



## **LEGALISING PROSTITUTION**

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### **ABSTRACT**

The purpose of this research is to examine whether the profession of prostitution should be legalized or not. The main focus itself is on the question whether prostitution needs legal backbone or not. "Prostitution forms an age worn but interesting chapter in the history of civilization and presents an important problem for modern society. All civilized countries have offered solutions, none of which are satisfactory, and only a few of them have even modified its baneful influence<sup>2</sup>." As per a survey of Global Commission there are nearly 116 countries that have laws against sex workers, nearly 80 have some or the other kind of protection but there are nearly 11 countries which do not describe any punitive law about prostitution. This paper considers the aspect of how legalizing prostitution would lead to welfare and how will the vice versa will harm the society. Somewhere, in some corner of the world, right to become a sex worker is provided under the right to choose occupation and profession but somewhere it is considered as against religious and idealistic values this research paper also draws a conclusion as to whether prostitution should be legalized or not, as legalizing it may harm idealistic values of the society as well as basic rights of women, and not legalizing would be a bar over ones right to pursue any profession. This paper is written by searching over many books, articles, paper and marks about the debate over legalizing the profession of prostitution.

### **INTRODUCTION**

Prostitution can be defined as the act of engaging in licentious relation for money. It is a profession where a person engages themselves in sexual activities for exchange of any fiscal or proprietary benefit. The term Prostitution is a highly debated term, yet discussion arises whether prostitution should be legalized or not. Prostitution can be differentiated according to the modus operandi, age and gender as well as in what world region they are prevalent. Some of the most prominent are escort prostitution, religious prostitution, brothels, sex tourism and further .Some regions like red-light areas & escort agencies are the regions encouraging the

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<sup>2</sup> Arnold Clarkson, History of Prostitution 41 Canada Medical Association, 296-301 (1939)



prostitutes. As per Sec-2(f) of The Immoral Traffic (Prevention) Act, 1956.”Prostitution means exploitation or abuse of person for commercial purpose or for consideration in money or in any other kind”. “A woman who had sex with 23,000 men should be classified as a prostitute, although 40-60 would also do. However, promiscuity itself does not turn a woman into a prostitute. Although a vast majority of prostitutes are promiscuous, most people would agree that sleeping around does not amount to prostitution”. (Edlund and Korn, 2002, p.183)<sup>3</sup>

### **BRIEF HISTORY OF PROSTITUTION**

Everything which has its existence today has a history of its own. Many practices started and ended in the history itself while some continued. Prostitution is the oldest profession in India, in fact one of the oldest in the world. In the temple services in Mesopotamia, nearly around 2400, BC, documents of prostitution are found and revealed prostitution as a legitimate economic activity. The traces of prohibiting prostitution lay around 534 AD where Justinian the Great banished the brothels from his capital in 1400 AD. The Visigoths of Spain declared prostitution as morally errand and punishable by flogging and banishment .In Europe while the religious institution was strenuously against prostitution, the male dominated class secretly supported its existence<sup>4</sup>. Indra, the ruler of Gods had celestial divine virgin woman dancing in his court called the Apsaras. When studying the Vedas closely these Apsaras are whom we call prostitutes in today’s world, who distract one by their beauty and dance. The thing that makes the prostitutes suffer is change in attitude and mentality. In fact literature have also codified the practice of prostitution like the prominent work of Vatsyayan’s Kama sutra is particularly about human sexual behavior .Till the time of Guptas and Mughals the practice of prostitution was similar as practiced by Indra but a new category of prostitutes called “Tawaif and Notch Girl “arose with the aim to provide sexual services to the soldiers and war troops so that they can provide their best in the battle field. The historical caves of Ellora and Temples of Khajuraho have statue and wall impression showing various sex positions. Earlier sex was a piece of art unlike now, an interdict .The sex workers are treated equal to garbage and society turns a deaf ear towards their cries.

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<sup>3</sup> A Theory of Prostitution: Lena Edlund, Evelyn Korn

<sup>4</sup> <http://research-paper.essayempire.com/examples/criminal-justice/prostitution-research-paper/>



## **CASES OF PROSTITUTION**

Sanlaap, an Indian feminist non-governmental organization, aims to protect the human rights of women and girls, and works for the removal of social imbalance against gender injustice and violence. As per their report majority of prostitutes enter into this profession because of lack of resources and to sustain their life. A survey completed in 1988 by the All Bengal Women Union interviewed a random sample of 160 workers in Calcutta; of those 23 claimed that they have come by themselves whereas the remaining gave reason like, they had close acquaintance with false hope of job, false hope of marriage, mother or sister was in the same profession etc. Based on once ideologies there can be end number of causes of prostitution, the most common being the social and moral deviance. Some studies even say that prostitution is already related with feeble mindedness and can be transferred from one generation to another. Person who are weak to control their sexual desire also indulge into the vicious circle of prostitution. The people having different sexual desire like bi-sexual or homosexual and transgender also end up in this profession to fulfill their needs and get a sense of belongingness. Emotional factors like loneliness, lack of belongingness, depression etc. act as the motivating factors. In fact by some people it is considered as one of the easiest mean to earn money, some of them are involuntarily forced and Coerced into this profession. A jobless state of poverty also deceive prostitutes in joining prostitution<sup>5</sup>. Children who are indulged in this kind of activities since childhood consider prostitution as a normal activity. This is the next the most common scenario in the developing countries.

## **LAWS RELATED TO PROSTITUTION**

The World Charter for Prostitutes' Right, a declaration of rights of the prostitutes all over the world was adopted by the ICPR, i.e. International Committee for Prostitute's Rights in the year of 1985. United Press International, a news agency of USA reported: "Women from the world's oldest profession, some wearing exotic masks to protect their identity, appealed at the world's first International Prostitutes Convention for society to stop treating them like criminals<sup>6</sup>. The increasing concern about the trafficking of women and increased population in the industry of a legislation, led to formation of a legislation popularly known as the Prostitution Reform Act, 2003. The act is mainly concerned with the control of prostitution related criminal activities, controlling the spread of sexually transmitted diseases, and

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<sup>5</sup> Anthropologica –The New Anthropology of Sexuality by- Canadian Anthropology Society

<sup>6</sup> 'Prostitution Appeal for Decriminalisation' by- St. Petersburg Times 1986/02/16



recognizing the basic rights of sex workers. There are some jurisdictions where prostitution is entirely unregulated, i.e. there are no laws either prohibiting or allowing prostitution. A review of 27 countries in Central and Eastern Europe and Central Asia found that this was the case in eleven of them. They included Azerbaijan, Bulgaria, the Czech Republic, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Poland, Slovakia, Slovenia and Tajikistan. These countries have no reforms intended or legislative recognition of prostitution as either legal or illegal<sup>7</sup>. The Preamble of Universal Declaration of Human Right provided equal rights to both men and women as well as equal right against all the kind of slavery and subjugation and say that they have right to work and right to free choice of employment. The main three legislations protecting the rights and improving the condition of sex workers in India are:-the Constitution of India 1950, the Indian penal code 1860 and the Immoral Traffic (Prevention) Act, 1956.

Constitution of India, 1950 guarantees prohibition of trafficking of human rights and forced labor under Part-IV of the Constitution of India i.e. Directive Principles of State Policy, Article-39(a) says that “The state shall direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood”. Even Article-39(e) provides that the state should direct its policy towards improving and securing the health and strength of both men and women. The Andhra Pradesh High Court asserted that these duties, altogether combined are placed on state as well as equally on citizens including sex workers. In Indian Penal Code, 1860 including sections-293,294,317,339,340,341,342,354,359,375,376,496,498,nearly 20 sections of IPC thoroughly makes Trafficking punishable, and many of them even deal with rape, wrongful confinement, abduction for intercourse etc. The Supreme Court of India affirmed that the profession of prostitution is not confined for the effective enforcement of any provision of any law against prostitution, three things, i.e. counseling, cajoling and coercion are necessary. The Supreme Court further passed an order to set-up an Advisory Committee to make suggestions for child prostitution and to point out social aspects for the care, protection, treatment and development of the young victims, children and girl prostitutes from red light area and get them free from the abuse of prostitution<sup>8</sup>. Immoral Trafficking (Prevention) Act, 1956 does not at all prohibit commercial activities of human. The Gujarat high court refused prostitution

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<sup>7</sup> <http://prostitution.process.org/sourcefiles/newzealandreport.pdf>

<sup>8</sup> Gaurav Jain V. Union Of India & Others MANU/SC/0789/1997



as a valid means and said if prostitution would be legitimized as a means of livelihood it would give an open invitation for women to be trafficked<sup>9</sup>.

### **PROS & CONS**

In the most of countries prostitution is illegal on paper but is condoned as a practice. Like in many countries, for instance, Las Vegas and Bangkok have sex tourism as a major revenue earner. Any fact existing in society have pros as well as cons. Jurists tell about some of them. Prostitution provides easy financial assistance and removes crisis-both financial and personal from the lives of a prostitute. Analysis reveals that it can be one of the most successful measures to reduce sexual violence, forced illicit relationship and rapes. Jurists say that the women and girls are not to be forced into this profession by the way of trafficking and should be given full fledged consent. Some of them even because of mental and physical torture indulged in trap of criminalization and are left to thrive in the same. So the legalization, as per the view of the government, would help in improving the situation. Some of the jurists even consider that legalizing prostitution can protect the prostitutes from operation as well as tormentness of the people in position of power. With pros, there also exist some cons as intellects say that the idea of legalizing the prostitution is wrong because sex for money or any kind of benefit is not only immoral but simply bad for women at every level. Jurists also analyzed thoroughly that legalization of prostitution would Actually not reduce violence against women as it is nearly next to impossible to protect someone whose income and earning depends upon being raped. “Arguing that STD testing prevents diseases is like arguing that pregnancy tests prevent pregnancy. It is a fundamentally flawed line of reasoning to begin with... The only way to truly protect the health of a prostituted woman is to get her out of prostitution<sup>10</sup>.” For instance there are some countries where prostitution has been legalized and they have become the largest center of human trafficking. Conversion of women into an object is itself a failure. Greatest obstacle in legalizing the profession of prostitution is that, whether legalize or not, a prostitute never be seen with moral modesty and will always be treated as a subject.

### **CONCLUSION**

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<sup>9</sup> Sahiyog Mahila Mandal V. State Of Gujarat (2004)2 GLR 1764

<sup>10</sup> Laila Mickdwait, MPD –Founder, NRI. “Myth V Fact: 6 common myths about prostitution and the law” proxon.org



Legalizing prostitution may not be the best way in tackling with their problem and evil of prostitution but can be said as the most suited option for the present scenario. The sex workers across the world don't survive with the society but parallel to the society. Many of the theories exist as to whether prostitution should be legalized or not. Now the time has arrived to put aside religious and idealistic preconception and do whatever is unsurpassed for the prostitutes. But if paid sex would be normalized then every boy would create a conception that woman and girls are objects to be bought, used and sold. Prostitution is a profession which flourishes in black market and would lose its immediate existence. Prostitution, a victimless crime is a myth and in reality it is one of the most fatal forms of violence. This profession itself is a violation of a woman's most basic human right. Studies also show that nearly 75% of prostitutes are between the ages of fifteen to twenty five years.

According to the survey of the Ministry of Child Development in 1997, there were nearly 2 million female sex workers which increased to approximately 3 million in 2007, where nearly 35.47% entered the profession before the age of 18 years. Violence is so much integrated here that it's considered as the basic nature of the sex industry. Demand for sex is assured and ineluctable. Even when performed under the unsafe condition it is still a work and a portion of society earn their living from this. The life of prostitutes is unsafe but can also never be made satisfactorily safe. This sex industry is demanding to be attacked for welfare of those who are being prostituted and sidetrack the buyers from encouraging this profession.