

## REGULATION OF PROSTITUTION IN INDIA- A CONSTITUTIONAL OBLIGATION OF THE STATE

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### ABSTRACT

*In India we don't have any specific regulation on the prostitution. Sex workers in India cannot even exercise their fundamental rights. They are the victim of marginalization and stigma is always attached to their profession. They are even deprived of their basic right of food, shelter, clothing and most important dignity. This paper, initially explain that what are the existing laws on prostitution and then it highlights the area which are not regulated by the existing laws and emphasize on the importance of the regulation. This paper will not only tell the reader that why a legislation is required on prostitution but also proposed that how prostitution can be regulated. In last the paper includes the comparative study which includes provision of different developed as well developing countries and how they are regulating the prostitution in their countries. The main objective of this comparison is to consider other important issues/challenges/solutions which might otherwise be overlooked. The method of research is doctrinal which consists only pre-existing documents, resources, case laws, reports etc.*

*Keyword- Prostitution, Legalization, Fundamental Rights, Labour Rights, Regulation, Dignity etc.*

*"We declare that human rights are for all of us, all the time: whoever we are and wherever we are from; no matter our class, our opinions, our sexual orientation."<sup>1969</sup>*

### INTRODUCTION

Every individual in India can exercise certain basic right as mentioned in the Constitution of India, 1950 and the rights are also recognized as general principle of law by many countries and reputed international organizations. Even in this 21<sup>st</sup> century where lots of progressive laws were enforced by Parliament like ban on Triple Talaq, laws on Sexual Harassment at

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<sup>1969</sup> Ban Ki-moon, *Secretary-General's message on Human Rights Day*, UNITED NATIONS (Dec. 10, 2014), <https://www.un.org/sg/en/content/sg/statement/2014-12-10/secretary-generals-message-human-rights-day-scrolldo wn-french>.

work place, complete prohibition on child labor, introduction of Right to Information etc. but still few sections of society are not able to fulfill their basic needs. The same condition is with the Prostitution in India. Prostitution is one of the oldest professions in the world but still considered as taboo in this modern society. The word Prostitution as per Indian laws means “the sexual exploitation or abuse of persons for commercial purposes or for consideration in money or in any other kind”<sup>1970</sup>. In today’s society they are treated as garbage, humiliated and tortured daily by the society. They are deprived of their basic right of dignified life as well as other fundamental rights. Initially, we need to understand that this is not a gender specific issue, but both the genders are involved in this. Though, in India we have few laws like ‘The Immoral Traffic (Prevention) Act and ‘The Indian Penal Code’ that regulate few aspects of the prostitution but the major part is still unregulated in India. Now, the first question is why we cannot completely ban the prostitution in India? The answer to this is two folded, first as per ‘The Law Commission of India’ in one of his report, they stated that “any attempt to prohibit or completely ban the prostitution by enactment or by any other means is abortive which means it cannot achieve the intended results, no country in this world is able to completely ban this as it will always re-appear in the society and always considered as necessary evil”<sup>1971</sup>. Secondly, in one of the ‘World Health Organization’ reports ‘the rise in poverty and Unemployment’ is the major reason behind the increase of prostitute in the world.<sup>1972</sup> Different ‘World Bank’ reports clearly show that how poverty and rise of unemployment affected the Indian<sup>1973</sup>. So, if the government want to ban the prostitution then the government need to eradicate poverty and give employment to these individuals which is not possible for the developing countries like India. So, the complete ban is not the solution of this. The second question is why we need regulation if we have already The Immoral Traffic (Prevention) Act and The Indian Penal Code? As these two laws regulate only small part of the prostitution and many important issues are unregulated and ignored which are also

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<sup>1970</sup> The Immoral Traffic (Prevention) Act, 1956, No. 14, Acts of Parliament, 1956 (India).

<sup>1971</sup> P.B. Gajendragadkar, *Law Commission of India Sixty-Fourth Report on The Suppression of Immoral Traffic in Woman and Girls Act, 1956*, LAW COMMISSION OF INDIA (Mar, 1975), <http://lawcommissionofindia.nic.in/51-100/Report64.pdf>.

<sup>1972</sup> Meena Poudel, *Poverty, Prostitution and Women*, WORLD HEALTH (Nov. 13, 1994) <https://apps.who.int/iris/bitstream/handle/10665/328773/WH-1994-Nov-Dec-p10-11-eng.pdf>.

<sup>1973</sup> Poverty Economist: Sutirtha Sinha Roy, *Poverty & Equity Brief in India*, WORLD BANK (Apr. 11, 2020), [https://databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global\\_POVEQ\\_IND.pdf](https://databank.worldbank.org/data/download/poverty/33EF03BB-9722-4AE2-ABC7-AA2972D68AFE/Global_POVEQ_IND.pdf).

the matter of paramount importance and need urgent attention. Let's discuss the existing regulation on the prostitution.

## EXISTING LAWS ON PROSTITUTION

There are no direct laws on prostitution but on different aspects that are connected with the regulation of prostitution. Few of them are discussed below.

### The Constitution of India, 1950

Article 23(1) of the Constitution of India prohibits human trafficking and in the context of prostitution it prohibits all kind of sex trafficking that lead to commercial sexual exploitation of an individual. Article 23(2) said that any person guilty for human trafficking shall be punishable by law. As per one of the Reuters report 75% of commercial prostitutes in India are the victim of sex trafficking, as they basically belongs to poor families and they are abducted or lured by the traffickers in the name of job or marriage and then sold to pimps, brothels or in red light areas.<sup>1974</sup> So, this is one of the important provision that prohibit the forced prostitution in India.

### The Immoral Traffic (Prevention) Act, 1956

This major objective of the act is to criminalization of certain activity related to the prostitution and establishment of Protective homes & Corrective Institutions. Let's discuss both the objective one by one. As stated above the act criminalize lots of activity such as the act of keeping a brothel or allowing the use of premises to be used as brothel, when an individual lives on the earnings of the prostitution, the act of inducing or taking person to indulge them in prostitution, the act of detaining a person on the place where the prostitution is carried on<sup>1975</sup>. The act also provide punishment for the prostitution in or in the vicinity of public places which is within a distance of two hundred meters of notified places as mentioned in section 7(3) of the act. Apart from this the act also provides punishment for seducing or soliciting for the purpose of prostitution and seduction of someone in the custody<sup>1976</sup>. Secondly, the objective of the act is establishment of 'Corrective institutions' which is used to detain persons who are in need of correction and it is inclusive of the shelters

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<sup>1974</sup> Anuradha Nagaraj, *Rescued child sex workers in India reveal hidden cells in brothels*, THOMSON REUTERS FOUNDATION (Dec. 13, 2017), <https://www.reuters.com/article/us-india-trafficking-brothels/rescued-child-sex-workers-in-india-reveal-hidden-cells-in-brothels-idUSKBN1E71R1#:~:text=Of%20an%20estimated%20%20million,force%20them%20into%20sexual%20slavery.>

<sup>1975</sup> The Immoral Traffic (Prevention) Act, 1956, No. 14, Acts of Parliament, 1956 (India).

<sup>1976</sup> *Supra*.

where undertrials prisoner may be kept and establishment of protective home where those prostitute who are in need of care and protection are kept under technically qualified persons and other facilities.<sup>1977</sup> Here, we need to understand the intent of the legislature behind the act which is mainly to criminalize different sphere. Though, the act also have the provision of corrective institutions but the provision will apply only for the detain persons and the concept of protective home only state that it is for the persons, who are in need of care and protection but what is the ambit of this care and protection, what comes under this and what are the benefits given is also not mentioned in the act.

### The Indian Penal Code, 1860 (IPC)

As we all know that Indian Penal Code is a penal statute and describes various offences and few of them apply to the prostitution as well. Section 372 of the act clearly states that selling minors for the purpose of prostitution is an offense and the punishment is imprisonment of at least ten years and section 373 provides punishment for those who buy a minor for the purpose of prostitution and awards imprisonment of ten years. Unfortunately, the both sections are not gender neutral and only penalize if the victim is minor girls and in the case of minor boys there will be no punishment irrespective of the age<sup>1978</sup>. Furthermore, the provision of obscenity as mentioned in section 292 of IPC is also indirectly linked to prostitution and can be applied in specific circumstances.

These three are the only laws that regulate the prostitution in India. Though, this is debatable that whether these three laws regulate prostitution or criminalize prostitution, but this is the harsh reality that the many important sphere is still unregulated and ignored which has a directly nexus with the rights of prostitute in India.

### THE NEED OF REGULATION

There are lots of ground on the basis of which we can say that there is an urgent need for the regulation of the prostitution and few of them are discussed below.

#### Constitutional Obligations

- The Preamble of the Constitution of India clearly states that India is a 'Socialist State' which aims to eliminate income, status & standards of life. This also focus to provide

<sup>1977</sup> Unknown, *Review of Immoral Traffic (Prevention) Act, 1956*, SHODHGANGA, [https://sg.inflibnet.ac.in/bitstream/10603/124050/11/11\\_chapter%205.pdf](https://sg.inflibnet.ac.in/bitstream/10603/124050/11/11_chapter%205.pdf).

<sup>1978</sup> Prachi Darji, *Prostitution in India*, MY ADVO (Sep. 12, 2019), <https://www.myadvo.in/blog/prostitution-in-india-read-its-causes-legality-and-law/>.

a decent standard of life to their citizen.<sup>1979</sup> But in the case of prostitute these equality and decent standard of life is a myth. Apart from this, part III of the Constitution also includes certain fundamental rights to every individual which includes prostitutes as well, but, in reality majority of them cannot exercise any of their fundamental rights.

- As per article 14 of the Constitution of India, there will be equal protection of law and State cannot deny this and that equal protection must include affirmative action<sup>1980</sup> but in case of Prostitution, there is no affirmative action taken by the government to safeguard their rights. As per one of the RTI answered by the 'Ministry of Health and Family Welfare', there are almost 7 Lakhs registered sex workers in Delhi<sup>1981</sup>. As per few organisations, there are almost 80 Lakhs 'sex workers in whole India<sup>1982</sup>. These figures are only few percent of the reality as because of the stigma attached to this occupation, many sex workers preferred to live in isolation by hiding their identity. But till now, no constructive steps taken by the government which is beneficial to them. Apart from this, they are not even treated equally like others individual as they are not given equal opportunity on different platforms, for example, even after rehabilitation no private sector companies wants to recruit a former sex worker as their employee. There is an urgent need of the law that can eliminate stigma, discrimination faced by these sex workers and provides other mandatory assistance as well. This clearly justify that how article 14 of the lakhs of Sex workers is violated by the government by not taking proper measures to safeguards their constitutional rights. Furthermore, by not enacting any law for them the government is also creating hurdles in their access of justice which is violation of their human rights as well<sup>1983</sup>.
- In case of article 19, one of the important fundamental rights in the context of prostitution is right to practice or to carry on any occupation, trade or business<sup>1984</sup>. We need to analyse this in two contexts. First, the right of the sex workers to practice any

<sup>1979</sup> Unknown, *Socialism in India's Constitution: Dr. B.R. Ambedkar's and Pandit Jawaharlal Nehru's Reflection*, SHODHGANGA,

[https://shodhganga.inflibnet.ac.in/bitstream/10603/256826/9/09\\_chapter%203.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/256826/9/09_chapter%203.pdf).

<sup>1980</sup> Chand Sharma v. State of Rajasthan, (2002) 6 SCC 562, 592: AIR 2002 SC 2877 (India).

<sup>1981</sup> Dipak Kumar Dash, *6.8 lakh Sex Workers in India, Delhi Red-Light Capital*, THE TIMES OF INDIA (Jul. 21, 2010), <https://timesofindia.indiatimes.com/india/6-8-lakh-sex-workers-in-India-Delhi-red-light-capital/articleshow/6193566.cms>.

<sup>1982</sup> Centre for Advocacy on Stigma and Marginalization (CASAM) India, *Status of Women in Sex Work in India*, GLOBAL NETWORK OF SEX WORK PROJECTS (Apr. 01, 2014), [https://www.nswp.org/sites/nswp.org/files/cedaw\\_report\\_india\\_sangram\\_vamp\\_-\\_2014\\_0.pdf](https://www.nswp.org/sites/nswp.org/files/cedaw_report_india_sangram_vamp_-_2014_0.pdf).

<sup>1983</sup> TashiDelek Gaming Solutions Ltd. v. State of Karnataka, (2006) 1 SCC 442 (India).

<sup>1984</sup> INDIA CONST. art. 19, cl. 1(g).

profession or to choose any employment. Like every other individual the sex workers are also entitled to indulge in any avenues, as per the constitution of India. No doubt, majority of them choose this profession only for the living and to abject poverty from their life, no one enters in this by choice. Secondly, apart from sex workers another effected class is the 'Brothel' like in article 19 you can also practice any trade in India and India there are approx. 275,000 brothels as cited by different non-governmental organizations<sup>1985</sup> and their fundamental right is also affected in the absence of proper regulation.

Like every fundamental right, even in this there are certain restrictions on which the State can prohibit the trade or occupation, if they come under the part of the restrictions as mentioned in article 19(2) of the Constitution of India. It was always alleged by few that Prostitution comes under the reasonable restriction of 'Decency' or 'Morality', but in reality, they both concepts cannot apply on this in toto. The word morality is nowhere defined in the act but in judicial precedents it means constitutional morality, which means the principle on which the constitution is based i.e., 'democracy', 'liberty', 'equality', 'rule of law' etc. while interpreting constitutional morality, the Apex Court always take a progressive and proactive approach<sup>1986</sup>. In the battle of public morality and constitutional morality, it was always the Constitutional morality have an overriding effect<sup>1987</sup>. In a democratic country like India every occupation or trade is respected and the concept of morality helps in the progress of the fundamental rights, rule of law and doesn't barred the prostitution in India. Another restriction that can be debated upon is 'Decency'. The concept decency is explained in the case of *Ranjit Udeshi v. State of Maharashtra*<sup>1988</sup> which can deprave or corrupt those whose minds are open to such immoral influences.<sup>1989</sup> Complete legalisation or regulation of prostitution doesn't mean that anyone can use any public place for this or there will be advertisements on the road

<sup>1985</sup> Jeff Hays, *Prostitution in India*, FACTS AND DETAILS (Jun. 2015), [http://factsanddetails.com/india/People\\_and\\_Life/sub7\\_3h/entry-4190.html](http://factsanddetails.com/india/People_and_Life/sub7_3h/entry-4190.html).

<sup>1986</sup> Navtej Singh Johar v Union of India, AIR 2018 SC 4321 (India).

<sup>1987</sup> Shelal Lodhi Rajput, Constitutional Law: Doctrine of Constitutional Morality, LEXLIFE INDIA (May 14, 2020), <https://lexlife.in/2020/05/14/constitutional-law-doctrine-of-constitutional-morality/#:~:text=The%20constitutional%20morality%20is%20not,the%20ethos%20of%20constitutional%20democracy.>

<sup>1988</sup> AIR 1965 SC 881 (India).

<sup>1989</sup> PSA PILLAI, THE CRIMINAL LAW (13<sup>th</sup> ed. 2017).

for prostitution, no doubts that there will be certain restrictions of public places etc. but that restrictions must be reasonable in nature and if the restrictions are not reasonable and arbitrary in nature, it violates article 19 of the constitution of India. Also, putting arbitrary restrictions by government is violative of article 14 of the Constitution of India as the Apex Court in plethora of cases clearly stated that “equality is antithetic to arbitrariness”.<sup>1990</sup>

The question here is if prostitute can practice any profession and brothel can conduct their trade, then whether this is not the government duty to regulate them. The registered ‘Brothel’ means there will be no exploitation of the sex workers, sex slavery will be reduced, the ‘Brothel’ is accountable to ensure all the safety measures, this will also increase the transparency in the entire sex industry. Regulation will also drastically decrease the sex trafficking of Minors in India, because all the brothels need to give the details of all the sex workers working in their brothels.

- The amplitude of article 21 is very wide and lots of rights comes under the ambit of article 21 and we will discuss all those rights which justify that there is a urgent need to enact a law to regulate the sex industry to fulfil the constitutional obligations<sup>1991</sup>.

‘Right to personal liberty’, like every other individual, the sex workers also have the right of the personal liberty but in reality, in India many sex workers are working as sex slave and exploited on daily basis. As per the Global Slavery Index around 40 percent of the enslaved people for sex industry throughout the world are in India<sup>1992</sup>. This raises a question that whether the sex industry workers can really exercise their right of liberty, the answer is no. The life of slaves is almost equal as hell basically a small room with only a bed with windows always locked, no passage for sunlight, living the entire life in the room<sup>1993</sup>. Article 21 also applied to the non-citizen of India, so sex workers abducted from different parts of the world is also entitled for right to personal liberty as mentioned in article 21 of the Constitution of India.

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<sup>1990</sup> E.P. Royappa v State of Tamil Nadu, 1974 AIR 555: 1974 SCR (2) 348 (India).

<sup>1991</sup> Rishav Sharma & Ujjwal Kumar Singh, *Whether Prostitution shall be legalized and regularized in furtherance of article 14, 19 and 21 of the Constitution of India*, 5 IJRAR 563-566 (2018).

<sup>1992</sup> Mandakini Gahlot, *there are more modern-day slaves living in India than anywhere else on Earth*, THE WORLD, <https://www.pri.org/stories/there-are-more-modern-day-slaves-living-india-anywhere-else-earth>.

<sup>1993</sup> Joe C. Moreno, *My 25 years as a Prostitute*, BBC NEWS (Jun. 30, 2015), <https://www.bbc.com/news/magazine-33113238>.

One of the important facets of article 21 is 'right to health and medical care'. Life of sex workers are full of illness, anxiety, trauma, depression but instead of that there is no provisions of routine check-up or any assistance to these sex workers. Most important, they are vulnerable to HIV AIDS because of the unprotected sex and as per different reports they are 13 times more vulnerable as compared to the general population and 9 percent of total HIV positive patient in the world are sex workers<sup>1994</sup>. Despite of these alarmingly data the awareness is very low among the sex workers and if few sex workers are aware of this, but they didn't have the negotiating powers to tell his customer to use condoms. Here, we required that laws on prostitution must include the provision like routine check-ups, mandatory use of condoms etc. so they can protect themselves for deadly disease and also not become the hotspot of HIV infection.

Article 21 also includes 'freedom from police atrocities'<sup>1995</sup>, in many of the report it was alleged by many sex workers that they are subject to police atrocities when they raise questions on their unlawful arrest. Even in many cases they are subject to unlawful arrest and subject to cruel or inhumane treatment<sup>1996</sup> which is also violative of the guidelines given by Apex Court in the case of *D.K Basu v. State of West Bengal*<sup>1997</sup>. This also justify that how important is proper regulation to safeguards the rights of sex workers from unlawful arrest and cruel or inhumane treatment.

The ambit of article 21 also includes 'right to claim compensation' as propounded by the Apex Court in the case of *Chairman, Railway Board v Chandrima Das*<sup>1998</sup> in which a gang raped victim was given the compensation under article 21 of the Constitution. Same, in the context of prostitution in which they are also subject to rape majority of the times and after their rescue they need certain monetary compensation to start their livelihood again and bring the life back on the track like other individuals.

- Article 21A of the Constitution of India doesn't directly apply on the sex workers but on the second generation of these sex workers, like in these sex industry this is a

<sup>1994</sup> Unknown, *Sex Workers, HIV and AIDS*, AVERT (Oct. 10, 2019), <https://www.avert.org/professionals/hiv-social-issues/key-affected-populations/sex-workers>.

<sup>1995</sup> Prem Shankar v Delhi Administration, AIR 1980 SC 1535 (India).

<sup>1996</sup> Joint Stakeholders Submission, Violations Faced by Sex Workers in India, U.P.R. (2016).

<sup>1997</sup> AIR 1997 SC 610 (India).

<sup>1998</sup> AIR 2000 SC 998 (India).

common trend that prostitute give birth to their child because of the unprotected sex and as she cannot go out of the brothel, she lives with her child in the brothel and in case of girls, they automatically joins the same occupation as sex workers. This trends violates their fundamental right of education and not only this the introduction of this second generation will automatically increase the number of prostitutions in India. The Supreme Court in *Avinash Mehrotra v Union of India*<sup>1999</sup> emphasized that why education is a fundamental right and how it help to build the future society more aware and more democratic<sup>2000</sup>. This is also one of the ground that justify that the regulation of prostitution also includes provision for the safeguard of the second generation of these sex workers.

### Labour Rights of the Prostitutes

There are two groups of the prostitutes, one who work independently and the other who work in brothels. In the brothels there is an employee-employer relationship between the prostitute and the manager of the brothel. As in the brothels the sex workers are not allowed to take money directly from the customer, the customer pay the amount to the manager of the brothel and the brothel give their sex workers a very nominal amount not even fifty percent of what they received from the customer. As nothing regulates the transaction in prostitution, this gives a chance to the brothel to economically exploit their sex workers. The laws like 'Minimum Wages Act, 1948 that applies certain type of employments but doesn't have any application on sex industry<sup>2001</sup>. This means that if you are not giving the sex workers even the minimum wages to spend their livelihood, then this is just an example of the modern-day slavery. In *Unni Krishnan vs. State of A.P*<sup>2002</sup>, the Apex Court stated that every worker is entitled for 'medical aid' under the 'Right to health' that includes lots of facilities like health insurance, medical care etc. but in India a prostitute is not considered as workers because the law doesn't recognize such concept, because of this the sex workers cannot avail these benefits. Apart from this many statute govern different aspects of labour rights like proper working condition, safety measures etc. but as these laws are not applicable to them directly.

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<sup>1999</sup> (2009) 6 SCC 398 (India).

<sup>2000</sup> Advocates for International Development, *Case Law Summary for Avinash Mehrotra v Union of India, RIGHT TO EDUCATION PROJECT* (Jan. 07, 2017), [https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE\\_Avinash\\_Mehrotra\\_v\\_Union\\_of\\_India\\_%26\\_Other\\_2017\\_En\\_0.pdf](https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Avinash_Mehrotra_v_Union_of_India_%26_Other_2017_En_0.pdf).

<sup>2001</sup> Unknown, *Brief Notes on Minimum Wages, DEPARTMENT OF LABOUR GOVERNMENT OF TELANGANA*, [https://labour.telangana.gov.in/content/minimumWages/Brief\\_Note\\_on\\_Minimum\\_Wages.pdf](https://labour.telangana.gov.in/content/minimumWages/Brief_Note_on_Minimum_Wages.pdf)

<sup>2002</sup> (1993) 1 SCC 645: AIR 1993 SC 2178 (India).

Also, not giving them the proper safeguards under different labour laws is also violative of article 14 of the Constitution of India because apart from the prostitutes all other workers get the benefit of these labour laws but not them which means the laws is discriminating between both of them. This is why a proper regulation is required which must safeguards their labour rights as well.

### **The Benefit of Taxation**

One of the objectives of the taxation is the economic development<sup>2003</sup> and taxation is the need of the hour in this sex industry. The two major argument in support of this. First, as we know in India there are almost more than 8 billion sex workers operating and thousands of brothels. If in case if we regulate the industry with a high tax then the government is able to collect a huge revenue. Second, now the same revenue can be used for the sex workers for the medical assistance, pension schemes and other assistance. In 2009, few sex workers pay around 15 thousand in taxes, on interest on their deposits in the cooperative bank<sup>2004</sup>, so this model can be adopted by the government in which their own money can be used for their benefits, but this is only possible when the government regulate the prostitution by enacting a law for the benefits.

### **Supreme Court on Prostitution**

A panel established by Supreme Court in 2011 recommended that sex worker must be given legal recognition in India, though in the report Court clearly stated that the panel is not supporting the flesh trade but only focusing on the welfare of the prostitutes<sup>2005</sup>. The report stated that the reason behind the inhumane condition of the sex workers is their lack of legal status as for the sex workers, it is difficult for them to even get their identity cards<sup>2006</sup>. Without identification cards they cannot get the benefits as provided by the local authorities of free medical check-ups, rations and admission of their children in government schools.

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<sup>2003</sup> Ritika Muley, *Taxation Objectives*, ECONOMIC DISCUSSION, <https://www.economicdiscussion.net/government/taxation/taxation-objectives-top-6-objectives-of-taxation-discussed/17450#:~:text=The%20primary%20purpose%20of%20taxation,must%20be%20financed%20by%20taxation.&text=Truly%20speaking%2C%20in%20the%20modern,an%20instrument%20of%20economic%20policy>.

<sup>2004</sup> Aditya Ghosh, *Sex Worker Pay Tax via Unique Savings Schemes*, HINDUSTAN TIMES (Feb. 05, 2009), <https://www.hindustantimes.com/india/sex-worker-pay-tax-via-unique-savings-scheme/story-49S4K7FC4WGtmnc icg4s2J.html>.

<sup>2005</sup> HT Correspondent, *SC: No Support to flesh trade, want welfare of prostitutes*, HINDUSTAN TIMES (Jul. 26, 2012), <https://www.hindustantimes.com/delhi/sc-no-support-to-flesh-trade-want-welfare-of-prostitutes/story-SKc5e S562dMswNjpnqQCVJ.html>.

<sup>2006</sup> Amrita Madhukalya, *Give Legal Recognition to Sex Workers: Supreme Court Panel*, DNA INDIA (Nov. 09, 2016), <https://www.dnaindia.com/india/report-give-legal-recognition-to-sex-workers-supreme-court-2271497>

The panel also stressed on the rehabilitation schemes of the prostitutes who wish to leave the sex industry.

The government is under constitutional obligation to take affirmative action and this can only be done by passing the legislation on prostitution which will safeguards their constitutional as well as their labour rights.

## PROVISIONS IN OTHER COUNTRIES

### Germany

Germany legalised the prostitution in 2002 and the sex industry worth is 15 billion euros a year.<sup>2007</sup> The German society belief that legalisation of prostitution will decrease the criminal sex act such as rape, adultery etc. As per the law only the registered prostitutes are allowed to work and stay in Frauenhäuser (Women's house) and the register with police which also ensure their routine health check-ups. The regulation also includes that prostitutes are able to obtain contracts, liable to pay taxes and all the employment & health insurance benefits<sup>2008</sup>. They also have a right to work under the supervision of pimp and Hell's angles. One of the main contentions of the government to legalised and regulate this is this step will eliminate human trafficking.

### Netherlands

The legalisation of prostitution in Netherlands was in 2000. According to the 'World Values Survey' (1999) in Netherlands almost 78 percent people considered prostitution as 'acceptable job' and belief that there is no coercion involved in prostitution. This means that law on Netherlands is entirely based on the public opinion. The law in Netherlands prima facie unban the previous ban on the involvement of the third-party which means initially, in Netherlands running a brothels or escort agency was not allowed but after the legalization, the scenario changed. The main objective of the legalisation is the empowerment of the sex workers and to ensure social & economic justice. The law emphasized on the well-structured plan which includes mandatory licensing of the sex businesses. These registrations help in maintaining the accountability and prohibit trafficking & sex slavery. If the authorities find any type of coercion, or deception in recruitment or the working condition is not up to the standards then there will be criminal liability. Also, recruitment, employing or buying a

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<sup>2007</sup> Joel Gunter & Ben Clissitt, *Welcome to Paradise*, TELEGRAPH MEDIA GROUP LIMITED (2013), <https://s.telegraph.co.uk/graphics/projects/welcome-to-paradise/>.

<sup>2008</sup> Dayna Gross, *Want to Know about Germanys Legal Prostitution Industry*, CULTURE TRIP (Oct. 05, 2017), <https://theculturetrip.com/europe/germany/articles/what-to-know-about-germanys-legal-prostitution-industry/>.

minor for sexual services is a criminal offense in Netherlands. In context of labour law, they also recognized prostitution as labour and provide them all the labour and employee rights. The law also differentiates between voluntary prostitution and the forced prostitutions<sup>2009</sup>. They are also entitled for the several medical benefits and routine check-ups.

### **New Zealand**

New Zealand legalized the prostitution in 2003 and one of the liberal prostitution laws in the world. The main objective behind the law is to safeguard the human rights of the sex workers and protect the sex workers from exploitation. Even the street solicitation is legal in New Zealand. The law treats them as workers and all the laws on welfare, occupational safety and health of workers are applicable on him. Not only this, the law also mandates to create an environment conducive to public health. Like in other countries, New Zealand also prohibits minor in prostitution. The law also mandates certification system of the brothel in which the applicant need to fulfil certain criteria to be eligible to operate brothel in New Zealand. They law also supervise 'small owner-operated brothels' which is only having 4 or less than 4 sex workers. The power is also delegated to the territorial authorities to make bylaws on the regulation of commercial sexual services which includes their location of brothels, signage & way of advertising. They also introduced a committee (Prostitution law review committee) to review whether the act is achieving his purpose or not<sup>2010</sup>.

### **Germany**

The prostitution was legalised in Germany in 1927. One of the main reasons to legalise is to eliminate the stigma attached to the profession and prohibit the exploitation of the sex workers. In Germany, the brothels are managed by the State itself. They are treated as workers and given all the benefits like health insurance. Like other workers sex workers are also entitled for equal rights and routine health check-ups. The law also ensures the social benefits must be given to all like pension. The law also mandates them to pay taxes. Like other state even in Germany, entry of minor is completely prohibited<sup>2011</sup>.

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<sup>2009</sup> Ronald Weitzer, *Legal Prostitution: The German and Dutch Models*, RESEARCH GATE (Nov. 19, 2017), [https://www.researchgate.net/publication/321065863\\_Legal\\_Prostitution\\_The\\_German\\_and\\_Dutch\\_Models](https://www.researchgate.net/publication/321065863_Legal_Prostitution_The_German_and_Dutch_Models).

<sup>2010</sup> Parliamentary Library, *Prostitution Law Reform in New Zealand*, NEW ZEALAND PARLIAMENT (Oct. 10, 2012), <https://www.parliament.nz/mi/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-ne-w-zealand/>.

<sup>2011</sup> Unknown, *Prostitution Law in Germany: Regulation for Taxation*, NORDIC MODEL NOW (Jan. 13, 2019), <https://nordicmodelnow.org/2019/01/13/prostitution-law-in-germany-regulation-for-taxation/>.

Other countries like Australia, Austria, Belgium, Brazil, Canada, Denmark, Ecuador, France, Greece, Indonesia etc. also legalised prostitution in their countries with few reasonable restrictions as per their domestic laws<sup>2012</sup>.

## Proposed Regulations

Legalization of prostitution doesn't only need a formal statement by the government but required a law that safeguard the interest of the sex workers. The law must cover these things;

- ❖ The law must be gender neutral and not inclined to a specific gender.
- ❖ The government with help of local authorities first do zoning of the area and specify those zones in which prostitution is legal and marked those zones in which there are public buildings like school, temples, hospitals etc. where prostitution is illegal. The zoning will avoid the doubt and reduce the conflict in future.
- ❖ The brothel must need a registration with local authorities and the in registration they need to give all the details as how many sex workers are there, there full details including their age, this ensure the accountability and reduce the human trafficking a lot.
- ❖ The brothel also needs to inform about any update like new recruitment, old retirement etc.
- ❖ The law also respects their labour rights and treat them as workers and ensure applicability of all required labour laws like medical benefits, occupational safety, laws on welfare etc.
- ❖ Apart from this the employee rights also need to respected and right to enforce the contracts if any made between them and brothel before joining.
- ❖ Provide them with identity cards and routine check-ups in government hospital also need to be done. The identity card also helps them to use the benefit of ration cards.
- ❖ Awareness on HIV AIDS & mandatory use of condoms by local authorities and routine test of HIV, so it doesn't become the hotspot of HIV infection.
- ❖ Appointment of supervisor under the law to check whether proper working atmosphere is in the brothel or not.

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<sup>2012</sup> Rohit Bhattacharya, *15 Countries around the World That Have Legalized Prostitution*, SCOOPWHOOP <https://www.scoopwhoop.com/inothernews/countries-with-legal-prostitution/>.

- ❖ To ensure basic constitutional obligations is fulfilled i.e., food, shelter and clothing that comes under the ambit of right to livelihood as mentioned in article 21 of the Constitution of India.
- ❖ The law must mandate the brothels to pay taxes and the individual sex workers if working alone as well and the same fund will be used on their medical benefits and awareness scheme.
- ❖ Slavery and forceful or recruitment under coercion must be punished and harshly penalised like cancellation of registration as well as imprisonment.
- ❖ There must be a toll-free number which is active 24 x 7 for sex workers in case they need any assistance like rescue in emergency or to complaint against the brothel or the client.
- ❖ A committee to review 'the immoral traffic (prevention) act, 1956 & 'Indian penal code, 1860' on laws related to prostitution as few laws are not gender neutral and most important the rehabilitation plan need review.
- ❖ Punishment for the police personnel in case of atrocities, unlawful arrest or inhumane treatment.
- ❖ No discrimination policy needs to be adopted in which all the private company and other private organisations must give fair and equal chance to the former sex workers during their recruitment.
- ❖ The right of compensation of the sex workers must also need to include.
- ❖ Admission of their children in government school and isolate them in government shelter house if required.
- ❖ A committee to check that whether the law is achieving his purpose or not and recommend changes every 3 years (almost three times).
- ❖ These laws will be of no use, if the government doesn't start the awareness programmes to eliminate the stigma attached to the profession.

## CONCLUSION

One of the oldest professions in the world as well as in India is prostitution. But, even in this modern society they are treated as garbage, tortured, humiliated daily. In this society where even sex is a taboo, imagine the situation of sex workers. For every other individuals Constitution is a sacred document but for them constitution is of no use because if they

cannot access to justice, how will they ensure their rights. Though, we have few laws but they only criminalized different aspects but doesn't regulate prostitution. In a democratic country like India, they don't have any constitutional rights, they work as labour but doesn't have any labour rights, they are the employee of the brothel but doesn't have any employee right. Leave right they didn't have identity as because of the stigma attached to the profession and very minimal support from the local authorities, it is very difficult for them to make their identification cards. The society and the government must need to understand that they are not doing this as hobby but to eradicate poverty and fulfil their basic necessities of food, shelter and clothing. In plethora of case the Supreme Court also stated that dignity is also a basic necessity like food, shelter & clothing, but in reality, majority of the sex workers dream to live a life full of dignity. Freedom, liberty is totally myth in their life, their life is equivalent to hell. There is an urgent need that a law must need to pass which not only safeguards their rights but also eliminate stigma from the society.

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