones is very low. More than 71% of them are illiterate. They are deprived of the fundamental human necessities. The offspring of prostitutes and sex workers face social disgrace, mortification and mental insufficiency. They are denied education in schools and private institutions because of their occupational foundation. Denial of jobs additionally constrains them to take the same path as of their guardians.

**Laws related to Prostitution in India:** As far as laws are concerned, prostitution in India is not illegal per se. However, Indian penal code states that certain activities related to prostitution such as - (a) Soliciting such services at public places, (b) Carrying out such activities in hotels, (c) Kerb crawling, (d) Pandering, (e) Being an owner of a brothel or even running one, and (f) Pimping, are negations of law.

The Indian Constitution bans trafficking of persons under Article 23 which prohibits trafficking of human beings and other similar forms of forced labor. Whereas Article 24 prohibits child labour under 14 years old in a factory, mine or "any other hazardous employment".

There are two principal Indian laws that address trafficking and prostitution in particular: (1) The Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA) and (2) The Immoral Traffic (Prevention) Act of 1986 (ITPA), colloquially called PITA, an amendment to SITA. In The Immoral Trafficking (Prevention) Amendment Bill 2005, many amendments such as: permitting soliciting by sex workers, enhancing punishment of human traffickers to 10 years' imprisonment and Rs.1 lakh fine,

Providing confiscation of property worth over Rs. 3 lakh, owned by traffickers and agents and, widening the definition of "trafficking in persons" to include clients with punishment up to three years, were introduced.

India is also a signatory to international conventions such as the (i) Convention on Rights of the Child (1989), (ii) Convention on Elimination of all forms of Discrimination Against Women (1979), (iii) UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) and the latest (iv) South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002).

The International Labour Organization (ILO) also accepted adult sex work as work in a ground breaking 1998 report[4] and called for its global recognition as a legitimate form of work.

#### **Governments recognizing the need for Regularization and Legalization of Prostitution:**

Prostitution has been legalized in the countries such as Netherlands, New Zealand, Germany, Iceland, Switzerland, Austria, Denmark, Greece, Turkey, Senegal, Venezuela, the state of Nevada in the U.S., and several Australian states (Victoria, Queensland, ACT and Northern Territory).

On December 9, 2009, The Supreme Court of India, while dealing with a public interest litigation (PIL) regarding child trafficking, filed by the NGO Bachpan Bachao Andolan, asked the government to consider legalising prostitution if it was unable to curb it effectively. The court's remarks stated by Judge Dalveer Bhandari, came as, "When you say it is the world's oldest profession and you are not able to curb it by laws, why don't you legalise it?" and Judge A K Patnaik asked Solicitor General Gopal Subramaniam. "You can then monitor the trade and rehabilitate and provide medical aid to those involved." In the recent case of *Budhadev Karmaskar vs State of West Bengal*[5], the Supreme Court ruled that "Prostitutes have a right to live with dignity" guaranteed under Article 21 of Indian Constitution. Judges on the bench passed orders to clarify that the panel would recommend steps to create "conditions conducive for sex workers to live with dignity as per provisions of the Constitution Article 21". Justice Mishra recommended to give the sex workers an alternative platform by giving free vocational training.

**Benefits of regularizing prostitution:** It will help to curb money laundering.

- Help to curb spread of AIDS and have better access to health care.
- It will break the police-trafficker-pimp nexus.
- Licenses and registration will allow access to public facilities.

- It will help in reducing immoral trafficking of women and children.

#### Suggestions:

- Concrete acts and regulations should be brought to regularize prostitution throughout the country.
- Intensive rehabilitation programmes should be organized to help the sex workers who want to escape the clutches of prostitution. This can be brought by giving free vocational training for various other professions and providing safe housing for them.
- Proper development of the red light areas should be carried out in order to guarantee a safe and healthy environment for the sex workers and their families.
- Valid identity card should be issued by the government for sex workers who want to continue or join this profession. This will prevent the forceful and illegal entry into prostitution.
- Free and regular medical check-ups should be given to the sex workers and they should be provided with health cards
- Children of sex workers should be given scholarship and financial assistance by the governmental and various non- governmental organizations for proper educational training.

- Sex workers should be brought under the work schedule of the labour department and their work should be brought under wage laws governing in India namely articles 14-16, 19(1)(c), 23-24, 38, and 41-43A of the Indian constitution which directly concern labour rights and The Minimum Wages Act 1948 which sets wages for the different economic sectors.
- Prostitution in India is estimated to be an 8.4 billion dollar industry. Therefore, the government should tax the higher paid sex workers in order to channel the money back into the profession which will enable to protect the rights of sex workers better.
- Old immoral traditions like Devadasi system should be eradicated thoroughly in the country.

**Conclusion:** Destitution, discrimination, hopelessness, lack of knowledge, disregard, and HIV-nearly spinning around the life of a sex worker, give a profound knowledge into the prevalent status of sex workers in India. Due to these reasons this research paper exerted the need for immediate regularizing prostitution in India and enhancing the economic status of sex workers. Many developed countries have recognized and implemented the legalization of prostitution and it is the high time that India follows the lead in order to attain over all development.

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