

ST JOSEPH'S UNIVERSITY

36 LALBAGH ROAD, BENGALURU 560027 2021-2022

Term Paper Submitted On

DEBATE ON LEGALISING COMMERCIAL SEX-WORK IN INDIA

Submitted by
Adithya Sajeev(20EPS044)

Under the guidance of Parvathy Poornima
Department of Political Science



St. Joseph's University
36, Lalbagh Road, Bangalore - 27

Abstract

The debate surrounding the legalization of commercial sex work in India has been a contentious and multifaceted issue that has elicited strong opinions from diverse stakeholders. This research paper aims to critically examine the complex arguments for and against the legalization of commercial sex work in the Indian context. Through a comprehensive review of existing literature, legal frameworks, and socio-economic data, this study delves into the historical and cultural factors shaping the perception of sex work in India. It seeks to understand the prevailing socio-legal environment, exploring the various challenges faced by sex workers and analyzing the potential benefits and drawbacks associated with legalizing their profession.

The research highlights the perspectives of different stakeholders, including government agencies, civil society organizations, feminist groups, sex worker advocacy groups, and religious bodies, revealing their varying stances and rationales. The study aims to offer a balanced assessment of the societal impact of criminalizing sex work, including its implications on public health, human rights, and gender equality.

The findings of this research underscore the significance of evidence-based policy formulation, focusing on harm reduction, decriminalization of sex workers, and addressing exploitative practices within the sex industry. Additionally, it emphasizes the importance of considering diverse cultural norms, sensitivities, and the role of patriarchal structures in shaping public attitudes towards commercial sex work.

Keyword: Arthashastra, Uruk, Kakum, Tawaiifs, Sadharani, Immoral Traffic, Kamasutra.

CHAPTER 1: INTRODUCTION TO THE PAPER

“Slavery still exists now it applies only to women and its name is prostitution” – Victor Hugo.

Prostitution or commercial sex-work can be described as the business or practice of exchange of sexual activity for money or favorable considerations of the service provider. The profession of commercial sex-work or prostitution is not something new on India. It has a long history. There was a complete chapter devoted to it in Kautilya’s **Arthashastra**, written around 3rd and 4th century BCE. The amorous ways of life of prostitutes were also discussed in **Vatsyayana’s Kamasutra**.

This is something that clearly suggest, sex-work is something that’s been a part of Indian culture since ages. The devadasi system which attaches prostitutes to a place of worship is also of ancient origin and still its practiced.

The question of legalizing this commercial sex-work in India is something which is going on as a hot and ignored debate issue of contemporary times in India. This is high time we should take some fixed actions and decisions about this issue. Even though we are living in a world craving and fighting for human rights and India has not taken a fixed stand on this issue which doesn’t help the society. And this is why I selected this topic and decided to collect and interpret the public’s perceptive towards this issue of legalizing commercial sex-work.

1.1. OBJECTIVES OF THE STUDY

- To analyze the perception of public on whether to legalize or notlegalize commercial sex-work in India.
- Does legalizing commercial sex-work reduce the crime rates and violence.
- Does legalizing creates a safer and violence free environment for thesex-workers.
- Does legalizing commercial sex-work takes away the social stigmaand them a better status in the society as others doing other professions.
- Does legalizing protect the human rights of the sex-workers and theirchildren.
- Does legalizing encourages youth to adopt this profession as a sidejob for extra money.

1.2. SCOPE OF THE STUDY

The scope of the study is open to public. Data was collected and analyzed using an online survey developed with survey software. The subjects of the questionnaire are the public, differentiating on the basis of their age group namely youth and adults.

1.3. RESEARCH DESIGN

My research study titled ‘Debate on legalizing commercial sex-work in India’ is a research based on quantitative and qualitative study of the perceptions of the Indian public on legalizing commercial sex-work. I have followed the process of analyzing the response of the public and interpreting it in my way.

1.4. RESEARCH METHODOLOGY

My research study titled “Debate on legalizing commercial sex-work in India” has been prepared through both primary and secondary sources of information such as conducting surveys , questionnaire, articles and surveyreports of published works, journals and certain YouTube videos to understand the issue and

public's perception in depth.

1.5. LIMITATIONS OF THE STUDY

- The study is based on the response of the public, where I was not able to take survey of every individual, so there are chances for different perceptions other than that I have included.
- Some of the responses was not that honest and some didn't respond at all because they wanted anonymity for taking about controversial issues like commercial sex-work.
- As commercial sex-work is a topic with certain social stigmas, few of them responded with a prejudiced and stereotypic mindset during the survey which was a great limitation.
- I was not able to interview a commercial sex-worker due to some inconvenience and I consider that as a major limitation of my study.

CHAPTER 2: ABOUT COMMERCIAL SEX-WORK

2.1. MEANING AND BACKGROUND

According to Oxford English dictionary, Prostitution or commercial sex-work is described as "the practice or occupation of engaging in sexual activity with someone for payment". It is regarded as one of the ancient professions in the world. During the beginning, it was mainly a profession adopted by women. But in this 21st century females are not the only ones practicing this profession. Men and transgender persons are also involved. But the number is comparatively lesser than women when we consider the whole world. There are various forms of commercial sex-work. Some are like street prostitution, escort prostitution and brothels.

There are different legal status for this profession in different countries. Currently Austria, some states in Australia, New Zealand, Canada, Belgium and Brazil have legalized and is regulating commercial sex-work. It's illegal in most of the African states, Argentina, UK etc....

Prostitution can be traced back into ancient near East civilizations where there are depictions of these in the walls of temples. It's the oldest profession and has marked the beginning from 2400 BCE, these give details about a temple-brothel run by Sumerian priests in **Uruk**. Three different levels of women lived in this **kakum**, or temple, which was devoted to the goddess Ishtar. The lowest class of women resided on the temple grounds, while the second group had access to the property and provided services to guests, and the first grade was only allowed to conduct sexual rituals inside the temple. Additionally free to shop on the streets was the third class. Thus, history has various records of practicing of prostitution which states the fact that this is something that's very old like our ancient civilizations which is still going on in an evolved and changed manner.

2.2. CAUSES FOR BECOMING A SEX -WORKER

There are many factors which lead an individual to become a prostitute. A woman may become a sex-worker for a variety of reasons, but poverty and unemployment are the two of the biggest motivators for a woman to engage in sex work. It has been observed that women from distant places are vulnerable to dishonest middlemen who promise them prospects for respectable employment before tricking them into becoming sex-workers.

Poverty is the main factor that pushes desperate and defenseless women into prostitution. It is acknowledged that, out of all the factors responsible for prostitution, poverty is thought to be the main factor driving people to become a sex-worker. Numerous people, especially young people have been forced into metropolitan areas by the rising rate of poverty, where they view sex-working as a quick way to meet their needs and the needs of their families. If one considers prostitution in its broadest sense, one will realize that it was not always as prevalent as it is

today. Our reality structure has undergone a considerable change as a result of urbanization. Urbanization has sparked the growth of free enterprises, which has contributed to the polarization of classes and increased the incidence of poverty, unemployment, crime and estrangement. Prostitution has become more prevalent as a result of these circumstances, especially among women who are trying to adjust to the challenging economic conditions. Additionally, some women are driven into sex-work by unemployment. Women were forced to turn to illegal transactions out of desperation due to lack of job opportunities.

6% of the women who were raped went into prostitution. And frequently the society that accuses these women of being raped makes sexual assault survivors feel guilty and stigmatizes them. Additionally, in certain instances not only has society rejected them but even their own family rejects them. In addition to the delay or rejection of justice, the casualties occasionally face comparable circumstances. And after a certain period of time, when they can no longer find a place to live in our society and when there is no hope for them, they find their way into the shadowy world of sex-working. About 8% of the young women turned to prostitution after their incest incidents. Incest between a parent and a young girl is the most well-known case, followed by uncle-niece. And when these young victims of incest who are being sexually exploited from their own homes do not expect safety anywhere in public, they progressively turn to prostitution. In addition to the aforementioned causes, there are a number of other variables that influence women to become a sex-worker. These are some of the same causes which even turns males as well as transgender to adopt sex-work as their profession.

2.3. PROBLEMS FACED BY SEX-WORKERS

Security is crucial for any type of employee, which is why there are laws and regulations in place to make sure that employees are safeguarded. However, there is no protection for sex workers, and they are also stigmatized, marginalized, and exploited. Therefore, on International Sex Workers Day, which is observed on June 2, we examine the issues and difficulties that sex workers encounter.

But the law itself has failed the sex workers and I would say the law executors are the dirtiest problem a sex worker ever could face. The hypocrites of the law are killing them. Education, health, and safety itself are the major problems. The children of sex-workers are also facing issues and discrimination based on these. No law and no order have been too able to take away the stigma against sex-workers and this can be considered as a social problem our society is currently facing.

CHAPTER 3: ASPECTS OF LEGALIZING COMMERCIAL-SEX WORK IN INDIA

3.1. INDIAN BACKGROUND OF COMMERCIAL SEX-WORK

Prostitution took its form in India during the ancient India, where there was an emergence of illicit love affairs or extra marital affairs. The mentioning of “Sadharani” which is equivalent to the word “prostitute” in Rigveda, explains the existence of prostitution in Rigveda too. As the institutions of marriage came to existence, prostitution also came along in India. Even Mohammedan period, dancing girls were appointed in the courts of sultan, who were acting as prostitutes sometimes. “Tawaifs” was the name of these women.

And after, brothels were established for the troops during British period. They enacted *Cantonment Act* of 1864. This can be regarded as one of the first legislations with respect to prostitution in India.

In India, many contend that prostitution is a kind of exploitation of women. And commercial sex-work is more of a subjugating profession for women, where women are mostly forced into it, either actively or passively and this has great impact on Indian society. This can be on an account of being trafficked or sold as child prostitutes by their own parents or opting sex-work as a profession to earn the livelihood out of it as a necessary means to live. And in this way, women and children are being exploited and forced into sex-work. In other sense, poor women are targeted and are dragged and forced by their Family members. After being trafficked this way, they are subjected to the most gruesome form of torture by their own clients, which can be deduced by the several interviews of Indian sex-workers by various researchers and social workers. There are few problems like the refusing to wear condoms, which is cause for increasing the rates of HIV/Aids. This can be continued by payment to the brothel owners to

continue to exploit women.

3.2. LEGAL ASPECTS OF COMMERCIAL SEX-WORK IN INDIA

Commercial sex-work is partially legal in India. Sex-workers can practice the profession privately. But solicitation and brothels where someone keeps the sex-workers organized and this organized sex-working is illegal. Sex-working can be only done privately keeping away from public spaces. Moreover, only sex workers who are female are only recognized in India. As the commercial sex working is a shadowed profession and the institution like brothels are rackets and therefore the rates of prostitution is hard to determine in India. Even though brothels are illegal there are many brothels in various parts of India and are known as red light streets where they work as brothels. But there is only a very little effort made by the government to track them down and bust the sex rackets. However, there are few laws with respect to commercial sex work in India they are,

- The **Immoral Traffic Prevention** act of 1956 is one of the main legislations in view of prostitution.
- Section 3 of this statute imposes imprisonment for two or three years with fine for keeping a brothel or allowing premises to be used as brothels.
- Section 5 enforces which enforces 3 to 7 years of imprisonment with fine for procuring a person for the purpose of prostitution without their consent.
- Section 7 of the statute prohibits prostitution in or near a public place.
- However, the act of trafficking of children and violence against women with respect to this is so silent and something hidden, in the case of Afjal vs state of UP, the accused ran a brothel of minor girls was found guilty under the provisions of the act and the girls were rescued.
- There are laws regarding prostitution in the Indian Penal Code as well section 336 say clause (A) of the IPC talks about the procurement of minor girls for illicit sexual intercourse and prescribes punishment for the same.
- Clause (B) talks about the importation of a girl from an outside country for the purpose of sex work.
- Section 372 and 373 of the IPC prohibit the selling or disposing of a minor girl knowing that such a girl will be dragged into sex work and buying or hiring of a minor girl to force her into sex-work respectively.

Once more there is no mention of legal sanctions for clients or brothel owners who violently abuse a prostitute. Additionally, it does not mandate the use of condoms or include measures for the healthcare of sex-workers, leading to the spread of HIV/Aids and an increase in birth rates that contribute to the population growth.

3.3 EFFECT OF LEGALIZATION OF PROSTITUTION ON EXPLOITATION AND VIOLENCE IN INDIA

The question whether prostitution must be legalized or not has undergone medical, legal and moral consideration. As commercial sex work takes place in secret and on an individual basis is lawful in India, control, prostitution needs to be regulated and brothels and related businesses need to be under government control. Despite the fact that there are laws prohibiting the development of brothels and pimping, these businesses nevertheless operate and take advantage of women. For example, Kamathipura in Mumbai, Sonagachi in Kolkata, GB road in Delhi, Murangany in Allahabad etc.... still works with full effect. Police raids are not always useful since the owners of the brothels bribe the police. It is clear that the supply and demand are to be blamed for this. Supply and demand will be met if the government takes control of these brothels, and middlemen won't be needed either. Prostitution must be permitted to practice their trade covertly so they can support themselves while avoiding attention from the general public.

Governance of commercial sex-work will be simpler once it is decriminalized. This will lessen the number of women and children being coerced into prostitution. It is challenging to ascertain whether the women have given their agreement to engage in prostitution under the current system. Bringing prostitution under the legal radar will help victims and also make it easier to manage criminal behavior. By regulating prostitution, pedophilia can be prevented and young females can be removed from the industry. The operators of the brothel give their customer

additional money in exchange for allowing them to do violent acts against the prostitute which includes sexual assault. Almost little respite or escape from this kind of assault is available to prostitutes. Government control will work wonders in reducing the atrocities committed against women in the name of prostitution by taking the place of these horrible middle men.

Of course, these steps won't end all forms of exploitation of women. In addition to regulation law enforcement must take a proactive role in dismantling any ongoing illicit networks. Police corruption must never occur, according to the administration. This type of regulation of prostitution has the potential to drastically reduce social ills like exploitation and violence in the sex industry.

CHAPTER 4: SURVEY, ANALYSIS, INTERPRETATION AND CONCLUSION

4.1. QUESTIONNAIRE

1. Do you support legalizing commercial sex-work in India?
2. Why do you support/oppose legalizing commercial sex-work in India? Give reasons.
3. Do you think legalizing commercial sex-work could reduce the crimes related to these?
4. Do you consider prostitution as a result of patriarchy?
5. Would legalizing commercial sex-work better protect sex-workers from violence?
6. Do you think legalizing prostitution may end up encouraging many youths and teen to this field for extra money?
7. Do you consider "legalizing" as the only way to support sex-workers or do you have any suggestions for their empowerment?
8. Do you think legalizing could trap certain group of people who were tricked and forced into prostitution, forever?
9. Do you think legalizing commercial sex-work could protect the rights of sex-workers?
10. Do you consider "Prostitution" and demand for prostitution inevitable?

4.2. ANALYSIS AND INTERPRETATION

A survey was conducted to know about the public opinion about few aspects regarding on the debate on legalizing commercial sex work in India. There were a total number of 40 responses which included both youth and adults above 30 years old. Out of 40 respondents there were 15 men and 25 women. Out of that about 13 men were of 20 years old and remaining 2 is 48 and 53 years old. And in 25 women 22 of them were of 20 years old and 3 of them were above 40. The research was started with a notion that age groups and gender differences may make many major changes in one's perspective on the issue of commercial sex - work. Even though there were few gender-based opinions, it's not that controversial and conflicting.

Out of 40 responses 89.5% of respondents wanted the commercial sex-work to be legalized and the rest 10.5% wanted not to legalize commercial sex-work in India.

1. There were many responses for the question 2, which was filled by majority of respondents to legalize commercial sex work. There were many reasons for the same. Most of them responded that the commercial sex-work is going to happen anyway whether its legalized or not, but legalization would bring an order and maintenance of the sex- industry of India. Some of the them responded that, it will bring down the violence that's happening in the sex- industry of India. And some argue that, it's a choice of human to profess what profession they like and government should support it. Many of them wanted the sex workers to have their own occupational identity and a dignity for their own job in the society as common employees of other sectors. Few of them responded that, legalizing will help in reducing the sexual frustration of some particular group of people. Another contradictory response to this was not to legalize commercial sex work, which objectifies a woman.

2. Most of them responded that's legalizing commercial sex-work would reduce crime rates corresponding to sex-work and sexual assault. The fact is that, it will reduce crime rates. This is something that we can understand from the statistical data of countries which legalized commercial sex-work and found a decline in the crime rates. In most of the sexual assault cases men are the assaulters and the opposite sex as victims, but there are also male victims which is a fact we should never ignore.
3. For the question "Is prostitution a result of male patriarchy?" Most of the men responded no and women, yes. We can see a difference of opinion based on the gender of the respondent which comes from an emotional mindset. For the answer of this question, we should analyze the past and history which brought us here. To an extent, yes prostitution started as the demand for the service increased and that is what which created a job opportunity at the beginning.
4. For the fifth question in the questionnaire most of them predicted that the rate of violence against sex-workers would decrease because of the handing over of total control of all brothels and overall prostitution from middlemen to government, which should be necessary changes
5. The question where, its asked that whether legalizing would encourage youth to adopt sex-work as a side business to earn money, most of them respondent no. But the social reality that we are going through now days are pretty much worse and money is something that's very important to our life and if the commercial sex-work gets legalized, gradually there will be a flow of more youth into the profession of sex-work as a side money earning method. For e.g.: We can take about some business that students or the youth does to make money. If you take certain metropolitan cities like Bengaluru, there are young students who are into sex-work even its not legalized completely. There are students doing illicit drug businesses and even its not legalized. It's all about money, and its sure that money and the need for money really motivates youth to adopt certain activities in order to gain money. The question about having regret and realization comes after a certain time period, when it's already out of their control.
6. Most of them responded that legalization is enough for the society to empower sex-workers. No, it's a big no. Government should make sure that these brothels and every sex-worker should be under the radar of government and these should be properly administered. There should be allowances and benefits given to them. They should be equally treated. In my opinion, this won't happen soon as we know the condition of Indian government, where there are more hypocrites, who says something and does another. We should really fight against with the sex-workers who protest against it. They need support and our consideration to pull them up from the social stigma of treating them lower than normal public. Education for the sex-workers as well as their children is something that the majority of public wants.
7. Legalizing commercial sex-work won't trap the sex-workers who are a part of this, not by their own interest. Legalizing should give the sex-workers to choose to stay or leave and that solves the problem.
8. 78.9% of my respondents says that legalization will protect the rights of sex-workers and its actually possible if the government takes a fixed and strong decision on this matter. Unless our power, our government takes and action on it.
9. The question of whether prostitution is inevitable or not is a debatable one. The chances for the end of prostitution are very low, it won't end. There are many causes for the development of prostitution and some reasons which leads to prostitution is something that never ends until human society exist. Poverty or the hunger to survive will be a reason of every sex worker to choose the profession but we should understand the fact that prostitution is not a crime. According to the response prostitution is something like any other job the only negative about this is the violence apart from the nature of job. But a person having sex with a sex-worker with their permission cannot be considered violence. So, there are cases without violence which proves the fact that there

4.3 CONCLUSION

This research concludes that the need for legalizing commercial sex work is a very important need of our society. Not only legalizing for the namesake of legalizing but it should be done with all our effort and we should bring all the brothel sex workers under government recognition. government should take care of these workers as a normal government employee who's working for the betterment of nation government should take care of these workers as a normal government employee who's working for the betterment of nation. Yeah, even me sometimes mock sex workers or mock in the name of sex workers but the reality that is understood by doing this research is far beyond. there are people who lost everything and practicing sex work for their own survival, but if you look them in a sociological perspective there are people who just don't make any problem in having sex with multiple people who are in desperate for sex. This itself is a great social service to the society in which they are balancing the needs of both men and women. A quote from an article says that "Prostitutes are there so women from good background doesn't have to worry about the lustful men". It's something really pathetic and it's something that most of our general public has a notion about. It's time to grow, it's time to be human being. it's time for change!

ACKNOWLEDGEMENT

I would like to take this opportunity to thank my guide, Parvathy Poornima, who has supported, encouraged, and guided me throughout this study. It is under her able direction that I was able to complete my term paper. I am immensely grateful to St. Joseph's University and Fr. Dr. Victor Lobo, S.J. (Principal) forgiving me the opportunity to do this term paper.

I would also like to thank my friends and family who provided me with the constant support and encouragement that was invaluable in the completion of my term paper.

BIBLIOGRAPHY

- *About.* Hein Online. (2021, March 8). Retrieved November 16, 2022, from <https://heinonline.org/HOL/LandingPage?handle=hein.journals%2Fsupami10&div=14&i d=&page=>
- Indian Journal of Law and Legal Research. (2021, August 26). *Legalization of prostitution in India*. IJLLR. Retrieved November 5, 2022, from <https://www.ijllr.com/post/legalization-of-prostitution-in-india>
- *Google scholar.* (n.d.). Retrieved November 16, 2022, from <https://scholar.google.com/>
- *Questions - prostitution - procon.org.* Prostitution. (2020, February 28). Retrieved November 5, 2022, from <https://prostitution.procon.org/questions/>
- *International Sex Workers' day 2022: What's it about & how the Supreme Court walked the talk.* cnbctv18.com. (2022, June 1). Retrieved November 5, 2022, from <https://www.cnbctv18.com/world/international-sex-workers-day-2022-whats-it-about-and-how-the-supreme-court-walked-the-talk-13682392.htm>
- *Top 10 pro & con arguments - prostitution - procon.org.* Prostitution. (2020, April 8). Retrieved November 5, 2022, from <https://prostitution.procon.org/top-10-pro-con-arguments/>
- *Demand for prostitution is not inevitable.* Ethos. (n.d.). Retrieved November 5, 2022, from <http://www.ethos.org.au/online-resources/in-depth-articles/demand-for-prostitution-is-not->