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Bodies On Sale: Laws Governing The Legality Of Prostitution In India

Author : Rajvir Singh

B.A.LLB, Student 1st Semester, LLM

University School of Law (USL)

Rayat Bahra University, V.P.O. Sahauran, Tehsil Kharar, Distt. Mohali, Punjab-140104, India

Abstract: The present study conducted by the researcher makes an in depth analysis into the complex and multifaceted social evil called “Prostitution”. Ethically, this might seem a social taboo but individually, this is source of income for the vulnerable section of the society. It is rightly said that the women who are trapped in the web of prostitution are likely to be there by reluctance and not by choice. The underlying causes such as poverty, unemployment, lack of education, scarcity of basic amenities and many other factors have contributed to the growth and prevalence of prostitution in India. This research paper deals with the concept of prostitution, the causes of prostitution, the various judicial pronouncements and laws related to it and the arguments in favour of and against prostitution in India. At the end of the research, the researcher has concluded with suggestions with respect to the steps to be taken for the improvement of the conditions of prostitutes in India.

Keywords : Prostitution , sexual abuse, pornography, trafficking, forced sexual submission, judicial pronouncements on prostitution.

I. INTRODUCTION

Kate Millet once rightly remarked’ *“The worst part about prostitution is that you’re obliged not to sell sex only, nut your humanity. That’s the worst part of it, that what you are selling is your human dignity, not really so much in bed but in accepting the agreement in becoming a bought person.”*

Prostitution is not a new concept. It dates back to the ancient eras but the only difference is that the past times had witnessed strength and dignity of women rather than their vulnerable selves left at the plight and mercy of the meths, the pimps, the buys and the customers. In earlier times, during the prevalence of monarchy, the royal courtesans were provided every kind of protection and security. A courtesan refers to a woman with an elevated social standing, and who serves the roles of companion, mistress, or escort, often engages in a romantic or sexual relationship with an affluent man in exchange for financial support, social status and protection. In those times, women often engaged with powerful men; therefore, they were known to attend royal courts, aristocracy, and wealthy patrons simultaneously. Such women were expected to be well versed is cultural activities like music, dance, poetry, and etiquette. Courtesans are known to have more refined manners as compared to mere mistresses, as they are thought to possess a higher level of social sophistication, elegance, and superior education. A shift from such an honour is really devastating to witness because women are forced to enter prostitution and have to go through the barbaric animosity of various criminals, sadists, sexual offenders, drug addicts and such other so-called customers suffering from the sexually transmitted diseases.

II. OBJECTIVES OF THE STUDY:

The following are the prospective objectives of this research paper on prostitution-

- ❖ To investigate the socio-economic causes of prostitution
- ❖ To look into the effects of prostitution on the physical and psychological health of sex workers
- ❖ To analyze the regulatory framework on prostitution.
- ❖ To find out the causes and underlying factors behind prostitution.
- ❖ To lay down arguments for and against prostitution.
- ❖ To draw a meaning conclusion.

III. RESEARCH METHODOLOGY USED:

The researcher has conducted a descriptive research which is used to define the characteristics of a particular research problem. The researcher has conducted an analysis to lay down the meaning of prostitution, its effects, causes and the various laws which deal with prostitution in India supported by the judicial pronouncements. The study conducted by the researcher is a Doctrinal Research. Thus, the study mainly involves the laws, legal framework, legislative provisions and the judicial pronouncements pertaining to the Prostitution.

IV. WHAT IS PROSTITUTION:

In general, women engage in prostitution as a means of making a living. In India, most prostitutes are women. While prostitution itself is legal in India, the many occupations that emerge from it, such as brothels, the devadasi system, vehicle picking, and pimping, are all considered criminal around the globe. The only legal condition for a woman to engage in prostitution is that she is at least 18 years old, but otherwise, it is entirely up to her free choice. There is, on the one hand, liberty in a society where women are allowed to engage in prostitution if they so want. The other side of this coin is when women who aren't interested in prostitution are coerced, kidnapped, or forced into it. Problems with sexually transmitted diseases (STDs), including HIV, unplanned pregnancies, abortion, and many more, are widespread among these women, and the government is actively trying to eradicate these practices.

V. CAUSES OF PROSTITUTION:

- Poverty: A lack of job opportunities drives numerous women and children towards resorting to prostitution.
- Ignorance: The lack of both basic education and job training combined with the lack of better paying positions creates a gap that cannot be bridged.
- Social discrimination: Prejudice on the basis of caste or gendered discrimination coupled with social marginalization puts certain groups at risk.
- Family gaps: Abandoned individuals and broken families along with inadequate or non existing support systems contributes to some people engaging in prostitution.

- **Economic Idleness:** There is an astonishingly high rate of idleness especially among young people that channels a great deal of energy into the uncontrolled movement from one sex industry to another.
- **Underpayment:** The existence of wage slavery among employees leads to overdependence on alternative ways of becoming rich like prostitution.
- **Debt slavery:** There is a chance of sexually motivated exploitation to cancel out a placed wagered debt or loan.
- **Cultural and historical causes and Community heritage:** Some South Indian communities for centuries served as a part of sex work systems. Thus, it is an ongoing practise which has become a usage in the society.

VI. ARGUMENTS AGAINST PROSTITUTION:

- *Exploitation and abuse:*

The abuse, exploitation, and violence that is experienced by many sex workers, particularly women and children, is commonly associated with prostitution.

- *Women discrimination:*

Prostitution leads to women discrimination due to social stereotypes and perceptions which as a result increases a woman-hating culture.

- *Public health:*

Prostitution makes one vulnerable to acquiring various sexually transmitted infections and diseases, including HIV/AIDS.

- *Social beliefs and values:*

A given society may view prostitution as a practice that is devoid of morals and ethics, in that it commercializes a person's body.

VII. ARGUMENTS IN FAVOUR OF PROSTITUTION:

- *Rewarding voluntary activity:*

One view is that prostitution should be legalized as a profession so that sex workers can operate freely without discrimination.

- *Women's empowerment:*

Engaging in prostitution can be a means for some, most especially women, to earn a living in a society with limited job opportunities.

- *Tackling sex trafficking:*

Legalizing prostitution may allow it to be separated from sex trafficking so that prostitution can be offered while the latter is discouraged.

- *Better Public Health:*

It's possible regulation of prostitution could enhance health and security conditions of the sex workers.

VIII. EFFECTS OF PROSTITUTION:

- *Physical Health Risks:* Prostitutes are vulnerable to sexually transmitted infections (STIs), including HIV/AIDS, due to the high-risk nature of their work.
- *Mental Health Concerns:* The profession is linked to higher rates of depression, anxiety, post-traumatic stress disorder (PTSD), and substance abuse.
- *Violence and Abuse:* Prostitutes often face violence, including physical and sexual assault, from clients, pimps, and law enforcement.
- *Social Isolation:* The stigma associated with prostitution can lead to social isolation and difficulties in forming and maintaining personal relationships outside of work.
- *Stigma and Social Exclusion:* Prostitutes are often stigmatized and excluded from mainstream society, making it difficult for them to access healthcare, legal protection, and social services.
- *Human Trafficking:* Prostitution is closely linked to human trafficking, with many individuals being coerced or forced into the industry against their will.
- *Community Impact:* The presence of prostitution in a community can lead to concerns about public safety, property values, and the overall quality of life.
- *Contribution to Underground Economy:* Prostitution contributes to the underground economy, making it difficult for governments to regulate and tax.
- *Exploitation:* Prostitutes are often exploited by pimps, traffickers, and clients, who profit from their labor without providing fair compensation or protection.

- *Economic Empowerment*: For some individuals, prostitution can provide a means of economic empowerment, especially in contexts where other employment opportunities are limited.

IX. RELEVANT LAWS AND JUDICIAL PRONOUNCEMENTS RELATED TO PROSTITUTION:

Article 23 of the Indian Constitution outlaws all forms of trafficking, including the commercial sexual exploitation of women and girls. The Indian Penal Code is only one piece of legislation; we also have state laws like the Goa Children's Act and federal laws like the Immoral Traffic Prevention Act (ITPA). A law passed in 1956 to prohibit immoral traffic.

The main law in India addressing sex work is the Immoral Trafficking Prevention Act of 1956 ("ITPA"). While the law does not directly denounce sex work or sex workers, it primarily prohibits activities such as brothel running, living off earnings, and obtaining, even in cases where sex work is not forced,

Punishment for permitting premises or maintaining a brothel for its intended purpose (Section 3).

(1) On a first conviction, anyone found guilty of managing, keeping, assisting, or acting in the management of a brothel is subject to rigorous imprisonment for a term ranging from one to three years and a fine that can go up to two thousand rupees. On a second or subsequent conviction, the sentence is increased to two to five years of rigorous confinement, with a fine that can go up to two thousand rupees.

(2) Anyone who—as a resident, lessee, occupier, or person in charge of a property—knowingly permits or uses that property or any part of it as a brothel or—as the owner, lessor, or landlord of a place or an agent of that person—lets out the property or any part of it knowing that it is expected to be used as a brothel, or—in the event of a second or subsequent sentence—faces a thorough detainment term of up to 5 years, fines, and/or imprisonment for up to 2 years.¹

Section 2-A Unless proven differently, it will be presumed that the persons mentioned in clause (a) or clause (b) of subsection (2) are willingly allowing the premises or any portion thereof to be used as a brothel or, conversely, are aware that the place or any portion thereof are being used as a brothel, if,-

- a) A police officer searching for this Act is required to publish a notice in a local newspaper stating that the person's residence or a portion of it is used for sex work or
- b) The person is provided with a copy of the inventory of all items found during the search mentioned in clause

Procuring, taking, or enticing another person to engage in sexual activity is covered under Section 5.

(1) Everyone who

- i. Acquiring or attempting to acquire an individual for sex work, with or without their consent; or
- ii. Inducing an individual to go to a brothel for sex work or
- iii. Taking or endeavouring to take an individual, or making someone to be taken, from one place to another with the intention of their continuing or being raised to continue sex work; or
- iv. Causing or prompting an individual to continue sex work shall, upon conviction, be punished with a fine of up to 2000 rupees and a term of thorough detention ranging from three years to seven years or both. Imagine if any person commits an infraction under this provision without their will. In such instance, the penalty of seven years in jail will be increased to fourteen years:

¹ Immoral Traffic (Prevention Act), 1956, sec 5.

Under certain circumstances, the punishment for an offence under this subsection can be severed as follows:
(i) If the offender is a child, the punishment can be life in prison without the possibility of parole or
(ii) if the offender is a minor, the punishment can be rigorous confinement for a term ranging from seven to fourteen years.²

It is clear that sections 3 and 5 of the Act, together with other provisions, only prohibit the actions of third parties; hence, additional laws will be enacted to prohibit clients from visiting sex workers.

A landmark case on the rights of sex workers' children is *Gaurav Jain vs Union of India*. The petitioner sought appropriate guidance from the Union of India about the welfare, protection, and recovery of sex workers' children via the filing of a Public Interest Litigation. (1)

Following the distribution of a newspaper article alleging the exploitation, sexual assault, and forced labour of teenage girls, the Bombay High Court acted suo motu in the case of *Public at Large vs State Maharashtra*. The Supreme Court strongly disagreed with the High Court's decision to reduce the rape convict's sentence from 10 years to 3 years, citing the youth of the accused as the reason. (2)

The Mumbai High Court appointed a Committee in the case of *Jayesh Thakkar vs. the State of Maharashtra and the Internet Users Association of India (Interveners)*. The Committee's mandate was to ensure that cybercafes had sufficient levels of oversight to prevent underage users from accessing pornographic content. The Committee proposed Cyber Zones that are suitable for children, or at least designed to be, so that kids may safely use the internet for things like research, schoolwork, and fun. In addition, the Committee detailed the process for licencing cyber cafes, recommended a description of cyber cafes to be included in the police rules, and outlined laws requiring cybercafés operators to request picture IDs from all customers. The Committee recommended that children not have access to computers with built-in filters and that ISPs should make information about possible risks and remedies available to the public via email websites. It is also recommended that the cyber-crime investigative unit set up a hotline to raise awareness about cybercrimes. (3).

IX. CONCLUSION:

For Indian society to progress, its members must learn to respect one another's rights and define actions that are not criminal. The general public must realise that they must refrain from invading others' personal space. This is something that parents may do from a young age. The youngster must learn that women deserve respect in real life and online. To sum up, Indian society desperately needs a total social revolution. Therefore, tougher penal provisions alone will not be enough to tackle the issue of cybercrime, particularly the sexual exploitation of women in cyberspace; concurrently, there is a huge need to reform the entire educational system and the social surveillance of children. Neither of these changes will be achieved overnight, nor will any one institution implement them. There has to be a concerted effort from all sectors to address this societal issue; this includes the government, NGOs, parents, religious leaders, and many more.

It is the responsibility of the government to consider the welfare of the children of prostitutes and to provide enough facilities for those who want to integrate into mainstream society. Nevertheless, the Supreme Court's ruling in *Gaurav Jain vs. UOI* has not been fully implemented, despite the court's directives to the federal government to address the plight of sex workers' children. It has been well-researched that the only way to end prostitution is through stringent legislation and controlled administration by enforcement agencies. Additionally, society as a whole needs to be educated about prostitution, especially cyber prostitution, so my second hypothesis—that decriminalisation will never solve the problem—holds water. In order to address the issue of cyber prostitution, the investigative agencies and judges should acquire greater technological expertise and undergo capacity development training. Therefore, to tackle this social problem, all sectors of society, including the government, NGOs, society, judiciary, and legislature, must collaborate.

(1) AIR 1990 SC 1412 Cr. LJ 1469: (1990) 3 SCC 318

(2) AIR 1997 SC 3021: 1997 AIR SCW 3055: (1997) 8 SCC 114.

(3) 1997 (4) Bom CP 17, Bombay High Court

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