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An Analytical Study in Legality of Sex Workers in India

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ABSTRACT

Sex work is frequently associated with ideas of compulsion, poverty, misery, and a lack of agency; nevertheless, research reveals that sex work in India is more diversified than these common representations. Prostitution, which is simply a sex trade, is a common occurrence in India; yet, we in acculturated society don't dither to prevent the legal presence from claiming this profession; in fact, the vast majority of us are unwilling to give it legal standing. Regardless of the fact that the Hon'ble Supreme Court of India has signalled in many judgements that this calling should be legalised in India. Currently, our country's main issue is a massive increase in the number of assaults, and legalising prostitution would be a step forward in combating assault. Aside from that, legalising prostitution will help to reduce the number of occurrences of child trafficking. The Universal Declaration of Human Rights, 1948 states that "All men are born free and are equally entitled to have their basic human rights." This paper analyses the People thought about the legalisation of sex work in India. From the conception of marriage, sex work has been in Indian society and is as old as civilisation itself. Sex work is now often associated with violence, prejudice, and exploitation. No matter if it is legal or illegal, prostitution will always exist. So, it is preferable to confront the issue at hand and perhaps come up with solutions to the issues that women and children involved in prostitution suffer.

Keywords: Sex workers, Trade unions, Legalization, India, Industry.

I. INTRODUCTION

A prostitute is someone who "permits the use of her body for sexual activities as a result of payment." Sexual services are offered in prostitution. Services, such oral sex or sexual activity, for money. The term "prostitution" itself refers to a woman's condition. It's not only a problem in India; it affects people everywhere. In ancient Greece, prostitution was a regular part of daily life. It utilised a significant portion of the population and talked to one of the best levels of financial action in the most important urban locations, especially the numerous ports. There was a regulation that said that every woman in the ancient Syrian city of Heliopolis was to sell herself to strangers at the altar of Astarte. Prostitution has never been made illegal by a

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legislature. The reality of prostitution must be accepted. The country will fight against AIDS and sexually transmitted diseases at the same time that it legalises prostitution. Laws will transform prostitutes from being second-grade students to people who make a life legally. They'll get the chance to live with pride. Similar to a building without a roof, a fish without water, and a plant without roots is a life without notoriety. The most fundamental element of a man's existence is his reputation among the general public and his act of generosity. Nobody should be subjected to abuse or insults. One's life depends on their level of notoriety. Prostitution is the practise of providing sexual services in exchange for payment. To claim that men are not victims of sexual exploitation and violence would be a little stupid, thought. Prostitution, like other male-on-female acts of violence, is predominantly a concern for women because the majority of the victims are female. Moreover, when we highlight the flaws in India's sex work system, the transgender minority frequently remains undetected. The majority of the billions of dollars made by prostitution in India and around the world is made by exploiting those who are socially and economically disadvantaged.

II. BACKGROUND

Sex work is an ancient occupation in India. There are references to sex workers in numerous Hindu mythological tales known as apsaras. The devdasi system existed prior to colonial times, and it was customary practise among Hindus to give up their female child as a mark of their devotion to God. Devdasi literally translates as "devoted to the god," meaning that they were married to God and were not forced to marry mortals.

These were sexually liberated women who excelled in a variety of artistic disciplines, including classical dance and music. Colonialism, on the other hand, brought with it a system of exploitation and suppression. The British began reflecting their own societal restrictions on these women, transforming the fundamentals of sexual liberation, femininity, art, and culture into devotion, bhakti, and so on. Furthermore, with the decline of feudalism and the end of colonialism, these women began to be mistreated by temple priests. As a result, they are at risk of sexual exploitation and poverty. This is one of the oldest forms of sex work in India.

(A) Research Questions

- What could legalization do to prevent the use of women for sex work related abuse?
- The role played by trade union or association in the development of sex work.
- What are the laws which govern sex work.
- Which factors help former sex employees rehabilitate and reintegrate back into society.

(B) Objectives

- To examine legalization's impacts on sex workers.
- To analyze the sex work status in India.
- To recommend policies and regulation for sex workers in India.
- To determine the resources and services available to sex workers.
- To research the elements of sufficient policies or law that can protect women who leave the sex industry.

(C) Research Problem

There are numerous debates concerning whether or not prostitution should be legalised. Both have advantages and disadvantages. The researcher attempted to assess the impact of legalisation on the exploitation of women and children and to determine what good it can accomplish. Atrocities against women have gained prominence in recent years, and many attempts have been made to defend the rights of women and children. Given this, the researcher has provided their viewpoint on the effectiveness of legalising prostitution on victims of prostitution.

III. VADAMALAR FEDERATION AND SIAAP

- i. This year, almost 100 new sex workers have started taking part in the CBO and federation activities.
- ii. A brand-new, active board has been created. The federation's activities are more active, and its members are more enthused. Instead of relying too heavily on the NGO partner, the federation's activities are being more fully owned by the sex workers. Meetings are called, planned, and even have resource people invited by the members themselves.
- iii. Sex workers have higher self-esteem and view themselves as knowledgeable individuals with the ability to speak for themselves and get what they want. Speaking to a sizable number of police officers was a unique experience because sex workers have historically felt hostility towards the police. But here, sex workers were on the pedestal while the police were watching and listening. They felt a sense of self-actualization after openly identifying as sex workers when speaking to the media at a news conference.
- iv. Relationships are built with supporters from different movements, including those of workers, Dalits, and LGBTQ people. Vadamalar joined the labour unions in taking part in the All India Strike on January 8. Across movements, there is a growing sense of unity.

Transgender sex workers were seen walking in Vadamalar with the female sex workers during the Chennai Pride. The Vadamalar federation and the communist party in Madurai now get along well and the federation is invited to their events. Vadamalar Federation attended a protest meeting against the oppressive Citizenship Amendment Act at their invitation.

- v. This year, four CBOs under Vadamalar have been registered. Due to this, advocacy campaigns have gained more respect.
- vi. This year, Vadamalar's sex workers engaged with the media on a large scale, changing how society views sex work. A change in how the media covers sex workers has sparked a flurry of conversations on social media platforms concerning the legality of sex work and whether it is a respectable means of support.
- vii. Successful community outreach for counselling and knowledge sharing has expanded the movement's influence. The number of sex workers who have been sent to hospitals for SRH and NCDs is something that sex worker leaders have been reporting on a monthly basis. The CBO officials have earned the fullest trust of the sex industry. According to Indra from the Kanyakumari district, numerous sex workers have called her even in the middle of the night with urgent thyroid and kidney stone-related health difficulties, and she has taken them to the hospital without hesitation. Local sex workers look up to the CBOs and sex worker leaders, trusting that they will receive any assistance they require. Counselling was effective because it gave sex workers a chance to express their feelings and find confidantes among their peers. The community has joined together much more strongly.
- viii. Two sex workers were selected to participate in training under the paralegal volunteer programme as a consequence of the DLSA's legal awareness trainings. However, the State Legal Services Authority's approval would be required before the training could start. There is a delay because of the system's bureaucracy.
- ix. The Secretary of Social Welfare agreed to instruct police not to detain willing sex workers. She added that she would discuss the problem of violence in medical settings with the National Health Mission Director. The fact that they had a direct conversation with the Secretary in her office made the sex workers thrilled and proud.
- x. The use of research evidence in demonstrating actual data on the effects of criminalising sex workers helped the stakeholders accept our case as valid.

IV. PEOPLES THOUGHT ABOUT LEGALISING SEX WORKERS IN INDIA

Given that prostitution is a problem that cannot be avoided, some people believe that it should be legalised in India and that prostitutes should be accepted as members of society. The benefit of legalising prostitution in India is that we will eventually gain a reputation as sex experts since after Bombay's dance bars were closed, the majority of the bar dancers moved to Gujarat, Karnataka, and other nearby states to start their business covertly. By legalising prostitution, these women who frequently straddle the line will have access to medical facilities that can stop the spread of AIDS. The case for treating the sex industry like another industry and providing it with legal safeguards is very strong. The practical repercussions of the profession's legalisation would be favourable to sex workers and society at large. Because many offenders view prostitutes and their clients as desirable targets for theft, misrepresentation, abuse, or other criminal behaviours, keeping prostitution illegal also encourages crime. The perpetrators are aware that victims like these are unlikely to report crimes to the police because they would have to admit they were involved in the prostitution trade when the assaults took place. However, if prostitution is legal, victims will easily go to the police and report the crimes if they occur. Benefits of legalising prostitution Sex trafficking will end if prostitution and the sex industry are made legal. Legalising prostitution will regulate the sex industry. The amount of prostitution that is secretive, illegal, and on the streets will decline if it is legalised. The women who engage in prostitution will be safe if it is legalised since they will have rights. The sex industry needs to be legalised because women who work in prostitution are the ones who suffer the most because they have no legal protections. Women's wellbeing will improve if prostitution is legalised because then they will have easy access to medical facilities, which they do not have when it is illegal. Seeing prostitution as a commercial enterprise, which enabled Indian women to become licenced sex workers.

(A) Organizing as Laborer: The Karnataka Sex Workers Union:

In the southern Indian state of Karnataka, there is an organisation called the KSWU that represents men, women, and transgender sex workers. At least 2,500 people have signed up with KSWU as of right now. The union's first official public event as a member of the New Trade Union Initiative (NTUI) was a rally on May 1, 2006. A group of sixteen left democratic unions created the NTUI, a nationwide federation of around 300 independent trade unions in India, in 2001 with an emphasis on women workers and unorganised workers. Although KSWU hasn't always worked closely with NTUI, the union's association with the latter—and NTUI's willingness to deal with sex workers—served as a source of assistance for the organisation early

in its history and as confirmation of its symbolic link with the labour movement. With its emphasis on legal rights and trade union structure, KSWU has set itself apart from other sex worker organisations in Karnataka, many of which concentrate on HIV prevention and the health requirements of sex workers. For instance, unlike many other sex worker organisations in India, KSWU has requested for official state registration as a trade union but does not collect funds from foreign donors. A membership fee and a monthly subscription are paid by members. Even though the state has not yet formally recognised KSWU as a trade union, the organization's core organisational principles depend on it doing so.

(B) Pushing The Limits of The Labour Union for Sex Work:

The term "worker" has significance for sex workers both symbolically and practically because there is substantial overlap between sex workers and other informal employees. Many people who work in the sex industry have also worked in domestic or manufacturing employment at various times, or alternate between the two. Hybrid organisational strategies are necessary to address the problems sex workers experience, including criminalization, harassment, poverty, a lack of access to social assistance, violence, and precarity. In order to unionise, sex workers must simultaneously make an argument for the legitimacy and recognition of the trade union while also redefining it to take into account concerns of sexual orientation, gender, and caste as well as the adaptability and variety of working conditions. Sex workers have used this strategy all around the world, such as in Argentina, to join umbrella labour federations. KSWU has adopted a comparable approach. The activity of KSWU offers fresh ideas for labour organising in India. Similar to the informal workers' movement, the sex workers' mobilisation has prioritised social safeguards from the government over increased wages from businesses.¹⁵ Additionally, sex worker unions must employ original and inventive methods for staying in touch with members who are dispersed and frequently working covertly as opposed to on the same factory floor, frequently by redefining the workplace through methods like a helpline. Since sex workers are stigmatised, criminalised, and operate covertly, the visibility of traditional forms of activism, like street protests, may put them at risk. As a result, KSWU must play multiple roles: as an internal democratic, nonjudgmental space for emotional and social support and as a tool for requesting recognition and access to poverty alleviation from the state. Finally, the organising of sex workers demonstrates how factors such as sexuality, gender, and caste dynamics can give labour organising a fresh perspective. Despite the difficulties of supporting the labour movement, KSWU members are in a unique position because of their status as workers to both demand citizenship rights and redefine "work."

(C) ILO Position On Sexual Labour:

HIV & AIDS and the workplace are topics of ILO Recommendation 200, which was issued in 2010. In accordance with Recommendation 200, employees have the right to receive occupational health and safety, HIV testing, prevention, treatment, care, and support, as well as to be free from stigma and prejudice connected to their status as people living with HIV. It also discusses the responsibilities placed on employers and the government to create policies and initiatives that safeguard these rights. Despite the fact that sex work is not specifically mentioned, Recommendation 200 applies to all employees working in all capacities and settings, including "persons in any employment or occupation" in "all sectors of economic activity, including the private and public sectors, as well as the formal and informal economies." The Committee's minutes specifically state that the instrument covers sex employment.

Later ILO publications enhance and support the recognition of sex work as labour:

- The book *Reaching out to Sex Workers and Their Clients* underlines the importance of addressing structural factors that render sex workers vulnerable to HIV during HIV prevention interventions with them. These include a lack of social protections, stigma, discrimination, marginalisation, and violence.
- *Not Leaving Anyone Behind Reaching critical Populations via Workplace Action on HIV and AIDS* documents best practises in workplace interventions to deal with HIV among critical populations, including sex workers.

Despite this development, sex workers contend that the ILO should go further in recognising sex work as work, send a message to the international community and national governments that sex work is in fact work, which is not necessarily harmful and exploitative, and promote the realisation of sex workers' labour rights in the workplace.

V. PROSTITUTION AS AN INDUSTRY

Thus, the question of whether or not prostitution qualifies as an industry under the law, with a definition that will allow both men and women who work in the sector to benefit from the Industrial Disputes Act of 1947, emerges. According to the statute, an industry is made up of organised, systematic operations between an employer and employees. Since there is no employer to establish an employer-employee relationship and no system through which the occupation is controlled under current law, prostitution is excluded from the scope of the act by itself. Simply said, there are a very significant number of people who are sexually exploited or who willingly sell their bodies as a product. The term "sex industry" will therefore apply to the

profession of prostitution for the purposes of this essay even though it is not considered an industry by the Industrial Disputes Act of 1947. But in many nations, prostitutes have organised into unions to successfully and efficiently advocate for their rights. Australian sex workers registered the Australian Liquor, Hospitality and Miscellaneous Workers' Union with the Australian Council of Trade Unions a century after the country's first trade union was established. The subject of why unions, who claim to defend society's weak and vulnerable workers, are openly supporting exclusivity was finally raised during the 2007 European Trade Union Confederation Congress. Japan is working hard to bring prostitution out of the shadows and into the light after years of abuse and defiance of its anti-prostitution laws. It has been suggested that unionisation would better protect the men and women involved in the industry than outright denial, as the latter would simply allow the industry to flourish underground. Many arguments opposing sex workers' unionisation claim that doing so will benefit "employers" like pimps and traffickers more than it will benefit the workers themselves. But it's important to distinguish between consensual sex work performed by those who are capable to do so voluntarily and victims of sexual exploitation. In fact, the Supreme Court of India noted that in order for any group of people to be successfully safeguarded, the other must first be acknowledged. In *Budhadev Karmaskar v. State of West Bengal*, the Supreme Court recommended conducting nationwide surveys to ascertain the proportion of sex industry employees who voluntarily entered the field as opposed to those who were coerced into it by a variety of factors and those who consciously chose to stay in the field. Both groups need to be represented; the former needs the assistance of social workers and rehabilitation facilities, whereas the latter needs the representation of unions. The first prostitution union in Spain, named Sealeer Cooperative, was established in Ibiza a few weeks ago. It supports both the women who are physically abused as well as those who are denied payment by clients. In Australia, the decriminalisation and unionisation of sex work resulted in the profession being referred to as "health-assured" because precautionary measures to prevent venereal diseases and HIV/AIDS through the use of condoms and other protective devices could be taken due to the profession's public recognition of its risks and dangers. The sector's unionisation also made it possible to protect workers under the age of 18 by removing them from the business and rehabilitating them in addition to protecting adult workers.

VI. WHY DECRIMINALISATION?

The sex market is enormous and varied. Strangely, individuals who work alone and are most autonomous from a boss are also those who are already most vulnerable and are therefore most at risk of being criminalised. This can be explained by state and police corruption, as well as

the challenges of eluding law enforcement. Although complete decriminalisation of sex work is a first step towards enabling sex workers to organise without fear, it won't solve all the issues, particularly those related to exploitation. Since sex workers may report crimes without worrying about being arrested after New Zealand decriminalised sex work, the amount of violence has dropped.

Because decriminalisation has been shown to lower the rate of HIV infections in sex work, it is supported by all UN institutions and health organisations. Since sex work was made legal in New South Wales, there has never been an incidence of HIV transmission from a sex worker to a client. Contrary to the assertions of prohibitionists, decriminalisation did not increase the sex business in New Zealand; rather, it made it simpler for people to find other types of employment without a criminal history. When you are no longer need to hide, you also spend less time on the streets. As in Greece, austerity policies and poverty fuel the sex industry's expansion. The best strategy for combating the sex business is to support solutions that give us more options by standing with sex workers. Sex workers are a part of the working class, regardless of your opinion of what we do for a living. We only possess our bodies and intelligence; we do not possess the means of creation. We should be permitted to join trade unions in order to unite in our support of our class.

(A) Engagement:

- Initial crisis response: The team became aware of and started to address the most pressing requirements of sex workers during field visits, which included lowering police harassment, providing a safe location, and having specialised sexual health services. The crew started off by responding to numerous emergency circumstances. For instance, they swiftly responded to partner and anti-social element violence and negotiated the release of FSW after police detention, accompanied them to medical facilities in times of emergency.
- Violence by anti-social elements: In 2004, pimps and "agents" who made their living off the wages of FSWs controlled a large number of sex workers. Open violence was typical. Reports of anti-social element violence significantly decreased as sex workers took control of their life and united as a community.
- Exchange of protective tactics in a safe environment at the drop-in centre (DIC): In response to the FSW's request for a safe place, the team held community consultations and worked together to choose a location for a drop-in centre (DIC). Health care delivery was started when the FSW requested a clinic in the DIC. Nearly 75% of the anticipated

population of sex workers had started using the clinic's services by the end of the first year. The DIC was initially used as an unregulated area with no usage restrictions. In order to allow FSW to use the space and the chance to interact in it to usher in a significant period of collectivization, the space needed to be one in which external rules did not restrict their freedom. As sex workers got to know one another at the DIC, they realised they had similar issues and experiences.

(B) Involvement:

- Workplace security: reinforcing protection in the lodges: The safe space afforded by the DIC quickly moved from a “problem-sharing” to a “problem-solving” space. Although the programme team initially engaged in crisis management, their role as the primary problem-solvers gradually retreated as sex workers began to hold more formalized meetings to strategize solutions to their problems. During the earliest phase of the project, sex workers began to realize that the social networks forming through the DIC afforded them protection by reducing isolation. Beginning in early 2005, the intervention began creating safe spaces beyond the DIC by building rapport with lodge owners who provided rooms for sex work. Negotiations with lodge owners ensured that sex workers were able to maintain control during their transactions with clients.
- Client violence: Client-initiated violence is less frequent than other types of violence. Negotiations for relatively safe sex locations were always done by sex workers. In addition, the neighbourhood could tell the difference between legitimate customers and criminals posing as customers. Lodge owners, brokers, and other sex work industry participants were targeted as essential stakeholders as the project and community grew more involved in initiatives to avoid violence, and reports of all forms of client assault further decreased.

(C) Ownership:

- Swift reaction units: Community-led protection expanded from the DIC into the field as sex workers started creating and putting into practise their own plans to stay out of perilous situations with different parties, like talking about how to negotiate safe locations with clients and informing peers when going to an unusual place with clients. The sex workers received crisis management training on the job as well as instruction in legal literacy and negotiation techniques. The quick reaction team, originally made up of seven sex workers and two noncommunity personnel, was now entirely made up of sex workers. Since almost all sex workers had cell phones, the rapid response operation

was conducted using a cell phone network. All sex workers were given access to the fast reaction team's cell phone numbers and instructed to call them. Managing power dynamics with regular partners while maintaining domestic safety Empowerment among FSW and complaints of domestic violence from regular partners seem to have a complicated relationship. Early on in the research, there were fewer allegations of police brutality, but there were more reports of domestic violence committed by common partners. This shows that, although being contradictory, domestic violence may serve as a proxy indication for empowerment. It is yet unknown if sex workers are genuinely experiencing greater violence from their regular partners in the context of increased empowerment, or if they are simply better able to identify violence and feel more empowered to disclose these encounters. This shows that empowerment may not follow a straight line to "progress"; instead, new conflicts and disruptions appear as interpersonal relationships change as a result of the intervention.

(D) Sustaining:

Self-regulatory organisations for combating human trafficking and violence Inextricably related with human trafficking is violence. To control their victims, traffickers frequently employ coercion, force, and overt physical and sexual violence. violence, including wrongful arrests, against sex workers. Following "raid and rescue" operations by police and others, reports of forced detention and other conditions have also been made. Early attempts to coerce young girls or women into having intercourse with them go against their will. The majority of the board was composed of residents of the town, with non-residents representing significant civil and professional areas like education, health, law, social welfare, and the police. She is offered the choice of being reintegrated with her family or living at a hostel to pursue other vocational training if she is a minor or was forced into sex work. In the event that she is to be reintegrated into her family, the representatives will take her home and secure a signed promise from them that she won't be returned to sex work. There is routine follow-up in these circumstances. Developing into a community-led intervention: Protection through community acceptance With the emergence of the sex industry, it became clear that community health protection required going beyond a limited definition of "hot spots" that merely recognises locations where sex workers congregate or engage in client sex. Their activities also needed to address the numerous systems that sustained and reproduced their marginality for HIV prevention to be effective.

VII. CONCLUSION

In a society where prostitution has been a long-standing profession and is still thriving as a

business, it would be imprudent to turn a blind eye to it and pretend the system and its defects do not exist. Decriminalizing sex work and making it legal will provide a better life for sex workers by providing higher earnings, health security, and protection. Not only that, but as a society, it will be a progressive move that will abolish many societal problems such as child prostitution, rape, and so on. Sex trade is a highly visible reality in our country, and by recognising it as a legitimate business with certain norms and safeguards, all parties involved can gain. A more comprehensive legal framework, as well as the adoption of all protection procedures, will only serve to benefit society. Sex work is one job that society regards as shameful, and sex workers are regarded as filthy and shameless persons. Sex work regulations in India are insufficient and lack a coherent approach. As a result, control of such operations is absolutely necessary. Because sex work will continue to exist even if tight laws are imposed, it is preferable to establish rules rather than outright abolish the conduct. Sex work is a career that can involve violence and exploitation in some circumstances. Nonetheless, for certain people, it may be useful in running a family. Also, people must be educated about women's issues so that they do not perpetrate such horrible atrocities against them, which is the main source of concern. Given these considerations, the researcher believes that prostitution should be legalised, with a regulatory authority overseeing the practise. He concludes that legalising and regulating sex work protects the protection of sex workers and children, as well as their rights.

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