



## An interpretation of the legal rights of prostitutes in India: a context of the human rights violation

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Received: 10/08/2023; Accepted 11/09/2023; Published 25/10/2023

### ABSTRACT

A practice or business with people's participation in sexual activities and conduct in exchange of money is called prostitution. The word 'prostitute' stands for a person who works in this field. Prostitution is not confined only to one form, rather it is witnessed in several forms.

Prostitution has been there in the world since times immemorial and is considered the world's second-oldest occupation, next to agriculture. The historical documents adequately reveal the existence of prostitution in India. Despite the lapse of years, prostitutes are still waiting for the existence that they deserve as human beings. They are considered not more than sexual objects solely associated with the physical enjoyment of the clients who visit them.

The Constitution of India guarantees several rights to all, but it fails to defend the rights of sex workers. The violation of the human rights of sex workers across the nation in the form of public insult and humiliation, vulgar comments and remarks, treating them as slaves, etc. is very common, and in India, they are bound to lead and live an unrespectable life.

In this article, the sole focus is on the legal rights of the prostitutes of India, and above all, the violation of the human rights they deserve as human beings. The study falls in the category of qualitative-interpretative research and is based on the use of secondary data. The findings reveal that sex workers in India are protected by law through the legal rights and their amendments, but practically, this protection is only theoretical, as in most cases, they still have to involve in prostitution against their will, and just to please all those who are indirectly involved in this business.

**Key words:** Prostitution, Practice, Business, Occupation, theoretical

### INTRODUCTION

#### Global Perspective of Prostitution

Prostitution in the world is as old as the origin of human beings. The concept of marriage was an attempt to stop it but in vain. Despite civilizations, educational and professional advancements, and ethical claims, prostitution has always been there in all the countries of the world. With the passage of time, it is widening more or more. Once it seemed to be limited and confined only to girls and women, but now it has taken into its compass even the men who sell their bodies for the sake of money.

'States vary in the ways they have attempted to control prostitution, ranging from total prohibition to decriminalization and legal regulation. Some nations prohibit the purchase but not sale of sex (Sweden, Norway, and Iceland) or prohibit the conditions necessary for commercial transactions such as "soliciting," "loitering," or "communication" related to a sexual transaction'[1].

In most western countries, prostitution is a licensed trade, and it is run under a license as a result of which the prostitutes find themselves safe in terms of respect. Countries such as Canada, Argentina, Germany, and the Netherlands have taken steps to decriminalize the profession and regulate it, subjecting it to the same labor rules

as any other Normal Profession. They are legally classified as employees, and the municipality is responsible for maintaining high working conditions. Prostitutes pay taxes and levy a VAT on the services they provide.

‘In order to most effectively protect the human rights of those who voluntarily enter sex work and uphold their international obligations, state parties should combine robust civil laws decriminalizing sex work with holistic approaches that provide support to keep sex workers safe and provide them with an option to leave sex work, should they choose’ [2].

### **Historical Perspective of Prostitution in India**

The sexual activity between two persons for a certain amount or in exchange for something of value is called prostitution. Prostitution dates back to ancient times. Menaka, Rambha, and Urvashi are referred to in several contexts as sex workers. Prostitution finds sufficient room in Vedic literature where there are references of the sale of the females with no brothers by the kings to rishis as slaves. The recognition of ‘Prostitution’ dates back to the Brahmamana period when prostitutes called ‘Vishya’ or ‘Beshya’[3].

Kautilya in Arthashastra refers to the ganikas as an indispensable factor in royal courts and in India, it became institution in the post-Vedic period Prostitution was an organized profession and was a source of revenue to the State in ancient times. A prostitute is a woman who sells herself for sexual purposes to a great number of men in succession and with little or no choice among them [4].

The Devdasi Custom which having its roots around the 6<sup>th</sup> century is another name for prostitution or ritualized prostitution under which the females were served to Hindu gods. In Devdasi custom which prevailed in South India and its temples, the young pre-pubertal girls are married off, given away in matrimony to God or the temple's local religious god. The girl is frequently married before she reaches puberty, and she is forced to work as a prostitute for upper-caste community members [5].

Devdasi Security Act of 1934 prohibited the Devdasi custom, and allowed many of the girls and women involved in this tradition to enjoy a respectable life. India has roughly 2-3 million sex workers. The case studies and reports show that most of them fell prey to kidnapping and circumstances created by poverty and penury. Only very few of them joined prostitution voluntarily. Most of them belong to impoverished families and lower socioeconomic groups [5]. Those who join prostitution voluntarily, sell their bodies to feed their families and themselves, as well as to provide a living. Here it is to be mentioned that Prostitution is not limited to women only, rather extended to men also.

### **Legal Perspective of Prostitution in India**

‘India is a country where prostitution is legal but with certain limitations. While addressing the question ‘Is prostitution legal in India?’ there is some ambiguity. Because prostitution is not completely outlawed by the Indian constitution, it is written clearly about a few acts linked to prostitution that are penalized by law, such as running brothels, solicitation, trafficking, and pimping under the Immoral Traffic (Prevention) Act (1956). The act characterizes prostitution as the sexual maltreatment of people for business purposes and brothel as any spot utilised for sexual abuse or maltreatment for business purposes. The act doesn't condemn prostitution or prostitutes fundamentally, yet generally rebuffs acts by outsiders working with prostitution like brothel-keeping, residing off profit, and procuring, even where sex work isn't coerced’ [6].

‘ITPA defines "prostitution" as the commercial exploitation or abuse of a female for monetary gain, and a "prostitute" as the individual who benefits from it’ [7]. Immoral Traffic (Prevention) Act, 1956. (ITPA) is one of the most effective Acts that safeguards the trafficking of children and women for the purpose of prostitution. This Act declares prostitution, brothel, living off the prostitution-generated money, soliciting someone into prostitution, trafficking of children and women for the purpose of prostitution explicitly illegal. The Indian Penal Code of 1860 also addresses prostitution, but only in the context of children. However, it tries to stop things like kidnapping in general, kidnapping for the purpose of seduction and seducing someone into sex, importing a foreign girl for sex, and so on.

Article 23(1) of the Constitution prohibits strictly human trafficking, beggary, and other forms of forced labour. The violation of this rule under Article 23(2) falls under the category of punishable crime.

### **Violation of Legal Rights and Human Rights of Prostitutes in India**

In the context of India, prostitution is immoral and against social norms. Hence, the Indian society does not have any soft corner for the prostitutes. There are examples of many such prostitutes who joined prostitution after

kidnapping or sale, and who on growing up, wanted to rejoin their parents and siblings, but the parents and siblings did not accept them and allow them to stay with them for the fear of society.

Violence against sex workers is linked to the belief that they are criminals rather than citizens. Despite being humans, the prostitutes in India fail to enjoy the human rights, such as, the right to life, dignity, equality, equal protection under the law. Violation of the legal and human rights of the prostitutes in India is very common, and every now and then they are humiliated and are not allowed to exercise and enjoy the human rights they have being humans. 'Violence is used to assert sexual authority, and it has become accepted as a punishment for having sex with other men' [8].

Prostitutes in India are generally humiliated and criticised, and their confidentiality is breached. They are not properly evaluated, and are forced to endure HIV tests, overcharged for treatments at private hospitals, denied medical services, delivery care, and their confidentiality is violated. The adult women were placed under the care of their parents or family members on the condition that they refrain from working in the sex industry. Moral judgments are frequently used to give over "custody" of an adult sex worker to a parent or family member' [8].

#### **Indian Judiciary regarding rights of sex workers**

Judiciary has a great responsibility to define and resolve the issues associated to Prostitution. Judges have a critical role in determining how broad a piece of legislation in relation to prostitution should be. Hereunder are a few cases that reflect the approach of judiciary-

**Budhadev vs. state of West Bengal.** In this case, the judiciary unanimously favored the prostitutes calling them human beings and safeguarding them under Article 21. The appellant was found guilty, and the court stated that the prostitutes were human beings who entitled to live a dignified life under Article 21. The decision was historic because it was ordered that the government should develop sex-worker rehabilitation plans that include vocational training so that they can earn a living other than selling their bodies. The decision also had a public appeal that instead of looking down on prostitutes as inferior humans, people should sympathize with their plight because most women choose this business out of necessity rather than choice [9].

#### **Upendra Baxi and Lotika Sarkar v. State of Uttar Pradesh xxxix**

The Supreme Court ruled that victims must not be subjected to inhumane and degrading treatment and that their right to live in dignity under Article 21 must be made real and meaningful to them [10].

**Kaushalya v. State of Uttar Pradesh.** In this case, the Allahabad High Court of Judicature argued that Section 20 of the Act violated the respondents' basic rights under Article 14 and sub-clauses (d) and (e) of Article 19(1) of the Constitution. The Act was found to be constitutionally valid since the distinction between a prostitute and a person producing a nuisance was discernible. The Act is also in line with the goal of the act, which is to maintain order and decorum in society [11].

**Kajal and others V. State of Maharashtra (2020).** In this case, the Bombay high court held that prostitution is not a crime under the Immoral Traffic (Prevention) Act of 1956, and that an adult woman has the right to choose her profession and cannot be detained without her consent or will. The court set free 3 sex workers from correctional institutes [12].

#### **Visaljeet v. Union of India, 1990**

The Apex Court held that "prostitution remains as a running sore in the body of civilization and destroys all moral values [13].

### **OBJECTIVES**

1. To reflect the legal rights of women in general
2. To trace the legal rights of women in India as guaranteed by the Constitution of India
3. To trace and reflect the legal rights of the prostitutes
4. To refer to the human rights in general
5. To discuss the human rights of the prostitutes
6. To refer to the laws that protect the legal and human rights of the prostitutes in India
7. To discuss the approach of the society to the prostitutes in India
8. To discuss the practicability of the legal and human rights of the prostitutes in India
9. To share the situations that reveal difference between theory and practice of the legal and human rights of the prostitutes in India

10. To share the picture of the violation of legal and human rights of the prostitutes in India
11. To extend suggestions for the safeguard of the legal and human rights of the prostitutes.

#### **HYPOTHESIS**

1. The women in all the countries of the world are guaranteed certain legal rights that protect them in various unwanted situations
2. The Constitution guarantees certain legal rights to all the women irrespective of caste, religion, occupation
3. The Constitution of India guarantees certain legal rights to the prostitutes
4. Being humans, the prostitutes have right to enjoy all the human rights that are given to all
5. There are certain specific laws that protect the legal and human rights of the prostitutes in India
6. The approach of the society to the prostitutes in India is not positive, and they are not considered the part of the society in general
7. The prostitutes have legal and human rights in theory, but practically they are unable to enjoy them and to exercise them
8. There is an apparent violation of legal and human rights of the prostitutes in India

#### **METHODOLOGY**

The study falls in the category of qualitative, descriptive and interpretative research in which the issue taken up for the study has been sufficiently described and interpreted. The study is designed on the use of the secondary data available in various books and journals published online and offline, in addition to the personal observations and assumptions of the researcher. The researcher abided by all the steps or method of research prescribed by the eminent social scientists, which helped her keep the scientific spirit of the work. First, it is the title that was finalized and selected after much consideration with the chief object to discuss the legal and human rights of the prostitutes in India and to find out to what extent these rights protect their interests. Secondly, the objects set for the study helped in arriving at the conclusion. Thirdly, the review of the related literature got through the journals, books, magazines, blogs etc. activated the insight of the researcher and helped her go deeper and deeper into the subject and issue selected for the study. For it, 10 research papers available in the various journals published online or offline, were selected and reviewed keeping in view the various aspects associated with the topic of the study. Fourthly, the formulation of hypothesis enabled the researcher to pave a path for the study. Fifthly, the research design enabled the scholar to design the contents of the study properly and in a presentable form. Last but not least is the conclusion which was drawn on the basis of the entire work including all the aspects of the study.

#### **RESULT AND DISCUSSION**

‘Legalizing prostitution encourages the underground, illegal, and street variants of the profession because many prostitutes find it more difficult to meet the standards for registration with the right authorities. Others may be minors, undocumented immigrants, or suffer from HIV or other venereal diseases that make them hostile to legalization.’ [14]

‘According to survey 56.7% respondents were male and 43.3% were female. The respondents who answered survey in which 53.3% think that prostitutes is not immoral act, 16.7% think it May be immoral act, 30% says its immoral act. 46.7% of respondents want prostitutes should be legal in all states of India, 36.7% wants decriminalisation of prostitution in all states of India ,16.7% preferred not to say any views about this. Respondents answered that (40%) reason for prostitution is forced to do so,64% because of money ,36% reasoned it as socio economic condition.’ [15]

Overall, the legal rights of women involved in prostitution in India is a controversial and sensitive issue, with ongoing discussions and debates about criminalization, regulation, and the welfare of sex workers.

Despite all this, if we want to change, then we need to change our t If we talk about this profession then it is impossible to stop it completely. A line has been said that until a woman is characterless, until a man is characterless, one day a man will tighten the reins on his lust, that day the respect of someone's house will not be just like a sapphire. But expecting this from a man is an illusion honking, only your thoughts and culture can change the society.

### CONCLUSION

Prostitution is as old as civilization itself, and has been a part of Indian society ever since the idea of marriage came into existence. In recent days, prostitution has become synonymous with violence, discrimination and exploitation. Prostitution is often seen as a taboo in Indian society, and requisite attention has not been paid for its regulation.

The demand of time is to legalize prostitution in India so that it can be identified as a trade and all those who are involved in it be considered and treated as employees. The utmost need of the day is to safeguard the legal and human rights of the prostitutes, which can be possible through the verdict of the judiciary and through introducing new laws and legislations.

Prostitutes are not criminals, rather same human beings as others are, and so they should be allowed to enjoy all those human rights that allow others to enjoy a life of social respect. There is no need for any specific treatment for a problem like prostitution, such as criminalizing, decriminalizing, or sanctioning it. Simply legalizing prostitution will not be enough to tackle the problem; instead, a unified rule governing its administration in our country is required. Prostitution regulation will aid in the protection of sex workers and their children from exploitation. Not only will it preserve the health of sex workers and society as a whole, but it will also protect the rights of sex workers.

'In India, prostitution is neither explicitly illegalized nor regulated. Associated work such as owning or working in a brothel, pimping, and organized sex work have been made illegal under The Immoral Traffic (Prevention) Act, 1956 (ITPA), colloquially known as the SITA act (hereafter referred to as the same). In this act, prostitution is referred to as 'sexual abuse'. However, the act does not recognize men who have taken up the profession of prostitution.' [16]

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