

Social-Legal Aspects of Prostitution and the Current Scenario of India

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Abstract

Since the conception of marriage, prostitution has been a part of Indian society and is as old as civilization itself. Prostitution is now often associated with violence, prejudice, and exploitation. In Indian society, prostitution is frequently regarded as taboo, so the necessary attention has not been given to its regulation. This research explores the impact of legalizing and regulating prostitution on the abuse of sex workers. No matter if it is legal or illegal, prostitution will always exist. So, it is preferable to confront the issue at hand and perhaps come up with solutions to the issues that women and children involved in prostitution suffer. Prostitution flourished on a massive commercial scale in the absence of state regulation and supervision as the situation continued to deteriorate. Women's social limitations and economic disadvantages made them easy targets for gangsters in this field.

Keywords: Individuals, profession, prostitution, sexual relationship, sex trafficking, women

INTRODUCTION

Prostitution has been so deeply rooted in society that it has deeply affected the lives of individuals. Prostitution was a social phenomenon in the Vedic age. The development of prostitution was attributed to the development of the institution of marriage [1]. The practice of engaging in a sexual relationship outside of wedlock has existed since then and continued to exist in modern times as well. This has somewhat resulted in the disruption of the marriage system. According to the current legal regime in India, prostitution has not been explicitly declared illegal; however, soliciting customers or carrying out prostitution in a place proximate to a public area has been declared illegal. Some people enter the profession of prostitution voluntarily, while others are trafficked and forced into this vicious cycle. It is very disheartening to look at the facts and figures pertaining to sex trafficking in India. Our country has almost become a hub or destination for human trafficking, especially for sexual exploitation. Sex tourism is a common phenomenon in India [2].

CAUSATIVE FACTORS OF PROSTITUTION

Hopeless Poverty

India was known as the golden bird because of the abundance of resources and minerals. But, with the coming of British, much of India's resources were taken away, and since then, the problem of poverty has persisted in the nation [3]. Even to tackle the situation of poverty, India adopted the goals

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introduced by the United Nations. One of the goals was to eradicate poverty and hunger [4]. Many programmes were introduced by the Indian Government to provide job opportunities and alleviate the standard of living of poor sections of the society. But the question remains unanswered as to whether these initiatives were effectively able to tackle the situation or whether to earn a livelihood, the poor people, especially the women, had to enter prostitution. The gap between rich and poor has sought to increase, and poverty has become like a

disease spreading its tentacles in Indian society. Thus, poverty had become hereditary in nature [5]. Poverty has acted as an evil and forced the individuals to find ways to come out of it. Consequently, the individuals, especially the women, have decided to enter another vicious and never-ending cycle of prostitution to come out of the clutches of poverty. Poverty and prostitution seem to have a close relationship. The lucrative earnings of the profession of prostitution have attracted many individuals. Some of them enter the profession to carry the burden of their families while others consider it a lucrative profession to earn money at a faster pace [6].

Lack of Education

Prostitution and lack of education have a close nexus with each other. Men are considered breadwinner whereas women are considered homemakers [7]. Although the situation has improved a bit with changes in the society, lack of education especially for women, is still a widespread phenomenon. This is when the women choose to indulge in the profession of prostitution [8].

Family Custom

The laws regulating prostitution and prohibiting sex trafficking only aim to criminalize commercial prostitution and prostitution in public areas. The Devadasi System is a tradition in which young girls are devoted to the temple [9], but in reality, these devadasis are treated more like prostitutes. Even after the passing of regional acts to prohibit the Devadasi System, this tradition still haunts Indian society. Due to the rigid beliefs attached to this system, it has become difficult to prohibit the Devadasi System from existence. In such a situation, generations of these *devadasis* are forced to devote themselves into the system of prostitution. Vadia Village in Gujarat also has a similar tradition. From the birth of the girl in the family, it is ascertained that she will join the profession of prostitution. The male members make the arrangements [10].

Early Marriage and Domestic Violence

Marriage at an early age is not an unknown phenomenon in Indian society. Although the legal age for marriage is determined by law, i.e., 18 years for girls and 21 years for boys [11], the situation intensifies when the husbands are alcohol addicts and fail to take responsibility for the family. In such a situation, women have to be the breadwinner, and due to a lack of qualifications, they end up choosing the profession of prostitution.

MEDIA AND PROSTITUTION

The growth of society and technological advancement go hand in hand. Media is a wide term and encompasses within itself various forms such as print media, radio, the internet, etc. Radio and print media such as newspapers and books are conventional and oldest forms of media, but with the era of digitalization, the internet and various social media apps have become a prominent source of information. Media almost always impact every sphere of life and contains information about everything.

The Pros of the Effect of Media on Prostitution

Media has an ability to reach masses of people. Thus, information or a movement started through the media, does not take long to spread and gain support. The children of prostitutes often are not aware of their father, because of which they face difficulties. This reminds me of the famous clip from the Gangubai movie, in which it is said that the name of the mother should be sufficient for the identity of these children [12]. The girls were forcibly and deceptively bought from adjacent villages, and due to their abject poverty, they were made to surrender in this profession and were sexually exploited [13].

The Cons of the Effect of Media on Prostitution

Every coin has two sides. Similar is the case with the media; it can positively as well as negatively affect prostitution. Digitalization has made it easy for the traffickers to escape the clutches of the law [14]. This act resulted in a gross violation of their rights. The confidentiality that should be kept in mind while dealing with such crimes was breached by the authority itself. Society is unwilling to accept these

prostitutes as a part of the mainstream, and revealing their identities increases the hardships for the prostitutes, and they are then viewed as criminals. A person with education and knowledge would treat it as a source of pleasure, but the young minds, not having enough knowledge about sex education treat it as fun and get deeply indulged in the same [15].

ISSUES OF PEOPLE INVOLVED IN PROSTITUTION

It is a settled principle in international law that all human beings are entitled to human rights irrespective of any kind of discrimination, and in the event that a section of people is discriminated against on certain grounds, then they are also entitled for equal protection without being prejudiced [16]. In India, the human rights are concretized in the form of fundamental rights and Articles 14 [17], 15 [18], and 16 [19] of the Constitution of India form the basis of rights to equality [20] and prevention from discrimination. According to Article 21A [21] of the Indian Constitution, however, the reality is that sex workers and their children are discriminated against and not provided with equal opportunities to attain education. This cycle continues, and the basic right to education is also denied due to the stigma attached to the profession [22]. On public health and prostitution, the views of public health organizations and those who oppose prostitution are divided. Initially, the opinion of public health officials on the commercialization of sex underwent various changes [23].

OPINIONS IN FAVOUR OF LEGALIZATION

Prostitutes are also human beings and are entitled to all the human rights. However, the criticism they face, getting treated as outcasts and labelled as criminals because of pursuing immoral activities—makes it difficult for them to lead a life with dignity. In order to ensure their betterment, it is essential that prostitution should be legalized [24]. Prostitution is not per se illegal in India. But soliciting the customers, carrying on organized prostitution in brothels and prostitution in public areas have been prohibited by Immoral Traffic Prevention Act, 1956 [25]. The legalization of prostitution would remove these middlemen and then the earnings of the prostitutes will increase; they will be able to lead a better life with more income [26]. By legalizing and considering prostitution as work, the government will be able to charge taxes on the profession thus, helping the government to earn revenue. Moreover, the sex workers will be able to get adequate protection by legalization [27]. The outbreak of COVID-19, have badly affected the livelihood of people. Many of them, especially those employed in the informal sector lost their jobs, and were left in a hand-to-mouth situation. Prostitution is also one of the industries affected by the outbreak of the pandemic. This has provided plenty of reasons for legalizing prostitution [28].

ARGUMENTS AGAINST LEGALIZATION

The proponents against the legalization of prostitution argue that prostitution should not be considered work due to the reason that it causes physical harm and a person who chooses it voluntarily do so because of some of the compelling factors such as poverty, early marriage, lack of education, etc. This would make the sex industry more profitable thus, in order to meet the rising demands of people, the sex trafficking could increase instead of decreasing [29]. The ones who do not support legalization argue that sex workers should be protected however the profession of prostitution should not be legalized. In order to support their contention, the attention is drawn towards the countries that have provided legal status to prostitution [30].

Lines Blurred Between Voluntary and Forced Prostitution

This has provided the police officials with unfettered powers to conduct raids and send the ones rescued for either rehabilitation or correction without considering whether they have been involved in the profession voluntarily or have been trafficked. They have been continuously discriminated against, and exploited in the absence of any legal status given to their work. Their powers to bargain with the customers have also been affected [31]. In the year 2011, a panel was set up by SC to give recommendations in order to protect the rights of sex workers and alleviate their working conditions for their betterment; the panel was asked to submit its report [32]. Section 4 [33] of the act punishes a

person who lives on the earnings of prostitutes. The panel recommends that this section should be amended. The parents, partner, and children of the prostitute should be removed from the purview of this section. They shall not be punished unless it is proved that they are the one who forced the prostitute to enter into the profession without her consent. In *Vinod @ Vijay Bhagubhai Patel vs. State of Gujarat* [34], plethora of issues surrounding prostitution were discussed and the provisions of ITPA Act and Section 370 of the IPC were taken into account. The clarification issued by the Justice JS Verma Committee that brought changes to Section 370 of the IPC has been emphasized. The intention behind amending Section 370 was to curb trafficking, however, the section does not seek to widen its scope to include those who have been involved in sex work voluntarily.

CONCLUSION

The present legal regime criminalizes certain facts surrounding prostitution, because of which, prostitutes even if harassed, cannot knock on the doors of court for availing justice. This in itself provides a kind of protection to traffickers, and in the absence of any effective complaint against them, they are easily able to escape from the clutches of the law [34]. Not only in small towns or villages, these traffickers even operate in big cities. The root problem is still not solved with the present laws pertaining to prostitution and sex trafficking. The society has been evolving continuously with the passage of time, thus, the laws also need to be amended in accordance with the changing needs and in order to effectively tackle a problem. Human Rights Watch also opines that sex work between two individuals consenting to it should be decriminalized. According to Human Rights Watch, criminalizing sex work, even in the commercial sphere between two consenting individuals, is a violation of their rights to privacy and autonomy. As discussed here, criminalization alleviates the sufferings of prostitutes leaving them exposed to exploitation. Due to the stigma and fear of being arrested by police officials, the sex workers often do not approach the authorities to seek justice [35]. Decriminalization enables sex workers to seek legal as well as healthcare assistance. They will be in a better position to protect their rights. The Human Rights Watch further states that decriminalizing sex work will not encourage sex trafficking as consenting sex work is different from sex trafficking which is a crime against humanity. It suggests that decriminalizing sex work will help to lower down the fear in the minds of the prostitutes because of which they might also help in reporting the instances of forced sex work or sex trafficking [36].

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