
BETWEEN THE SHEETS: UNRAVELING INDIA'S SEX WORK - NAVIGATING LEGALITY AND MORALITY

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ABSTRACT

This research paper delves into the complex and contentious issues surrounding the legality and morality of sex work in India, examining its current legal status and exploring its societal importance. The study juxtaposes the Indian context with that of other countries to highlight the contrasting approaches towards sex work regulation and the diverse perspectives on its moral implications. In India, the legal framework surrounding sex work is multifaceted and varies significantly from state to state. Historically, sex work has been stigmatized and associated with criminal activities, often leading to the marginalization and exploitation of sex workers. However, recent developments have sparked discussions on the decriminalization and regulation of the industry, with proponents arguing for improved rights, protection, and health services for sex workers. This paper critically assesses these legal perspectives and their impact on the lives and dignity of sex workers. The research also sheds light on the complex interplay between legality and morality in the Indian societal context. Sex work in India is a deeply polarizing subject, with cultural, religious, and traditional norms heavily influencing public perceptions. By examining both the ethical and pragmatic considerations, this paper seeks to offer a comprehensive understanding of the moral dimensions of sex work in India. Ultimately, this research paper argues that the legality and morality of sex work in India are interconnected, and any meaningful discourse must encompass both aspects. By acknowledging the importance of evidence-based policies and the voices of those directly impacted, this study contributes to a more nuanced understanding of the implications of sex work regulation in India and serves as a stepping stone towards an inclusive and informed dialogue on this significant societal issue.

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1. RESEARCH METHODOLOGY

In order to examine carefully the topic at hand provide the best understanding of the legalization of prostitution and to draw a detailed comparison between the legality and morality of the topic, doctrinal research was conducted. The research conducted involved the study and examination of qualitative data such as books, articles, judgments, websites, and law journals. These were gathered from online databases and sources such as JSTOR and SCC online. Opinions of various researchers also helped conclude the research. The main advantage of this type of research is that it helps to find out and examine the loopholes of the topic at hand.

A. RESEARCH QUESTION -

1. What is Prostitution?
2. What are the basic rights that have been denied to the Sex Workers?
3. What are the laws governing Prostitution in India?
4. What shall be the effect of decriminalization and legalization of the Sex Work in India?
5. Is Prostitution really an immoral activity?

B. RESEARCH OBJECTIVE -

1. To draw a comparison between the legality and morality of Sex Work.
2. To examine the status of Prostitution in India.
3. To study the effect of decriminalizing and legalizing Prostitution.

2. INTRODUCTION

“*Frailty, thy name is woman*”, was the ignominy heaped upon a woman of the Victorian era by William Shakespeare in his great work *Hamlet*.² The history of sociology has, however, established the contrary, i.e., “fortitude”, thy name is woman; “self-sacrifice”, thy name is woman; “caress”, thy name is woman. Recent years have witnessed a growth in people’s interest in removing all the barriers related to Prostitution in India. Till today, the concept of decriminalizing prostitution has been in discussion all over the world.

² <https://interestingliterature.com/2021/06/hamlet-frailty-thy-name-is-woman-meaning-analysis-origin/>

Prostitution can be defined as the business or mode of earning money by engaging in sexual activities. The word is derived from a Latin word which means 'to expose publicly' or 'offer up for sale'.³ It can also be defined as sexual service or commercial sex. Prostitution means the sexual exploitation or abuse of persons for commercial purposes, as defined by Per K. Ramaswamy, J. in the case of **Gaurav Jain vs. Union of India 1997**.⁴ The people working in this field are generally known as 'Prostitutes' and it is usually committed against women by men. The main issue arises due to the orthodox thinking of the society, where women are treated as an object to fulfill other people's wishes. Most of the human beings on this planet are of the opinion that whenever anyone faces any kind of problem the only solution that would solve the problem shall be "money", and many human beings believe in this. The profession of Sex Work provides a source of income to the people working in the profession, who otherwise might not have a job to fulfil their basic needs.

Human Rights are of major importance and its violations are very common all-around India, they are relevant in the lives of the people working as prostitutes. Discrimination against prostitutes is a problem as is the discrimination which is being faced by other groups of people on lines of caste, class, religion or race. Sex work is not treated as a respectable work, but as a dirty and unethical lifestyle which are considered as a threat to public.

The concept of sex work can be seen in various forms in every part of human history. Despite being a ubiquitous issue in the country, the legality and morality of sex work in India is still in debate.

The constitutional provisions in India guarantee fundamental rights, including equality, freedom, and protection against trafficking and forced labor. However, the implementation and enforcement of these rights for sex workers remain challenging. Additionally, stigma and marginalization further exacerbate the denial of basic rights to sex workers, such as education, safety, and healthcare.

³ *Prostitution*, Oxford English Dictionary (2d ed. 2013)

⁴ [1997] 8 SCC 114

Understanding the legal aspect of sex work in India necessitates considering both the positive and negative implications of legalizing prostitution. While legalization could provide sex workers with improved access to justice, protection, and healthcare, concerns exist regarding the potential increase in the number of individuals entering the profession and the associated social consequences. Balancing the rights and well-being of sex workers with societal concerns requires a comprehensive approach that addresses stigma, ensures safety, and provides support and opportunities for sex workers.

3. HISTORICAL BACKGROUND

The means to earn money by indulging in sexual activities is not a new concept. It has existed for time in memorial. It dates to ancient times. The Ancient Near East was a home to a number of worship places and places of paradise which were created in devotion of divinities. It was put forward by Greek authors like Herodotus, that people were involved in sacred prostitution but these claims were in question due to lack of evidence.⁵ One of the oldest and reliable references to prostitution in ancient Greece⁶ is derived from the poet Anacreon who belongs to the Archaic era in one of his poems which refers to "whores by choice". In ancient Rome, there was no unified legal approach related to prostitution. The status of prostitutes was very low, and taxation was implemented upon this work. The Mahabharata and the Matsya Purana talk about accounts of the origin of prostitution. The Later Vedic texts also talk about prostitutes, the professional prostitutes are noticed as it is mentioned in the Buddhist literature. The definition of prostitutes has been very ambiguous throughout the Middle Ages. Generally, prostitution was not a lifetime career choice for the women, they usually turned to this profession in order to earn some extra money in times of distress. The women who used to work as prostitutes did not usually have any family ties or any means to protect themselves. Prostitution was considered as a necessary part of people's life in the medieval era. People from the urban area were of the view that prostitution as a business was more developed and was growing at a rapid rate in the rural area. By the end of the 15th century the attitudes towards prostitution hardened. In the 18th century, throughout the rule of The East India Company in India, the soldiers serving were using Indian women

⁵ Beard, Mary; Henderson, John (November 1997). "With This Body I Thee Worship: Sacred Prostitution in Antiquity". *Gender & History*. **9** (3): 480–503. doi:10.1111/1468-0424.00072. ISSN 0953-5233.

⁶ https://en.wikipedia.org/wiki/Prostitution_in_ancient_Greece

as prostitutes, as they frequently paid visits as dancers. When European females started arriving in India, the concept of prostitution started decreasing.

4. STATUS OF SEX WORK IN INDIA – LEGAL ASPECT

Prostitution is not absolutely illegal in India, it is still considered as illegal, unethical and unprincipled by the courts of India. People who are involved in acts like managing brothels, persuading a person into sex work, and trafficking of children and women with the aim of making them work as prostitutes in order to earn money from them and live a life off that are said to be criminal and such work is absolutely illegal in India. Various aspects of our Indian legal system talk about criminalizing and punishing sex work. Aspects such as The Constitution of India, 1950, Indian Penal Code, 1860 and Immoral Traffic (Prevention) Act 1956 talk about a few provisions that discuss a few aspects of prostitution.

According to the Indian Penal Code 1860, prostitution is not illegal per se but there are a few aspects of sex work that are illegal and as well as punishable. The following are the aspects that are punishable-

- Pimping
- Owning a brothel
- Canvassing for prostitution in a public place
- Carrying out sex work in hotels
- Arrangement of a prostitute for customers.

Our Constitution of India provides for definite laws, which ensures safety, security, freedom and equality. Article 14, Article 15, Article 21, Article 32 and DPSP are some examples of such laws. Human trafficking, beggars, and other forms of forced labor are prohibited by Article 23(1) of the Constitution.⁷ Any violation of this rule, according to Article 23(2), is a punishable offence according to the law.⁸

Sex work in India is being regulated by an act called the Immoral Trafficking (Prevention)

⁷ <https://lawessential.com/miscellaneous/f/rights-of-sex-workers-in-india-a-legal-analysis>

⁸ *Ibid.*

Act, 1956, it is famously referred to as PITA.⁹ The act was essentially enacted to prevent and protect women and children from exploitation and trafficking. It also states that if sex work is done voluntarily, it would not amount to an offence. The law is mainly based on the question that if sex work is carried out in a public place, who will be entitled to punishment for the same? There are also some issues related to the act, which need to be taken into consideration, they are-

- Discrimination against the victims. In most of the cases, the victim is punished rather than the real culprits.
- Violence against women, etc.

In the case of **State of Uttar Pradesh v. Kaushalya**, Allahabad High Court held that the Immoral Traffic (Prevention) Act is constitutionally valid and there is a very big difference between a prostitute and a person causing negligence.

A study mainly shows that sex workers experience physical violence as well as violence by police. This raises the big question of whether the acts, provisions and ordinances are providing for the safety of sex workers or merely punishing them.

5. STIGMA AND MARGINALIZATION

Stigmatization can be seen as a very crucial factor that stops women working as a prostitute from accessing their rights. A woman, when working as a sex worker or we can say as a prostitute is usually considered as a woman with no respect and dignity. Society discriminates against them and fails to understand the reason behind it. Instead, they put blame and allegations on them and keep on abusing and teasing them publicly. No one tries to understand their weaknesses which they are not able to put into words. A prostitute/ sex worker is unacquainted with the respect that she as a person deserves. A prostitute is discriminated against to the extent that she does not have the liberty to access her basic rights.

The basic rights that are denied to a prostitute are as follows-

EDUCATION: Lack of means of education is a crucial restraint for the sex worker as well

⁹ The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).

as their children. Studies and surveys have shown that there is a very low percentage of women working as prostitutes, who are educated or had a chance of completing their education. Not only sex worker but their children and generations down the line also are debarred of the basic right to education.

SAFETY: Sex workers are prone to a lot of violence physically, mentally and emotionally. They do not get any sort of protection from the police either. Just because they are discriminated by society, they are considered to be morally corrupt and are assumed to be guilty. The violence is a result of discrimination against them as well as their vulnerability.

HEALTH: A sex worker named Bandawwa Makadwala, in Karnataka stated that “Our health and our children suffer the most due to this stigma and marginalization.”¹⁰ Lack of education, ignorance towards hygiene and cleanliness and fear of approaching someone for health issues make it difficult for the sex workers to access healthcare. The stigma of a sex worker being impure leads the doctors to also not provide them with proper treatments. Even sex workers are considered as the carriers of the disease called HIV/AIDS.

6. DESIRABLE CONSEQUENCES OF LEGALIZING PROSTITUTION

There are some people in society who believe that sex work is an evil and demeaning profession in itself while on the other hand, there are some people who express support for its existence in society. Hence there can be two different perspectives. However, a few things which cannot be talked about are that in the profession of prostitution, there are workers who are being sexually, psychologically, mentally, physically and emotionally tortured. Therefore, there is no doubt that legalizing prostitution will protect sex workers from exploitation, cruelty and viciousness. Legalizing sex work can have both positive as well as negative impacts. Some of the positive impacts are:

1. Easy access to justice.
2. End of the Middlemen who exploit sex workers.
3. Setting up of institutes that could provide work to prostitutes.
4. Brothel incomes can be taxable.
5. Proper healthcare facilities can be provided to sex workers.
6. Regularization of wages.

¹⁰ [Microsoft Word - SANGRAM IND UPR S1 2008 SampadaGraminMahilaSanstha etal uprsubmission.doc \(ohchr.org\)](#)

7. Better working conditions.
8. Protection by police.
9. Reduction in Human Trafficking and exploitation of women and children.
10. Provide sex workers with various rights and duties.
11. Educational rights.

Also, the legalization of sex work will help the state in the formation of a set of rules and regulations concerning the age limit for getting involved in the profession of prostitution and the necessary clinical facilities for prostitutes. However, earnings made by someone using their bodies are something that shall never be acceptable and commendable. If prostitution is legalized in India, then the people of the society will start contemplating it as a legal profession and then more and more women will be motivated and inclined to engage in this profession as an easy way of earning money. In India many people are considered to be in the category of poor or below the poverty line and in order to survive many times people start to sell their female child to sexual workers in order to earn money. Decriminalization comes with large-scale rules and regulations. With the decriminalization of the profession of prostitution more and more women and children shall be forced, or we can say shall be inclined to become sex workers due to easy money. Along with this, there will be a swift increase in the number of frauds and scams against women and children.

A very important question that arises is whether selling a body or being a sex worker is ethical. If prostitution is legalized, then what will happen to the social morals? What will be the impact on society? Some of the disadvantages that will follow if the legalization of prostitution takes place are as follows:

1. Will benefit the middlemen who conceal the facts and documents from the government.
2. It would be hideous as every little child would be inclined towards this profession as it would provide easy money to them.
3. Might affect various families and ruin them.
4. May bring social disorganization.

Hence there are both positive and negative impacts of the legalization of prostitution.

7. SEX WORK CONSIDERED AS IMMORAL

Sex work has long been a subject of moral debate, with many societies considering it inherently immoral. This perspective often stems from religious, cultural, and traditional beliefs that equate sex work with immorality, promiscuity, and deviance. The morality of prostitution as a profession is a very highly discussed topic in India, having very strong opinions that are either positive or negative. Those who argue against, are of the view that it is a morally degrading and demeaning practice that is highly against the tradition and cultural values of India. On the other hand, those who support the profession of prostitution are of the opinion that it is a legitimate and legal form of work that should be legalized. The perception of sex work as immoral also extends to concerns about potential exploitation, human trafficking, and the spread of sexually transmitted infections. In this view, society views sex work as a violation of established norms and values, leading to the marginalization and stigmatization of sex workers. The moral opposition to sex work reflects the deeply ingrained moral codes and societal expectations, contributing to the perpetuation of a contentious and complex discourse surrounding the industry. Even in the present case scenario, Indian courts consider sex work an immoral profession, where the only objective of society is the welfare of social morals and rules. In society even today prostitution is considered immoral and illegal work for anyone to do.

8. CONCLUSION

The debate surrounding the decriminalization and legalization of prostitution in India is complex and multifaceted. While some argue for the removal of barriers and the recognition of sex work as a legitimate profession, others strongly oppose it on moral and cultural grounds. The historical background reveals that prostitution has existed since ancient times and has evolved under various legal and social frameworks.

Currently, the legal status of prostitution in India is governed by the Immoral Trafficking (Prevention) Act, of 1956, which criminalizes activities such as running brothels and human trafficking while leaving the act of prostitution itself in a legal grey area. The law aims to protect women and children from exploitation, but it often fails to address the underlying issues faced by sex workers. Stigmatization and marginalization play a significant role in denying sex workers their basic rights. They face discrimination, violence, limited access to education, lack of healthcare, and a constant struggle for safety. This marginalization

perpetuates a cycle of vulnerability and hinders their ability to improve their lives.

The potential consequences of legalizing prostitution in India are both positive and negative. Legalization could provide sex workers with better access to justice, protection from exploitation, healthcare, and improved working conditions. It may also help in reducing human trafficking and the exploitation of women and children. However, concerns exist that legalization could lead to an increase in the number of people entering the profession, potentially exploiting vulnerable individuals and causing social disorganization.

The moral dimension of prostitution is a significant factor in the ongoing debate. Opponents view sex work as immoral and contrary to cultural values, while proponents argue for the recognition of sex work as a legitimate form of labour. The social perception of prostitution as immoral continues to shape the legal framework and societal attitudes toward sex work.

In conclusion, the issue of prostitution in India is complex, with various legal, social, and moral considerations at play. Striking a balance between protecting the rights and well-being of sex workers while addressing societal concerns requires a comprehensive approach that addresses stigma, ensures safety, and provides support and opportunities for sex workers. Ultimately, finding a solution requires a nuanced understanding of the multifaceted challenges faced by sex workers and the societal dynamics surrounding the issue.

9. REFERENCES

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