



PROSTITUTION IN INDIA THROUGH THE LENS OF IMMORAL TRAFFICKING (PREVENTION) ACT, 1956

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ABSTRACT

According to the National AIDS Control Organization, there are over 8 lakh women sex workers in India, and more than 6000 female sex workers have been subject to physical violence and other forms of abuse according to the National Crimes Records Bureau Report 2020-21

Prostitution can be defined as non-optional sex work for money or other material possessions. The Immoral Traffic (Prevention). Act 1956 was enacted in India to address the issue of trafficking and prostitution in the country. Legalization supporters argue that it would provide legal protection and social benefits to sex workers. Opponents argue that it would promote the commodification and objectification of women's bodies and could increase the demand for prostitution. Prostitution is illegal in India under the Immoral Traffic (Prevention). It remains a pervasive problem in the country, with estimates suggesting that there are between 2 and 10 million sex workers in India. Men and transgender people also participate in prostitution, although less than women. Many sex workers come from poor and marginalized communities and may have been forced into sex work due to poverty, lack of education, or other factors.

Keywords: prostitution, women, human trafficking, children, legislation

INTRODUCTION

Prostitution can be defined as non-optional sex work for money or other material possessions. In the 21st century, women are not the only ones who practice this profession. Men and transgender people also participate in prostitution, although less than women. Concerning India, the Rig Veda mentions prostitution¹. In medieval India, tawaifs served the nobility in dance, music and the like. It was an emerging form of prostitution that later evolved into sexual services for ordinary people. Today it is called prostitution.

Prostitution is illegal in India under the Immoral Traffic (Prevention) Act². However, it remains a pervasive problem in the country, with estimates suggesting that there are between 2 and 10 million sex workers in India.

¹ Sukumari Bhattacharji, *Prostitution in ancient India*, 15 Social Scientist, 32 (1987)

² The Immoral Trafficking Act, 1956, No. 104, Acts of Parliament, 1956 (India)

Most sex workers in India are women, although there are also male and transgender sex workers. Many sex workers come from poor and marginalized communities and may have been forced into sex work due to poverty, lack of education, or other factors.³

Despite the illegality of prostitution in India, many brothels and red-light districts in cities nationwide exist. Some of the most well-known red-light districts include Kamathipura in Mumbai, Sonagachi in Kolkata, and GB Road in Delhi. Sex work is a controversial issue in India, with debates over whether it should be legalised or decriminalised in order to improve the safety and working conditions of sex workers.

Prostitution in India is a complex issue that is influenced by various cultural, social, economic, and legal factors. In addition to poverty and lack of education, factors contributing to the prevalence of prostitution in India include gender inequality, caste discrimination, and human trafficking.

SITUATION IN INDIA

Women in India often face discrimination and are relegated to lower social and economic status compared to men. This makes it difficult for them to access education, healthcare, and employment opportunities, leaving them vulnerable to exploitation and trafficking. Additionally, women from lower castes and marginalised communities are more likely to become involved in prostitution due to limited opportunities and social stigmatization.

The issue of human trafficking is closely linked to prostitution in India, with many sex workers being victims of trafficking. Trafficking often involves the coercion, abduction, or deception of women and girls who are forced into prostitution. This is a severe issue in India, with the country being a significant source, destination, and transit point for human trafficking.

The criminalization of prostitution in India has been criticised for contributing to the exploitation and abuse of sex workers. In the absence of legal protections, sex workers are vulnerable to violence, harassment, and arrest. They are also denied access to healthcare and social services and legal recourse in cases of abuse or exploitation.

Advocates for legalising or decriminalizing prostitution argue that it would improve the safety and working conditions of sex workers, reduce the prevalence of trafficking, and regulate the industry. However, opponents argue that legalisation would promote the objectification and commodification of women's bodies and could potentially increase the demand for prostitution.

DEFINITION OF PROSTITUTION

According to the National AIDS Control Organization (NACO), there are over 8 lakh women sex workers in India, and more than 6000 female sex workers have been subject to physical violence and other forms of abuse according to the National Crimes Records Bureau Report 2020-21.⁴ Prostitution, as defined in the Oxford English Dictionary, is “*the practice or occupation of engaging in sexual activity with someone for payment.*”⁵ Prostitution is often regarded as one of the oldest professions in the world. According to Black's Law Dictionary, “*Prostitution is*

³ Prabha Kotiswaran, *Born unto brothels – toward a legal ethnography of sex work in an Indian red-light area*, SSRN Electronic Journal, 579–629 (2008)

⁴RASHIDA MANJOO, (2013), https://www.sangram.org/upload/resources/violence_against_people_in_sex_work_in_india.pdf (last visited 2023)

⁵ *Prostitution*, Oxford English Dictionary (2d ed. 2013).

performing an act of sexual intercourse for hire or offering or agreeing to perform an act of sexual intercourse or any unlawful sexual act for hire. The act or practice of a female of prostituting or offering her body to indiscriminate intercourse with men for money or its equivalent”.

In the 21st century, females are not the only ones practising this profession. Men and transgender persons are also involved in prostitution, although in lesser numbers than women. Prostitution can be of various forms, including street prostitution, escort prostitution, brothels, or any other state.

BACKGROUND OF THE ACT

The Immoral Traffic (Prevention) Act, 1956 was enacted in India to address the issue of trafficking and prostitution in the country. Prior to the enactment of this law, there was no specific legislation that addressed the issue of trafficking and prostitution in a comprehensive manner. The need for the Immoral Traffic (Prevention) Act arose from recognising the pervasive problem of trafficking and prostitution in India, particularly of women and children. These practices were often associated with organized crime, exploitation, and abuse of vulnerable individuals. The Act was aimed at preventing and combating the trafficking of persons for the purpose of prostitution and other forms of sexual exploitation. It also provided for the rehabilitation and social reintegration of sex workers and other victims of trafficking. The Act provides for the punishment of traffickers⁶, brothel owners⁷, and those who solicit or procure sex workers. It also provides for establishing protective homes⁸ and rehabilitation centres for victims of trafficking and prostitution.

In addition to criminalizing trafficking and prostitution, the Act also provides for the protection and welfare of sex workers. It recognizes the right of sex workers to live with dignity and provides for measures to prevent the spread of sexually transmitted infections.

The Immoral Traffic (Prevention) Act 1956 was required in India to address the issue of trafficking and prostitution, a significant social problem affecting vulnerable individuals, particularly women and children. The Act sought to provide legal and institutional measures to prevent and combat trafficking and prostitution while also ensuring the welfare and protection of sex workers and other victims of these practices.

Prior to the 1986 amendment, prostitution was defined as "the act of a woman voluntarily offering her body for intercourse for monetary or non-monetary consideration and whether the offer is immediate or otherwise, and the term "prostitute" shall be construed. According to the new definition to mean, prostitution is the sexual exploitation or exploitation of people for commercial purposes. Thus, the current definition is not limited to the act of a woman offering her body for free sexual intercourse with him but includes the sexual exploitation or exploitation of a man for commercial purposes. Black's Law Dictionary states, "*Prostitution is the performance of a sexual relationship for pay or sex or an offer or consent to any illegal sexual act. The act or practice of a woman to prostitute herself or to offer her body for wanton intercourse with men for money or the like.*"

"Exploitation" and "Exploitation" under the Black's Law Dictionary define it as "*the act or process of exploitation, exploitation, or alteration. To take unfair advantage of another for one's own gain or advantage.*"

⁶ The Immoral Trafficking Act, 1956, § 5, No. 104, Acts of Parliament, 1956 (India)

⁷ The Immoral Trafficking Act, 1956, § 3, No. 104, Acts of Parliament, 1956 (India)

⁸ The Immoral Trafficking Act, 1956, § 21, No. 104, Acts of Parliament, 1956 (India)

Regarding the meaning of the word "abuse", Black's Law Dictionary says: "*anything contrary to the established order of use. Deviation from reasonable use; unreasonable or improper use. Physical or mental abuse. abuse, fraud, and female child. Attempt or carnal knowledge of genital injury short of actual penetration*"⁹. But according to other authorities, the "assault" here has parallels or rapes. Any injury to the private parts of a girl is "violence" within the meaning of the Criminal Code¹⁰, which provides for assaulting a girl under 12 with intent to obtain carnal knowledge of her; It is enough just to harm the private parts of the girls, even if they are not bruised, cut, torn or torn¹¹.

SHOULD PROSTITUTION BE LEGALIZED?

The question of whether prostitution in India should be legalized is a matter of ongoing debate and controversy. Supporters of legalization argue that it would provide legal protection and social benefits to sex workers, while opponents argue that it would promote the commodification and objectification of women's bodies and could increase the demand for prostitution.

Proponents of legalization argue that criminalization of prostitution makes it difficult for sex workers to access health care, social services, and legal protections. They also argue that legalization would allow the government to regulate the industry, ensuring that sex workers are not exploited or abused. Legalization could also reduce the incidence of trafficking and other forms of exploitation by providing a safer, regulated environment for sex work.

Opponents of legalization argue that it would promote the commodification and objectification of women's bodies, and would increase demand for prostitution, leading to an increase in the exploitation of women. They argue that legalization would also undermine the efforts to eliminate trafficking and exploitation, as it would legitimize the industry.

However, it is important to note that there are different forms of legalisation or decriminalization of prostitution, and their outcomes can vary depending on the specific laws and policies that are implemented. For example, some countries have legalised prostitution but criminalised activities such as pimping or brothel-keeping, while others have decriminalised all aspects of prostitution. The effectiveness of these approaches in reducing the exploitation and abuse of sex workers is still a matter of debate.

Under the Immoral Trafficking Prevention Act 1956¹², the act's objective is to prohibit the action of frequent prostitute. Therefore a single offer cannot be an offer for lascivious intercourse. The illegality of prostitution refers to the casual exchange of sexual services without any emotional attachment for financial reasons. However, in *In re Ratnamala*¹³ and *Bai Shanta v. State of Gujarat*¹⁴, it was pointed out that the purpose of the Act is not to render

⁹ *Lee v. State*, 246 Ala. 69, 18, So. 2d 706, 707.

¹⁰ Indian Penal Code, 1860, § 375, No. 45, Acts of Parliament, 1860 (India)

¹¹ *Ard. v. State*, 57 Ala. App 250, 327 So. 2d 745, 747.

¹² Immoral Trafficking Prevention Act, 1956, No. 104, Acts of Parliament, 1956 (India).

¹³ AIR 1962 Mad 31

¹⁴ AIR 1967 Guj 211

prostitution per se a criminal offence but to inhibit or abolish commercialised vice as an organised means of living. In *re Kamala*,¹⁵, the Court held that the entire scheme behind the Act is not proof of a single incident of prostitution or the activities of a prostitute, and there must be indiscriminate sexuality requiring more than one customer. Whether prostitution should be legalised in India is a complex issue that requires careful consideration of various policy options' social, legal, and ethical implications. While there are arguments on both sides, any policy decision should prioritise the safety and well-being of sex workers and ensure that they are not subject to exploitation or abuse.

HAS THE ACT HELPED IN THE PREVENTION OF PROSTITUTION?

Human trafficking and prostitution go hand in hand, which is an unfortunate circumstance; both are human rights violations where one is deprived of its right to life and identity, whereas the other has the right to life but has no institution over it. The victims are victims of circumstance and are often blamed for being naïve to understand the perpetrator's motive.

In 2017, according to the NCRB report, the number of cases registered of human trafficking was 90 in Delhi,¹⁶. In 2018¹⁷, this number rose to 98; in 2019,¹⁸, it was 93 in Delhi. According to the National Crime Records Bureau data on Purpose-wise Human Trafficking under Sexual Exploitation for Prostitution of 2017¹⁹, only seven people in the Union Territory of Delhi, out of which all 7 were children, were saved under this act from prostitution. In the 2018 report²⁰, only 40 people were rescued, of which 16 were female children and 24 were adult females from human trafficking being done for prostitution. In the 2019 report by NCRB²¹, only nine people were rescued, of which 7 were female children, and 2 were adult females from human trafficking. The reports are shocking and yet not surprising to witness.

The question is whether the act has failed in its objective and purpose or is it not being executed in a correct sense. The Immoral Traffic (Prevention) Act of 1956 is vital legislation addressing the issue of trafficking and prostitution in India. However, several criticisms of the Act need to be addressed.

One of the main criticisms of the Act is that it has been ineffective in addressing the root causes of trafficking and prostitution, such as poverty, social inequality, and gender discrimination. While the Act provides legal protection

¹⁵ AIR 1966 Mad 312

¹⁶ MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, STATE/UT-WISE CASES REGISTERED UNDER HUMAN TRAFFICKING DURING 2017

¹⁷ MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, STATE/UT-WISE CASES REGISTERED UNDER HUMAN TRAFFICKING DURING 2018

¹⁸ MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, STATE/UT-WISE CASES REGISTERED UNDER HUMAN TRAFFICKING DURING 2019

¹⁹ MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, STATE/UT-WISE & PURPOSE-WISE HUMAN TRAFFICKING UNDER SEXUAL EXPLOITATION FOR PROSTITUTION, 2017

²⁰ MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, STATE/UT-WISE & PURPOSE-WISE HUMAN TRAFFICKING UNDER SEXUAL EXPLOITATION FOR PROSTITUTION, 2018

²¹ MINISTRY OF HOME AFFAIRS, NATIONAL CRIME RECORDS BUREAU, STATE/UT-WISE & PURPOSE-WISE HUMAN TRAFFICKING UNDER SEXUAL EXPLOITATION FOR PROSTITUTION, 2019

and social benefits to victims of trafficking and prostitution, it fails to address the socio-economic factors that make individuals vulnerable to these practices in the first place.

Further, the act is used to harass and victimise sex workers rather than to protect them. The prostitutes working are continuously harassed by the police officers who are supposed to protect them from further exploitation at the hands of men or are turned into lackeys for the police, which puts their lives at risk. This not only undermines the protection of sex workers but also perpetuates the stigmatisation and marginalisation of this group. The lawmakers have focused on preventing prostitution rather than the complete abolition to provide better health and living conditions for the poor in our country and thus this act.

Additionally, there are concerns that the Act has not kept pace with the changing nature of trafficking and prostitution in India. The rise of technology and online platforms has made it easier for traffickers to operate and exploit vulnerable individuals. However, the Act has not been updated to address these emerging issues, and there is a need for new and innovative approaches to combat trafficking and sexual exploitation in the digital age.

