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PROSTITUTION AND LAW

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ABSTRACT:

In this modern, technological world where every aspect of life is taken into importance, somewhere down the line we tend to ignore the difficulties endured by the Sex workers every day. There needs to be an international analysis and more conferences including the so called “prostitutes” to lead for more enlightenment. For those sitting in the Ivory towers and AC Chambers, the toughness of the lives of prostitutes still remains a topic out of reach. It is not lack of awareness, but lack of concern for the people caught up in this trade. It is total apathy on the part of system even today to have just left them off. There are some who lecture regarding the so called ‘morals’ and blame the prostitutes for everything. In fact, they cannot be blamed. Instead, we actually have to blame the system which did not even give them food and salary and put them in that prison of prostitution and sentenced them to lifetime imprisonment without any trial and conviction. To those who have to face everyday alienation in the concentration camps of prostitution for no mistake of theirs and even their children face a lot of endless traumas forever just because they would have been born to them. Whether to consider prostitution totally illegal or consider this prostitution as a profession and punish the main culprits? This question must be asked first. Who will ban it? Whether to involve international agencies to put pressure

on the governments of the countries or to bring strict measures to curb down prostitution at the local level by clean political representatives is the thought which might come to many.

INTRODUCTION

There are people who just frown by hearing the topic of Prostitution, there are some who just get disgusted by listening to some information relating to this grave issue, there are some who even hate the mentioning of the word called 'prostitution'. but this trade has made sure that lakhs together of women and girls have just been robbed off their normal life and have been subjected to unbearable, unimaginable exploitations every month, every day. So, what is the solution, how to save their lives from the den of prostitution, and how to analyze it legally, politically and socially?

According to Oxford dictionary ¹ the word prostitution means "Sex Industry". So, taking this meaning into relevance today, it cannot be just an industry, but it's a cage where some people are sold off like animals for a particular price for some body else's pervert satisfaction as well as financial greed and gains. Even though some social Activists are pushing for a complete ban on this trade of prostitution, still no governments or the legal enforcement agencies are ready to put a full stop to this endless trauma endured by these women who get entrapped because of some cheating of some people and life situations.

¹ Edited by Maurice Waite, "Thesaurus Oxford Paperback" (4th ed,2012)

PROSTITUTION AND VARIOUS PERSPECTIVES:

In a book ² written by a writer named A. P. S Kumar, he writes about the difficulties endured by the prostitutes:

“The sex racket is profitable for traffickers and the law enforcers alike, and it enjoys a high level of social tolerance. Without ending this situation on the ground, acts against trafficking of women would remain ineffectual. Once into it, there is no way out for these women. It Is a ‘**Chakravyuha**’ (a circle) one only knows to go into it and not to come out of it. Public opinion is such that these women find rehabilitation impossible. Once they are stigmatized, they will be like the De-notified tribes who cannot lead a normal life away from the reach of undesirable elements”

- This particular paragraph highlights the hand in glove of all the law enforcement agencies and the ruling governments in the exploitation of the said prostitutes, till today in the parliament, there hasn't been a strict law relating to complete banning or eradicating of prostitution in our country of India. Another tragedy is even young girls get exploited everyday and some even die of some infectious diseases. And even some of the social activists who fight regarding laborers' issue, farmers issue remains silent in the matter of prostitution only because of the fact that a particular assumption is associated with the so-called character of that person involved in that trade, and some assume that they would lose their image by standing with the women who are exploited. They fear their 'image', 'reputation' getting spoilt in the society. The pre-assumption of character, quality and the nature just stop many people from siding with the prostitutes.

The author continues writing in his book relating to the violence being inflicted upon them, readers will just feel the pain of those who are trapped in this circle of humiliation. To quote one paragraph of the same book by A.P. S KUMAR mentioned above:³

² A.P. S Kumar, “India: whose country is it anyway?”, 51 (1st ed. 2018)

³ A.P. S Kumar, “India: whose country is it anyway?”, 52 (1st ed. 2018)

“They are beaten into submission and any attempt to escape attracts severe retribution, on a fate similar to the ones Africans suffered in the United States during the period of slavery. Often the police haul them back to the brothel. Since the trade is not licensed, the scope for exploitation is immense.

Each sex worker is forced into cohabitation with 10 to 20 men a day- that is one man every two hours or every hour. Each time it is rape. Sex workers have to contend with unhygienic surroundings, dark and dingy rooms. If one has been in the profession for 20 long years, she would have to endure the pain and humiliation of entertaining 60,000 to 1,00,000 men- young and old healthy and diseased. They have to surrender the physique to ruffians who treat them with disdain, two thirds of a sex workers earnings is taken away and shared between pimps, brothel owners and the police. Most women contract venereal diseases and AIDS and die a slow, painful death, sobbing silently all alone. And for no fault of theirs, the children of sex workers suffer humiliation and are shunned by society”.

By considering this part of analysis, we have to see the statistics relating to this trade. According to a report ⁴, India had around 20 million commercial sex workers, of whom 16 million are victims of sex trafficking. And placement agencies in the Capital City of Delhi and the city of Mumbai lure tribal women from the states of Chhattisgarh and Jharkhand promoting them as ‘Black Diamond’. There is over 500 such placement agencies n Delhi alone, police say.

And as per a 2021 report by the International Labor Organization (ILO) 8 million people are trapped and subjected to human trafficking in India. Of these 4 million are children who are forced into the sex trade. Activists believe the number of women and minors being trafficked runs into hundreds of thousands. This is corroborated by several NGO’s concluded in a 2021 report that 8 million people are trapped in human trafficking in India., and that half of these are children who are forced into the sex trade. Even the Lok Sabha Secretariat in its reference notes has identified trafficking for sex being the third largest money spinner in India after arms and drugs.

⁴ Rashme Sehgal, ‘Sex trafficking is India’s third largest underhanded industry’ ‘National Herald’ (16th Jul, 2025 at 9:30 PM) <https://www.nationalherald.com/national/sex-trafficking-is-indias-third-largest-underhanded-industry>.

LEGALITY AND THE CHAIN OF PROSTITUTION THAT CONTINUES:

Legally analyzing in India, strangely this trade of prostitution is declared neither illegal fully nor legal fully. The thing is the complexity of this matter is such that the present laws ban the forced trafficking of women and girls for this profession and punishing of brothel keepers but at the same time the people involved in this profession are exempt from certain punishments because of legal loopholes. **The judgement ⁵ which was delivered in the year 2022 actually recognizes prostitution as a profession.** The Apex court or the Supreme Court of India stated that prostitution is a profession and sex workers are entitled to dignity and equal protection under the law.

A three-judge bench under the authority of Justice L Nageshwara Rao gave six directions for safeguarding sex workers rights. The Bench said “Sex Workers are entitled to equal protection of the law. Criminal law must apply equally in all cases on the basis of age and consent, the police must refrain from interfering or taking any criminal action. It need not be gainsaid that notwithstanding the profession, every individual in this country has the right to a dignified life under article 21 of the constitution’

The court also instructed cops not to discriminate against sex workers who lodge a complaint, if the offence against them is of sexual nature. Sex workers who are victims of sexual assaults should be provided with every facility including immediate medico legal care.

The court also added one important point relating to identity of sex workers, means their identity must not be revealed. It added that the media should not reveal the identities of sex workers, to

⁵ ‘Buddhadev Karmaskar vs The state of West Bengal and Ors’ Criminal Appeal No (s). 135 of 2010 with interlocutory application No 89140 of (2020) (India) decided on 18th May, 2022 (per Justice LNageshwara Rao, Justice B R Gavai, Justice AS Bopanna) (India).

quote the words of the order, “the media should take utmost care to not reveal the identities of sex workers, during arrest, raid and rescue operations, whether as victims or accused and not punish or telecast any photo that would result in disclosure of such identities”

The bench added that sex workers should not be arrested, penalized, harassed, or victimized through raids on brothels because voluntary sex work is not illegal and only running the brothel is unlawful, and it also concentrated on the mother’s affection towards the child, “a sex worker’s child should not be deprived of the mothers care on the ground that she in the trade, basic protection of human dignity and decency extends to the sex workers and their children also”

SOCIAL ANALYSIS AND THE QUESTIONS WHICH ARISE:

Taking into light this case, there needs to be an introspection amongst the people as well regarding the outlook regarding the prostitutes. The society just blames the prostitutes but doesn’t blame the others who would have pushed these women towards a hell-hole. Nobody blames the men who would have gone there, nobody blames some of the local policemen who snatch money that is the earnings of the people in that industry. Nobody blames those who would have cheated these poor ones. Their life is indeed a circle from which they can’t come out at all. Even if they come out, there will still not be a proper place for them to settle as our society is still not progressive to allow them into mainstream areas of employment and infrastructure.

It is very tough for them to work even in a cloth manufacturing factory. So, any state or central government has to come up with a proper legislation that the children born to these prostitutes must be given at least 4 percent of reservation in educational institutions whether school or college, whether private or government institutions. So that they can be free from the slavery of prostitution, so that the next generation can be free from this vicious cycle of trade and enjoy all the rights as enshrined in the constitution of India.

The constitution of India guarantees freedom from exploitation according to article 23. That is, it prohibits trafficking in human beings, including trafficking for the purpose of forced labor,

slavery or exploitation which is also a fundamental right. We are living in a paradoxical society where there are more things for a few and less things for the other section.

As rightly put by Dr B.R Ambedkar, the father of Indian Constitution regarding the future situation in his note on 26th January, 1950 which can be quoted here: “We are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality”.

But first we need to check out the police atrocities going on directly targeting the sex workers for just money and unnecessarily harassing them verbally, physically and psychologically. There are many instances of custodial violence wherein infliction of violence has resulted in many organ damages. In relation to this, some data and information as well as analysis can be taken from a research paper which speaks about the complicity of the local police in organized prostitution ⁶. To quote some parts of that research paper:

“Worldwide, there are an estimated 40 to 42 million prostitutes (as estimated by Foundation Scelles, 2012). China alone has about 4 to 6 million sex workers making it the largest sex market in the world. Our analysis reveals several interesting patterns that are consistent with the hypothesis that police are complicit in organized prostitution. First, a transaction is perceived as “safe” and is more likely to involve more acts and higher penalty acts if it takes place in hotel or at home. Second, the density of the police force matters, a transaction taking place in hotels or homes is rated “less safe” and therefore more likely to be a briefer or low penalty transaction where there are more police stations around it. This can be considered as the pure effect of complicity. This result also helps establish that we are not simply observing more police stations in high crime or population dense areas, but allowing us to compare behavior in those private settings with behavior in more public settings given the same police presence in each area.

⁶ Goujon He, and Wenwei Peng, ‘Guns and roses: Police complicity in organized prostitution’ “Journal of Public Economics” (Mar, 2022 Vol. 207)

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.sciencedirect.com/science/article/abs/pii/S0047272722000019&ved=2ahUKEwjvmfuem-GNAXVASmwGHUFFJMUQFnoECCUQAQ&sqi=2&usq=AovVaw3vPgUK8LQPT-WuqKA5UmGI>

This finding implies that the local police can be complicit in organized prostitution run by massage parlors and sauna houses around them. If there were no such complicity the combination of “surrounded by more police stations” and “in massage parlors or sauna houses” should only increase the risk of being caught and thus decrease the probability of having large variety and high penalty sex transaction. So, these opposite signs indicate that these seemingly dangerous places, that is relatively public establishments surrounded by more police stations are actually the safest in terms of avoiding arrest” ...

Taking this part of the research paper done by eminent researchers, it is important to look at international versions as well. Where in some countries, this trade of prostitution is legalized. For example, in Thailand, where prostitution is legalized and the revenue gets generated on an annual basis, and where the government itself stands in support of this trade, it is very much necessary to analyze another aspect to it. A few questions might arise in our minds:

- That is, do they really like that profession even if it's legalized by the ruling governments?
- Do they really want to work there or are they there due to some unexplained circumstances in life? Are they living that life due to some financial conditions or lack of choice or skills?
- Even if they want to learn skills, is the government ready enough to teach them new skills? Is the Judiciary ready to give a direction to the ruling governments for rehabilitation of the sex workers?
- Even though many others are not ready to accept them into mainstream area, will the ruling party make any arrangements under the housing schemes?
- Will they be able to live a life without the fear of police sirens and beatings? Will they be able to enjoy the international human rights as enshrined under the universal declaration of human rights of 1948?
- Is any government ready to completely ban the trade of prostitution in total and punish the culprits involved in exploitation of these poor women?

So, in this perspective, it is very much necessary to check out the numerical details relating to police atrocities inflicted upon the prostitutes worldwide. A report ⁷concentrates upon the atrocities and physical violence committed by the law protectors themselves. To quote some parts of the report:

“In the country of Canada, racialized sex workers-including black, indigenous and other people of color as well as visible minority immigrant workers face several health and rights inequities and concerns have been raised regarding racialized policing and barriers to reporting violence to police.

Our study included 367 participants consisting of 711 observations. So, at the beginning of the study period, the prevalence of reporting violence was estimated at 26.0% and out of 367 participants who experienced any verbal, physical or sexual workplace violence incidents over the study period, over half of the sample (53.4%) experienced only one violent incident, 22.9% experienced two incidents, and 23.7% experienced more than two incidents. Of 131 events of rape and sexual assault, around 57.3% were unreported.

Among a subsample of 147 participants who answered questions about why they did not report violence, 34.0% reported not trusting police to help. Participants reasons for not reporting violent incidents due to previous negative experiences with police after the implementation of end demand legislation. So, in this seven-and-a-half-year community-based cohort study, 38% of all women and only 12.7% of migrant women who experienced violence reported any of these incidents to police, highlighting several gaps in these aspects of sex workers access to police protections. Alongside inequalities in access to violence reporting for racialized migrants, other visible minorities were also significantly less likely to report violence to police...”

⁷ Bronwyn McBride, Kate Shannon, Brittany Bingham, Melissa Braschel, Steffanie Strathdee, and Shira M Goldenberg ‘Under reporting of violence to police among women sex workers in Canada: Amplified inequities for migrant prior to and following End-Demand Legislation’ (Journal of Harvard University, ‘Health and Human Rights’) (Dec.2020 Vol. 22/2, pages 257-270).

So apart from analyzing the statistical information, it is very important to analyze the exact legal scenario when it comes to the matter of prostitution. To explain, it is vital to know the legal area for the protection of sex workers, to quote the facts **of one case law** ⁸:

“This was a criminal petition filed against the orders of the **learned metropolitan magistrate, special court for ITPA Mumbai which was confirmed by the Hon’ble sessions judge Dindosh.**

It was the case of three major women, who are between the ages of 23-23 who were caught by the police during a sting operation conducted to catch the persons who were supplying the women with prostitution work.

At the time of the raid on the said guest house, the police had only arrested these three women and failed to catch the main accused who was behind the activity of and for whom the string operation conducted and produced these women before the Hon’ble Judge after one day.

The police failed to produce records of the details of the officers involved in that operation Along with the owner of the brothel house. When the case was presented before the Metropolitan magistrate, 54th court at Mazfaon, Mumbai the Hon’ble Judge did not go into the details about where the victim girls had been kept between September 28, 2023 and September 30, 2023.

So, aggrieved by the order of the court when the victim approached the additional sessions judge Dinoshi, the court also confirmed the same judgement, and again the appeal was preferred before the Hon’ble High Court of Mumbai of the state of Maharashtra.

The bench Of Hon’ble justice P K Chavan in the High Court of Mumbai accepted the petition and it was allowed and ordered in favor of the accused women.

The Hon’ble High Court after considering all the facts and submissions made by both the counsels and after pursuing the produced records quashed the order passed by the trials courts and they could continue their stay if they wish and also directed to the petitioners to present

⁸ ‘Kajal Mukesh Singh and others vs state of Maharashtra’ Criminal Writ petition No. 6065 of 2019, (India) decided on 24th Sep, 2020 (per Justice Prithviraj K Chavan) (India).

before the trial court their evidence and provide their complete residential address to the investigating officer”.

Some of the Changes that came in the legal system after this judgement were as follows:

- (1) The honorable Supreme court of India set limit in police actions while dealing with cases relating to sex workers and puts sex workers and their children on par with rest of the people in society.
- (2) The police department is directed that when a sex worker comes forward with a complaint it will be treated as any other complaint, it will be treated as any other complaint, and she will not be treated as an offender but as a complainant
- (3) the police and health department that any sex worker who is a victim of sexual assault should be provided with all facilities available to a survivor of sexual assault. This assistance must be in line with the section 357 of code of criminal procedure of 1973 and the guidelines and protocols for survivors and victims of sexual violence issues by the union health ministry
- (4) The supreme court after observing all the problems faced by the prostitutes said as follows:

“Needless to say, this basic protection of human decency and dignity extends to sex workers and their children, who bearing the brunt of social injustice and stigma attached to their work and are removed to the fringes of the society by depriving from

their right to life and personal liberty which conferred by the constitution of India, hence let live them with dignity and their children can lead a secure life in the society on par with other citizens of the society”

Taking this case law and this observation into importance, we need to understand the situation of prostitution laws in various parts of the world. It means analysis of the legal recognition given to this trade in some countries:⁹

Country	Legality of prostitution
India	Limited legality
Nigeria	Limited legality
Mexico	Limited legality
Japan	Limited legality
United Kingdom	Limited legality
France	Limited legality

⁹ ‘World population review’ “countries where prostitution is legal 2025”

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://worldpopulationreview.com/country-rankings/countries-where-prostitution-is-legal&ved+2ahUKEwjMoZ32i-KNAXVGXWxGHaoSDqcQFnoECCUQAQ&sqi=2&usg=aoVvAW3tcbjZAmQ4tySwie8E083J>.

Spain	Limited legality
Algeria	Limited legality
Brazil	Fully legal
Bangladesh	Fully legal
Ethiopia	Fully legal
Germany	Fully legal
Democratic republic of Congo	Fully legal
Kenya	Fully legal
Colombia	Fully legal
Russia	Illegal
Pakistan	Illegal
Qatar	Illegal
Oman	Illegal

Philippines	Illegal
Iran	Illegal
Tanzania	Illegal
Myanmar	Illegal
South Korea	Illegal
Uganda	Illegal
Iraq	Illegal
South Africa	Illegal
Vietnam	Illegal
Yemen	Illegal
Angola	Illegal
Afghanistan	Illegal
Ukraine	Illegal
Morocco	Illegal
Nepal	Illegal

Saudi Arabia	illegal
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These comparative details push us to think in multi dimensions about this trade of prostitution, first of all its wrong to call this as profession. Instead, it is every day rape being committed. Hope one day, there might be a nationwide agitation to ban this sex trade forever and hope those ‘prostitutes’ be liberated from the iron hand of the system which would have imprisoned them in that way.

“They were not tried, not heard by anyone, but still they were imprisoned and humiliated for life for no mistake of theirs- they are our society’s ‘Prostitutes’” ...