

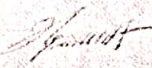
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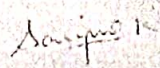
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BLIND LADY OF JUSTICE ON WOMEN AS A SEX OBJECT

Dr. Rajashree S Kini

Abstract

Prostitution is an old tradition in India. It is believed that concept of prostitution was emerged to save the society from few lustful men. Now, in the 21st century, when rights of women are protected in different ways, women in sex trade are considered exploited and vulnerable as human body is traded as goods. There are many laws to protect the rights of women in sex trade. Many laws are not reaching them or implemented well due to various reasons. There is a need of awareness among women in sex trade to get their rights.

KeyWords: Prostitution, Legislations, Protection of the rights of women in sex trade, Awareness, Measures to eradicate prostitution.

Introduction

Prostitution is an old tradition and has always been to controversy from time immemorial. Prostitution is a social-legal problem in India. Currently, prostitution in India is a Rs. 40,000 crore annual business. There about 300,000 to 500,000 children in sex trade in India. The number of children below 14 years in flesh trade is increasing at the rate of 8 to 10% per annum¹. Prostitution is so heinous; it is devoid of love, respect and relationship between persons. It's a social evil and so disgrace to the society.

Meaning

The word prostitution has derived from the Latin word 'prostituere' means to 'expose publically'. Prostitution means giving or receiving body for sexual activity for hire. Prostitution is the business or practice of engaging in sexual activity in exchange for payment². Prostitution is also referred as sexual services, commercial sex or hooking.

Literature Review:

Prostitution is considered as the oldest profession in the world. The issues involved with prostitution are religious, moral, health and human rights. Prostitution is a sector characterized by economic exploitation, corruption, and links with crime and is one which governments find difficult to deal with (Lim 1998)³.

'The large scale accumulation of capital takes place through a progressive appropriation and decimation of women's and children's bodies, sexuality and entire beings' (Raymond et al. 2002)⁴.

While condemning prostitution, one also has to fix responsibility squarely on the man who exploits her and treats her flesh as an object of purchase and enjoyment. The prostitute is a scapegoat (Mathur & Gupta, 1965)⁵.

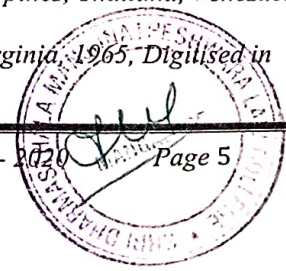
¹ Prostitution in India: The Staggering Numbers and the Stagnant Legality, available at <https://www.youthkiawaaz.com/2012/04/prostitution-in-india-the-staggering-numbers-and-the-stagnant-legality/>, 28/11/2019, 11.20 A.M.

² Prostitution – Definition and more from the Free Merriam – Webster, 26/11/2019, Also Prostitution Law and Legal Definition, US Legal, 26/11/2019).

³ Lim, Lin Lean (ed.), *The Sex Sector: the Economic and Social Bases of Prostitution in Southeast Asia* (Geneva: International Labour Organization, 1998).

⁴ Raymond et. al., *A Comparative Study of Women Trafficked in the Migration Process: Patterns, Profiles and Health Consequences of Sexual Exploitation in Five Countries (Indonesia, the Philippines, Thailand, Venezuela and the United States)*, (2002).

⁵ A. S. Mathur & Bajrang Gupta, *Prostitutes and Prostitution*, (The University of Virginia, 1965, Digitised in 2008).





In 1923, Gandhiji rightly observed that, "it is a matter of bitter shame and sorrow and of deep humiliation that a number of women have to sell their chastity for man's lust. Man, the law-giver will have to pay a dreadful penalty for the degradation he had imposed upon the so called weaker sex"⁶.

In 1996, the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography stated that, 'All reports indicate a dramatic escalation of the number of sexually exploited children all over the world' (Baker & Williamson, 2010)⁷.

While mentioning about vulnerability and prostitution Sanghera wrote, "they merely exacerbate the vulnerability of the marginalized and disadvantaged groups and render them increasingly more amenable to a variety of harm" (Sanghera 2005)⁸.

Vulnerability is related to politics and socio-economic aspects. It is divided into 2 categories, personal circumstance and socio-structural forces (DePaul University 2002)⁹.

Mukherjee & Das (1996) identified, "57 factors which play the role of causal agents to push women and girls towards prostitution"¹⁰.

Statement of the Problem: The perception of the prostitution, its causes and the support of legislation and judiciary to protect the sex workers and the reality of the implementation problem.

Objectives of the Paper

The main objectives of this paper are:

1. To know the history of prostitution in India.
2. To find out the factors responsible for prostitution.
3. To analyse the existing legislations to protect the women and girls from prostitution.
4. To highlight the judicial decisions supporting the women and girls distressed in prostitution.
5. To address the challenges to bring awareness among the women and girls in prostitution and also the public at large.
6. To suggest the measures to eradicate the ills of prostitution and to suggest measures to create the society to respect women for their worth.

Scope and Limitation: The scope of the study is theoretical and for academic purpose. The limitation is the study is not done on primary sources of data and concepts are taken from only available books and journals.

Research Methodology:

The study is socio-legal study, descriptive in nature. The social issues part of the study is done with secondary sources of data and information such as books, periodicals, reports and websites were consulted for understanding the relevant concepts, theoretical perspectives and previous research studies conducted on the issue. The legal part is analysed based on relevant legislations and judicial decisions pertaining to the matter.

⁶ Gandhi Mahatma, *A Guide to Health*. Madras, (S. Ganeshan, 1923).

⁷ L. M. Baker, Dalla, R. L., & Williamson, C., *Exiting prostitution: An integrated model*. *Violence Against Women*, 16(5), 579-600.

⁸ Sanghera Jyoti, *Unpacking the Trafficking Discourse, in Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, 3-24 (2005).

⁹ DePaul Journal of Women, Gender and the Law, <https://via.library.depaul.edu/jwgl/vol3/iss1/2>, 27/11/2019.

¹⁰ K. K. Mukherjee & D. Das, *Prostitution in Six Metropolitan Cities of India*, (New Delhi: Central Social Welfare Board, 1996).





The author got the chance to interact with few women and girls in the field of prostitution through a NGO working for them, but only information is taken here, as the names of the women, girls and also of the NGO is confidential.

Analysis

Prostitution through History

Ancient Period: In pre-vedic age, rich merchants were able to spend on women and wine. In vedic age, there is evidence to show that vedic Indians were fond of wine and women¹¹. In post-vedic period, prostitution was an accepted profession during Brahmana Period and prostitutes were called as 'vesyas'. The society treated them with respect but with low estimation¹².

In the Medieval India, prostitution emerged as religious prostitution as many dancing girls, called as 'Devadasis', were associated with Hindu temples¹³.

In Muslim Period, sultans used to maintain female slaves¹⁴.

In the Colonial Period, the sailors accelerated the process of prostitution in India¹⁵.

Social Problem

Prostitution is the vital betrayal of virtue of a female and brutal part is, male ownership of that virtue. Flesh trade has evoked interest in sociologists, social workers and criminologists to have in depth analysis of the matter. The study of prostitutes is necessary to understand the causes and problems of prostitution and to know how to reform or rehabilitate the victims of it. Few of the causes of prostitution are:

- a. Economic Causes: Poverty is the main aspect forcing the females of the house to take up such step. It is depicted that, money earned in flesh trade by an ordinary female is much more than the money earned by a female working in ordinary industries¹⁶.
- b. Psychological Factors: The studies have showed that women take up the profession of prostitution to show their hostility towards men¹⁷. Other reasons being, sexual curiosity, dominating the male society, showing modernisation and freedom, trying to overcome loneliness, feeling the need for men to appreciate the body etc. On the other hand, men enter into buying flesh, is to show their dominance on women and to hide their failure and inabilities in life situations.
- c. Criminality and Disabilities: The criminalisation of prostitution evoked the issues of gender discrimination and about rights and freedoms of females. The right and freedom of disabled persons to have sex or the manipulation of them by the male dominating society are also the reasons.
- d. Parental Abuse: It can be simply neglecting the child or physical or mental abuse by the parents at childhood which leads into prostitution. The lack of care on the part of the parents makes the child emotionally go against the norms of the society. Also children try to get the affection from a stranger and get into the trap of selling flesh¹⁸.
- e. Early Life Sex Experience: Access to prostitutes in the neighbourhood or through any personal contacts will motivate to enter into the world of flesh trade. Some females get sexual experience in life in different

¹¹ Chandra Moti, *The World of Courtesans*, (Vikas, 1973).

¹² A. S. Altekar, *The Position of Women in Hindu Civilisation*, (Motilal Banarsidas Publications, 1956).

¹³ H. H. Wilson, *Meghdutam by Kalidas*, (1843).

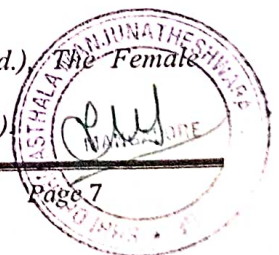
¹⁴ Abu'l Fazl Allami, *Ain-I- Akbari*, (1873).

¹⁵ M. Sundra Raj, *Prostitution in Madras*, (Konark Publications, 1993).

¹⁶ Havelock Ellis, *Studies in the Psychology of Sex*, (The University Press, 1900).

¹⁷ Jennifer James, *Motivation for Entrance into Prostitution*, in Laura Crites (Ed.) *The Female Offender*, (Sage, London, 1983).

¹⁸ H. Greenwald, *Call Girl: A Social and Psychoanalytic Study*, (Libra Publishers, 1978).





circumstances, as touching and using by near relatives or friends, curiosity, one time need for money, wanting things which they cannot afford etc. and later they start enjoying it or trapped not to come out of it. By not accepting the rape victims to the main track of life, the society will unknowingly push them to prostitution.

- f. Role of Mediators/Pimps: Pimps will develop friendship with girls, know their problems in life and lure them with money and getting importance.
- g. Fun, Adventure and Situation at Work: Many women choose prostitution for fun, thrill, adventure and for easy money¹⁹. Many are prey at workplace. For being in the job, for promotion, not to get complicated work, to get priority to prove themselves etc. are the reasons to allow male counterpart to touch the body.
- h. Product of Patriarchal Society: Women in the society are considered as wrong and man being a man is always right. The existence of women is not considered for any task²⁰.

Legislature

International Conventions

The Paris Convention, 1910, United Nations Charter, 1945, Universal Declaration of Human Rights, 1948, United Nations Convention on the Rights of the Child, 1989 etc. have checked on immoral trafficking of women, to promote respect and to observe fundamental freedoms for women, to prohibit slave trade in any form, to protect the child from all forms of sexual abuse.

Constitution of India

- a. Fundamental Rights: Articles 14 and 15 of Indian Constitution, deal with the right to equality, considers women as equal citizens and permits the state to make any special provisions for women and children²¹.

Article 23 gives the citizens right against exploitation by prohibiting trafficking in human being. This gives protection to women from activities compelling them to engage in unlawful sex trade, sexual harassment and sexual exploitation²².

According to A. 35, legislature can pass a law prohibiting the immoral trafficking²³.

- b. Directive Principles of State Policy: Most women get into the profession of prostitution for economic reasons. The Directive Principles of State Policy speaks about economic welfare of the citizens. Article

¹⁹ K. E. Rosenbulum, *Female Deviance and The Female Sex Role: A Preliminary Investigation*, (*The British Journal of Sociology*, 26(2), 169-185, 1975).

²⁰ D. B. Simon, *The Second Sex*, (1949).

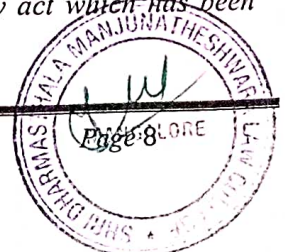
²¹ A. 14 of the Constitution of India provides for equality before the law or equal protection within the territory of India.

A. 15(1) - the state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them.

A. 15(3) - Nothing in this Article shall prevent the State from making any special provision for women and children.

²² A. 23 - Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

²³ A. 35 - Parliament shall have the power to pass legislation for punishing any act which has been declared as an offence by Part III of the Constitution.





38 speaks about promoting the welfare of the people, Article 39, about, making the policy for equal rights to adequate means of livelihood, Article 42, state to make just and human conditions of work²⁴.

- c. Fundamental Duties: Article 51(e), directs the citizens not to follow any practices derogatory to the dignity of women²⁵.

Indian Penal Code

- a. Wrongful Confinement: Brothels prevent the girls from going out and physically and psychologically pressurise the girls to carry on the profession. Section 340 of Indian Penal Code addresses this issue under wrongful confinement²⁶.
- b. Kidnapping and Abduction: Procurers kidnap minor girls and women and sell them to brothels. Section 361 of IPC gives protection to women²⁷.
- c. Also Sections 366A, 366B, 372 and 373 of IPC addresses the issues of minor girls subjected to illicit sexual intercourse, sale or purchase.

Juvenile Justice Act, 1986

It is evident that almost one-third of the prostitutions are juveniles. Juvenile Justice Act is enacted to provide for care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for adjudication of matters relate to delinquent juveniles.

Immoral Traffic (Prevention) Act, 1986

As per the provisions of the International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of others, the Government of India passed the Suppression of Immoral Traffic in Women and Girls Act (SITA), in 1956. The Act is further amended in 1986 as Immoral Traffic Prevention Act (PITA). This Act only discusses trafficking with respect to prostitution and not in relation to other matters of trafficking like domestic work, child labour, organ harvesting, etc.

²⁴ A. 38 - The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

A.39 - The State shall, in particular, direct its policy towards securing, that the citizens, men and women equally, have the right to an adequate means to livelihood.

A. 42 - The State shall make provision for securing just and humane conditions of work.

²⁵ A. 51(e) - It shall be the duty of every citizen of India, to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

²⁶ S. 340 IPC - Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

²⁷ S. 361 - Kidnapping from lawful guardianship.—Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.



Some of the Relevant Provisions are:

- Child is defined as any person who has not completed eighteen years of age.
- There are provisions in the Act, highlighting the illegality of prostitution and the punishment for owning a brothel or a similar establishment or for living of earnings of prostitution as is in the case of a pimp.
- If a person procures, induces or takes a child for the purpose of prostitution then the prison sentence is a minimum of seven years to life. To make sure that the people in the line of trafficking are also held responsible the Act has a provision that states that any person involved in the recruiting, transporting, transferring, harbouring, or receiving of persons for the purpose of prostitution if guilty of trafficking. In addition any person attempting to commit trafficking or found in the brothel or visiting the brothel is punishable under this law.
- If a person is found with a child it is assumed that he has detained that child there for the purpose of sexual intercourse and hence shall be punishable to seven year in prison up to life imprisonment, or a term which may extend to ten year and also a maximum fine of one lakh rupees. If a child is found in a brothel and after medical examination has been found to have been sexually abused, it is assumed that the child has been detained for the purpose of prostitution.
- Any person committing prostitution in public with a child shall be punishable to seven year in prison up to life imprisonment, or a term which may extend to ten year and also a maximum fine of one lakh rupees. If prostitution of a child is being committed with knowledge of an establishment owner such as a hotel the license of the hotel is likely to be cancelled along with the given prison sentence and/or fines.
- Any child found in a brothel or being abused for the purpose of prostitution can be placed in an institution for their safety by a magistrate. Landlords, leasers, owner, agent of the owner who unknowingly previously rented their property to a person found guilty of prostituting a child, must get approval from a magistrate before re-leasing their property for three years after the order is passed.
- In 2006, the Ministry of Women and Child Development proposed an amendment bill that has yet to be passed. The amendment does not really concern any of the provisions related to the child but has many important consequences for the right of women sex workers.

Judiciary

Judicial Positivism: Usually prostitutes belong to poor family and do not have financial freedom to go to judiciary for justice. Those days judiciary simply interpreted and implemented laws relating to prostitution. In *Shama Bai V. State of U.P.*²⁸, the petitioner, a prostitute claimed that prostitution was her hereditary trade and means of livelihood. She has many dependents on her. If SITA is implemented then she would be left to starve along with family members. And SITA is ultra vires the Constitution as it illegally prohibits her from carrying on her trade. In this case Court observed many things and considered, that work of a prostitute is a profession, occupation or trade within the meaning of A. 19(1)(g) of the Constitution of India and SITA imposes restriction on the same. Court further observed that the prostitution per se is not prohibited under SITA, but only some restrictions are imposed and so it is not ultra vires the Constitution. In *Soni Bachu Lakhman V. The State of Gujrat*²⁹, Court found that under Section 15 of the SITA, a special police officer is authorised to enter and search a premises without a warrant. In *State of Bihar V. Jagrup Singh*³⁰, Court observed that the prostitution can be established by some circumstantial evidences as it is difficult to get direct evidences. In *Krishnamrty alias Tailor Krishnan V. Public Prosecutor, Madras*³¹, and *State V. Bai Radha*³², it is observed that to prove prostitution repeated visits by persons not necessary and also evidence of more than one person is not necessary, if one

²⁸ AIR 1959 All. 57.

²⁹ AIR 1960 Guj 37.

³⁰ AIR 1963 Pat. 381.

³¹ AIR 1967 SC 567.

³² ILR (1967) Guj 1046.





acknowledges the act is enough. In *Kalyani Choudhari V. State of U.P.*³³, Court held that no girl can be kept in protection homes unless under any of the laws of the country.

Judicial Activism: Legal activism aimed at having the just society and remedying the social ills of the society. In *Upendra Baxi V. State of UP*³⁴, answering a Public Interest Litigation, Court directed the state government to take necessary steps to protect the inmates of Agra Protective home and make arrangements for them to live with dignity under A. 21 of the Constitution of India. In *Vishal Jeet V. Union of India*³⁵, Supreme Court delivered a landmark judgement eradicating child prostitution. In *Gaurav Jain V Union of India*³⁶, Court ordered to segregate the children of prostitutes by locating separate schools and providing separate hostels. In *Chandru S V. State*³⁷, a Single Judge Bench of K.N. Phaneendra, J. held that the offences under ITP Act or under Section 370 IPC are not attracted as far as the customers in a brothel house are concerned, and held customers in a brothel house are not offenders under PITA³⁸. In *Ms Mona vs State Of Raj*³⁹, Petitioner was the girl, who was arrested at the spot along with customer. There were two arguments in support of her. Firstly, it is contended that Bajrang Singh Shekhawat the investigating officer was not notified as a Special Police Officer under Section 13 of the Immoral Traffic (Prevention) Act, 1956. Secondly, it is contended that in terms of the Section 15(2) of Immoral Traffic (Prevention) Act, 1956, two or more respectable inhabitants of the locality out of which one should be woman were not called and hence, the search carried not in consonance with the provisions of the Act, shall vitiate. Court held as per government notification the Inspector of Police is authorised to conduct the search and for second argument Court held S. 15(2) is directory and not mandatory in all the cases.

Implementation Problems: Though there are many provisions to protect the minor girls and women, on daily basis many incidents happen to question these legal cover. Few of the problems of implementation are:

- Due to poverty and social denials, the number of cases reported under PITA are very less compared to the incidents.
- Prostitution is the product of male lust. Men have been commercialising female body as a product and it is supported by male dominated society. But women are considered as the offenders and punished though they are the victims. Even though profession is carried on mostly by men, more females are getting arrested.
- Rehabilitation is the necessity of the day of the profession. But it is social as well as economic problem. Government is not ready to spend more money on rehabilitation programmes as it does not generate any revenue. There are many NGOs and social workers are into rehabilitation of prostitutes. But these mainly concentrate on their children forgetting the need of those sex workers.
- As the prostitution as a profession is subject to social stigma, sex workers and their children's health, education, employment, shelter etc., is not accepted by the society and it is very difficult for the government and service organisations to bring them to main track of the society. It is not easy to get

³³ 1978 Cr. L. J 1003.

³⁴ (1983) 2 SCC 308.

³⁵ AIR 1990 SC 1412.

³⁶ AIR 1990 SC 292.

³⁷ Crl. Petition No. 5059 of 2017.

³⁸ The "customer" or "clientele", who is the abuser of the trafficked woman, is undoubtedly, an exploiter. He is the one who perpetuates 'demand' and commercial sexual exploitation and is, therefore liable under ITPA and other laws. (sections 3, 4, 5, 6, 7, 9 ITPA, read with Chapter V of IPC dealing with abetment of offences)

³⁹ S.B. Criminal Miscellaneous (Petition) No. 221/2018.





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married sex workers girl children even though they are educated and beautiful. Usually male children of sex workers are neglected and they end up in entering into illegal work for their livelihood.

- The sex workers health is always of major concern as it affects the society also. Licensing the profession, regular health checkups and monitoring are the possible solutions, though not permanent.
- Legalisation of the flesh trade is a debatable matter, as it involves both advantages and disadvantages. If advantages weigh more than disadvantages then only it can be looked into.
- The Ministry of Women and Child Development (MWCD) has taken number of initiatives to stop trafficking of women and children: like formation of the committee to look into the matter, rescue operations, bringing awareness about ways of exploitation, a nodal cell to do research on the matter, shelter homes, training the authorities dealing with sex workers etc.

Suggestions to the Problem of Prostitution

Legislative Measures:

- As per the preamble, the state should make provisions for removing the causes of prostitution, provide for rehabilitation and need to treat them with dignity as human beings.
- Instead of legislations speaking about minor girls more, consider women at any age in the enactments.
- A thought should go in the direction of decriminalising the prostitution. That is, remove prostitution from criminal code with restrictions of punishments to procurers, pimps and brothel keepers. It may create better work conditions for sex workers without any harassment from authorities⁴⁰.
- There need to have some reservation in public employment at basic level of job for rehabilitated sex workers. It will bring them to main stream, with financial independence.

Executive Measures:

- In the field of education and public employment reservation need to be given to prostitutes and their children to bring them to main stream of the society.
- Sex workers who want to leave the profession and join the society should be given all the support.
- Free health checkups, counselling services and other welfare programmes should be provided to them.
- Any kind of wrong done to women in any form, which forces them to get into the profession should be dealt with seriously.

Judicial Measures:

- Judges dealing with the case of prostitution should be given special training on PITA and related enactments and also on the psychological aspect of women in the profession.
- If needed, sensitive cases should be dealt by women judges.
- Cases relating to wrong done to women should be taken up on priority basis so that the exploitation should not be more to lead them to the profession.

Conclusion

It is a debate from the past that devadasi system or prostitution saves the society by satisfying lustful men, so that they should not exploit any other women of the society or it is the male dominated society's one of the ways of exploiting women. There is no answer as both the arguments look correct, and the prostitution is a reality. The need of the day is, law should look into the matter of exploitation, problems of the sex workers and give justice to them wherever needed. Women should be empowered, treated with dignity and respect and there should be a full stop for considering women as a commodity in the market.

⁴⁰ Dr. Singh P. K., *Brothel Prostitution in India*, (University Book House (P) Ltd., 2004).

