

Should Prostitution Be Legalized?

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Abstract

The subject of my research paper is “Should prostitution be legalized?” it is written with context of old Indian culture and the phase of changes in society. Where at one point of time just like the cast system even the profession of sex workers was socially accepted and respectable! But gradually due to the change of time and cultural diversities, this profession and people in it became socially out casted.

I have tried to show the kind of treatment given to this segment of society and also given history of its beginning to its current state. Based on various reference book and history of India from Ancient to modern time is given for the same.

Along with history of Indian civilization where in different stages, with different monarch, and different society with religious changes of that time, I have tried to cover the account of same profession of sex workers in concurrent society of other countries like Europe, Turkey and USA. This is to show a comparative study of Sex workers.

By writing this research paper my initiation is to show the conflict of a segment of society who is rejected by the advent of time, which is now ill-treated and exploited by the underworld and by society itself. What preventive measures can be taken to give them social, political and professional right with security; most importantly acceptance in the society of today’s times. It’s like fight against untouchability in India and its eradication.

Let us understand the definition of Prostitution "*Prostitution is offering and provision of sexual services for financial gain or barter*". If we look back in the history of world, May it is Asia or Europe, prostitution has existed since the start of civilization. It has been in existence from the beginning of ancient society and trade. Now, before I start with my point of view on the above mentioned sensitive and taboo subject, I would like to share a brief history of India, which has accounts of "Prostitution" as an integral part of the society.

If you take a good look on prostitution as an occupation, it's one of the oldest professions in human history. Religion such as Catholicism, which used to manage prostitution once now rejects it. Old Christian church bishops & clergies used to charge 10% on the amount charged by prostitute who used the premises of Church. During the time much earlier to this, Indian society had the practice of prostitution from the very beginning of its first civilization.

During the beginning of civilization in Harappa and Mahenjdarro the temple which were also the supreme power in olden times practiced **Devdasi Pratha**, this system was introduced to entertain the traders coming from Sumeria, Babylonia, Egypt and to some extent north eastern regions of India and Afghanistan (Earlier known as **Brahmvrat** by Aryans who later Invaded India). There was another reason to have this practice apart from entertainment, the trader who were visiting India would naturally be far from their country and would be deprived of their culture, food and most importantly physical needs. To prevent any social crime against any female member of the society by these outsiders the "**Devdasi Pratha**" i.e. **Mistress of God**, was introduced. These Devdasis were considered as a good part of the society and regarded with high respect by the Heads, Chiefs, Temple and even trader who would seek their services to entertain their customers.

Soon the Aryans invaded India and took over the Sarasvati Sindhu Civilization and introduced its own religious belief, but did not completely change the old system. The "Devdasi Pratha" still remained in practice. But soon the cast system was formed and a new society based on Rules, Regulation and may be prejudice was introduced. This led to the downfall of the Devdasi to its collapse as people soon started regarding this profession as malpractice which was only for the sake of Kings and Mahants of those times. These Devdasi were given new recognition by the society i.e. Vishkanya, Gajgamini, Roopjeevani etc. But still they were accepted by the kingdom and were pardoned tax by the kingdom and were given other social benefit in the society (One can find such example in Mruchchkattikam of Shudrak, where Vasantsena is a well-known, respected Devdasi. Also there is story of Amrapali in Buddhist scripture who was made Janpad Kalyani of Ujjaini to fulfill demands of entire Ujjaini society and was considered as the property of all the people). In ancient India, there was a practice of having Nagarvadhus, "brides of the town"(grooms). Famous examples include Amrapali. Kautaliya's Arthshastra (320 BC-150 AD) has a chapter titled "The Chief Controller of Entertainers' (Courtesans, Brothels, Prostitutes and other Entertainers) Responsibilities", in which he makes a distinction between prostitution and trafficking, and emphasizes the absolute necessity of the willingness and consent of the prostitute to engage in a sexual relationship.[1]

Soon after the Mughal era started these Devdasi were no more considered the property of Temple and Mughal emperors gave the title Kaneez, Tabayaf or

Kothewali to the women indulged into this profession (FYI – Tabayaf were only those who entertained their customers by singing and dancing there was no physical needs fulfilled by them). These above examples were having special allotment in society, like in present times even in olden days these women were given land by the king in segment outside the society or were allotted a special place to live and practice its trade. Till now though this profession was losing its respect one should know that till Mughal period most of the time the women folk entering this profession were doing this on their own will. After the Mughal invasion there was trade of slaves from Baluch, Kandahar, Egypt, Syria and Turkey.

Well then the question arise how did this profession become untouchable like a segment of few members of society in India? The answer is also back in history. After the invasion and rule of British power in India, there were two major revolutionary changes which took place, One Education in English language and its culture and second industrial revolution which made world a small place soon.

When the British East India Company established its army base and operational hub in India, it had slowly started expanding its strength and power over the Indian Kings. These kings were indulged into unproductive activities like music, dancing and most importantly physical entertainment from mistress or kept. These mistress who were also known as Rakhail, Bandi or Vaishya who would entertain the king for expensive rewards, gifts and to one extend status equal to queen. But, once the kings lost their kingdom to British Company, these Bandi also lost favor from the kings. They were compelled to trade with British officer and entertain them. During the British East India Company's rule in India in the late 18th and early 19th centuries; it was initially fairly common for British soldiers to frequently visit local Indian “**nautch**” dancers.

In the 19th and early 20th centuries, thousands or even millions of women and girls from continental Europe and Japan were trafficked into British India

Another reason was that The British East India Company, were encouraging slave trade, prostitution for the sake of entertaining the British officers who were living far from their family. The exploitation to other local trade had resulted in many young girls being thrown into skin trade due to this in Colonial period of Indian history.

Ratnabali Chattarjee mentions

“Further, being situated within the broader category of "Indian W omen" the prostitute was also a subject of reform. Meanwhile, legal, medical and political discourse on "prostitution" continued to grow in England and India right through the 19th century, but British officials with are mark able Persistence continued to regard the Indian prostitute as a sexual commodity only.

William Acton, British medical authority on veneer al disease, first conceptualized prostitution in terms of economic laws of supply and demand: The desire for sexual intercourse is strongly felt by the male on attaining puberty and continues through his life as an ever present sensible want ... this desire of the male is the want that produces the demand of which prostitution is are slut ... in fact the artificial supply of a natural demand.”[2]

British when introduced Railways in India, soon wanted to start Railway service in Africa, Mainly to carry Gold and other precious metal which was difficult to carry in dry regions of Sao, Cape Town etc. (There is explanation of demand of railway by Colonial Robert Patterson who became well known for his African adventure in Sao). The need for manpower was fulfilled by importing people from India and Local of Africa both British and Indian in origin. Back in India the East India Company had carried on the same practice of entertaining its highest delegates and officers by providing them with girls who were purchased as either slave or as prostitute for a brothel.

Now certain officer who had been to Africa and returned did not know that they were suffering with AIDS a disease, which was transmitted to them by the Green Baboon (These monkey are having the HIV Virus in them but are resistant to the disease due to some inbuilt genetic mechanism). Soon due to the advancement of modern times in duration of year 1919, there was discovery of AIDS in citizens of America and Britain, whose source lead to the officers who had served in India, Africa and then migrated to their country or other.

They had not only carried this disease to their country but naturally as they were involved in physical relationship with women who were practicing polygamy to multiple people, they also spread the disease to most number of people who had Sex with these women. Thus, it scared the majority of people who were ignorant of this new found disease. The British and Educated class of Indian society had by then had been heavily influenced by the foreign education, got entirely different view point for these women. Thus, they were a rejected part of the society.

Current scenario with pros and cons

If we have a look at present scenario then “There are approximately 10 million prostitutes in India.” [3] There are 300,000-500,000 children in prostitution in India. [4] There are 300,000 -500,000 children in prostitution in India. 160,000 Nepalese women are held in India's brothels. [5] About 5,000-7,000 Nepalese girls are trafficked to India every day. 100,000-160,000 Nepalese girls are prostituted in brothels in India. About 45,000 Nepalese girls are in the brothels of Bombay and 40,000 in Calcutta [6]. There are more than 100,000 women in prostitution in Bombay, Asia's largest sex industry center. 90% of the 100,000 women in prostitution in Bombay are indentured slaves. In Bombay, children as young as 9 are bought for up to 60,000 rupees, or US\$2,000, at auctions where Arabs bid against Indian men who believe that sleeping with a virgin cures gonorrhea and syphilis [7]. The red light district in Bombay generates at least \$400 million a year in revenue, with 100,000 prostitutes servicing men 365 days a year, averaging 6 customers a day, at \$2 each. [8]. Sonagachi in Kolkata, Kamathipura in Mumbai, G.B. Road in New Delhi, Reshampura in Gwalior, Budhwar Peth in Pune, host thousands of sex workers & are the famous red light centers in India.

Mumbai and Kolkata (Calcutta) have the country's largest brothel based sex industry, with over 100,000 sex workers in Mumbai. It is estimated that more than 50% of the sex workers in Mumbai are HIV-positive. In Surat, a study discovered that HIV prevalence among sex workers had increased from 17% in 1992 to 43% in 2000. A major part of this industry is controlled by underworld mafias, Pimps (Bharwas,

Dalaal), Middle man, Agent, corrupted police etc. this is because of no legal acceptance of this profession

“Based on information from the women themselves, women in prostitution are observed to be prostituted through choices precluded, options restricted and possibilities denied. Prostitution in this view is observed to a product of lack of choice, the resort of those with the fewest choices or none at all, when all else fails, as it often does. - Catherine MacKinnon, American Feminist.

What if it's legalized?

In Countries like India prostitutes are not legally considered as existing people on record. They suffer all problems in society but they are not provided any legal aid for their rights. They deserve dignified life, if considered human right. Most of the time children of these prostitutes are also compelled to involve in this industry. Apart from it, due to this profession being considered bad, illegal, it's mostly practiced behind the back door in the society. This means children of these class of society suffers in terms of proper sanitation, education, nutrition.

Now, Let us think of a legal profession where "people offering and providing services and skills for financial gain" are taxed. As they are tax payers they enjoy pension, housing loans, educational loans, investment options and most of all legal recognition. Now if we think of making sex workers and industry around sex pay tax, it simply implies we make it legal and accountable! As we make the industry legal and accountable most of the evil surrounding it will take back seat. We can regularize their minimum wages, health and safety regulations, minimum age of entry, pension schemes, loans for various reasons, and legal acceptance and recognition. So also we put a check on evils like child abuse, violence, trafficking, rape etc.

Think of the customers; getting sex in the dark back alley while no one notices you seems lucrative (read dangerous) but then going to buy sex in a legal (read safe and healthy) brothel will put off a considerable number. Plus it will also keep STD's and other health related problems at bay.

Now the point where it may become a lucrative career choice, seems quite unlikely as we are talking of making the profession legal for the interest of people trapped in it and not taking away the social stigma associated with it. There are certain professions which will be looked down upon come may what!

Considering living on their tax and using it for public benefit. If we can provide a legal structure to take care of them, we can very well use their money for their own benefit. Owing to the fact that Indian constitution imposes taxes on blue collared and white collared people, there can be amendments on this profession too.

Every service and profession that involves money can be taxed and made accountable to keep a tab on illegal activities that will eventually cloud such industries. When the profession is legalized and taxed all these illegal people like corrupt policemen, middlemen (pimps/dalaals), or thieves may no longer hold much control on prostitutes. It's only 'cause it's illegal they treat them badly.

“necessary step [to prevent rape] is to legalize prostitution — carried out in brothels or by call-girls — provided the sex workers are adults and have not been forced into the trade. The more you try to put down prostitution, the higher will be the incidence of crime against innocent women. You may find the idea repulsive but ponder over it and you will realize there is substance in the argument.” – Khushwant Singh [9]

Legalizing prostitution does not mean indirectly inviting, encouraging prostitution, or showing lucrative employment opportunities to young generation. As already told some profession are always looked down upon and practiced under inevitable conditions. In spite of prostitution considered as illegal activity in India, human trafficking is still into existence.

If it’s legalized, the following outcome can be expected:

Supreme Court of India in December, 2009 asked the govt. “If you are not able to curb it by laws then legalize it.” SC added that- legalizing prostitution would help monitor the trade and rehabilitate sex workers.

If there are 2 million prostitutes in India who earns 1000 `INR a day, then this leads to a total of INR` 200, 000 /- revenue a day and roughly ` 72,000, 000 /INR- a year. By legalizing, government can earn a decent tax on this revenue, which will be beneficial to the country’s economy.

Legalizing will ensure a secure & safe future for sex-workers, their children and those who’re involved in this. They would get better living, a chance to opt for better career options instead of compelling situation where they are not having much option but to join their parents into illegal activity. These females would be legally fir for claiming for protection under offensive, physical or mental torture, violence.

Government can implement some rules which include:

- Registration of each sex-worker
- Licensing of brothels, Dalaal, removal of middle-man
- Mandatory checks in order to ensure safety for the sex-workers
- Girl/child less than 18 years can be prevented from entering into this profession.

These measures will lead to a decrease in:

- STD/HIV Disease spread
- Child trafficking,
- Women harassment, sexual violence, rape etc.

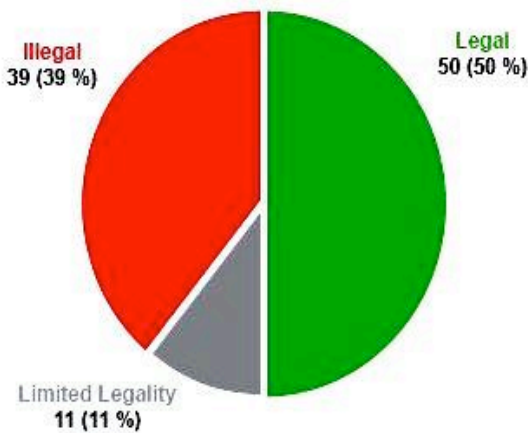
There are some countries in which legalization of prostitution not only worked but they have been able to curb STDs:

- Brazil
- Amsterdam (Netherland)
- New Zealand
- Thailand
- The Philippines and many more..

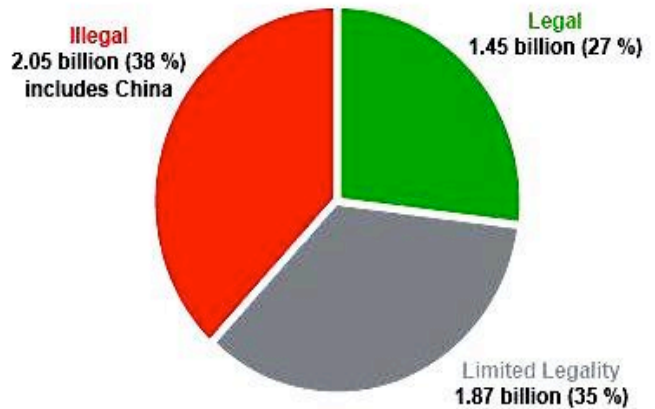
Many countries have legalized and monitored prostitution. In Singapore, it is common and a publicly open trade. In Denmark, women can be prostitutes as long as it is not their only means of occupation. Canada, France, and Mexico and even the biblical area of Israel allow prostitution. In the Netherlands, it is to be contained in brothels and in England and Wales, it is limited to individuals being able to be prostitutes. In the US, it is illegal except for the state of Nevada. Prostitution is legal in 50%, illegal in 39%, and limitedly legal in 11% in one hundred countries worldwide chosen to inclusive of major religions, geographical regions, and policies toward prostitution (prostitution.procon.org, 2009). As of 2009, one source estimated that there were 800,000 women working as prostitutes in the Philippines, with some of them believed to be underage. If prostitution is legalized, it will benefit sex workers and their clients. For whatever reason, financial or personal satisfaction, sex workers can help their clients who pay for sex because that is their only way to get sex. And people who have conditions of erotic phobia and other sexual dysfunctions have therapeutic claims of sex workers helping them overcome such conditions.

On the morality issue, which many people have debated over prostitution, Prostitution is not going away. Legalize it and regulate it. People are needed to have a realistic approach rather than being moral, especially when there are not specific laws to control other illegal activities. In societies and countries where prostitution is legalized, regulated, and monitored, rates have dropped in crime, prisons being overcrowded, murder, rape, and suicide rates have gone down, STD, HIV, and AIDS cases have also dropped. Another benefit of legalizing prostitution is to the prostitutes themselves, which are treated poorly by pimps and abused or owned by gangs. Keeping prostitution illegal contributes to crime because criminals make prostitutes and their customers an easy target for fraud, robbery, and other criminal acts. The victims could not report this to authorities for this will have to make them admit for doing something illegal when the attack took place. It would also help if prostitution will be monitored to make sure there will be no more human trafficking, no more minors being into that trade.

Number and Percentage of Countries with Legal, Illegal, and Limitedly Legal Prostitution (of the 100 countries)



Population (total # and % of total) of Countries with Legal, Illegal, and Limitedly Legal Prostitution (of the 100 countries)



Legal in 50 (50%); Limited Legality in 11 (11%); Illegal in 39 (39%); Total: 100 (100%)

- | | | | |
|------------------------------|------------------------|------------------|---|
| 1. Afghanistan | 26. Czech Republic | 51. Israel | 76. Portugal |
| 2. Albania | 27. Denmark | 52. Italy | 77. Romania |
| 3. Angola | 28. Dominica | 53. Jamaica | 78. Rwanda |
| 4. Antigua and Barbuda | 29. Dominican Republic | 54. Japan | 79. Saint Kitts and Nevis |
| 5. Argentina | 30. Ecuador | 55. Jordan | 80. Saint Lucia |
| 6. Armenia | 31. Egypt | 56. Kenya | 81. Saint Vincent and Grenadines |
| 7. Australia | 32. El Salvador | 57. Korea, North | 82. Saudi Arabia |
| 8. Austria | 33. Estonia | 58. Korea, South | 83. Senegal |
| 9. Bahamas | 34. Ethiopia | 59. Kyrgyzstan | 84. Singapore |
| 10. Bangladesh | 35. Finland | 60. Latvia | 85. Slovakia |
| 11. Barbados | 36. France | 61. Liberia | 86. Slovenia |
| 12. Belgium | 37. Germany | 62. Lithuania | 87. South Africa |
| 13. Belize | 38. Greece | 63. Luxembourg | 88. Spain |
| 14. Bolivia | 39. Grenada | 64. Malaysia | 89. Suriname |
| 15. Brazil | 40. Guatemala | 65. Malta | 90. Sweden |
| 16. Bulgaria | 41. Guyana | 66. Mexico | 91. Switzerland |
| 17. Cambodia | 42. Haiti | 67. Netherlands | 92. Thailand |
| 18. Canada | 43. Honduras | 68. New Zealand | 93. Trinidad and Tobago |
| 19. Chile | 44. Hungary | 69. Nicaragua | 94. Turkey |
| 20. China (including Taiwan) | 45. Iceland | 70. Norway | 95. Uganda |
| 21. Colombia | 46. India | 71. Panama | 96. United Arab Emirates |
| 22. Costa Rica | 47. Indonesia | 72. Paraguay | 97. United Kingdom (including Scotland) |
| 23. Croatia | 48. Iran | 73. Peru | 98. United States |
| 24. Cuba | 49. Iraq | 74. Philippines | 99. Uruguay |
| 25. Cyprus | 50. Ireland | 75. Poland | 100. Venezuela |

Pros of legalizing prostitution by public opinion

Prostitution should not be a crime. Prostitutes are not committing an inherently harmful act. While the spread of disease and other detriments are possible in the practice of prostitution, criminalization is a sure way of exacerbating rather than addressing such effects. We saw this quite clearly in the time of alcohol prohibition in this country.

“What makes prostitution a 'victimless crime' in the sense that no one is necessarily harmed by it is that there are consenting adults involved.” [10]

"Criminalizing the sex industry creates ideal conditions for rampant exploitation and abuse of sex workers. It is believed that trafficking in women, coercion and exploitation can only be stopped if the existence of prostitution is recognized and the legal and social rights of prostitutes are guaranteed." [11]

"Decriminalization would better protect people in the sex industry from violence and abuse. Police cannot and do not simultaneously seek to arrest prostitutes and protect them from violence.... Indeed, women describe being told, 'What did you expect?' by police officers who refused to investigate acts of violence perpetrated against women whom they knew engaged in prostitution. The consequences of such attitudes are tragic: Gary Ridgway said that he killed prostitutes because he knew he would not be held accountable. The tragedy is that he was right - he confessed to the murders of 48 women, committed over nearly twenty years. That is truly criminal." [12]

Cons of legalizing prostitution by public opinion

"MYTH - Prostitution is a victimless crime.

Prostitution creates a setting whereby crimes against men, women, and children become a commercial enterprise.... It is an assault when he/she forces a prostitute to engage in sadomasochistic sex scenes. When a pimp compels a prostitute to submit to sexual demands as a condition of employment, it is exploitation, sexual harassment, or rape -- acts that are based on the prostitute's compliance rather than her consent. The fact that a pimp or customer gives money to a prostitute for submitting to these acts does not alter the fact that child sexual abuse, rape, and/or battery occurs; it merely redefines these crimes as prostitution." [13]

"I believe that we will never succeed in combating trafficking in women if we do not simultaneously work to abolish prostitution and the sexual exploitation of women and children. Particularly in light of the fact that many women in prostitution in countries that have legalized prostitution are originally victims of trafficking in women." [14]

"Regardless of prostitution's status (legal, illegal or decriminalized) or its physical location (strip club, massage parlor, street, escort/home/hotel), prostitution is extremely dangerous for women. Homicide is a frequent cause of death....

It is a cruel lie to suggest that decriminalization or legalization will protect anyone in prostitution. It is not possible to protect someone whose source of income exposes them to the likelihood of being raped on average once a week." [15]

"Even if a prostitute is being tested every week for HIV, she will test negative for at least the first 4-6 weeks and possibly the first 12 weeks after being infected.... This means that while the test is becoming positive and the results are becoming known, that prostitute may expose up to 630 clients to HIV. This is under the best of circumstances with testing every week and a four-week window period. It also assumes that the prostitute will quit working as soon as he or she finds out the test is HIV positive, which is highly unlikely. This is not the best approach for actually

reducing harm. Instead, in order to slow the global spread of HIV/AIDS we should focus our efforts on abolishing prostitution." [16]

Considering, all these information about prostitution, prostitution should be legalized so law enforcement will be put to better use. Policemen effort and time to find and prosecute the prostitutes and their customers could be saved to take care of more important things and be able to help people in more important situations. It would not only help in controlling something will is practiced with all illegal aspects, but also provide a better chance for people involved in it to have a dignified life. Their social security, children's future, health care would be far more better than what is prevailing in the current scenario of country India.

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