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PROSTITUTION: RECOGNITION AS A PROFESSION IN INDIA

Introduction

We live in a dynamic society as a result it is reasonable to expect changes in some old beliefs which are not relevant enough. Currently, the literacy rate in India is higher than the past and people are getting more and more modern day by day. But still we are unable to accept some facts and things prevailing in the society and one such thing is the prostitution or what it is called as sex work. Prostitution as mentioned in the Immoral Traffic (Prevention) Act, 1956 means the sexual exploitation or abuse of persons for commercial purposes. It is regarded as the earliest profession in the world. In India prostitution is disapproved by the people and something to be ashamed of. The people who step into this profession do it because either they are not educated enough or they do not have any skill to work and earn the means of livelihood. There are lakhs of women and even men in India who choose this profession because they are compelled to do so.¹

Historical Background

In India, prostitution has long been a common occupation. There are references to prostitutes in a number of Hindu mythological tales known as apsaras. Before the arrival of the British, Hindus used the devdasi system, in which they would give away their female child to the gods as a symbol of their devotion. Literally translated, "devdasi" means "devoted to the god," signifying that they were wed to the god and exempt from having to wed human beings.

¹Roshni S, Prostitution in India and its Legality, PRIME LEGAL (Feb. 21, 2024, 6:03 PM), <https://primelegal.in/2023/03/06/prostitution-in-india-and-its-legality/#:~:text=Prostitution%20as%20mentioned%20in%20the,a%20brothel%20is%20not%20legal.>

These were sexually liberated ladies who were talented in music and classical dance, among other artistic mediums. But colonization also brought with it an oppressive and exploitative structure. The British began to impose their own social constraints on these women, transforming the concepts of femininity, sexual liberation, art, and culture into concepts of devotion, bhakti, etc. Additionally, with the declination in colonialism and feudalism, these women began to be mistreated by temple priests. Consequently, they become more susceptible to poverty and sexual exploitation. This is among the most traditional forms of prostitution that exist in India.²

Causes of the Prostitution

There are several reasons which force and compel the women in India to indulge in the profession of prostitution and two of the main reason are unemployment and poverty because they do not have sufficient means to sustain there lives in a dignified manner. The fraudulent middlemen induce the innocent women of the rural area about providing the good job to them but then sells them as sex workers. Poverty is the primary factor pushing desperate and defenseless women toward prostitution. It is widely acknowledged that poverty is the primary factor responsible for driving people into prostitution out of all the factors that contribute to prostitution.

Many people, particularly the younger generation, have been compelled by the rising rate of poverty to relocate to urban areas, where many view prostitutions as a quick and easy way to meet their own and their families' needs. The process of urbanization has led to a major shift in how our reality is structured. Free enterprise has grown as a result of urbanization, leading to a rise in class division and an increase in the prevalence of poverty, unemployment, crime, and alienation. Prostitution has become more widespread as a result of this circumstance, especially among women who are trying to adjust to the harsh realities of the economy.

6% or so of the women became prostitutes after being raped. Furthermore, the society holds the victim responsible for getting raped and also attaches stigma to her. In certain instances, they have faced rejection not only from society but also from members of their own family. In addition to the postponement or denial of justice, the victims occasionally face comparable

² Yashi Verma, Legalization of Prostitution In India, LEGAL SERVICE INDIA (Feb. 21, 2024, 6:31 PM), <https://www.legalserviceindia.com/legal/article-3392-legalization-of-prostitution-in-india.html>

circumstances. And when these victims do not find shelter elsewhere in society, they eventually end up as prostitutes. In addition to the previously listed causes, there are a number of other variables that influence women to become prostitutes.

Is prostitution legal in India?

The paradoxical answer to this question is both "Yes" and "No." According to the Indian context, prostitution is not expressly forbidden by law, although certain related activities, like operating brothels, soliciting, trafficking, and pimping, are punishable offenses in India under THE IMMORAL TRAFFIC (PREVENTION) ACT, (1956). Although this Act does not forbid or punish prostitution or sex workers, it does make certain related behaviors illegal. The third parties involved in prostitution are punished which as a result makes it difficult for sex workers to engage in this profession freely. Since it intentionally makes it harder for sex workers to practice their job without worrying about being discovered, this Act violates the article 14 and 19 of the Indian Constitution.³

Landmark Judgements

Supreme Court of India, Gaurav Jain v. Union of India and others

The Court ruled that the children of sex workers are entitled to dignity, equality of opportunity, care, protection, and rehabilitation as well as the ability to integrate into society without experiencing any form of "pre-stigma."

Budhadev Karmaskar v. West Bengal State

The rights of sex workers are now protected thanks to this landmark decision. This instance highlights the social stigma associated with sex workers as well as their vulnerability. The ruling maintained the Indian Constitution's Article 21's guarantee of sex workers' right to a dignified

³ Akash Khanna and Rajeshwari Singh, Legal aspects related to prostitution in India, BLOG IPLEADERS, (Feb. 21 2024, 7: 14 PM), https://blog.iplers.in/legal-aspects-related-to-prostitution-in-india/#Causes_of_prostitution

life. Her story brings attention to the predicament of sex workers, who are forced into this profession by poverty rather than because they enjoy it. They nevertheless have the right to a dignified life notwithstanding the societal stigma associated with their occupation.⁴

Supreme Court on Prostitution

The Supreme Court of India has ruled that prostitution is a legitimate profession and has given numerous directives aimed at protecting the rights of prostitutes. Because sex labor is not new in India, this order was both historic and necessary. It is a historically common profession, even though it is dangerous. A three-judge Supreme Court bench made a landmark ruling in 2022 acknowledging sex work as a legitimate industry and stating that sex workers should be treated with respect and afforded equal legal protections. The Supreme Court expounded on the fact that "voluntary" sex work was lawful. It released praiseworthy guidelines along the lines of: no child of a sex worker should be taken away from its mother based solely on the fact that the mother works in the sex trade; the police should treat all sex workers with dignity; and when a sex worker makes a complaint of an offense, the police must take it seriously, act legally and refrain from abusing them and other such positive directions were given by the Supreme Court.⁵

Conclusion

Prostitution though legalized in India still is not acceptable in the society because it is considered as immoral and unethical profession. The execution of the legalization of prostitution is still not witnessed in India despite the judgement of Supreme Court. The rights of the sex workers must be protected through an enacted legislation which clubs all the benefits and different aspects laid down in the different judgements into one Act. The implementation of the same is the urgent need of the hour to provide them safety and protection so that they can lead a normal life with dignity.

⁴Roshni S, Prostitution in India and its Legality, PRIME LEGAL (Feb. 21, 2024, 8:00 PM),

<https://primelegal.in/2023/03/06/prostitution-in-india-and-its-legality/#:~:text=Prostitution%20as%20mentioned%20in%20the.a%20brothel%20is%20not%20legal>

⁵ Anubhati Jain, Supreme Court order on sex work historic, but execution will be the real hurdle, THE PRINT, (Feb. 21, 2024, 8:30 PM), <https://theprint.in/campus-voice/supreme-court-order-on-sex-work-historic-but-execution-will-be-the-real-hurdle/988049/>