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WORKERS OF THE DARK THAT NO ONE CARES ABOUT: THE STUDY OF THE SHAMED WOMEN IN THE CONTEXT OF THE INDIAN SOCIETY

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ABSTRACT

In the beginning, the paper delves into the historical roots of prostitution in India, tracing its origins back to ancient scriptures and texts such as the Rig Veda, Sam Veda, Yajur Veda, Mahabharata, and Ramayana. It explores how prostitution, initially associated with beauty, entertainment, and art, gradually degraded value. The paper highlights the pivotal moment in history when the prominence and respectability of sex workers, known as devadasis, were abruptly shattered during British colonial rule. British officials began to exploit these women for sexual pleasure, leading to the degradation of their status and reputation within society. Examining the aspect of morality, the paper presents contrasting viewpoints. While some argue that prostitution commodifies human bodies and objectifies women, others contend that it is a legitimate form of work. The societal perception of prostitution as morally wrong stems from the belief that sexual intercourse can only occur within the confines of marriage. The paper explores the concept of public and private morality and the stigmatization and discrimination faced by them. Further ahead, the paper elaborates on the favouring arguments that justify the legalization of prostitution as a profession and Occupation. After that, the paper explains the critical legislation and statutory provisions which regulate prostitution in India. Lastly, it lists relevant landmark judgments of the Apex Court that further mutate the validity and regulation of Prostitution as a legalized profession. Lastly, the paper explains the need to hear the plight of sex workers and work for their cause.

INTRODUCTION

In India, prostitution has a lengthy history dating back to the pre-historic era and British India's 19th century, and it is still a widely accepted societal reality today. The disadvantaged state of sex workers in our society is the most pervasive social ill that no one appears to care about. The notion that "prostitution in society has not been an unknown phenomenon" has also been acknowledged by our judiciary. The impoverished, illiterate, and uneducated members of society who are the intended

audience for this illegal activity are the trap's victims. They once enjoyed great respect and fame in the culture of the pre-colonial era, but everything quickly fell to ruin, and now many people take advantage of them and treat them like a commodity in order to appease their sexual and mental rage.

Prostitution pertains to a group of occupations that need significant levels of physical toleration, endurance, and danger. The National Aids Control Organization's data indicates that there are 7.76 lakh women working in the

prostitute industry. Additionally, this profession is impacted by various social and cultural norms, which makes them vulnerable to social stigma and poverty. In this situation, the law must intervene to break the cycle of abuse, strike a balance, and protect those who have been victimized. But the Judiciary has made a very bold move in legalizing Prostitution as a profession and giving it a respectable status as other professions under the ambit of Article 21 of the Indian Constitution. It will very promptly help in reducing the social stigma of society against these mere choiceless lassies.

The research paper aims to analyze the present situations of sex workers and the rights and benefits of their children. The paper further explains the history of Prostitutes in the pre-and post-colonial era, moreover, it simplifies the reasons for their sudden downfall in the colonial era, resulting in creating a social stigma against them, which is still prevailing even after 70 to 80 years. It talks about international laws and conventions and explains the approach of other countries toward regulating it. The Indian Laws regulating prostitution are also been comprehensively discussed and lastly, the Judicial pronouncements reshaped the notion and ideas related to sex workers and their rights.

THE ORIGINATION OF THE PRATHA

An old saying goes - **“the truth always lies in history”**.

The profession or vocation of “prostitution” is nothing sort of new to us. In fact, the art of prostitution originated in India only thou not in the form we see it nowadays but it did originate from these lands. The roots of origination do not just date back to a few years or even a few hundred years but go back thousands of years so much so that our Rig Vedas also talk about them (Rig Veda10.95) talks explicitly about apsaras who were the women with unparallel beauty and knew how to woo any god or living man on earth through their act and dance and were praised highly in the courts of Lord Indra

and entertained the guest who arrived in his court. The gods also used them to test the power of the sages who praised gods for some divine power. The story of the downfall of Rishi Vishwamitra caused by an apsara named ‘Meneka’ is known by all. Parts of Sam Veda and Yajur Veda also talk about them in references. During the Vedic times, Women who were involved in the business of prostitution remained unmarried and wore clothes that had a red hue as they had a belief that it would scare away the bad spirits. The presence of prostitution has also been mentioned in the historic book of “Mahabharata” A total of 42 apsaras have been mentioned in the book. The mention of prostitutes also comes up in the book “Ramayana” written by Maharishi Valmiki and how they were employed for the entertainment of kings and soldiers. The famous novel ‘Meghdoot’ written by the famous Kalidas talks about prostitutes performing at the Shiva temples which can be traced back to the 4th century. One of the most famous intellectuals of Indian history ‘Chanakya’ also talks about how the business of prostitution should be run in a state and how the prostitutes should go about their business. The book ‘Kamasutra’ which was written as early as the 3rd century B.C by a noted Indian sage who went by the name of ‘Vatsyayan’ dedicated several pages in his book to the art of prostitution.

These prostitutes were not limited only to dance and entertainment but they were also attached to religious works and those who were devoted to this danced only in the temples such as the Mahakal temple of Ujjain and were revered as an essential practice in order to offer prayer to the god. These girls were also referred as “Devadasi” which meant servant to the god. These girls were given away or were married of to the gods, and were forbidden to enter into any real marriage and only performed in temples and auspicious occasions. These women were held high in esteem and were given utmost respect and were even called upon on special occasions to perform and give in their blessings as these women had given up

their life to the service of gods and held no earthly pleasures for themselves. These women would also teach singing and dancing to the children of ruling class and enjoyed economic security with social benefits. There were many ways in which one would become a devadasi some were offered at young age by their parents, some gave themselves to God by their own free will, some even kidnapped and then rescued were given away to temples in order to restart their life. A ceremony used to be held with grandeur wherein a girl accepted of her becoming a devadasi.

From there on, the system continued to the era of Indus Valley Civilization during the excavation of Mohenjo-Daro sites an image made up of bronze metal was found which depicted a prostitute going on with her duty, and was found in the confines of the Holy Goddess temple which meant that even till the Indus civilization they were held in high regards. Even later on during the period of Aryans and Guptas the prostitutes were given to other monarchs as a symbol of gift and prosperity and to maintain cordial relationship with other dynasties and to maintain political power and influence within an area, their social status at that time was also high and they were considered as the pride of the kings. But later on, as the times changed so did their fate.

WHAT HAPPENED ABRUPTLY THAT SHATTERED THE PROMINENCE OF SEX WORKERS WITHIN THE SOCIETY

“Every good thing always comes to an end”, this phrase very well couples with the condition of the devadasi once the Britishers invaded India. Prostitution is deemed to be the oldest profession practiced by the women, and was considered to be a profession which awards utmost respect and honour. Owing to which they were embraced with the title as “Bride of the town”, because they treated lord Krishna as their husband and thus cannot marry another

mortal man²³. They were idolized as a personality of beauty, positivity and felicity. Then the question arises that what happened all of sudden that abated their reputation and standard within the society.

During the Mughal rule, there was a tradition that thousands of good-looking females were hired inside the kingdom to increase the glamor and beauty of the place. The main work of these females was to look good and provide mental and physical satisfaction to their kings. Great Mughal ruler Akbar tried to diminish this tradition, but during the time of Shah Jahan, and Aurangzeb it again accelerated and expanded its origin. There were Brothels established both for the general public and royal kings. In Awadh, during the evening time these brothers were decorated with lights and flowers as famous kings and rulers used to visit there for entertainment. There were female brothel regulators who used to earn a healthy sum of money by running these brothels, frequently Royal kings used to get very impressed by the dance performance of the devadasi and in return, they awarded them with gold chain, cash, diamond and other precious gifts.

When the Britishers invaded India they started conquering one state after the other, the kings of different states tried to defend their territory but eventually lost it to the Britishers. Now these devadasis had to perform in front of the kings and the britishers. Earlier these kings and Mughals used to never indulge in any kind of physical activity with the devadasi, but those British officials got very much fascinated by their beauty and elegance. These officials then started to use these young and good-looking girls to meet their sexual pleasure, and from there the origin of prostitutes begun. Due to the frequent sexual intercourse by the British officials, there was a spread of venereal

²³ Prostitution: A Brief History, India, available at: <https://www.speakingtree.in/allslides/prostitution-a-brief-history>. (last visited on August 02, 2022).

diseases in the presidency capitals²⁴. Due to which the colonial government enacted a new act namely “contagious Disease Act, 1868”. The important element of this Act was that it endorsed the formulation of brothels and permitted prostitution in a standardized structure. Each brothel manager and prostitute were issued an identity card with subtleties of enlistment which they were bound to show on authorities’ request. Each Prostitute was subject to inspectional check to be sure that she was not contaminated with venereal infections. This clinical checking was done with a motive to safeguard the clients from getting infected by those contaminated prostitutes. To safeguard the wellbeing of the client was the fundamental point of this act, rather than protecting the health of those prostitutes.

The Britishers by this time understood that the business of prostitution has a lot of money and can very well flourish in India. They then started shifting the very elegant and attractive female dancers and devadasi to their own brothels from the Indian brothels. They assigned 15 females for 100 soldiers in their respective brothel, so that it can ease their soldiers and give them some kind of satisfaction and enjoyment after a deadly war. They also opened brothels for the general public. The Indian females were indulged forcefully and against their will to work on those brothels to meet the sexual needs of the Britishers. In the pre-colonial era they were asked only to perform dance and other artistic work, but in the British brothels they were coerced to perform sexual activities to satisfy the sexual hunger of the customers. From that period the respected and honoured devdaasi became sexual slave, who were paid in-return to perform sexual intercourse. From that decade their respect and status in the society got tarnished. After post-colonial that bad stigma didn’t vanish and the society kept

on treating them abnormally. This is the prominent reason why these sex workers didn’t get independence from their profession post-independence and had to practise the same thing as the society didn’t allow them to change their lifestyle and debarred from living a conventional lifestyle.

MORALITY AND ITS IMPACT ON PROSTITUTION

Indian society comprise a lot of social beliefs and moral values, and everything happening within the community needs to be morally and ethically permissible. A similar kind of thought and understanding was embodied by our natural law theorists. Finnis in his research argues that sexual intercourse under the umbrella of marriage is legitimate as the intercourse aims to bring new life into existence. Kant, St. Augustine, and Aquinas argue along similar lines, claiming that all sexual pleasure should be directed towards contributing to God’s work of creation²⁵. But if the views of the theorists are matched with the practise of Prostitution, then in that case it seems completely diverse, prostitution more likely is been practiced as a profession and involves engaging in sexual activities in exchange for money or other forms of compensation. Does that mean Prostitution is morally and ethically wrong?

No, it doesn’t, only that societal morality deems it wrong and improper. Issues of morality, legislation, and public policy all come into play when discussing prostitution. Many people consider prostitution to be immoral from a moral perspective because it includes the commodification of human bodies and the objectification of women. However, others argue that prostitution can be a legitimate form of work and that criminalizing it only drives it

²⁴ HISTORICAL STUDY OF PROSTITUTION TRADE IN INDIA : PAST AND PRESENT, India, available at: <http://vckarad.com/Minor%20Research%20Project%20on%20HISTORICAL%20STUDY%20OF%20PROSTITUTION%20TRADE%20IN%20INDIA%20%20PAST%20AND%20PRESENT.pdf>. (Last visited on August 02, 2022)

²⁵ Debmalya Biswas, *Sex Workers: Undeserving of Morality?*, Law School Policy Review & Kautilya Society, (Dec. 12, 2022, 11:17 AM), [https://lawschoolpolicyreview.com/2022/06/04/sex-workers-undeserving-of-morality/#:~:text=The%20dominant%20attitude%20has%20been,\(Prevention\)%20Act%2C%201956.](https://lawschoolpolicyreview.com/2022/06/04/sex-workers-undeserving-of-morality/#:~:text=The%20dominant%20attitude%20has%20been,(Prevention)%20Act%2C%201956.)

underground and puts sex worker's life and well-being at risk²⁶. Now an argument exists that in both Marriage and Prostitution sexual intercourse takes place then why is prostitution so much criticized by society? The answer to it is sexual intercourse between a spouse in marriage is done with the intent of love and reproduction of a new life, whereas in prostitution both individuals have different intents one is doing it for economic gain and the other for meeting his sexual desires²⁷. So, if one individual is getting financial benefits from it then why can't we give it a status of an occupation? The answer is very cursory and straightforward, "It is never a freely chosen profession and there are various societal conditions that push a woman into it". When sexual behavior is free of superstition, morality in sexual relationships primarily entails respect for the other person and a refusal to use that person for personal gratification at the expense of their wants. Prostitution may or may not be transgressing this rule. In general, morality simply refers to a society's belief in right and wrong, which is either established through inherited culture or through the government's determination of what laws to enact or not. But nowadays the bar for morality is been set up by the people of the society rather than the government. Morality has two sub-types; Public Morality and Private Morality. Public and private morality in the Indian context can be distinguished based on their respective domains of application and the social norms that govern them. Public morality concerns the behavior of individuals in the public sphere and is subject to external regulation, while private morality relates to an individual's personal beliefs and values. As quoted by a famous Indian philosopher Sarvepalli Radhakrishnan, who wrote, "Public morality is an extension of personal morality, and private morality is the basis of public morality"²⁸. The majority of

people term prostitution as a sinful act that is against public morality on the ground that it is against religious beliefs and cultural norms. The word "Majority" here is a wall between distinguishing things as moral and immoral²⁹. The preservation of the term "Morality" is regulated by the people and not by law which is the major reason why the sex-workers are being treated so inhumanly within the society. Rather, Comparing prostitution to morality can be problematic because it can lead to moral judgments and stigmatization of individuals who engage in prostitution. This can result in harmful consequences, such as increased vulnerability to violence, social exclusion, and discrimination.

Prostitution is criticized on the ground of public morality because it is often seen as a violation of social norms and values related to sexuality, gender roles, and family relationships. But the criticism is subject to debate and controversy, as the Apex Court of India, in the matter of *Gaurav Jain v. Union of India* (1997), held that "prostitution per se is not an offense, but the acts of soliciting or inducing for prostitution, living on the earnings of prostitution and keeping a brothel are offenses" (para. 10)³⁰. This judgment reflects Indian society's ambivalent attitudes towards prostitution, where it is not criminalized outright, but certain activities related to it are considered immoral and illegal. Similarly, the National Commission for Women (NCW) report states that "prostitution perpetuates and reinforces gender stereotypes, and perpetuates the commodification of women's bodies, reducing them to mere objects of male desire"³¹. This report highlights the social and cultural norms that underlie the criticism of prostitution and the ways in which it is seen as a threat to gender equality and women's rights. The two observations mentioned above certainly give us an idea that the criticism of Prostitution is very controversial. Morality and

²⁶ Ronald Weitzer. Prostitution and Jurisprudence. *Annual Review of Law and Social Science*, 2011; 7: 189-206

²⁷ Primoratz, I. (1993). What's wrong with prostitution?. *Philosophy*, 68(264), 159-182.

²⁸ Radhakrishnan, S. (1952). *The Hindu view of life*. George Allen & Unwin.

²⁹ Zawisza, K. (2011). *The Ins and Outs of Prostitution: A Moral Analysis*. University of Arkansas.

³⁰ *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.

³¹ National Commission for Women. (2016). Consultation paper on the status of women in India. NCW.

prostitution are both complex issues, they should not be compared or conflated. It is essential to approach prostitution with a human rights perspective that recognizes the agency and dignity of individuals involved in the sex trade.

ARGUMENTS THAT ARE IN FAVOUR OF LEGALISING PROSTITUTION

Whether prostitution should be legalized and whether its benefits exceed its drawbacks are the subject matter of discussion after the verdict by the Supreme Court of India. For instance, proponents of legalizing prostitution will claim that doing so will decrease trafficking, control the sex industry, regulate prostitution activities, remove prostitution from the streets, put an end to child prostitution because adult prostitution will eliminate the need for it, protect women in the industry from abuse and violence because they will now willingly engage in sexual activity and many other benefits. But there is a different side to it as well, there are some arguments that advocate that legalizing Prostitution as an Occupation can lead to a breakdown of traditional cultural and moral values³², Can degrade a women's body as people will treat it like a commodity which provides sexual pleasure³³, and are against many religious sculptures as they only permit sexual intercourse when it is done with a purpose to bring a new life in the world. People who work in such environments are also more likely to experience physical, emotional, and mental trauma, which not only affects them but also their offspring³⁴. Still, after the verdict of the Supreme Court on legalizing prostitution there are two different sides holding different observations.

Article 19 (1) (g) of the Indian Constitution gives the right to its citizen to practice any profession,

occupation, trade, or business. Therefore, sex workers also have a fundamental right to practice their profession without any unreasonable restriction or moral ethics³⁵. Whatever society believes in terms of moral ethics about a specific profession must not deny the freedom to pursue it. Similarly, if our Indian Constitution guarantees the citizens the right to practice any profession then societal morality must not override a fundamental right. Furthermore, a ban on prostitution would be an option taken away from any women who would voluntarily become prostitutes. It is an assault on their right to privacy. Moreover, if this profession remains to be illegalized, it will create a barrier for the sex workers who are in the profession and to maintain their livelihood they have to practice the profession illegally. Which will eventually compromise their human and fundamental rights resulting in making their life more miserable and poor. Legalizing Prostitution as a profession will protect the fundamental human rights of sex workers, as they are more likely to report abuse and seek help without fear of legal repercussions³⁶. Because during their service they are often assaulted and beaten by their clients which is not part of the occupation. In the case of *Budhadev Karmaskar v. State of West Bengal*³⁷, the apex Court recognized that sex workers have the same legal rights as other citizens, including the right to be protected from abuse and extortion. In this above-mentioned case, a group of men beats and raped a sex worker, and the judge found them guilty of both rape and criminal assault. Sex worker and writer "Annie Sprinkle", argues that prostitution should be considered a valid career choice and that those who engage in it should have the same rights and protections as any other work as per labor laws³⁸. Further Prostitution needs to be viewed as a work, a choice, and a woman's privilege. The brothers are the place from where

³² Prabha Kotiswaran, "Dangerous Sex, Invisible Labor: Sex Work and the Law in India," *Journal of Contemporary Criminal Justice*, 2005.

³³ Kavita Datla, "Regulating Sex Work: Morality and the State in Contemporary India," *Journal of Social Work and Human Sexuality*, 2007.

³⁴ ANUBHUTI JAIN, *Supreme Court order on sex work historic, but execution will be the real hurdle*, ThePrint, (June. 8, 2022, 03:53 PM), <https://theprint.in/campus-voice/supreme-court-order-on-sex-work-historic-but-execution-will-be-the-real-hurdle/988049/>

³⁵ AIR 1959 All 57

³⁶ Platt, L., Grenfell, P., Meiksin, R., Elmes, J., Sherman, S. G., Sanders, T., ... & Crago, A. L. (2018). Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies. *PLoS medicine*, 15(12), e1002680.

³⁷ (2011) 11 SCC 301

³⁸ Delacoste, F., & Alexander, P. (Eds.). (1998). *Sex work: Writings by women in the sex industry*. Cleis Press.

the sex workers carry out their business, therefore on legalizing prostitution, first and foremost the currently operative brothers have to be regulated by the government because that is the place where the sex workers are being criminally exploited³⁹. Human trafficking of women from the smaller district is done to supply more sex workers in these brothels, they are being managed and guarded in such a way that once they enter the brothel after that they can't leave the place and have to satisfy the sexual desire of their customer irrespective of their consent or will. Even the sex workers working inside the brothels believe that if they try to get out of this morass the people of society will never accept them as normal human beings, and this kind of anxiety forces them to carry out this profession irrespective of their will and interest. So, the government can organize educational and training camps for these sex workers who want to quit this profession, in this way, they can learn new skills in order to facilitate it in some other occupation.

Prostitution has become a huge racket of business, which includes brothel owners, brothel keepers, brokers (who are responsible for women trafficking), and other middlemen who are vital assets in this ferocious business. So, for creating a safe and healthy environment for sex workers to carry out their occupation, the brothels, and the brothel keepers have to be eliminated. According to a report by the UN Office on Drugs and Crime, in 2020, there were 11,841 prosecutions and 7,910 convictions globally for human trafficking. Therefore, prostitution has been legalized, but still, the government has to be more proactive and prone to combating human trafficking and forced prostitution. This may entail tougher punishments for prostitution promoters and traffickers, as well as giving law enforcement the tools and instruction they need to locate and save victims.

INDIAN LEGAL FRAMEWORK IN RELATION TO PROSTITUTION

In India there are notably three important legislations governing prostitution in India, namely the Constitution of India, 1950; the Indian Penal Code 1860; and the Immoral Traffic (Prevention) Act, 1956. The part III of the Constitution of India, it guarantees that both forced labour and human trafficking are prohibited⁴⁰. The State must direct its policies in accordance with Part IV of the Directive Principles of State Policy to ensure, among other things, that men and women have an equal right to an adequate means of subsistence⁴¹. The Indian Constitution also protects the health and strength of workers, ensures that citizens are not compelled by necessity to engage in occupations that are inappropriate for their age and strength⁴², promotes the economic and educational interests of the society's weaker groups, protects them from social injustice, and places obligations on the state to raise living standards and the renunciation of practices by citizens that are derogatory to the dignity of women. At least 20 clauses of the Indian Penal Code make trafficking a crime. Most of them, among other things, deal with unjust incarceration after abduction and entrapment for unlawful sexual activity. The Immoral Traffic (Prevention) Act of 1956 is the main law governing sex labor. The Act primarily criminalizes pimping and other actions, giving prostitution a commercial element that could potentially exploit the prostitute's person. Prostitution itself is not prohibited by the Act, but commercial actions including the commercial sex trade are.

Legal professionals and academics generally concur that, in accordance with the ITPA and SITA, prostitution or sexual activity performed for payment is not criminal in and of itself, but that all actions necessary to carry out such activities are unlawful. So, keeping a brothel, subsisting off the proceeds of prostitution, obtaining or

³⁹ Jeffreys, S. (2003). The legalisation of prostitution: A failed social experiment. *Women's Health Watch Newsletter*, 64, 8-11.

⁴⁰ Constitution of India, 1950, art. 23.

⁴¹ Constitution of India, 1950, art. 39 (a).

⁴² Constitution of India, 1950, art. 46.

holding a woman for the purpose of prostitution, soliciting or seducing for the purpose of prostitution, and engaging in prostitution near public spaces are all prohibited. Any person in control of the premises who uses it or intentionally permits someone else to use it as a brothel is subject to penalty under Section 3 of the ITPA. Under the ITPA, a Magistrate, if he deems it to be necessary, can order the removal of a prostitute from any place in the interest of the general public.

But there are few lacunas in the Indian laws that prohibit the effective implementation of the Immoral Traffic (Prevention) Act of 1956. The fact that the mentality of the police and even the judiciary has not changed contributes significantly to the legislation's limited influence and reach. Because of this, the authorities typically round up female sex workers during raids rather than pimps, procurers, or brothel owners. The inconsistent application of the ITPA to prostitute women is linked to several factors, including the considerable collusion between elected officials, law enforcement, and brothel owners, making it difficult to apply the Act's provisions strictly. This collaboration needs to be exposed and destroyed. There are many police officials who take monthly bribes from the brothel owners for not carrying out any raids or inspections. Another drawback with the applicability of ITPA is the fact that there is a significant discrepancy between the number of crimes actually committed and those reported to the police and recorded in their files. Roughly 60% of crimes reported do not result in a police record entry.

The inadequate nature of the reformative houses established under the Act is another significant issue. These homes are overcrowded and unable to house the numerous sex workers who have been found guilty under the ITPA. The statute does not include any rules for investigating offenses involving human trafficking, any provisions for victim compensation, or any means of connecting the "rescued" sex workers with medical assistance.

Among all the workers, the majority of them are those who are brought to the brothels against their will or free consent. Their top goal is to rescue, and given the current situation, the only way they can be saved is via an ITPA command. They are essentially dependent on ITPA to escape brothels and enter shelter homes so they can take a step back toward the family they were taken from until a new anti-trafficking law with thorough identification and rescue methods is put in place. After the observation by the authors, it is very clear that a separate legislation to deal with women anti-trafficking is the need of the hour because the ITPA has a few lacunas that in the present era need to be addressed. In the sense that these fallen angels of the flesh trade are treated cruelly instead of as victims, the act is more backward-looking than forward-looking. By arresting them and failing to recognize them as victims of crime, the system appears to be treating them cruelly.

JUDICIAL PRONOUNCEMENTS WHICH HAD A SIGNIFICANT IMPACT

The constitution of India grants each citizen an equal life without any discrimination regardless of their origin, vocation, or even mistakes. But sometimes some people get slid under the rug by society and have to forego even their basic rights and have to spend their life under wraps. The women who have been tangled in the nets of prostitution are one of them. Moreover, they are shamed by society and are treated as accused rather than a victim that they are, and it doesn't end at that. More than them their children have to bear the consequences of their profession as from the very beginning they are treated as an outcast and are rarely given an opportunity to join the mainstream and move ahead in their life. They just like toads are left inside the wells of prostitution never to come out. The judiciary which is one of the three pillars of democracy isn't just there to give judicial pronouncements but it also has a certain duty to look after the rights of the people as a watchdog and intervene when the rights of the common people are being trampled upon.

One of the earliest cases that asked questions about the future of the children of prostitutes that came before the apex court and had a significant impact was that of "**Gaurav Jain vs. Union of India**"⁴³. The petitioner who was also an advocate by profession had asked the Supreme Court to give direction for the establishment of separate homes and institutions for the children of prostitutes so that they could do something meaningful with their lives, the court partially agreed to this and ordered the government to set up juvenile centers for these children. But even to this date, no separate juvenile or vocational center has been set up for these children. The question simply doesn't end here, even from the early 90's the judiciary was well aware of the kind of environment that these children have to grow through but still no stringent decision was taken nor any committee was set up to see that the orders were being followed through and even after so many years their future is still as dark as it may get. Data collected by various NGOs show that more than 40% of the children born in brothels end up falling into the same profession. The number can be much higher as many of the births are not even accounted for. Judgments like these make us question whether constitutional rights such as Art. 14, Art. 21 and Art. 45 of the DPSP⁴⁴ are really for every citizen or a luxury to be afforded by a few. It was not for the first time that the question related to the future of the children of the prostitutes was being discussed, the same had been also asked during the case of "**Vishal Jeet vs. Union of India**"⁴⁵ and the court had given several instructions for their rehabilitation and bringing them into the mainstream but that also was looked over and no meaningful work has been done till today. The result – even today the children of the prostitutes are looked down on by society and are abused, bullied, and made to feel like second-class creatures by their peers which

then leads to them dropping out of school and again getting trapped into the vicious cycle of drugs, pimping and various such illegal trades. A survey conducted by the Jayprakash Institute of Social Change (JPISC) in collaboration with UNICEF and the Women and Child Social Welfare Department (WCSWD) of West Bengal revealed that in 2003 children 471 never bothered to attend school. 384 left even before attending primary education. Art. 21 guarantees basic primary education to a child but here the state fails to even provide the bare minimum of what the constitution promised through Article 45 to its people. 758 students left school after the primary stage most of them because of the shame that they had to endure from their peers as well as their teachers. 377 students were able to get a basic secondary level education and only a handful i.e., 13 managed to continue to the higher secondary level and no one from all those 2003 children has seen the face of a college gate.⁴⁶

When we go through these cases, we come to realize a certain point which is – that society is not giving the prostitutes their due respect which leads to their children also living a life cast by the shadows of the past. But it is not like no one has ever thought about their hardships many NGOs, learned people of the society and the judiciary itself has tried to scrub the stigma which has been created by the society.

In the case of "**Budhadev Karmaskar vs. State of West Bengal**"⁴⁷ the court had opined that sex workers also have every right to lead a life of dignity that is guaranteed by the constitution under Art. 21⁴⁸. The court had directed both the center and state governments to initiate programs that would help in the rehabilitation of these sex workers and give a way out to those who want to quit this profession. The court laid stress on the factor that the nexus which the traffickers have developed needed to be

⁴³GAURAV JAIN VS UOI (1997) 8 S.C.C 114 (INDIA)

⁴⁴ INDIA CONST. 1950, Art. 14

INDIA CONST. 1950, Art. 21

INDIA CONST. 1950, Art. 45

⁴⁵ VISHAL JEET VS. UOI (1990) S.C 1412 (INDIA)

⁴⁶ Medindia.net, India available at www.medindia.net.in (last visited at 25th August'22)

⁴⁷ BUDHADEV KARMASKAR VS. STATE OF WEST BENGAL (2011) 10 S.C.R 577 (INDIA)

⁴⁸ INDIA CONST. 1950, Art. 21

broken down. But a committee formed by the court reported that even after 6 months of the order being given out no concrete steps had been taken up by the government to ease the life of the sex workers. No welfare scheme or separate helpline number had been introduced and even if they tried reaching the cops through any other means their complaints would not get registered. Instead, they would be shamed and disgraced in front of everyone.

Another factor that contributes to the downtrodden condition of sex workers is the factor that they are treated rather as accused than a victim. A prime example of this is the case of **“Manoj Shaw and Manoj Kumar Shaw vs. State of West Bengal”**⁴⁹ where minor girls were forcibly involved in the business of prostitution were put behind bars and the owner who had orchestrated this setup of prostitution in the name of health spa was only served a notice. The minor girls were released only after the intervention of the Chief Justice. This goes to show the horrifying condition that these people have to go through, putting the girls who were minors and came from extremely poor backgrounds just in the name of closing the case pretty much clears the air as to what support these people get from our judicial system and why they are still entrapped. The state rather than working as a protector has created an image of being an abuser. A data survey done on 3000 sex workers shows us the grave ground reality of the same. 50% were abused and shamed in the Police Stations another 35% reported of being beaten up, another 37% threatened to take their case back and 20% had to bribe the officers so that they were not held up in fake cases or charges.⁵⁰ In conditions like these, these people would rather stay and stand the atrocities of where they are rather than go up to the state for help and then come back empty-handed and face the wrath

of the brothel managers who make their life bitter more than it already is.

All this chaos is created because of one simple misconception that “prostitution is an offense” but the courts have tried to clarify this point again and again. More recently in the case of **“Kajal**

Mukesh Singh & Ors vs. the State of Maharashtra”⁵¹ wherein the court clearly stated that – “prostitution is not an offense per se, a woman has every right to choose her vocation”. If the woman is in the profession on her own, will she not be prosecuted for the same? If a person is earning profits off a woman who is into prostitution, then that person can be held liable not that woman, she has to be treated as a victim.

CONCLUSION & SUGGESTIONS

As we tread towards the end of this paper we would like to focus on few important issues and concluding points. Even though we had hit a rough patch. Things are now getting better and we are moving towards giving the sex workers the right and respect that they deserve. The recent judgement given by the Supreme Court is historic in every sense and will surely bring a new hope for the sex workers. The bench comprising of justice L Nageswar Rao, BR Gavai and AS Boppana had opined that Art. 21 of the Constitution⁵² applies to each and every citizen and that goes for the prostitutes as well as their children. The court further clarified that voluntarily entering into this profession is not illegal as that had been clarified in previous judgements as well so whenever a raid will be conducted by the cops, they are to ensure that the concerned sex workers are not harassed or penalised in any manner. They can be only taken into custody if they are found to seducing others or luring them or soliciting their services. One another major issue upon which the apex court cleared air was that of minor children found inside the brothels. If any minor is found

⁴⁹ MANOJ SHAW AND MAONJ KUMAR SHAW VS UOI (2018) C.R.M 2708 (INDIA)

⁵⁰ (CASAM) Centre for Advocacy on Stigma and Marginalization, India available at (<https://www.ecoi.net/en/document/1353310.html>) last visited on 25th August'22

⁵¹ KAJAL MUKESH SINGH VS. STATE OF MAHARASHTRA (2020) S.C.C 954 (INDIA)

⁵² Constitution of India, 1950, Art. 21

inside the brothel it shouldn't be immediately assumed that he was trafficked from somewhere and taken into custody. If any worker claims that the child belongs to her a DNA test is to be done for the verification and if the results come out to be positive, the child is to be left in the safe custody of his/her mother.

But can we say that we have now turned a new page...

Even though the Supreme Court has clearly stated that Prostitution is now a legal profession. No committee or regulatory authority has been setup by the government to see that the orders are being followed through.

And what about the girls who have been forcibly introduced into this trade. A survey done by National Crime Records Bureau (NCRB) reveals that 95% women were forcibly introduced into this trade⁵³, most of them from neighboring countries such as Bangladesh and Nepal from a very young age. Being introduced to these trades at such a young age means that they do not even recall their homes and are lacking basic elementary education. The government needs to filter these women out and give them a fresh start and set up centre for vocational courses so that they can learn new skills and earn livelihood. Another major issue that they face is the economic trap that they are thrust into. Majority of these workers do not earn more than Rs. (200-300) from a customer. In that too the brothel manager takes up his share and they are left with a meagre amount which is just sufficient enough to go about in a day. Data reports collected by (KITS) Coimbatore stated that 90% of the commercial sex workers are in a debt trap⁵⁴ which makes it even harder for them to leave the environment that they are in. The government needs to regulate these brothels in order to break the nexus which the managers have created. Another facet which the

government has to look upon is the regulation of shelter homes as they are very few in numbers and that too lack facilities, security and do not provide any opportunity for the residents to move ahead in life.

The first step that the government needs to take is the regulation of this trade like Germany, Netherland, or Switzerland. This will ensure that all the workers come under the ambit of the "Sexual Harassment at Workplace Act" and they would be able to file a suit if any wrongdoings occur. If the trade is regulated it would put a halt on illegal trafficking, the workers would need to be given a basic minimum wage, they would be able to claim health benefits and so much more. Moreover, the government would be able to tax it and it would ultimately benefit the exchequer.

Next, the government needs to introduce a witness protection program in order to safeguard those who testify against their employer or any customer.

Further ahead, they need to be included in the policy-making so that the policies are created whilst keeping their point of view in mind.

Another welcome step and which would be the most important one. Would be to introduce campaigns and programs in schools and societies to remove the stigma that the people and the youngsters have in mind for them and treat them as regular people and their job as a self-employed one. So that these workers as well as their children can walk with their heads held high. When all this has been done then only, we can say that a positive step has been taken and now it's time to protect it.

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