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# PROSTITUTION IS LEGAL IN INDIA, ACCORDING TO A RULING BY THE SUPREME COURT

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## ABSTRACT

Prostitution means giving one's body for sexual activity in exchange for money. Anyone who engages in this practice is known as a prostitute. It has been a long-practiced activity since the society was organized. It is a practice that has been prevalent in both ancient and modern India. Furthermore, prostitution is criminalized in India but there is a range of activities related to it such as solicitation, kerb crawling, owning prostitutes, prostitution in public places, exploitation of children, pimping, and pandering. In her career as a prostitute, Intercourse employees faced many challenges. Her legal rights were violated simply because she is a prostitute. Some sex workers choose this profession out of their own consent, but brothel owners offer some of it. Intercourse workers' violence is linked to residents' perceptions of them as criminals. India's Supreme Court made headlines by directing it to recognize prostitution as a profession and asserting that sex workers, like some other professionals, are entitled to dignity and constitutional rights. The Indian Penal Code outlaws a number of activities related to prostitution, including pimping and renting property to run a brothel. According to the Immoral Traffic Act of 1956, human trafficking is prohibited in India.

**Keywords:** Prostitutes, Prostitutions, Illegal Activities

## **Introduction**

According to the Immoral Traffic Act, 1956 the term 'prostitution' is used to describe the condition of women. Prostitutes make their living through prostitution. The word prostitution is derived from the Latin word meaning to expose in public. Prostitution means giving one's body for sexual activity in exchange for money. Prostitution in India is an annual business of Rs 40,000 crore and thirty percent of sex workers are children whose exploiters earn Rs 11,000 crore. According to a survey, there are about 10 million sex workers in India, of which 100,000 are in Mumbai alone, Asia's largest sex industry hub. There are approximately 300,000 to 500,000 children in the sex trade in India, of which Bangalore as well as five major cities account for 80% of child prostitutes in the country. Prostitution is the oldest profession. This profession has been going on since ancient times. Prostitution is a serious social problem in India. There are other forms of violence perpetrated by men against women. There are also problems with them many times, like not treating them with respect or not giving them government facilities, they are not treated like other citizens. In some cases, they are sexually assaulted by their client, and they kill her even though she is not ready for intercourse. Previously, only women worked as prostitutes, and men were their customers. In this era, both men and women were involved in this profession. According to a BBC report, the number of male prostitutes in India is on the rise. Male prostitutes are known as gigolos. Also, when we talk about prostitution, transgender people are often overlooked. Billions of profits are made through prostitution by taking advantage of socially and economically backward people. As we discuss in this topic, prostitution is a very old profession in India. Sex workers were known as apsaras in Hindu mythology. Devadasi system was very prevalent in the Indian society before the colonial period. Women were given to God, but when feudalism and colonialism ended, and these women were exploited by the temple priests. This is one of the strangest forms of prostitution in India. Prostitution is also mentioned in the Vedas. In the Rigveda, it is said by Kausalya, "Women who live by their beauty can entertain men." This shows the existence of prostitution in ancient India. Prostitution is legal in India, barring other types of activities such as solicitation, kerb crawling, owning prostitutes, prostitution in a public place, child abuse, pimping and pandering.

## **Legal Requirements Regarding Prostitution**

Prostitution is defined by the Immoral Trafficking Act of 1956 as the sexual double act or abuse of other people for financial gain, and a prostitute is a person who makes money doing it. It is

also known as SITA. The law says that prostitutes can work in private, but not in public. In the event of a customer's death, they will be detained. Within 200 meters of people, women cannot engage in commercial sex. In fact, there are no designated prostitutes. Prostitutes could be arrested if they were discovered publicly soliciting or soliciting other people, according to a 1986 amendment to that law. Call girls' phone numbers shouldn't be made public. They could face a fine and a six-month prison term if they are granted release. The client runs the risk of spending three months in prison if they accept the sex worker within 200 meters of a public place. They could face up to ten years in prison if they have sex with a minor. If an adult man lives with a prostitute, he is guilty until he is found not guilty or is given a sentence of two to four years in prison. The 1986 ITPA is significant because it puts into effect the Convention on the Trafficking of Women and Children, which was signed on May 9, 1950, in New York, with the goal of putting an end to immoral child and woman trafficking. It also comes after the Preamble.

In "The State of Uttar Pradesh vs. Kausalya," the ITPA's constitutionality was questioned. According to the facts of this case, a few prostitutes were requested to be removed from Kanpur in order to preserve the city's decorum. The High Court of Allahabad decided that this act's section 20 cut short articles 14 and 19(1)(e) and (d). The act was deemed constitutionally valid, there was a discernible distinction, and the purpose should have been accomplished by the act.

This act aims to preserve society's decorum and morality while also rescuing women and girls by offering them rehabilitation so that they can become decent members of society.

In 2006, a proposal to amend this act was made. The provision that makes it illegal to solicit clients for prostitution is removed from the amendment bill. Also intended to make it illegal to visit a brothel in order to sexually exploit trafficked victims and impose a fine of Rs.20,000.

**In the case of 'Budhadve karmaskar v. state of west Bengal,'** in this case, the incident happened on 17th September 1999. Chaya Rani Pal, also known as Buri, was a resident of Jogen Dutta Lane in Calcutta and lived in a red-light area. She was clearly a prostitute. She fell to the ground after the appellant Budhadev kicked her with his legs and fists. The appellant then grabbed her by the hair and repeatedly slammed her head against the wall and floor, leaving the victim with ear, nose, and head bleeding. On the victim's body, as many as 11 injuries were discovered during the postmortem, eight of which were located on various areas of the face and forehead. Asha Khatoon and others brought the victim to the hospital, where

she was found “dead on arrival.” Sex workers are also human beings, and no one has a right to assault or murder them. A person becomes a prostitute not because she enjoys it but because of poverty. Society must have sympathy towards the sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21 of the Constitution.”

Trafficking is specifically addressed in a provision of India's constitution. All forms of human trafficking, including the sexual exploitation of girls and women, are outlawed by Article 23. In expansion to the ITPA and the constitution, we have specific arrangements referenced under IPC.

Under Indian penal code,

1. Section 366- A deals with procurement of minor girls.
2. Section 366-B deals with importation of girls.
3. Section 372 deals with selling of girls for prostitution.
4. Section 373 deals with buying of girls for prostitution.

Rape of an inmate of a brothel comes under the same provision as rape, but the rape must be against her will. The minimum punishment under the IPC is seven years.

### **Prostitution legalizations**

There has been a lot of discussion about making prostitution legal in India. Since there is little chance of banning prostitution, it is thought that it is best to regulate it. A number of nations, including Canada, France, Germany, Denmark, Wales and others have made prostitution both regulated and legal. In point of fact, the occupation is not legal but also subject to taxation in Germany, where brothels are permitted to advertise for jobs and send job offers through HR firms. In addition, Germany enacted the most recent legislation in 2016 with the intention of safeguarding prostitutes by mandating a registration certificate for prostitutes and a permit for all prostitution trades. This kind of system, in which the profession is regulated, and the safety of sex workers is considered, tends to do less harm to sex workers and better protects the system from abuse and exploitation. Not only do these sex workers get dangerous sexually transmitted diseases like HIV and AIDS, but they also suffer from police brutality, low pay, harassment, and other problems. The supreme court itself proposed legalizing prostitution in 2009.

### **Prostitution should be made legal, according to these arguments**

1. Minors will not be at risk of sexual exploitation if prostitution is made legal. Around 10 million children around the world are pushed into prostitution. Nearly all nations must deal with child prostitution, but the situation is worse in Asia and South America. The exclusion of minors from the system can be guaranteed by strict industry regulations.
2. The prevention of sexually transmitted diseases, especially AIDS, which is so prevalent among sex workers, will be ensured by mandated health screenings. Unwanted pregnancies will be prevented, and other health risks will be reduced with adequate birth control. Cleaner and more hygienic working conditions will be made possible by strict guidelines and regular health checks.
3. The system will be improved and upgraded if prostitution is made legal. Middlemen and pimps will be eliminated from the system, sex workers will earn more money, and the criminal and exploitative elements will be negligible.
4. People will turn to a legal and simpler option to satisfy their sexual urges, which will result in a decrease in sexual violence, rape, and other forms of sexual assault. Take Queensland, for instance, where the rate of rape increased by 149% following the closure of brothels.
5. Since voluntary sex work is not illegal and only operating a brothel is illegal, the sex workers involved should not be arrested, punished, harassed, or harmed during a raid.
6. India's prostitution industry is worth approximately 8.4 billion dollars. The government will be motivated by legalizing and taxing the process.
7. Workers' rights will be safeguarded. Even though sex workers do not yet fall under the purview of standard labor laws, they should be accorded the same rights as citizens and workers.
8. The police's treatment of sex workers is often brutal and violent, according to observations. It's as though they're a group whose rights aren't recognized. The rights of sex workers, who also have all of the fundamental human rights and other rights that

the Constitution guarantees to all citizens, should be made known to the police and other law enforcement agencies. All sex workers should be treated with respect by the police; they should not be abused verbally or physically, subjected to violence, or coerced into sexual activity.

9. The Press Council of India ought to be urged to issue appropriate guidelines directing the media not to publish or broadcast any photos that would reveal the identities of sex workers during arrest, raid, and rescue operations, whether as victims or accused. (sec. 354, IPC)
10. On the basis of a proforma certificate issued by UIDAI and submitted by the Gazetted Officer at NACO or the Project Director of the State Aids Control Society in conjunction with an Aadhar enrollment form or application, sex workers will receive Aadhar cards. The process will not violate any confidentiality, and the assignment of any code in the Aadhar enrollment numbers that identifies the cardholder as a sex worker will not take place.
11. The police's treatment of sex workers is often brutal and violent, according to observations. It's as though they're a group whose rights aren't recognized. The rights of sex workers, who also have all of the fundamental human rights and other rights that the Constitution guarantees to all citizens, should be made known to the police and other law enforcement agencies. All sex workers should be treated with respect by the police; they should not be abused verbally or physically, subjected to violence, or coerced into sexual activity.

### **Pro and con aspects of making prostitution legal**

The State will become responsible for managing brothels if prostitution is legalized, and it can fulfill this responsibility by issuing licenses to authorized individuals. In addition, it will establish age guidelines for prostitutes, a client database, adequate compensation, and medical facilities for prostitutes. Prostitutes can obtain rights like the right to medical care, the right to education for their children, the right to be free from exploitation and rape, and so on through this strategy. Abuse of prostitutes, sex racket operations, hidden and street prostitution, and other forms of sex racket can all be facilitated by this strategy. Prostitutes who have lost their jobs or who were forced into prostitution but no longer want that lifestyle will be housed in

protection facilities. Additionally, the government can provide these prostitutes with basic education and training so that they can find alternative means of earning a living. On the other hand, it's possible that the legalization of prostitution will be mistaken for the promotion of prostitution. This could make it easier for prostitutes to make money and encourage more women to prostitute. There is a good chance that the government will be able to make money from this business. As a result, strict regulations are required to prevent this industry from being legitimized, which is the least the government can do to address the problem.

### **Rights for Sexual Workers in India**

Every Indian citizen is entitled to fundamental rights under the Indian Constitution, so sex workers are also citizens who are entitled to these rights.

A prostitute has the right to life guaranteed by Article 21 of the Indian Constitution, as demonstrated in the *Budhadev Karmaskar v. State of West Bengal* case. In this case, Budhadev Karmaskar, the accused, was found guilty of killing a sex worker in Kolkata in 1999. The court also stated that a woman prostituted for poverty rather than pleasure. Instead of selling her body, such a woman can earn her basic income from her skill if she gets the chance to learn technical or vocational training. As a result, the Supreme Court ordered the Federal Government and the State Governments to develop nationwide programs for providing sex workers with vocational training.

### **What is the penalty for engaging in Prostitution-related illegal activities?**

The Immoral Traffic (Prevention) Act of 1956 makes some things illegal. Inducing or kidnapping a girl for prostitution, detaining girls in brothels, seducing a person under custody for prostitution, and carrying out prostitution within 200 meters of any public place like schools, colleges, temples, hospitals, etc. are all examples of these crimes. Other examples include managing a brothel or allowing certain locations to serve as brothels.

Even in the event of a first-time conviction, the aforementioned activities carry severe penalties, including lengthy prison sentences. The minimum penalty for brothel keeping is a fine of up to two thousand rupees and imprisonment for no less than one year and no more than three years. Obtaining a girl child for prostitution is a serious crime that carries a maximum sentence of seven years in prison, but it could be up to life. Tempting or Requesting for prostitution under the unamended Represent the principal conviction draws in a discipline of detainment for a very long time or a fine of rupees 500 and for the subsequent conviction, detainment as long as

one year or with a fine of rupees 500. In addition, violators of Section 370A of the Indian Penal Code face five to seven years in prison for exploiting a trafficked child.

### **Conclusion**

Due to the nature of the profession, prostitution is typically looked down upon in India, which has a variety of societal components' workers make their own community in which they live. The findings of the research indicate that legalizing prostitution would be beneficial to the people, prostitutes, and the government. Even though prostitution has been legal in our nation for a long time, our society still views it with contempt. The prostitutes would benefit in numerous ways, including improved working conditions, rights and responsibilities for them, improved health care, and better health facilities. It would be to the state's advantage because it would generate revenue, allowing it to exert greater control over such activities. Additionally, it grants the state the authority to regulate these activities and grants them the right to exercise control over them. The issues faced by sex workers will diminish as marijuana becomes legal. Trafficking, one of the most serious crimes, would be greatly reduced. Additionally, it is necessary to make a distinction between sex workers who have voluntarily chosen this occupation and sex workers who have been compelled to do so. a set of regulations governing both sectors must be developed and maintained. Prostitution must be legalized in exchange for life insurance and rights for sexual workers. As the majority of the time, brothel owners are to blame for the actions of prostitutes, they must be punished instead of the prostitutes. It is suggested that the state should assist in the rehabilitation of sex workers, and it is necessary to recognize that such disadvantaged women need to be provided with a sufficient income and reallocated to another industry with adequate training and development.



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