



## “Prostitution”- A Case for Legalisation in India

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### Abstract

*Prostitution which is nothing but sex trade is a common phenomenon in India though we the members of civilised society don't hesitate to deny the legal existence of this trade; in fact most of us are not ready to give it a legal status. Though in various cases the Hon'ble Supreme Court of India has expressed the view that this profession should be legalised in India. Today our country's biggest concern is enormous increase in the number of incidents of rape and legalising prostitution would be one step forward towards combating rape. Apart from this legalising prostitution would also be helpful in reducing the number of cases of child trafficking. The Universal Declaration of Human Rights, 1948 states that "All men are born free and are equally entitled to have their basic human rights." Denying legal recognition to this profession means denying the basic human rights of the prostitutes. Giving legal recognition to prostitution would enable the prostitutes to make some contribution towards the development of the nation as they would have legal protection; their children can get education and would be entitled to participate in the main stream of the society. Recognising prostitution as a profession will at least reduce the real illegalities that come with it like child prostitution, drug trafficking and other crimes.*

### Introduction

There has been a demand of several sections of the society that unless we legalise prostitution, rapes and sexual harassment of women cannot be stopped. Legalising prostitution is the best deterrent to rapes. Legalizing prostitution has drawn support from the National Commission for Women and prominent women activists. What is the attitude of the world's largest democracy to the world's oldest profession? National Commission for Women chairperson Lalitha Kumaramangalam has said she is strongly in favour of legalizing prostitution. She said it would lead to "easier control of the situation in which paid sex takes place." It would lead to better working conditions for sex workers as well as protect their health. She also said that while she was all for legalizing the profession, she didn't

think it would have any bearing on incidents of rape.

Kumaramangalam's view got support from former National Commission for Women chief Mamata Sharma. Abha Singh, prominent activist and lawyer, went further and said that incidents of rape in Mumbai are less because of the presence of 'several red light areas' in the city, which provide an outlet to millions of migrant workers, whose needs cannot be denied.

There might be substance to this argument. With the closure of brothels in 1959, Queensland, in Australia, experienced a 149% increase in incidents of rape.

Sex workers are the most marginalized members of society. They need protection and help. Legalising the profession has multiple benefits.

### Pros of Legalisation

Anyone who has worked with sex workers will tell you that they are normal people, with normal needs. They want bank accounts and schools for their children. They are exploited by pimps, abusive clients and, of course, the police. They have nowhere to turn to because what they do is illegal, and considered morally reprehensible by the same society which uses them.

Legalising prostitution would mean that pimps and brothel owners would be held accountable for the treatment of sex workers, and that abused sex workers would have the option of turning to the law for protection.

Legalising prostitution will protect minors. Around ten million children worldwide are estimated to be in the profession. Legalising and regulating this profession will ensure that only willing, consenting adults are employed, not trafficked children.

There are enormous health benefits of Legalisation. Legalisation will reduce the transmission of sexually transmitted diseases. In the brothels of strict Singapore, every customer is provided with condoms as well as the facility to shower before and after the 'session'. Legalisation may also ensure that the prostitutes are also required to maintain health cards. Countries like Sweden and Norway have driven prostitutes off the streets with new laws.

Legalisation would also translate into better work conditions and better wages for workers. Pimps and middlemen will gradually be eliminated. The job of the police will be to protect rather than extract 'protection money' from sex workers. The police can also then spend its time and resources tackling more serious issues than people having paid sex. In countries like the Netherlands, prostitutes have been brought under the tax net. They pay their taxes like any other working citizen.

In India, prostitution is estimated to be an 8.4 billion dollar industry. Taxing it would also enable the government to channel money back

into the profession, thus enabling it to protect the rights of sex workers better.

The Supreme Court of India in December, 2009 has asked the government that if you are not able to curb prostitution by laws then legalise it. The Apex Court further added that legalising prostitution would help monitoring the trade and rehabilitate the sex workers.

Prostitution has been legalized in the Netherlands, New Zealand, Germany, Iceland, Switzerland, Austria, Denmark, Greece, Turkey, Senegal, Venezuela, the state of Nevada in the U.S., and several Australian states (Victoria, Queensland, ACT and Northern Territory).

It is something we (India) too should give serious thought to. Sex workers need to empower themselves and fight for their rights.

The Sonagachi project, run by Dr Smarjit Jana, designated a 'best practice project' by the WHO, is one way of doing it. He organized the workers like a labour collective. He lobbied with pimps, the police and government. Now the sex workers have access to literacy classes, technical training for jobs, schools and loan facilities and day care centres. In other words, they finally have a life.

### Corns of Legislation

As it is said that every coin has two sides legislation too has some shortcomings. Legalising prostitution would benefit the pimps and the facilitators not the victims. In India, where women are coerced into the trade and kept in it almost like bonded labourers, such a move will not benefit them. Commercial sexual exploitation is a form of slavery and slavery cannot be legalised. India should not compare itself with other western countries where prostitution enjoys legal status because our social customs are more unlike those of west. Since abortion is illegal in India there is no question of legalising prostitution. So, giving legal status to prostitution means society is giving approval to flash trade. Some critics say that prostitution wrecks personality and affects family relationship. Prostitution affects family life,

communicates diseases and brings social disorganisation.

### **Indian Law on Prostitution; an overview**

A person above the age of 18 years, selling his/her body for sex against money or kind to another person of the opposite sex (the uncertainty on IPC Section-377 is temporarily over, with the Supreme court upholding it.) in his/her private premises (a privately-owned premise is not necessarily private), 200 meters away from a place of religious worship, a hospital, an educational institution or any place notified by the government is not a crime under any Indian laws including The Indian Penal Code-1860 or The Immoral Traffic Prevention Act- 1956. The Indian law bans the acts of trafficking, procuring, detaining, pimping, lending a premise for carrying on prostitution for running a brothel. Soliciting in public places for prostitution is punishable (Sec-8) but a woman arrested under Sec-7 or Sec-8 is not to be punished but to be given a chance of rehabilitation at the state's cost (Sec-10).

In short, the Indian law aims to punish the exploiters like madams, pimps, traffickers, customers, and other partners aiding the exploitative sex trade but not the prostitute woman. By legalising the trade, would the state decriminalise the offences of trafficking, procuring and detaining girls and young women, brothel-keeping or pimping? If the offence of soliciting in public is scrapped from the law book, then there will be pimps and madams approaching young boys and girls right outside the gates of schools and colleges, luring them with money, expensive electronic gadgets or foreign tours to join the sex trade. Parents and teachers will helplessly witness this as they will be arrested for not allowing the pimp to carry out their legal business. Should this legal position be rejected?

If the government wishes to serve the victims of prostitution, what stops it from doing what the small civil society organisations have done best? Aren't these women the citizens of this country? Haven't the High Courts and the Supreme Court

from time to time upheld the prostituted women's constitutional legal and human rights? The origins of the women's emancipation movement are aptly attributed to the struggle of Josephine Butler against the draconian British law 'Dangerous Diseases Act 1865' which was the main expression of legalisation. It caused public outcry in Britain and its colonies between 1865 and 1885 when it was finally repealed as it was seen as an anti-women instrument leading to excessive power abuse by the health officials and police. An indispensable component of legalisation is compulsory periodic medical testing (CPMT) justified curbing sexually transmitted infections. Clinically speaking, initial tests for a person with such an infection may turn out to be negative, if his infection is fresh. This is because of the window period. So a person holding a certificate of negativity could still spread the infection. The CPMT creates a false sense of security in the client who throws caution to the wind and indulges in unsafe sex. STIs/HIV infections actually increase under legalisation.

### **The World Charter for Prostitutes' Rights**

It is a declaration of rights adopted in 1985 to protect the rights of prostitutes worldwide. The distinction between voluntary and forced prostitution was developed by the prostitutes' rights movement in response to feminists and others who saw all prostitution as abusive. The World Charter for Prostitutes' Rights calls for the decriminalisation of "all aspects of adult prostitution resulting from individual decisions. The World Charter also states that prostitutes should be guaranteed "all human rights and civil liberties," including the freedom of speech, travel, immigration, work, marriage, and motherhood, and the right to unemployment insurance, health insurance and housing. Furthermore the World Charter calls for protection of "work standards," including the abolition of laws which impose any systematic zoning of prostitution, and calls for prostitutes having the freedom to choose their place of work and

residence, and to "provide their services under the conditions that are absolutely determined by themselves and no one else." The World Charter also calls for prostitutes to pay regular taxes "on the same basis as other independent contractors and employees," and to receive the same benefits.

### **Police raid at brothel**

Under legalisation, would the state issue licenses to the children (currently > 40% of the victims), the HIV positive victims (> 50% of the victims), the illegal migrants and trafficked aliens, mostly the Bangladeshis? If not, where will they all go if not underground? If the government wants to rehabilitate them, then who has stopped the government from doing so right away? Everyone in the country except the daroga (the police) knows where to find these women. In countries that have legalised the sex trade, two layers of prostitution have emerged - a very thin slice of registered legal activities and a huge chunk of illegal activities where women become more vulnerable and suffer extreme exploitation as they are forced to go underground.

Men's confidence in assaulting any woman goes up when they experience that buying the sexuality of some women is legally supported and risk-free. All they need to do is create vulnerabilities and keep the money ready. If in spite of the law, millions are getting trafficked and over 40 million are currently living the life of sex slaves, why would the crime go down with liberalisation of the law? It is like saying no one will fail if the exams are scrapped.

As legalisation will mean keeping many registers, filing returns, paying taxes and greasing 10 more palms, the sex traders have rejected legalisation. Only the pharmaceuticals and government health officials still demand legalisation, even after knowing its futility.

### **Prostitutes in India**

Officials say India has over 3 millions sex workers. It is unclear how many, like Sumana and Bina, opt for the business because they need the

money, and how many are forced by others. Bharati Dey, president of the All India Network of Sex Workers, argues that prostitution is a matter of choice, and that sex workers should have rights like anyone else. The industry has grown as women, notably ill-educated rural migrants, enter India's labour market in larger numbers. Most find low-paid or casual work; for a minority, selling sex is a relatively well-paid option.

Ms Dey and other groups want the sex trade brought out of the shadows. In April the UN's special reporter on violence against women said ending India's de facto criminalisation of sex workers would make them less vulnerable. Five years ago the Supreme Court said prostitution should be legalised. So, now, does the National Commission for Women, a federal body, changing its previous stance. Its head, Lalitha Kumaramangalam, argues that a regulated industry could better stop forcible trafficking, including of children, improve hygiene among workers and clients and limit the spread of HIV and other diseases. On November 8th she will make the case before a special panel of the Supreme Court looking at amending the law.

Openness and regulation bring benefits. Mayank Austen Soofi, who has written in depth about the brothels of G.B. Road, a sprawling red-light district in Delhi dating back to the Mughal era, says that every sex worker he knows wants to be legal. Prostitutes today hesitate to approach doctors. They dread police harassment. And they fear their landlords will expel them.

A priority should be ending forced prostitution, especially of children. Apne Aap, an anti-trafficking group, says brokers pay as little as 4,000 rupees to the families of village girls who are then raped by customers. Raids of brothels by NGOs and police to rescue victims often fail because families later return the children to the same brokers. In other cases girls and young women are tricked with promises of marriage. Apne Aap claims that over one third of all sex workers are less than 18 years of age.

## Conclusion

Closeting the flourishing profession of prostitution as a morality issue not only amounts to ignoring the commercial exploitation of sex workers who feed on the income they generate, but the larger issue of AIDS. What is required is a practical approach. By according legitimacy to the sex workers millions of women workers who enter into this trade to feed their families, will be freed from the clutches of pimps, brothel owners and cops on the take. Legalising prostitution will see these women, who live life on the edge everywhere, gaining access to medical facilities, which can control the spread of AIDS. Timely sex education for the sex workers will make them aware of venereal diseases attached with this profession. Employment opportunities for women who have no alternative but to choose this profession, can play wonders. There is a strong need to treat the sex industry as any other industry of this country and empower it with legal safeguards, which would rid this workplace of exploitative and unhealthy practice. The rising number of AIDS cases in India and the number of innocents being forced to this flash trade is alarming. The time has come for the lawmakers to take this issue more seriously. Legislation is the answer.

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