

LEGALISATION OF PROSTITUTION VERSUS CHOICE OF WORK FOR DECENT LIVING

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*“You never really understand a person until you consider things from his point of view
until you climb into his skin and walk around”*

– Atticus Finch

Many questions may arise when we say can prostitution be classified as work i.e. a way of employment for someone. Especially when talked in context of Article 19 (1) (g) which states that everyone has a right to practice any profession or carry out any occupation or trade. Its scope is limited by clause (6) of the same section. It does not mean that anything that is considered to be illegal in the eyes of law or any such recruitment for any job can be done by the government. Also, it restricts the state to create any such impartial ease of business for any particular business by means of passing any order. Therefore, fundamental right to carry out any profession is given to the people but for any unlawful act it can't be justified. This is what the Indian Constitution provides, now the question is whether prostitution is unlawful or just immoral from the point of view of the more privileged section of the society. Because for the oppressed and the poor population it is also a means to earn their daily bread.

Now if we look at the Directive principles of state policy i.e. given in Part IV of the Indian Constitution referring to Article 41, it states that the government has to eventually provide everyone who is jobless with a means of employment to at least get a minimum living wage. A securement of full-fledged 'Right to Work' as stated under Article 41 by the framers of constitution¹. Now this is something which is limited by various conditions i.e. one has to see the economic capacity of the country and also the social stability. But these are just guidelines

for the centre, the state and the local bodies to formulate such policies which are socio-economically viable for the people of the country.

If we see Article 19 clause 1 sub-clause g it states that anyone can carry out any profession which is not illegal or supported by an unlawful act, then we have Article 41 which states that government should focus on providing jobs to all for the upliftment of the society and betterment of people. Then we have Article 21 which is a fundamental right that states that everyone has right to life and livelihood. Also, in the case *Olga Tellis v. Bombay Municipal Corporation* 1985 Supreme Court stated that under the ambit of Article 21 right to livelihood will also come. Therefore, read together deprivation of right to work means deprivation of right to life as there will be no means to earn a livelihood. So, if a woman chooses prostitution as her profession in order to pay her rents and liabilities which comes under livelihood then why to question or try to eradicate their means of right to life.

It was stated in *TMA Pai Foundation v. State of Karnataka & Ors.* 2002 that occupation as per the webster's dictionary is defined as an activity in which a person carries out any trade, profession, craft or anything else that provides a means of living. As also Article 19(1)(g) provides a person to carry out any profession, occupation, trade or any such business and it was also stated that each of these have their own content and cannot be read synonymously when some work is to be defined as under right to carry out any job or business.ⁱⁱ

Now it was stated by BBC news that prostitution as a profession is illegal in India but according to the Immoral Traffic Act (Prevention) 1956 nowhere it is mentioned. This act has provisions to regulate sex work by way of making punishable the maintenance of brothels and accost people for the same also stringent punishment for pimps and traffickers. The law states that such practice cannot be done by forming an organisation or a business. Any sex work should not be taken within 200m radius of any public place or hotels. Brothels cannot be established and doing so shall be punishable under the law. Also, the act states that anyone who supports such activity and is a part of establishing it is punishable. Also, an adult above the age of 18 cannot who live on the earnings of a prostitute shall be penalised. So directly the act has not stated this work as illegal but all supporting activities are criminalised by it. Therefore, if a woman wants to be a prostitute in order to earn a living, she has to do it all alone in a secluded area away from public places without any remedy if something goes wrong. This just makes the women more vulnerable and prey to the predators. Eventually being a victim of sexual

abuse, violence, trafficking, illegal brothel owners, pimps etc. they are not even supported by police or law enforcement officials and thus end up facing police brutality as well because of the law that prevails. Also, if a woman chose this profession to work, she must be doing it in order to earn a living which is not just for her but even for her dependants. So, this Act just makes it harder for the sex workers to carry out their right to work.

In 2011 a Panel was set up by the Supreme Court in order to go through the Act and the problems that arose due to it regarding exploitation of sex workers. So, in 2016 they submitted a report with some changes that were made which was a start in order to recognise prostitution as a way of earning,

- (i) Adults those who willingly participated in the activity should not face criminal action or police interference.
- (ii) Section 8 of the Act that made soliciting customers punishable the panel also recommended deleting it.
- (iii) Also, the panel suggested that no action to be taken against the dependants i.e. parents, partner or children who live on her income unless it is proved that they forced her to do so.

After reading these changes some more can be added by making prostitution as a legal profession and whoever consensually gets involved can't be questioned. This will in return help these women to seek remedy openly and once they are protected by law, they will be less vulnerable and can setup their own communities to empower their rights.

Also, award-winning authors Kristof and WuDunn have talked in their book 'Half of the Sky' how this incongruity between a man and women can be changed. They have suggested some solutions like making provisions so that women can take micro-credit, a way to lend money to them so that they can start their own business. Educating them is another key aspect i.e. encouraging education for girls so that they can be empowered and not get compelled to do such work. To the women who are already working as prostitutes' modern plays and dramas depicting women as a powerful character and independent figure can help in same.ⁱⁱⁱ Even making them aware about the need to use contraceptives and maintaining hygiene can help prevent the diseases that may arise due to such business.

In India Sonagachi is the largest Red-light District in all of Asia situated in Kolkata having around 7000 sex workers, some maybe forced some willingly to support their families. Many of them are underage girls, some victim of trafficking and raped and by use of drug forced into this work, others consensually work to pay their bills. But all of them face the same oppression that is sexual abuse, violence, forced sex (rape), unprotected sex as customers are not willing to use contraceptives and they also have to give in or else they won't earn anything. As there are no laws and prostitution are not recognised as a legal profession, they find it hard to get their problems solved and don't know whom to complain. Also, time and again there have been movements with the slogan 'Sex Work is Real Work', the first such national convention was held by DMSC (Durbar Mahila Samanwaya Committee) in 1997 who speaks for their rights against abuse and their right to work but with dignity.

Kamathipura in Mumbai is another well-known red-light area which holds a large number of sex workers. Even the most famous Delhi's Red-light area are various examples of such places which people know about where such activities is going on in India therefore it is much needed to review the immoral Traffick (prevention) Act and make more realistic changes too it.

These were examples of places where already such activities take place in a recognised manner. There are many more places where women have no other option but to work as prostitute because of extreme poverty and they don't have any means to seek help therefore eventually being victim to some kind of abuse or forced sex. A documentary by Brut India showed how women in many districts of Jharkhand and Chhattisgarh work as prostitutes in unhygienic conditions in open areas sometimes behind mines or dunes etc. without protection or even safety measure. Women who work with their own consent also become victim in some or other way as they end up getting punished if they refuse or wrongly used by men or fall in hands of pimp sometimes by being in debt to them. Also the same can be seen in Ahmedabad many prostitutes by the evening stand by the highway looking for customers and then they take them to the open grasslands which shows gross violation of health and hygiene standards and also there's no safety for such women this is just an example from the place where I reside but there are ample of cases across the country. So, for a proper system of this work, that can be regulated so that such women are not misled by anyone the government should take more viable measures that are practical in implementation.

This can be understood by the by examples by various countries, like Amsterdam the biggest red-light district in Europe where such sex work is legal and there are many women who carry out this as a profession and are sufficed with what they earn. Some use it as a means so that they can earn some and from that start their business, some complete their education by what they earn, for many it is a way to for earning daily wages. But by legalising it at least their rights are not ignored. There are people with Nordic approach of thinking and take prostitution in terms of a profession as oppression of women but looking at a more realistic approach the sex market cannot vanish but can be brought under regulation so that such activity does not deprive a woman to work with dignity. This was stated by the BBC news itself that Amsterdam has set an example for being a safe and legal sex place for people for decades now. And whenever government tries to change this, they face large opposition from the sex worker communities. As the Netherlands had legalised it since 1971 and recently in 2019 tried to criminalise it but was hit by a huge movement i.e. the 'I am Priceless' campaign in which hundreds of sex workers participated.^{iv}

Therefore, the government should focus more on that why these women chose this work path i.e. because of extreme poverty, illiteracy, lack of resources and job opportunities and because of their economic and social life. There are women who work in this field as prostitutes willingly just to earn and educate their children so that they don't have to do the same and have a better life. As not everyone has the privilege to live a life with all amenities and access to education and a good lifestyle.

Curbing the crime rate is yet another factor but using a Nordic model (where the male clients are fined to hire prostitutes) in a modern approach is much better for the women and even to keep these clients under check. We talk about the growing crimes against women so let's consider by an analysis that is it really effective to illegalise prostitution to reduce crime rates.

These data will help in better understanding:

	Top 5 Countries with Highest Rape Rate	% per 100,000 people
1	South Africa	132.4
2.	Botswana	92.9

3.	Lesotho	82.7
4.	Swaziland	77.5
5.	Sweden	63.5

(the above data may vary as the data available on sites may not be absolute or differ as per different reports)

Now the fact is that in all these countries Prostitution is made illegal or only allowed in a neo-abolitionism or abolitionism manner.

	Countries where Prostitution is legal	Rape Rate- % per 100,000 people
1.	New Zealand	25.8
2.	Bangladesh	9.82
3.	Canada	1.7
4.	Germany	9.4
5.	Australia	28.6

(the above data may vary as the data available on sites may not be absolute or differ as per different reports)

This table gives us an idea of those countries where prostitution is legal and the crime rate as compared to the first table. So, for the people or government who have an orthodox Method of thinking this is just an illustration of the more realistic purview if we make this as a profession. Not saying it will definitely or completely eradicate crimes against women but an analysis of these table shows how it can be a stepping stone for the same. This is an industry that can't be eradicated but can be regulated.

CONCLUSION

As prostitution has prevailed since the ancient times i.e. even Chanakya had in his Arthashastra described about this. Its market will always be required as long as men are there, so when women are also consenting for the same then the least government can do is legalising prostitution as a profession and make provisions and pass laws on how to regulate it.

Some ways can be, by keeping an age restriction, alone they are more at risk but this way they can be in communities, by giving protection to these sex workers in case clients go out of hand, keeping the onus on the customer to prove any allegation and also inculcating the changes as suggested by the SC Panel in their report. This will empower these sex workers and can prove to be an effective step in order to reduce crime relating to women not completely eradicate but at least they will have means of remedy to resort too.

Thus, the question is-

Why is it immoral to be paid for an act which is perfectly legal when done for free?

- Gloria Allred.

ENDNOTES

ⁱ One can read the B.R. Ambedkar's commentary on framing of constitution to get a better understanding of this Right to work. (https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjMn4yIzcnrAhWa93MBHXExAhUQFjAKegQIARAB&url=http%3A%2F%2F14.139.60.114%3A8080%2Fjspui%2Fbitstream%2F123456789%2F12553%2F1%2F020_Right%2520to%2520Work%2520as%2520Fundamenta1%2520Right_Illusion%2520or%2520Reality%2520%2528269-272%2529.pdf&usg=AOvVaw3sQDarwn3yCmIauP8sudHE)

ⁱⁱ (2002) 8 SCC 481

ⁱⁱⁱ Taken from the book – 'Half the sky – turning oppression into opportunity for women worldwide' by Nicholas D. Kristof and Sheryl WuDunn published on September 8 2009, (the book talks about sexual slavery, sexual violence, sex workers and the practice of prostitution also why and how a woman enters this practice. Both the authors have travelled and studied various brothels in different countries to reach this understanding.)

^{iv} This was taken from the BBC news article after the I am Priceless 2019 campaigns against criminalising prostitution – (for more information please refer to the link - <https://www.bbc.com/worklife/article/20190419-should-prostitution-be-a-normal-profession>)