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PROSTITUTION IN INDIAN LEGAL ASPECT

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***Abstract:** Prostitution is one complex issue in India. The practice of prostitution is in existence for decades, yet the status of prostitution in society seems to be harsh and immoral. Though Indian laws allows the practice of prostitution at a certain extent, the issue is still in existence. Though society has adapted several dynamic changes, one constant practice has been difficult to adapt. This paper focuses on the Indian legal aspect on prostitution and how it is different than the societal views.*

Keywords:- Prostitution, Immoral, Sexual Activity, Legalization

Introduction

Prostitution is the profession or practice in which people participate in sex in return for monetary gains and whoever is involved in this area is called a prostitute. It occurs in a variety of facilities, and its legitimate status varies from nation to country and from place to region within a nation, from maintained or sanctioned misconduct to unrestricted or driven occupation. It's a part of anatomy, alongside pornography or any other sexual activity. Brothels are deliberately dedicated centers for prostitution. Prostitution and the rule of law shift worldwide, producing contradictory results.

In India, prostitution is an occupation of old age. Indeed, in many Hindu mythology inferences called apsaras there is description of female sex workers. It emerged during the pre-colonial era the devadasi culture where the Hindus practised as a symbol of worship for God giving away their female child.¹ Simply, devdasi implies the deity who was married to God and was not allowed to marry any mortal being.

They were women who were promiscuous and exceeded the standards of classical dance and music. Colonialism, nevertheless, presented an exploitation and repression scheme. The British began to focus on their own social constraint on these people, where, with the declining feudalism and the end of colonialism, they were dismissed by temple priests and mortified the founding principles of sexual freedom, women's femininity, literature, music, etc. That is why they are exposed to sexual abuse and poverty. This is one of India's most ancient forms of prostitution.

¹<http://www.legalserviceindia.com/legal/article-3392-legalization-of-prostitution-in-india.html>

Prostitution is legal in India, but other related practises, such as pimping, reclamation and bribery, are prohibited. More than 20 million sex workers are employed in India and the majority are under the age of 18.

Male Prostitution

In earlier times only women were found to be working as prostitutes but in the present period, men, women and even transgenders are working in this field. The BBC report shows that the rise of men in India as prostitutes takes place quite speedily.² It also claims that sex is sold to the male customers because there is no female customers. Gigolo is termed as male prostitutes.

Causes of Prostitution

After the fall of the Mughal Empire, particularly the women who served in harems, palaces, and hardships became oppressive for the lowest sections of society. The primary source of prostitution is poverty. A woman in prostitution is economically independent, especially when she is restricted of education, freedom and skills, in Indian patriarchal society. Prostitution is thus the only occupation to earn money.

Sex work is often carried out by some women because of unemployment. The lack of employment opportunities had forced women to use illegal such methods to deal as a means of generating income in desperation.

The prevailing caste system in India, which also exploits the identities of marginalised women and suffocates their impoverished state, is indeed a significant cause of prostitution.³ Another factor of prostitution is the lack of sex education, abduction and kidnapping.

Around 6% of women went into prostitution after rape.³ Moreover, several times the survivors of the sexual abuse suffer the guilt and humiliation of the community, which accuses these victims for being assaulted. Around 8% of young women were prostituted following the incest cases.⁵

Legalized Status of Prostitution in India

²http://news.bbc.co.uk/2/hi/south_asia/7159759.stm

³*Supra* note 1.

³<https://blog.ipleaders.in/legal-aspects-related-to-prostitution-in-india/>

⁵*Ibid.*

In prostitution, there are three types of status in nations, i.e.:

- Prostitution is not acceptable and is prohibited, such as Kenya, Morocco, Afghanistan, etc.⁴
- Where prostitution is lawful but legitimately limited, such as India, Canada, France, etc.⁷
- Where prostitution is legal and enforced by law, such as New Zealand, Australia, Austria, Netherlands, etc.⁵

In Indian legal context, prostitution is applicable to a certain extent. Once the activities lead beyond that extent it becomes punishable under Indian legal statute.

Laws in Relation to Prostitution in India

The following are the laws that addresses the practice of prostitution:

- Sec. 2(f)⁶ of the Immoral Trafficking Act, 1956: the term 'prostitution' is defined as
"sexual exploitation or misuse of any persons for any business purpose."
- Sec. 372¹⁰ and 373⁷ of Indian Penal Code, 1860: Prohibits child prostitution.
- Sec. 366A⁸ of Indian Penal Code, 1860: Prohibit minor girl prostitution.
- Sec. 366B¹³ of Indian Penal Code, 1860: Prohibits importation of girls from other nations for sexual and other exploitation purposes.
- Sec. 370A⁹ of Indian Penal Code, 1860: Prohibits trafficking for sexual and other exploitation purposes.

Constitutional Right

⁴<https://prostitution.procon.org/countries-and-their-prostitutionpolicies/><https://prostitution.procon.org/countries-and-their-prostitution-policies/> ⁷*Ibid.*

⁵*Ibid.*

⁶ Section 2(f) of the Immoral Trafficking Act, 1956¹⁰Section 372 of the Indian Penal Code, 1860.

⁷ Section 373 of the Indian Penal Code, 1860.

⁸ Section 366A of the Indian Penal Code, 1860.¹³Section 366B of the Indian Penal Code, 1860.

⁹ Section 370A of the Indian Penal Code, 1860.

In accordance with our Indian Constitution, all citizens of India are subjected to fundamental rights and thus sex workers are also citizens.

The constitutional rights of sex workers was questioned in the case of *Budhadev Karmaskar v. State of West Bengal*¹⁰. Budhadev Karmaskar, accused of killing a sex worker in Kolkata in 1999, was held liable. The court further held that “*a woman is indulged in prostitution not for pleasure*

but of poverty. If such a woman gets an opportunity to learn technical or vocational training, she can earn her basic livelihood from her skill instead of selling her body.” Accordingly the Hon’ble Supreme Court directed the central and state government to come up with such schemes to help the marginalized members of the society.

Why is such practice still in existence even after stringent laws ?

The main problem of existence of this practice is due to the societal pressure and daily life necessities. It remains a reality that sex work with precautions and regulations does not harm any individual. Furthermore, only because of the prominence of sex is considered as a taboo in society, and the demand and supply of sex in a regulatory manner is the only reason that prostitution is defined as something immoral and sex workers viewed as obscene.

Prostitution is a demand and supply business, those who are in this profession with their own will and are eligible have done nothing wrong by engaging themselves in such practices. The existence of sexual offences is not due to presence of prostitution. In anyway, prostitution practice opposes sexual abuse, since the consent of both parties are necessary even in practice of prostitution. There is also one main aspect where the law fails. These laws fail to recognise that not only women are the victims of sexual harassment but also men and people who suffer from gender-based abuse and exploitation is another key feature of Indian law relevant to prostitution.

Conclusion

In a culture where prostitution was age-old and continues to thrive as an economic sector, it is not able to turn a blind eye to prostitution and to say that the system does not work and that it does not exist. The decriminalization and legalisation of sex work would provide prostitutes with better pay, health protection and protection with better laws and regulations.

It will not only be a positive step, but also a culture that will remove many societal evils such as child trafficking, abuse, and so on. Sex trade is an obvious fact in our nation, where all parties concerned will obtain assured benefits by treating it as a legal occupation with some rules and guidelines. A stronger and more equitable legal system and the application of all the measures of security will only improve society.

¹⁰ AIR 2011.