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PROSTITUTION: AN OVERVIEW

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ABSTRACT:

Prostitution is as old as civilization and has been a part of Indian society since marriage was invented. Prostitution has recently become synonymous with violence, discrimination, and exploitation. Prostitution is frequently regarded as a taboo in Indian society, and adequate attention has not been paid to its regulation. Prostitution is the practice or business of performing sexual acts in exchange for money, and a prostitute is someone who works in this field. Prostitution occurs in a variety of structures, and its legal status varies from country to country and also from region to region within a country, ranging from being an upheld or unenforced evidence of corruption, to unregulated, to a directed profession. It is a component of the sex industry, along with pornography and other forms of sexual entertainment. Brothels are foundations that are solely dedicated to prostitution. Prostitution and the law are changing all over the world, resulting in conflicting conclusions. Some people consider prostitution to be a form of abuse or barbarity against women and children. This paper throws light in the aspects in relation to history of prostitution and what are the effects of legalizing prostitution and also regarding the landmark judgments on the concept of prostitution.

INTRODUCTION:

Regardless of the fact that today's society claims to be powerful, contemplative, and non-discriminatory, and that it readily acknowledges certain things, the reality is quite different. Sometimes, while flipping through the pages of a newspaper, we feel satisfied because we believe that civilization, people, and the realm around us have changed. Yes, that is correct, and much has changed. But it raises the question of how far the world is progressing toward a better tomorrow for all. The answer will undoubtedly be negative. Still, the problem is unavoidable, and it worsens when we try to deny it. Prostitution is one such issue. Prostitution is a reality, and the chances of getting away with it are slim. Its version of existence may have changed, but it remains a painful reality for society. The form of existence may have changed, but the standpoint and vision through which it is seen has not.

The reality is that if a sex worker is found near a public place or even in a remote location away from the chaos and staring directly into the eyes of the public, she is giving you a friendly smile and a slight response. This is a common image of prostitutes in India. Prostitution is often referred to as "the oldest profession," which is unfortunately not an exaggeration.

A prostitute is a person who permits her body to be used for sexually explicit reasons in exchange for money. Prostitution is the monetary exchange of sexual services such as oral sex or sexual intercourse. The term "prostitution" refers to the plight of women. It is not just a problem in India; it is a worldwide problem. Prostitution was commonplace in ancient Greece. It employed a significant portion of the population and symbolized one of the highest levels of economic action in the more popular places, particularly the many ports.

In today's globalized world of human resources, the world has consistently condemned this heinous human capital violation and has urged governments to take effective action. This work mainly focuses on the best framework to addressing the issue of legalizing prostitution in

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India. Giving it legal status will result in a better and safer society for women. Prostitutes should be educated about their rights and interests, including education, health, and the freedom to choose or deny constant medical check-ups, financial aid, injury compensation, and other benefits. They also need to be given a platform to seek justice in the event of a serious violation.

HISTORY OF PROSTITUTION:

Prostitution is an ancient profession in India. There are references to sex workers in various Hindu mythological inferences known as Apsaras. The devadasi system existed during the pre-colonial period, and it was common practise among Hindus to give away their female child as a sign of their devotion to god. Devdasi literally means "devoted to the god," implying that they were married to God and were not required to marry mortals.

They were sexually adventurous women who excelled in a variety of artistic disciplines, including classical music and dance. Colonialism, on the other hand, brought with it a system of oppression as well as suppression. The British began to reflect their own societal restrictions on these women, transforming the fundamentals of sexual freedom, femininity, craft, and culture into devotion, bhakti, and so on, and with the decline of feudalism and the end of colonialism, these women began to be mistreated by temple priests. As a result, they are vulnerable to sexual enslavement and poverty. This is one of the most ancient forms of prostitution in India.

CAUSES OF PROSTITUTION:

There exist numerous reasons which compels a woman to take up prostitution out of which poverty and unemployment are two major influential factors that causes women to engage in commercial sex. It has been seen that women of the remote areas fall prey to unscrupulous intermediaries who gives them assurance of decent job opportunities and then sells them as sex workers. The most fundamental reason which drives the needy and helpless women towards prostitution is poverty. It is accepted that among all the components answerable for prostitution, poverty is supposed to be the significant explanation that brings individuals into prostitution.

Rising poverty rates are pushing many people, especially young people, into urban areas where they look to prostitution as a quick way to meet their own and their family's needs. If we take a deep look at the idea of prostitution, we can see that pre-modern prostitution was not as inevitable as it is today. The process of urbanization has brought great changes to the fabric of our reality. Urbanization has spurred the development of free enterprise, fostered class polarization, and exacerbated the incidence of hardship, unemployment, crime, and marginalization. This situation has resulted in a more pronounced spread of prostitution as people, especially women, try to adjust to the harsh economic realities. Some women are also led to sex work because of unemployment. The lack of employment opportunities forced women to desperately turn to illegal businesses for income.

Approximately 6 percent of women prostituted themselves after being raped. And all too often, survivors of sexual assault fall victim to society-imposed shame and stigma, blaming these women for their rapes. In addition, there are cases where acceptance is rejected not only by society but also by families. Aside from delays or denials of justice, victims have to face similar situations from time to time. And when, after a period of public office, they can no longer find shelter or a glimmer of hope in our society, they find their way into the darkness of prostitution.

LEGALIZATION OF PROSTITUTION:

Three structures of prostitution-associated legal guidelines had been formulated and carried out

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[1]in felony techniques and those range appreciably each in effectiveness and appropriateness. A hundred and five These structures are categorized as: Criminalization, Decriminalization and Legalization additionally referred to as Prohibitionist machine, Tolerationist machine and Legalized Prostitution. The Criminalization or Prohibitionist machine ambitions at converting crook sanctions so as to manipulate the social evil of prostitution and to countenance it through amending the crook law. It perceives prostitution as immoral and ambitions at its eradication for which it bans prostitution consistent with se, through criminalizing the sports of all classes of human beings worried in prostitution: brothel-keepers, pimps, procurers, customers and prostitutes. Under Decriminalization or Tolerationist machine, prostitution isn't appeared as both against the law or a licensable activity; it's miles primarily based totally on voluntariness and taken into consideration an act among consenting adults wherein the function of the State is confined to get rid of coercive prostitution. A hundred and ten The nation can simplest deliver in sure measures to lower immoderate exploitation and hold public health. This machine does now no longer are trying to find to abolish prostitution consistently, however is simplest focused at trafficking in ladies and women for prostitution, brothel-keeping, pimping, purchasing and renting premises for prostitution; right here prostitutes aren't criminalized for his or her paintings and that they have greater or much less the identical rights as different residents withinside the society.

Decriminalization will enable sex workers to practice their work without police harassment; this is seen as a major issue with many sex workers in India[2]. It is at least a partial solution to some of the problems suffered by men and women within prostitution. Decriminalization is a way to protect workers' rights and to make the brothel owners responsible criminally[3].This approach of penalizing everyone involved in prostitution except for the sex worker works against her interest[4].

In the Indian context, prostitution is not explicitly illegal though pronounced to be unethical by the Court, certain acts that facilitate prostitution are regarded as illegal and acts like managing a brothel, living off the money procured by means of prostitution, soliciting or luring a person into prostitution, traffic of children and women for the purpose of prostitution, etc. are made explicitly illegal by the Immoral Traffic (Prevention) Act, 1956 (ITPA). For example, running a sex racquet is illegal but private prostitution or receiving remuneration in exchange for sex with consent without prior solicitation might not be illegal.

LANDMARK CASES ON THE RIGHTS OF SEX WORKERS:

➢ KAJAL MUKESH SINGH & ORS V. STATE OF MAHARASHTRA[5], It was observed that both the lower courts treated the matter very carelessly without considering the facts of the case, especially Section 17 (Prevention) of Moral Trafficking.

- The court noted that the law does not authorize a judge to detain victims for more than 3 weeks without a final court order. The court also noted that if the judge is satisfied with the investigation based on section 17 (4) of the Act, he must refer the victim to the asylum.
- The investigation according to subsection 5 of the section is carried out by a group of people with a background in social

[1] Jean D' Cunha, Prostitution Laws: Ideological Dimensions and Enforcement Practices, 27(17) ECONOMIC AND POLITICAL WEEKLY WS-34 (1992); For a general understanding of the USA policy on Prostitution, See B. J. George, Jr.,
[2] Geetanjali Gangoli, Prostitution, Legalisation and Decriminalisation: Recent Debates, 33(10) ECONOMIC AND POLITICAL WEEKLY 504,505 (1998).
[3] Mellissa Farley, "Bad for the Body, Bad for the Heart": Prostitution Harms Women Even if Legalized or Decriminalized, 10(10) VIOLENCE AGAINST WOMEN 1087, 1090 (2004).
[4] Prabha Kotishwaran, Preparing for Civil Disobedience: Indian Sex Workers and the Law, 21(2) BOSTON COLLEGE THIRD WORLD JOURNAL 161, 170 (2001).
[5] kajal Mukesh Singh & Ors v. State of Maharashtra, CRIMINAL WRIT PETITION NO. 6065 OF 2019.

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work, of which 3 must be women, if practically possible.

- The court emphasized that the purpose of the act is not to eliminate prostitutes or prostitution, but sexual abuse, commercial sex, and where a person runs a brothel or seduces another person are punishable.
- After considering all the facts and circumstances of the case, the court found that there is nothing in the records to show that they seduced anyone or ran a brothel.
- They also have the right to live freely in any place they choose and practice their profession as they wish, because their fundamental right is guaranteed in Part III of the Constitution.
- The consent of the victims should be obtained before placing them in a nursing home, because they are important and have all the basic rights of an ordinary citizen.

➢ MANOJ KUMAR SHAW V. STATE OF WEST BENGAL (2013)[6], The chief justice of the Calcutta High Court ordered the investigating officer to issue a notice under Section

- 1A of the Criminal Procedure Code against a spa owner who employed minor girls for prostitution in his spa. According to the reports of the legal body, during the investigation, it was found that the investigator was present, but on the other hand, it was claimed that he was not present. The court pointed out that in cases where the crime is punishable by at least 7 years of imprisonment, the investigator must consider all aspects of whether the presentation of a report under Section
- 1A of the Criminal Procedure Act is in the interest of justice. The court said that such serious offenses under Section 5 of the Act, which engage in prostitution in legitimate establishments like health clinics, etc., require sensitivity and attention and should be dealt with seriously. On the contrary, the owner of the spa only received a notice and the victims were sent to prison, who were already financially badly and illiterately exploited. The victims were minors and forcing minors into prostitution carries a sentence of more than 7 years under the Immoral Trafficking in Persons (Prevention) Act.
- The entire case reflects glaring flaws in the justice system because the victimized minor girls have become more vulnerable to threats, intimidation, etc., putting them in jail as if they were the accused themselves. The petitioner's anticipatory bail was refused because the court considered it necessary to interrogate the petitioner. According to Section 16
- of the Criminal Procedure Act, the district court ordered to release the notice for the investigator and the victims and record their statements. The victims received temporary compensation under the national victim compensation system and rehabilitation under the law.

➢ BUDHADEV KARMASKAR V. STATE OF WEST BENGAL[7], The applicant's appeal was rejected because he was convicted of murdering a sex worker by repeatedly smashing her head against the wall and the floor of the room. The court suo moto filed a PIL to deal with the issues of sex workers. The panel was formed by a lawyer, led by experts and resources with a background in social work. Central and state governments have been directed to initiate plans and policies for vocational and vocational training and rehabilitation of sex workers with the help of a panel constituted for the purpose. The court said that sex workers are like ordinary people and have an equal right to lead a dignified life under Article 21 of the Constitution. The main concerns of the Court of Auditors were:

1. Prevention of sex trafficking
2. Rehabilitation of sex workers who want to stop sex trafficking
3. Providing a decent life and decent conditions for sex workers who want to continue in this field.

[6] Manoj Kumar Shaw v. State of West Bengal (2013), WP No.1277 of 2013.

[7] Budhadev Karmaskar v. State of West Bengal, CRIMINAL APPEAL NO. 135 OF 2010.

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- The court stated that as long as communication between traffickers, sex workers and family members is broken, the rescue mission will fail. The court also directed NGOs and various state governments to provide a helpline to solve their problems and seek legal help if necessary.
- GAURAV JAIN V. UNION OF INDIA[8], The court observed in this particular case that the lawyer filed the PIL after reading a "red light trap" in India Today. He prayed for separate hostels and vocational schools for the descendants of prostitutes because their living environment is not healthy for children and living separately they could be part of the mainstream. The court also emphasized the elimination of prostitution. The establishment of youth homes for their vocational training and the separate living of their children was also directed. The Supreme Court Bar, assisted by the original petitioner Gaurav Jain, filed a writ petition before the court to consider the nature and scope of Articles 32, 12 and 15 (1) of the constitution and directions for eradication of prostitution. The court canceled the directives to eradicate poverty, but confirmed the directives to establish a youth home for the children of these sex workers.
- DELHI V. PANKAJ CHAUDHARY & ORS[9], The court set aside the Delhi High Court verdict acquitting the gang-rape accused and upheld the trial court's decision. The Delhi High Court rejected the conviction of the accused because the women were in police custody at the time of the alleged rape. Although the court said that even if a woman is immoral, no one can rape her. He is protected from harassment like any ordinary citizen. The court found that the Supreme Court erred by relying on the defendant's arguments and ignoring the women's complaints. It was also not allowed to consult with the police. The court canceled the charge against the policemen for giving false testimony. The court emphasized that even if the evidence proves that a woman is in a regular sexual relationship, no one can take advantage of her and raise a question about her character or be satisfied that she is a woman of "light virtue". The court noted that such women have the right to refuse sexual relations. The district court sentenced the defendant to 10 years imprisonment, as the district court previously stated.

CONCLUSION

Finally, it can be concluded from the analysis that there is no special treatment for such a problem as prostitution, for example its criminalization, decriminalization or sanction. Based on previous research, it is hard to deny the fact that legalizing prostitution has both negative and positive effects. Therefore, to solve this problem, it is not enough to give legal qualification to prostitution, but to manage it in our country, a uniform law must be prepared. Because regulating prostitution helps protect sex workers and their children from exploitation. In addition to ensuring the health protection of sex workers and society as a whole. Henceforth, rules and regulations should be made to regulate this area.

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