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LEGALISATION OF PROSTITUTION IN INDIA AND ITS IMPACT ON IMMORAL TRAFFICKING

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In India, prostitution is an age old profession. The term prostitution is derived from the Latin term 'prostituere' which basically means to expose publicly. Under the Prevention of Immoral Traffic Act 1986 defines prostitution as "sexual exploitation or abuse of persons for commercial purposes". The question that this article aims to raise is if a country like India can counter the sexual atrocities rising day by day against women by legalising prostitution? It is not easy to catch hold of an idea like this abruptly. While analysing the arguments, there are two perspectives we have in front of us. One side of the argument which is very optimistic in nature states that a woman has every right to own her body. What a woman desires to do with her body, is solely her prerogative. Dignity and equal respect for a woman who chooses this line of profession must be included in the scope of gender equality. Other side of the argument is the one which has been accepted by most of the society. The body is considered as a gift and persons are obligated to keep it pure and healthy, therefore selling it is wrong.

There are three different ways of tolerance by countries with regard to prostitution:

1. Where prostitution is illegal and not tolerated. This category includes countries like Morocco, Kenya and Afghanistan.
2. Where prostitution is legal, but with certain restrictions and limitations. This category includes countries like India, France and Canada.
3. Where prostitution is legal and it is regulated with the help of a proper legal framework. This category includes countries like Australia, New Zealand, Netherlands, and Austria.

Laws relating to prostitution in India

Laws relating to prostitution in India is very limited. The Constitution of India provides many human rights standards which are internationally accepted. It prohibits the trafficking of human beings by granting them right to life and personal liberty and the right to constitutional remedies. Article 23(1) of the Constitution provides that “traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law”.

In accordance with the above mentioned provisions of the Constitution, India enacted the Suppression of Immoral Traffic in Women and Girls Act 1956(SITA) which was subsequently amended and renamed to Immoral Trafficking (Prevention) Act 1986 in order to give effect to the those provisions enlisted in the Constitution of India and the Convention on Trafficking. Section 2(f) of the Immoral Trafficking (Prevention) Act 1986 (ITPA) provides the definition of the term prostitution as sexual exploitation or misuse of any persons for commercial purposes. In the landmark case of *State of Uttar Pradesh v Kaushalya*, the constitutionality of the ITP Act was challenged. The facts reckoned in this this said case was that, to preserve the modesty of the city of Kanpur, some sex workers were asked to be removed from their respective place. The High Court of Allahabad in this case, gave the judgment that article 14 and sub clauses (d) and (e) of article 19(1) of the Indian Constitution were abridged by section 20 of the ITP Act. The court held that there was an intelligible difference between a prostitute and a person creating a nuisance. Hence, the constitutionality of the ITP Act was upheld.

Section 372 and 373 of the Indian Penal Code 1860 provides for laws relating to child prostitution. Further, sections 366A, 366B and 370A of the Indian Penal Code has provisions for punishment of offences of procreation of a minor girl, importation of a girl from a foreign country for sex, and exploitation of a trafficked person, respectively. Subsequently, section 375 pertaining to rape is also applicable to rape a brothel inmate. These provisions of the IPC are applicable to owners of the brothel, the staff, the clients, if and when they engage in sexual activity with minors, either with or without their consent, or with women who have been kept in the brothel by way of force or threat.

For and against legalisation of prostitution

In our present day society, there are both categories of people who believe that the practice of prostitution is an evil in the society in itself as well as people who believe that the presence of prostitution in the society should be endorsed. Both views should be considered rationally as it is the belief of the society at the end of the day and one belief cannot be ignored. However, one thing that cannot be ignored is sexual torture in the field of prostitution or the presence of survivors of viciousness of both the procurers as well as customers. Hence, it should be doubted that legalising of prostitution will protect women from the brutality and exploitation. It has been argued by some that earning by selling the dignity of a women is not commendable. Furthermore, it has been argued that legalising prostitution in India will backfire and the society will begin to look at it as a profession and more women will be encouraged to engage in this occupation as a way to make easy money. There have been numerous instances where sex workers are compelled to do sexual intercourse without using a condom or any other precaution. Looking at this factor, legalising prostitution shall empower the state to obligate sex workers and the clients to the usage of condoms or any other form of protection as several health risks are attached with this profession. Also, the legalisation of prostitution will empower the state to formulate a set of rules and regulations in matters regarding the age limit of the sex workers, minimum wages and regular health facilities to sex workers. With the help of these regulations and rules, sex workers will be able to exercise their rights which have been enshrined to them under the constitution of India. For example, their right to receive proper medical check-ups and treatments, an equal opportunity to provide proper education for their children, their fundamental right to resist and protest against rape, violence, exploitation, etc. The lack of education and awareness is a fundamental factor responsible for the rapid growth of the prostitution industry in India. Therefore, legalising prostitution will facilitate the state into providing basic level of education to the sex workers and also vocational training which will enable them to develop income generating skills for example sewing, knitting, weaving, painting, etc. Another achievement that legalising prostitution will achieve is that a record of the number of sex workers in India can be tracked and recorded by the government, through which the state can manoeuvre new approaches for the protection and recognition of sex workers in the country which will further facilitate a welfare state. In the case of *Begum v the State*, the court grabbed the nerve centred with the issue of prostitution in India. The court observed that the state should refrain from being insensitive towards the victims of prostitution and provide them with alternate solutions. The court

dismissed the argument that prostitution is a threat to public safety and peace and was of the suggestion that there was a greater threat from goons and goondas who were likely to resort to violence.

Impact on immoral trafficking

Many scholars believe that the biggest concern with regard to legalisation of prostitution in India is that it will ultimately lead to the increase in the trafficking of human beings in the country. In my opinion, the results achieved by legalising prostitution in India will be rather contrary in nature, if certain regulations are formulated as well. For example, involvement of third parties in prostitution should be decriminalised. The state shall be obligated to work closely with the community to ensure that there are no cases of trafficking of persons for the purposes of prostitution. The finest example of this is the country of New Zealand where the target of zero cases of trafficking of human beings was achieved by way of legalisation of prostitution. In India, majority of the girls working in various brothels are brought by way of trafficking. In my opinion, to curb the problem of trafficking of human beings for prostitution, a separate, individual, independent body should be formed to regulate prostitution in the country. This body established, shall be liable to the authorities at the highest level, thereby limiting the issue of interference and exploitation. The body established, shall be responsible for conducting enquiries and interviews of sex workers. Every woman undergoing the said interview should express her views and ideas on prostitution, convey to the board the reasons for her to choose this profession and only after adequate scrutiny by the board, shall a woman be allowed to pursue this profession. If during scrutiny, the board finds that the woman has been brought to this profession by force or threat, then strict legal action should be initiated by the government which includes issuance of a non-bailable warrant of arrest of person(s) involved in the crime. Also, regular inspections and checks should be done in brothels to ensure that safety and security of the women are not compromised upon by anybody. The body established under the appropriate law shall also ensure that the sex workers earn a decent amount of money and if the body finds the contrary, the brothel owners shall be liable and could result in shutting down of the brothel in question also amounting to the cancellation of the licence issued to the brothel. Sex workers also come under the domain of 'workers', hence they should be protected under labour laws. They should be provided with proper identity cards, voting rights, and access to several government

schemes. This will likely achieve the goal of better living conditions for the sex workers and their children as well. With proper legalisation of prostitution in the country, it will definitely help to regulate human trafficking of human beings for prostitution and will also help to control STDs like HIV AIDS, ultimately leading to a healthy society to live in.

Conclusion

In India, the prostitution business is recognised as an age old profession and has constantly been thriving as an area of business. One would be ignorant if he/she pretends the absence of this business and puts a blind eye on the flaws of this business. There should not be any disbelief about the fact that legalising of prostitution business in India will help to protect the sex workers and also their children from exploitation. Along with it, it will also guarantee the health of sex workers and the society all together. Decriminalisation of prostitution and making it legal with the help of a governing body instituted under appropriate laws with rules and regulations shall, as a society, be a progressive step which will help eliminate numerous social evils like human trafficking, child prostitution, rape, etc. and will eventually provide for a better society to live in.

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