



## LEGALIZATION OF PROSTITUTION IN INDIA

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### ABSTRACT

Prostitution is a very old concept in the Indian society which has been a part of society since time immemorial. Prostitution is a business in which a person sell their bodies as means of survival, or in simple word, prostitution means providing sexual favors in return of money. Prostitution is considered as a taboo in Indian society, the sex workers are treated very harshly in society and people don't give any type of respect to them. In India, the estimated population of sex workers is almost three million. Among those, Mumbai, the most humongous sex industry of Asia, is the place for 1, 00,000.

The country has a complex history with prostitution, with different regions and cultures treating it differently. In today's society, prostitution has become synonym for violence, discrimination and exploitation, the business of prostitution has grown widely and has become a profitable business. Female children are kidnapped in order to make them work in brothel, forcibly and without their consent.

The debate over the legalization of prostitution in India is ongoing and multifaceted, with arguments for and against the issue. This essay will explore the historical background, causes, its affect in society, legal status in different countries and legalization of prostitution in India.

### INTRODUCTION

The word prostitution is derived from a latin word prostituere which means to expose publicly. Ransom House Dictionary describes prostitution as "the act or practice of engaging in sexual intercourse for money". In

21<sup>st</sup> century, not only women, but men and transgender also works as a sex worker in order to meet their ends. The legal status of prostitution differs from nation to nation, it is legal in some nations, like Netherlands, Germany, Austria, Greece, Turkey, Senegal, etc. Whereas it is also illegal in nations like UAE, Saudi Arabia, Pakistan, Qatar etc. .

In India, Prostitution has been a controversial issue in India for a long time. The country has a complex history with prostitution, with different regions and cultures treating it differently. It is neither explicitly illegalized nor regulated. Associated work of owning or working in a brothel, pimping, and organized sex work have been made illegal under The Immoral Traffic (Prevention) Act, 1956. The debate over the legalization of prostitution in India is ongoing and multifaceted, with arguments for and against the issue.

### CAUSES OF PROSTITUTION IN INDIA

Prostitution in India is a complex and multifaceted issue, and its causes are rooted in a range of social, economic, and cultural factors. Here, we will discuss some of the main causes of prostitution in India.

- **Poverty**- One of the primary causes of prostitution in India is poverty. Many women and girls are forced into prostitution due to economic hardship, with few other options available to them. Women who are from marginalized communities, such as Dalits or Adivasis, are particularly vulnerable to this kind of exploitation. Poverty can also lead to the exploitation of children, with some

families selling their daughters into the sex trade in order to make ends meet.

- **Human trafficking**– Another major cause of prostitution in India is trafficking. Human trafficking is a lucrative business, with criminal networks trafficking women and children across borders and within the country. These victims are often subjected to physical and sexual abuse, and forced into prostitution against their will. The trafficking of women and children for sexual exploitation is driven by demand for commercial sex, both from within India and from other countries.
- **Gender inequality**– Gender inequality is also a contributing factor to prostitution in India. Women and girls in India often face discrimination and limited opportunities compared to men, and this can lead to their exploitation in the sex trade. Women may be coerced into prostitution by their partners or by those in positions of power, such as landlords or employers. They may also be vulnerable to sexual violence and abuse, with little protection from the law.
- **Social factors**– Social stigma and lack of support services are other factors that contribute to prostitution in India. Prostitution is often stigmatized in Indian society, with sex workers facing discrimination and harassment. This stigma can make it difficult for sex workers to access healthcare and other support services, which can further exacerbate their vulnerability.
- **Cultural factors**– Cultural factors also play a role in the prevalence of prostitution in India. The caste system and patriarchal attitudes towards women contribute to the marginalization and exploitation of women in India. The practice of devadasi, in which young girls are dedicated to temples as a form of religious service, has also been linked to the sex trade, with some girls being

forced into prostitution as part of this tradition.

### PROS AND CONS OF LEGALISING PROSTITUTION IN INDIA

Legalizing prostitution in India has been a topic of debate for many years. Here are some potential pros and cons of legalizing prostitution in India:

#### PROS:

1. **Protection for sex workers:** Legalizing prostitution would provide legal protection for sex workers who would be able to seek assistance from law enforcement and healthcare professionals without fear of punishment.
2. **Regulation of the industry:** The Prostitution industry of India is a very large and unregulated industry. Legalization of prostitution would provide an opportunity for the government to regulate the industry, ensuring that sex workers are not exploited and are working in safe and healthy environments.
3. **Increased tax revenue:** As we all know that the Prostitution industry of India is a very large industry, its Legalization could potentially generate significant tax revenue for the government, which could be used to fund social programs and infrastructure projects.
4. **Reducing human trafficking:** By legalizing and regulating prostitution, the government could potentially reduce human trafficking, as more or less, human trafficking is associated with the illegal prostitution.

#### CONS :

1. **Morality and cultural values:** Indian society is a very old and primitive society which consider prostitution as a Taboo. Many people in India consider

prostitution to be immoral and contrary to cultural values, and legalizing it could be seen as a threat to these values.

2. **Increased demand for prostitution:** Legalization could lead to an increase in demand for prostitution, which could result in exploitation of vulnerable individuals and an increase in sex trafficking.
3. **Health risks:** prostitution is a hub for STDs like AIDS and HIV as the sex worker may be suffering from AIDS or HIV. Even with regulation, the nature of the industry puts sex workers at risk for sexually transmitted infections and other health issues.
4. **Difficulties in implementation:** There could be difficulties in implementing and regulating the legalization of prostitution, including issues related to licensing, monitoring, and enforcement.

Overall, the issue of legalizing prostitution in India is a complex one, with both potential benefits and drawbacks. It is important to carefully consider all the potential consequences before making a decision.

#### LEGAL ASPECTS RELATED TO PROSTITUTION IN INDIA

Prostitution in India is regulated under the Immoral Traffic (Prevention) Act, 1956, which criminalizes trafficking and prostitution-related activities. Here are some key legal aspects related to prostitution in India:

1. Prostitution is not illegal: While soliciting sex for money or operating a brothel is illegal under the Immoral Traffic (Prevention) Act, prostitution in and of itself is not illegal in India.
2. Trafficking is illegal: The Immoral Traffic (Prevention) Act criminalizes trafficking, which includes buying or selling someone for the purposes of prostitution, as well as transporting

individuals across state borders for the purposes of prostitution.

3. Brothels are illegal: Running or owning a brothel is illegal under the Act, and anyone found guilty can be punished with imprisonment and/or a fine.
4. Soliciting is illegal: Soliciting or making a public display of soliciting for prostitution is also illegal under the Act.
5. Sex workers have rights: The Act recognizes the right of sex workers to protection and rehabilitation, and provides for the establishment of protective homes and rehabilitation centres for rescued sex workers.
6. Penalties for violation: Anyone found guilty of violating the Immoral Traffic (Prevention) Act can be punished with imprisonment, fines, or both.

There are laws regarding prostitution in *The Indian Penal Code* as well. Section 366 Clause (A) of the IPC[20] talks about the procurement of a minor girl for illicit sexual intercourse and prescribes punishment for the same. Clause (B) of the same talks about the importation of a girl from an alien country for the purpose of prostitution. In the case of *Fateh Chand v. State of Haryana*[21], a man was booked under section 366 for procuring a minor girl for prostitution. Section 372[22] and 373[23] of the IPC prohibit the selling or disposing of a minor girl knowing that such a girl will be roped into prostitution, and buying or hiring of a minor girl to force her into prostitution respectively.

#### LEGALISATION OF PROSTITUTION IN INDIA

Prostitution is a controversial issue in India, with different opinions on whether it should be legalized or not. Prostitution is currently illegal in India, under the Immoral Traffic (Prevention) Act (ITPA) of 1956. The law criminalizes the solicitation, brothel-keeping, and trafficking of women for sexual exploitation. However, prostitution continues to exist in the country, both in red-light districts and as a hidden



practice. The debate around legalizing prostitution in India has gained momentum in recent years, with some advocates arguing that it would improve the lives of sex workers and reduce the negative social consequences of prostitution.

One of the main arguments in favor of the legalization of prostitution is that it would protect the rights of sex workers. Advocates argue that decriminalizing prostitution would allow sex workers to access basic labor rights and protections, such as safe working conditions, healthcare, and legal representation. It would also allow them to negotiate better pay and working conditions, and reduce their vulnerability to exploitation by pimps and clients. Legalization could also make it easier for sex workers to report instances of violence, abuse, or trafficking without fear of being arrested or punished.

Firstly, it is important to recognize that prostitution is a complex issue, and there are valid arguments on both sides of the debate. Opponents of legalization argue that prostitution is inherently exploitative and harmful to women, and that legalization would only serve to legitimize and normalize a practice that is fundamentally immoral. They also point to the potential negative consequences of legalization, such as increased demand for commercial sex, the exploitation of vulnerable individuals, and the undermining of moral and cultural values.

However, we believe that the case for legalization is strong, and that it would have a number of positive benefits for both sex workers and society as a whole. Firstly, legalization would provide sex workers with legal protection, access to healthcare, and safer working conditions, reducing the risk of violence and sexually transmitted infections. This is particularly important given the high rates of violence and abuse that sex workers face, often at the hands of clients or pimps.

Secondly, legalization could reduce the exploitation of sex workers by pimps and clients, leading to more control and agency for sex workers. This is because legalization would allow sex workers to work more openly and safely, without fear of arrest or prosecution, and would enable them to negotiate better wages and working conditions. It would also make it easier for sex workers to report abuse or exploitation, without fear of retaliation or arrest.

Thirdly, legalization would generate tax revenue for the government, which could be used for social welfare programs. This would be particularly important given the high rates of poverty and inequality in India, and would help to address some of the root causes of prostitution, such as economic desperation.

Fourthly, legalization could help reduce human trafficking, as trafficking is often associated with illegal prostitution. By legalizing and regulating the industry, the government could help to reduce the demand for trafficked individuals, and could work to ensure that sex workers are not coerced or forced into the industry against their will.

The foremost legislation regarding sex workers is The Immoral Traffic (Prevention) Act. It commonly makes pimping and other exercises culpable – giving a business view point to prostitution which creates an obvious possibility to abuse the person of the prostitute. It allows prostitutes to work in private, not public solicitation of customers. In India, prostitution

itself is not illegal, but organized prostitution such as operating brothels, pimping, soliciting sex etc. is illegal. As male prostitutes are recognized by Indian Law, a woman sanctioned to use their body to gain money provided it is done in privacy and with free consent. Law disallows a sex worker to practice her profession within 200 meters of place of public use.

The Act prohibits the commercial aspect of flesh trade and the vice of trafficking in woman rather than prohibiting prostitution per se. The sex workers does not get

protection under labour, being different from other Profession. In spite of this difference they have the inherence of the right to be rescued and rehabilitation along with all the other rights enjoyed by other Subjects provided by the law.

## IMPACT OF LEGALISATION OF PROSTITUTION IN INDIA

### Positive impacts:

1. **Improved safety and health for sex workers:** Legalization would provide sex workers with legal protection, access to healthcare, and safer working conditions, reducing the risk of violence and sexually transmitted infections.
2. **Reduced exploitation:** Legalization and regulation could reduce the exploitation of sex workers by pimps and clients, leading to more control and agency for sex workers.
3. **Increased tax revenue:** Legalization would generate tax revenue for the government, which could be used for social welfare programs.
4. **Reduced human trafficking:** Legalization could help reduce human trafficking, as trafficking is often associated with illegal prostitution.

### Negative impacts:

1. **Social stigma:** Prostitution is still heavily stigmatized in India, and legalization could further perpetuate this stigma.
2. **Increased demand:** Legalization could lead to increased demand for commercial sex, leading to exploitation and trafficking of vulnerable individuals.
3. **Difficulty in regulating the industry:** Regulating the industry could be challenging, with issues related to licensing, monitoring, and enforcement.
4. **Undermining of moral values:** Legalization could be seen as a threat to moral and cultural values, potentially leading to social unrest and opposition

## CONCLUSION

The legalization of prostitution in India would have a number of positive benefits for both sex workers and society as a whole. By providing legal protection, improving working conditions, generating tax revenue, and reducing exploitation and trafficking, legalization would help to create a safer and more equitable industry for all involved. While there are risks associated with legalization, these can be managed through careful regulation and enforcement. It is time for India to take a bold and progressive step towards legalizing prostitution, and to recognize the rights and agency of sex workers as legitimate members of society.

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