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Authored By: Ms. Mridula M.D. (LL.M), Kerala University,
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ABSTRACT:

“As per the report of UNAIDS, there will be 6.5 lakh prostitutes in India, although unofficial estimates put the figure as high as 20 million. And also, according to the later report of National AIDS Control Organization, more than 800,000 sex workers are employed in India. These kinds of reports show we have great number of people who are working in this profession. But Indian people are taking more distance from these people who are doing this job. Even though the law grants rights to such people, they are excluded from the society. They are facing lots of challenges and problems for their survival. In order to improve and promote social acceptance of these people, the judiciary has come forward and have strongly mentioned about the rights of these people in a recent case which is currently going on. Recently in 2022, three judge bench of supreme court issued a historic order that recognized “sex work as a profession and said that sex workers are entitled to dignity and equal protection of law”.

The apex court also held that voluntarily sex work was not illegal. After consulting with stakeholders, a bench consisting of "Justice L. Nageswara Rao, B.R. Gavai, and A.S. Bopanna was appointed of recommending solutions on things regarding to the prevention of trafficking, rehabilitation of sex workers who want to cease sex work, and the conditions conducive for sex workers to live with dignity in accordance with Article 21 of the Constitution of India". An attempt is made in this article to discussing about social acceptance of prostitution in India and current status of prostitutes”.

Keywords: Social Acceptance. Prostitutes, Legal Status, Current Status.

I. INTRODUCTION:

Prostitution means an act of a person who allow her body to someone for sexual use for payment. Generally, it's called prostitution. The people who do this job are known as prostitutes. Prostitution can be considered as the sale of sexual service. As per the report of *UNAIDS*, there will be 6.5 lakh prostitutes in India, although unofficial estimates put the figure as high as 20 million. According to the later report of *National AIDS Control Organization*,

more than 800,000 sex workers are employed in India¹. These kinds of reports show we have great number of people who are working in this profession. But Indian people are taking more distance from these people who are doing this job. Even though the law grants rights to such people, they are excluded from the society. They are facing lots of challenges and problems for their survival. They still do not get social acceptance despite the judiciary coming forward. Even their personal rights are infringed due to doing this job.

II. WHAT IS PROSTITUTION:

Prostitution is an act of a person who allow her body to someone for sexual use for payment. Generally, it's called prostitution. According to the definition of prostitution under international encyclopedia of the social science. *“Prostitution is the granting of sexual access on a relatively indiscriminate basis for payment either in money or in goods, depending on the complexity of the local economic system”*². Prostitution is evolved from the word prostitution. The people who do this job are known as Prostitutes. Prostitution can be considered as the sale of sexual service. I think exclusion of love is the single most important factor that identifies a woman as a prostitutes. The key component of prostitution is that women are doing this job only for monetary benefit. There is no love and affections.

As per The Immoral Traffic (Prevention) Act, 1986, the definition of prostitution as *“commercial sexual exploitation’ or ‘abuse of persons for commercial purposes”*³. It is overly broad and does not permit involved in sexual behavior for financial gain as part of legal sex work. Children, on the other hand, cannot under any circumstances be included in this category of permissible activities. Therefore, a variation in the definition of prostitution that completely excludes children is necessary. *Section 2(f) of Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)*⁴, deals about prostitution. In light of this, two things

¹ National AIDS Control Organisation, Phase 3 Program estimated between 831677 – 1242819 people in sex work in India

² International Encyclopaedia of Social Sciences, Vol.12, 1968, Page No. 592

³ The Immoral Traffic (Prevention) Act 1986, No.44, Act of Parliament, 1986 (India)

⁴ SITA 1956, No.44, s.2(f), Act of Parliament, 1986 (India)

should be kept in mind are instances of sexual exploitation or abuse & individual engages in this action for financial advantage.”⁵

III. REASON FOR ACCEPTING SEX WORK AS A PROFESSION:

In most cases people do not deliberately choose sex work as a career. They take up sex work as a profession for many reasons. Few of them take up this profession because of their family background, while others do this job to solve the financial burden. Some other reasons could be illiteracy, lack of knowledge etc.

Following are some reasons:

III.I Family Background:

Family has an important role to build the character, future etc. of a person. So, family also responsible to the failure and success of a person. Family background is One of the main reasons for prostitutes to accept prostitution as a profession. Since some prostitutes don't even have friends and family who are willing to offer them wise counsel. hence, they adopt this profession in order to follow their later generations. and their families keep prostitute children at a longer distance. Consequently, these types of family neglect also influenced them to pursue this line of work. Children of drug users and sex workers face various dangers, marginalization, and unequal treatment, but in the drug use literature, child weakness and strength are linked to the emotional health of parents and the family background.

III.II Addictions:

Many of the cases, lots of prostitute enter into this profession due to influence of some of addiction like alcoholic addictions, drug addiction etc. usage of all these things, compelled them to do this work. These kind of drug addictions cause serious problems to prostitutes' and other blood borne viruses are the main diseases faced by the prostitutes. Furthermore, common health complaints among this community have included disease caused by intravenous drugs, poor dental care, and premature death due to overdose⁶.

III.III Lack of Education:

⁵ SITA 1956, No.44, s.2(f), Act of Parliament, 1986 (India)

⁶ Ward and Day, 2006

Education can give everyone a proper awareness of their character formation and help them choose a better future. Lack of education may lead to making immature decisions or choosing wrong paths without proper awareness etc. lack of education and qualifications, contribute to weakness, pushing entry into prostitution and reducing opportunities for innovative forms of employment.

III.IV Discrimination:

Racial discrimination, social stigma, and stereotyping are all examples of discrimination. *“This can also quash inclusivity, tends to result in stigmatization and weakness. Disparity can cause serious uncomfortable feelings in some migrants, which seem to be common threads required to transfer to a foreign country where support from family and social systems may be largely missing. Furthermore, it can restrict or oppose access to services and employment, leading migrants to seek alternative means of survival, such as sex work”⁷.*

III.V Financial Burden:

The main objective of the prostitution is monetary benefit. Almost every prostitute does this job for the purpose of money. Family responsibilities, financial crisis. Lack of opportunities, for lack of basic needs etc. compelled them to do this job as a profession. The financial benefit to engage in sex work is prominent for single moms and women who are frequently excluded from the mainstream employment structure. They think like *“If one rots, it becomes fertilizer for the other”*. They burn their pride, body before someone only for getting better future to their children, family etc.

IV. SOCIAL ACCEPTANCE OF PROSTITUTION AMONG THE PUBLIC:

People in powerful positions regularly utilize sexual favors⁸ from sex workers in exchange for a quick resolution of benefits or access to privileges⁹. They continuously use bad words or bad

⁷ UK NSWP, 2008a

⁸ Case study of Kalpana, Tirupathi, Andhra Pradesh, 2013.No. PHF,2 in Annexure 1

⁹ Pan India Survey of Sex Workers, 2011, Sahani, R, Kalyan Shankar,

http://www.sangram.org/resources/Pan_India_Survey_of_Sex_workers.pdf. retrieved on 16 July 2022

¹¹ Case study of Sumathi , Uttara Kannada, Karnataka, 2013, No. PHF,3 in Annexure 1 ¹¹ Case study of Anu Mokal (2010), op.cit.

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language to verbally abuse sex workers. Sex workers regard law enforcement as the most coercive state agency. In custody, police abuse sex workers by illegally detaining¹⁰, sexually assaulting, and torturing them¹¹.¹⁰ Generally, we can see the news reports and cases reported in the court are almost manipulated. Police give report against the prostitutes and contended that ***“they arrested under the offense public nuisance or obscene conduct which is mentioned in the provisions of Indian penal code”***. Then they produced them before the honorable court and released on the payment of fine¹¹. Here they make a wrong practice to prostitutes and give a wrong message to the public. This action of police discourages the contentions raised by the prostitutes. It leads to get unsatisfied justice to prostitutes. ***“Stigmatization, which has its foundations in patriarchal morality, is a greatest issue to women standing up for their rights”***¹⁴. This systemic violence¹² perpetuates discrimination in the lives of women working in the commercial sex. It enhances social isolation and denial of rights, as evidenced by the presentation of impunity in Nippani violence in Maharashtra in 2002¹³.

Prostitutes are not socially accepted because of all these reasons. Even though the law grants rights to such people, they are excluded from the society. In order to improve and promote social acceptance of these people, the judiciary has come forward and have strongly mentioned about the rights of these people in a recent case which is currently going on. Recently in 2022, three judge bench of supreme court issued a historic order that recognized ***“sex work as a profession and said that sex workers are entitled to dignity and equal protection of law”***.

V. CURRENT STATUS OF PROSTITUTES IN INDIA:

As per the report of UNAIDS, there will be 6.5 lakh prostitutes in India, although unofficial estimates put the figure as high as 20 million., according to the later report of ***National AIDS***

¹⁰ Case studies of Uma, Leela, Jareen, Lakshmi, Shimoga, Karnataka, 2012. PV,3 in Annexure 1

¹¹ Case studies of Manisha Salunkhe, 2011; Rekha Bidkar 2012; Shanta Jadhav, 2010; Sunitha 2010 op.cit.

¹⁴ Mr.shubham kumar singh,prostitution in Indian society:issues,trends and rehabilitation,vol.4&issue 1,law audience journal(e-issn 2581-6705),2022

¹² Structural violence refers to the physical and psychological harm or disadvantage precipitated by systems of oppression and exploitation [Galtung Johan. (1969). ‘Violence, Peace, and Peace Research’.Journal of Peace Research, Vol 6, No. 3.pp 167-91].

¹³ Case study of State violence against sex workers in Nippani, Maharashtra, 2002. No RRC,4 in Annexure 1

Control Organization, more than 800,000 sex workers are employed in India, these kinds of reports show we have great number of people who are working in this profession. Prostitution is not illegal in India. Indian laws and judiciary have already admitted the dignity of this profession. But some kinds of prostitution like pimping,renting out property for running brothels etc. are prohibited under Indian penal code.

Recently supreme court issued a significant order which uphold the “*dignity of accepting sex work as a profession*”. After this historic order jun.2 in every year is decided to celebrate international sex workers day. We celebration of this day in every year can make respectful thinking in the mint of every people. And various messages regarding prostitutes in this day also build a new normal thinking. Sometime prostitutes face lots of problems like violence,criminalization,social exclusion, human right violation,stigma,personal right violation. Recent order of honorable supreme court has made a few percentages of change to these problems.

VI. LEGISLATIVE INITIATIVES TOWARDS PROSTITUTON:

In India, there are numerous laws and legislations enacted to protect prostitutes in the areas of personal, criminal, social economic matters. The fundamental law of land the Constitution of India also guarantees the rights of prostitutes. ***It would be proper to refer some of the most legislations pertaining to protection of prostitutes;***

VI.I Constitution of India:

Under Article 23(1) of the Indian Constitution “*trafficking in human beings, beggars, and many other related forms of forced labor are prohibited. and any violation of this provision which is punishable by Art.23(2) of constitution of India*”¹⁴. This Act does not prohibit prostitution, but it does make surrounding activities punishable. All third relevant stakeholders in this profession have been punished, making it challenging for sex workers to participate in prostitution

VI.II Immoral Traffic (Prevention) Act, 1986:

¹⁴ Art.23(1) of Indian constitution

The "*Immoral Traffic Suppression Act 1956 (SITA)*" was the first Act enacted in India for protecting prostitution. According to Section 2(f) of *The Immoral Trafficking Act (1956)*, "*prostitution*" is defined as "*sexual exploitation or misuse of any person for any commercial purpose*"¹⁵. Subsequently this Act has been abolished and enacted new Act named *The Immoral Traffic Prevention Act, 1986*. It mentions about just one concept of it, i.e., prostitution or commercial sexual exploitation. Its scope is limited to commercial sexual exploitation, and it criticizes any who enable and aid commercial sexual exploitation, such as clients as well as those who live off prostitutes' earnings. It also gives for social protection aimed mainly at victim rehabilitation, such as the establishment and management of protective homes by state governments. Obviously, maybe as a legislation dealing with sexual exploitation, it falls short.

VI.III Indian Penal Code 1860:

Sections 372 and 373 of the Indian Penal Code 1860 also convey prostitution, but only with regard to child prostitution only. Sec.372 lays down that "*Selling minor for purposes of prostitution, etc. Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine*"¹⁶. Sec.373 of Indian penal code lays down that "*Buying minor for purposes of prostitution, etc. Whoever buys, hires or otherwise obtains possession of any[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine*"¹⁷. Though sections 366A, 366B, and 370A of the IPC about

¹⁵ S.2(f) of *The Immoral Traffic Suppression Act 1956 (SITA)*

¹⁶ Indian penal code 1860, No.45,s.372 Act of Parliament,1860(India)

¹⁷ Indian penal code 1860,No.45,s.373 Act of Parliament,1860(India)

18 1990 AIR 292

penalizing minor girl procreation, importation of foreign girl for sex, and exploitation of a trafficked person, respectively. Thus, the scope of IPC laws governing prostitution indeed very narrow.

VI.IV Juvenile Justice (Care and Protection of Children) Act, 2000:

The Act was passed in consonance with the Convention on the Rights of the Child, to consolidate and amend the law relating to the ‘*juveniles in conflict with law*’ and ‘*children in need of care and protection*’. This Act has elaborate provisions for the care, protection, treatment, education, vocational training, development and rehabilitation of children rescued from those procuring, inducing or taking person for the sake of prostitution and detaining person in premises where prostitution is carried on. The concept incorporates the vulnerable person who is highly probable to be caused into trafficking. The question discussed in the case of *Gaurav Jain vs. Union of India*¹⁸, India appears to have been resolved to a greater extent. Clearly, with the establishment of various institutions such as the Children's Home, Special Home, and Shelter Home, as well as the participation of government and non-government voluntary organizations in the rehabilitation of juveniles and children in need of care and protection, there is little justification for a separate hostel or school for prostitute's children. Children of prostitutes should never be allowed to grow up in the slums of prostitutes' homes.

VII. JUDICIAL INITIATIVES TOWARDS PROSTITUTION:

Prostitution is a profession, just like any other profession. Prostitutes are eligible to equal status and protection under the law as same as that of any employees. But society removed these kinds of people from mainstream. They are trying to give a negative image or impression about prostitutes in the mint of others. we are living in democratic country with providing equal rights and dignity to all people. But the things happening in the life of all prostitutes are entirely different from others. We just look them as an alien. All the laws and legislations in our society protect the rights and dignity of all prostitutes still they suffer too much from this society. we just need to update our way of thinking with growth of our society.in many cases, when

judiciary came forward to bring a change in our society and mindset of human beings. Some judicial involvement regarding prostitution is following

Raj Bahadur vs. Legal Remembrancer¹⁹:

In this case Clause (2), on the other hand, allows the state to enforce compulsory services for public purposes, provided that no discrimination is made purely on the grounds of religion, race, caste, or class, or any combination thereof. Traffic in human beings refers to the sale and purchase of men and women as commodities, and involves immoral traffic in women and children for immoral" or other purposes.

The State of Uttar Pradesh vs. Kaushalya²⁰:

In this case, constitutional validity of the *Immoral Traffic (Prevention) Act, 1956*, was challenged. A majority of prostitutes were needed to be excluded from their residence in order to maintain decorum in Kanpur. The High Court of Judicature in Allahabad argued that Section 20 of the Act violated the respondents' fundamental rights under Article 14 and sub-clauses (d) and (e) of Article 19(1) of the Constitution. The Act was deemed constitutionally valid because there was a discernible distinction among a prostitute and a participant causing a nuisance. The Act is also consistent with the goal of the Act, which is to maintain social order and decorum.

Gaurav Jain vs. Union of India²¹:

In this case court held that “*Children of prostitutes have an equal right to opportunity, care and protection*”. And also highlighted a topic regarding elimination of prostitution. The victims were ordered to receive rehabilitation in compliance with the law and immediate compensation there under state victim compensation system. The Court rejected the recommendations for reducing poverty, but maintained the recommendations for creating juvenile homes for the children of such prostitutes.

Budhadev Karmaskar vs. State of West Bengal²²:

It noted that sex workers are humans with the right to life and that no one has the right to abuse or murder them. The judgement also highlighted the plight of sex workers, emphasizing that these women are forced to engage in prostitution not for pleasure but due to abject poverty, and guided the Central Government and State Governments to access treatment facilities and teach technical and vocational skills such as sewing so that they can earn a living elsewhere.

Following the directive, *Section 21 of the Immoral Traffic (Prevention) Act*, was incorporated as a principle for the State Governments to create and sustain protection homes, which should be regulated by licenses issued by them.

Kajal Mukesh Singh & Ors vs. State of Maharashtra²³:

This case was filed by the petitioner regarding pimping under Immoral Trafficking (Prevention), Act, 1956. They challenged the order passed by the metropolitan magistrate and additional sessions court. “The Court emphasized that the act's goal is not to prohibit prostitution or prostitutes; rather, what is punished is sexual abuse, commercial sex, and situations in which someone is managing a brothel or enticing someone else. Prostitution is not an offence, a woman has a right to choose her vocation. And as their fundamental rights are upheld by Article III of the Constitution, they too have the freedom to live as they like and to practice their chosen profession.”

Manoj Shaw and Majoj Kumar Shaw vs. State of West Bengal²⁴:

In this case the owner of a health spa forced minor girls to prostitution business. The Court determined that “*such significant offences that fall in Section 5 of the Act. Prostitution in connection with legitimate businesses like health spas, etc. require tact and consideration and should be handled seriously*” & “*Sex workers should be treated as victims of crime rather than the accused*”. The juvenile girls who were the victims were made more susceptible to threats, intimidation, etc. by placing them in jail as though they're the accused themselves, which highlights the case's obvious flaws in the legal system. The Bombay High Court ordered the closure release of three female sex workers imprisoned at a state correctional facility in September 2020, simply saying that prostitution was not really a criminal offence under the legislation and that an adult woman had enough right decide her profession.

2022 Recent Historic Order About Prostitution²⁵:

In 2022, a three-judge Bench Of the supreme court provided a legendary order that accepted sex work as a profession and explained that sex workers have the right to integrity and equal treatment under the law. The Supreme Court further said that 'voluntary' sex work was still not illegal. It approved truly admirable guidelines declaring that when a sex worker recently reported a crime, the police must take this seriously and act in compliance with the law;

whenever a brothel is raided, the sex workers involved should not be arrested; because no child of a male prostitute should be separated from the mother solely because she works in the sex trade.

VIII. CONCLUSION:

We have laws, legislations and strong judicial involvement to protect the rights of prostitutes. Then why they still face these kinds of discrimination from the society. Many studies, researches and trainings regarding the rights and protection of prostitutes are to be implemented. We all need to get a special awareness about acceptance of prostitution and have to take an initiative to normalize this. Prostitution is defined as providing sexual services in exchange for money. Prostitution, like other types of aggression committed by men against women, is a gender-specific issue because the majority of victims are women. I adopted the statements mentioned in 2020 judgment of Bombay high court “*prostitution was not really a criminal offence under the legislation and that an adult woman had enough right decide her profession*”.

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