



AN EGALITARIAN SOCIETY – A HARDFEATURED DREAM

Saakshi Iyer N

Student of law

BA., LL.B.

MS Ramaiah college of Law, Bangalore, India

ABSTRACT

“No person shall be denied the right to equality before law or the equal protection of law in the territory of India”.

- Article 14 of the Indian constitution

Our ears have often heard, our eyes have read and our fingers have perhaps curled through countless pages of several books that highlight and illustrate the right to equal rights secured by the constitution of India for all, irrespective of the identity markers. Nevertheless, the cloak and dagger question persist: do these rights exist solely in writing? How far do their rights extend to guaranteeing equal protection and treating all individuals equally under the law? The lady of justice is said to wear a blindfold in order to maintain the integrity of justice and truth regardless of the identity markers, but do those markers ever blind her to justice? Could it be argued that an egalitarian society is perhaps a hard-featured dream? To remove the stigma sex workers bore in society, the supreme court set a courageous precedent, recognizing them as professional workers and mandating that they be treated equally. Our knowledge of prostitution being a profession that is viewed with disapproval is not novel. Suffice it to say, those engaged in sex work are seen through the lens of filth, eliminated from ordinary social circles. Here we might ask, how did the word and work of prostitution find their way into the pages of the dictionaries? What does the term brothel mean? Was prostitution historically considered a damnable profession?

AN OVERVIEW OF THE MEANINGS AND ORIGINS OF THE WORDS**"PROSTITUTION", "SEX WORKERS", AND "BROTHELS"**

Based on the definition in the dictionary: Prostitution refers to “*the act or practice of engaging in promiscuous sexual relations, especially for money*”.¹ In like fashion, the term 'sex workers' refers to people who receive money or goods in exchange for voluntary sexual services. Brothel homes are establishments dedicated to prostitution. In exploring the origins of prostitution, it stands apparent that it is unlikely to have sprung up in an instant. With its roots in history, it is considered one of the most venerable professions. One can find evidence of prostitution in antiquity. As early as 2400 BCE, the practice first appeared in a temple in Sumeria, Babylonia, and Phoenicia under the name of sacred prostitution. Inasmuch as it did not result in monetary gain, but rather by virtue of its religious nature, it came to be known as such. Putting that into perspective, in Sumerian society, prostitution served as a temple service, conferring dignity and distinction. Considering this knowledge, it begs the question, has the profession been considered flawed since its inception? Following the foregoing, In India, prostitution began with the rise of an umbrella identity of an organized community as evidenced in the Vedic literature, which was viewed as prudent in order to maintain cohesion and peace in society. Considering that these archetypes are considered disgraceful professions and referred to as felons, how will this affect the portrayal of them in mythological books such as the Ramayana, Mahabharata and Arthashastra? To that end, historically, sexually-expanded women were a common motif portrayed in the temple sculptures associated with the Indus Valley. In view of the foregoing, an understanding of how and why prostitutes have come to be perceived negatively can shed light on historical developments to date. As history unfolds, it is pertinent to remember that the battle focuses less on defending the profession than on protecting its practitioners.

PROSTITUTION: VIEWED THROUGH THE LENS OF INDIAN LAW

Essentially, prostitution in its general sense is not prohibited under Indian law, however, certain activities that constitute a significant component of prostitution are subject to criminal penalties pursuant to certain provisions of the code:

- Soliciting services in public places
- Operating prostitution operations in hotels
- Running a brothel

¹ 2022. [online] Available at: <<https://www.merriam-webster.com/dictionary/prostitution>> [Accessed 11 June 2022].

- Pimping
- Arrangement of a strumpet
- Arranging a sexual relationship with a customer

The immoral traffic (prevention) act, of 1986 articulates the definition of prostitution as the use or exploitation of women for financial gain. following the foregoing, an individual that receives such benefit is defined as a prostitute. ²In continuance, While the Indian Penal Code of 1860 covers the issue of prostitution, it is only applicable to child prostitution. As a whole, the law

aims to prevent abduction in general, kidnapping for sale, girls being brought into the country for sexual purposes, and the smuggling of drugs and weapons. in similar vein, it must be borne in mind that Article 23(1) of the Constitution prohibits the trafficking of human beings, the employment of beggars, and similar forms of forced labour. Any contravention of paragraph 2 of article 23 shall be punishable by law. In light of what has been discussed thus far, it is worthwhile to reflect on the word and its relation to its predecessor, *immorality*. According to Indian law, this profession is viewed as unethical and unlawful. It is dispiriting to note that society tends to portray the profession as undesirable. On the one hand, we extend our support to films such as Begum Jaan and Gangu Bai Khatiwada, conversely, we turn a deaf ear to slander and embarrassment.

ANALYSING THE CAUSES OF PROSTITUTION

Despite the unavoidable truth, prostitution, in all its essence, is not a default choice for those who chose it. Also, although not necessarily a damned career, the life of a sex worker is not made of silk and lace. With respect to the foregoing remarks, it is perhaps vital to learn the reasons for which individuals turn to prostitution altogether. From among the reasons cited, poverty and unemployment remain the most prevalent. It is more common than not for individuals and families to pawn off young women and men for a nominal amount in order to sustain their households. Similar to that, the individuals are compelled to enter this field where there is no escape. Now that the causes are established, it is also relevant to note that these causes serve as a reminder to the profession of sexual assault and abuse. Court rulings have a discernible purpose, such as giving sex workers a fair and dignified platform and treating them accordingly, versus glorifying a profession with many dark facets.

² Rai, D. (2020, November 4). All you need to know about the Immoral Traffic (Prevention) Act, 1956. iPleaders. <https://blog.iplayers.in/need-know-immoral-traffic-prevention-act-1956/>

LEGAL STATUS OF PROSTITUTION: LOOKING AT INDIA AND OTHER COUNTRIES

What does the term "legalization" mean and what does legalising prostitution imply? Essentially, the term legalization entails invoking the notion that an act is not criminal or punishable. As defined by the dictionary, it is defined as a "*status defined by law*".³ Putting the definition into perspective, the legalisation of prostitution directs at the fact that the law recognizes that the profession is neither unlawful nor illegal. In addition, those engaged in the occupation are afforded equal rights. Following the foregoing, among the countries that recognize sex work as legal are Canada, Germany, New Zealand, Austria, and Denmark. As we take a closer inspection into the legal stance on prostitution taken by several countries, we must realize that recognition by the court of law is not adequate. The practice must also be appropriately regulated. As in the case of New Zealand, brothel homes are regulated under public health and employment laws aimed at holding the workers in the same standing as other employees. Similarly, brothel homes in Germany are state-run and the workers are directly the recipients of social benefits such as pensions and insurance. Correspondingly, there are numerous countries that have adopted diverse approaches, including the limited legality approach, prohibitions, neo-prohibitions, and abolitionism. Currently, India complies with abolitionism, meaning that prostitution is legal, but brothels and solicitations are forbidden. By contrast, prostitution is illegal in Japan, China, and Pakistan. In keeping with this, it may also be worth noting that countries such as Israel, Ireland, and Norway follow a neo-abolitionist policy, meaning that selling is legal, but buying, organizing, and solicitation are prohibited.

LOOKING THROUGH THE LENS OF CATASTROPHE

There are always two sides to a coin, and the same holds true here. In the event of legalizing the profession, it is reasonable to assume that trafficking will persist, as will abuse of sex workers and child trafficking, as well as the growth of pimp power. Nonetheless, this should not dilute the fact that these serious crimes have indeed been incorporated into law, in which case these arguments would prove to stand insufficient to legitimize the criminalization of this profession. To that end, regulating authorities could assist in enhancing the effectiveness of those working in the profession.

³ *legal status*. (n.d.). TheFreeDictionary.Com. Retrieved June 20, 2022, from <https://www.thefreedictionary.com/legal+status>

VIEWING THE WORLD THROUGH THE WRITER'S SPECTACLES

Prostitutes are often stigmatized by society as soiled and satanic. Especially for those involved in the profession, since they are perceived as being void of character. No one would dispute the fact that prostitutes are not viewed favourably due to their perceived immorality by law and society alike. Many of the children born of sex work are overlooked and undervalued. The lack of shelter, sanitation, health, food, and education leaves them to define their own fate and misery. Sex work being legalized is not a promotion of the field, but rather an emancipation of those who perform it. Justice is the essence of law, and in this case, justice must be served by legitimizing sex work and granting it the same standing as any other professional, in the interest of the sex workforce. People's perception of the world will change as well when laws change as the two are directly correlated. In closing, I leave the readers with this quote: *“Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favour or of grace or of discretion.”*⁴

-Wiley Blount Rutledge

References

1. Countries Where Prostitution Is Legal 2022. (n.d.). Worldpopulationreview.Com. Retrieved June 22, 2022, from <https://worldpopulationreview.com/country-rankings/countries-where-prostitution-is-legal>
2. Bhattacharya, R. (n.d.). 15 Countries Around The World That Have Legalized Prostitution. ScoopWhoop. Retrieved June 23, 2022, from <https://www.scoopwhoop.com/inothernews/countries-with-legal-prostitution/>
3. Legalization of Prostitution in India: Need of the hour. (n.d.). Legalservicesindia.Com. Retrieved June 23, 2022, from <http://www.legalservicesindia.com/article/2460/Legalization-of-Prostitution-in-India:-Need-of-the-hour.html>

⁴ Wiley Blount Rutledge Quote: Quotefancy.Com. Retrieved June 23, 2002, from <https://quotefancy.com/quote/1606051/Wiley-Blount-Rutledge-Equality-before-the-law-in-a-true-democracy-is-a-matter-of-right-It>