

HUMAN RIGHTS OF SEX WORKERS WITH REFERENCE TO IMMORAL TRAFFIC (PREVENTION) ACT, 1956: A CRITICAL ANALYSIS

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ABSTRACT

India being one of the most powerful and growing in every sector in the world still got many aspects or areas to work upon and that is where the topic Human Rights of Sex Workers in India came across. India is collaborating with various methods of various organization for eradicating the dilemma that prostitutes and sex workers cannot become the part of the society. Despite of various laws, enactments and making of NGOs for sex workers or prostitutes which provides assistance to them they are begging for dignity of sex workers and still waiting for the directions and suggestions i.e., initiatives to be taken by Central Government, State Government and Judiciary. Despite of having human rights they are still on the edge of medical attention and getting security. This paper throws light on the exploitation, hardships like health consultation, education and social criticism even the whole society is against them. Therefore, this paper focuses on redefining prostitution as sex work and further on legalizing and eradicating discrimination on sex workers which may result in protection of human rights and health of sex workers in India with help and guidance of legal provisions of Constitution of India and Immoral Traffic Prevention Act.

Keywords: Sex workers, Sex work, Prostitution, Security, Education, Health, Discrimination

INTRODUCTION

Historical Background

Prostitution in India is not too old. Prostitution comes in India from 6th century popularly known as Devdasi system. If we divide Devdasi into two then it results in Dev which is a hindi term which means the immortal persons who live in heaven or in short term it is called God and Dasi in hindi means maid or caretaker. But Devdasi system later ritualized as prostitution. According to the background of the India mythology till 21st century prostitution is not illegal per se.

Although India has signed numerous conventions and agreement related to the eradication of the discrimination and exploitation of sex worker but they haven't worked up to the full extent. Before the commencement of Constitution of India various reports were sent related to the numerous categories and kinds of laws that should be prevalent in Indian Constitution. Law Commission of India from 1947 to 1948 didn't submit not a single document or a report for protection of human rights of sex workers in India. As in India has been seen so far until and unless the crime doesn't become hazardous for the society the Government doesn't work against that crime.

Definition

The Prostitution has been derived from the Latin word 'prostibula' and if we talk about the term sex work it was coined by the Carol Leigh, a Western Sex Worker in 1998² and after that the word prostitute has been used increasingly worldwide. Talking about the definition of prostitutions, Encyclopedia Britannica defines prostitution as "the practice of engaging in relatively indiscriminate sexual activity, in general with someone who is not a spouse or a friend, in exchange of immediate payment in money or other variables."³ Encyclopedia Americana defines prostitution as "the practice of indulging promiscuous sexual relationship especially for payment."⁴

Types of Sex Workers

There are different types of sex workers which exist in the society which are classified on the basis of their 'modus operandi' which are as follows:-

1. Brothel Sex Workers: In this type of sex work the operations are carried out in brothels which were owned by ex Sex workers.
2. Call Girl Sex Workers: In this type of sex workers work independently from their location.
3. Street Sex Workers: In this type of sex workers the operations are carried out in open city for the sex work.

In the 64th Law Commission Report of India it has been stated that the prostitution as profession cannot be abolished. In the report it has been stated that prostitution is a social evil which cannot be abolished. Despite making several attempts to check this social evil prostitution still persists. So it is the step to check the social evil called prostitution.⁵

² Carol Leigh (ed.), *A Western Sex Worker*(1998)

³ Encyclopedia Britannica, 15th ed. 737 (2002)

⁴ Encyclopedia Americana, 1st ed. (1965)

⁵ Law Commission of India, *64th Report on The Suppression of Immoral Traffic in Women and Children, 1954* (March, 1975).

LEGISLATIVE FRAMEWORK

The makers of the constitution were well aware of the fact that the position of the women in the Indian Society is weak. So, it becomes necessary to have good legal provisions in the Constitution of India. The Constitution of India needs good provisions from the policy makers for the weaker sections of the society.

The Fundamental Rights mentioned in the Constitution of India gives a positive image for the protection of the women in the society. The Directive Principle of State Policy is giving a polished view in the Constitution of India. It endeavors to prohibit every kind of exploitation of women and children in all walks of life.⁶ But the view of sex workers in the society is not good enough to call them as a part of the society.

Provisions of Constitution of India

Article 14, 15(3), 19(1) (g), 21, 23, 39(e), 39(f) and 51(a) of the Constitution of India works directly or indirectly on the protection of women against matter concerning to prostitution. Article 14 of the Constitution of India guarantees the equality before law and equal protection of law working as a fundamental right.⁷ Article 15(3) empowers the State to make special provisions for women and children.⁸ Article 19(1)(g) of the Constitution of India plays a vital role as it empowers the citizens of India to practise any profession or to carry on any occupation, trade or business.⁹ However Article 19(1) (g) is restricted and regulated by the authority of law. Article 19(6) imposes a reasonable restriction on Article 19 (1) (g). Article 21 is the power and strength of the Constitution of India says that no person shall be deprived of his life or personal liberty except according to procedure established by law.¹⁰

The most significant Article which directly related the problem of Traffic in sex work is Article 23. Article 23 (1) says that, “Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”¹¹ The Article 23(1) becomes more effective that human Traffic is punishable under the law. The Article 39 (e) and (f) which comes under Part IV and can also be termed as Directive Principle of Sate Policy of Constitution which trace down the problems of women in general. Article 39 (e) says that state shall make policies related to health and strength of workers and children shall not enter to those work which are not

⁶ Shobha Saxena (ed.), *Crime Against Women and Protective Laws 23*(Deep & Deep Publishers, 2001).

⁷ Article 14, The Constitution of India, 1950 says: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

⁸ Article 15(3), The Constitution of India, 1950 says: “Nothing in this article shall prevent the State from making any special provision for women and children.”

⁹ Article 19(1) (g), The Constitution of India, 1950 says: “All the citizens of India shall have right to practise any profession, or to carry on any occupation, trade or business.”

¹⁰ Article 21, The Constitution of India, 1950 says: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

¹¹ Article 23, The Constitution of India, 1950.

suitable to their age and doesn't work as an economic necessity. Article 39 (f) says that children's childhood shall be given a clean, healthy and freedom so that youth are protected against the exploitation.¹² Thus, Constitution of India contains many provisions for the betterment and empowerment of the women in the society.

Human rights of sex workers got special recognition with a legal case named as *Budhadev Karmaskar v. State of West Bengal*¹³ in this case it was held that sex workers or prostitutes have the right to live with dignity under Article 21 of the Constitution of India and the problems faced by the sex workers are need to be addressed. With continuing statement on this case Justice Markande Katju and Justice Gyan Sudha Mishra observed "a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body."¹⁴

Legal approach to sex work

The Immoral Traffic (Prevention) Act, 1956

There is a special legislation which directly deals with the profession of sex-work known as The Immoral Traffic (Prevention) Act, 1956. Earlier this legislation was known as Suppression of Immoral Traffic in Women and Children Act, 1956. The Act was amended twice firstly in 1978 and secondly in 1986. The amendment of 1978 was to remove the defects of implementation of the act. The amendment of 1986 was to make penal laws more severe and to give minimum standard of the treatment to the victims which come under the act. The object of the act is not to render prostitution as criminal offence and to prevent sex workers from exploitation related to medical and laws and the protection of women from brothel. The scope of the Act has been widened by covering all persons whether male or female, exploited sexually for immoral purposes. A careful scrutiny of Immoral Traffic (Prevention) Act, 1956 clearly reveals that the Act was aimed at the suppression of commercialized vice and not at the penalization of the individual prostitute or prostitution itself.¹⁵ There are certain provisions in the act which directly or indirectly deals with protection from exploitation of sex workers such as section 2 (a), 2(f), 3, 5, and 19. The section 2 (a) of the act talks about 'brothel' which includes places or instances can happen to be exploitation of the prostitutes.¹⁶ It literally means that prostitution is legalized but the exploitation of prostitutes is illegal or the person who

¹² Article 39 (e) and (f), The Constitution of India, 1950 says: "The State shall, in particular, direct its policy towards securing: (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; [(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]"

¹³ [2011] 10 S.C.R. 577.

¹⁴ <https://www.livelaw.in/sex-work-dignity-two-sides-debate/> (Visited on March 17, 2019).

¹⁵ In re. Ratanmala, AIR 1962 Mad 31.

¹⁶ Section 2 (a), The Immoral Traffic (Prevention) Act, 1956 says: "brothel includes any house, room [conveyance] or place or any portion of any house, room [conveyance] or place, which is used for purposes [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes."

practices it. Section 2(f) defines the meaning prostitution which says that sexually exploitation of persons for commercial purpose. But there is one thing to notice that it is especially specified 'prostitutes' expression shall be taken into consideration.¹⁷ Section 3 of the Act talks about the persons who practices brothel shall be punished with rigorous imprisonment. Section 3 doesn't just talk about the punishment but it also talks about the nature of the crime that people who practices brothel in linear, so for their successive crimes the level of punishment also increased which is a kind of security provision for the sex workers so that brothel cannot be practiced over and over.¹⁸

Section 5 of the Act implies two things for the sex workers. Firstly, sex workers are allowed to work to their judicial limits where Article 19(1) (g) of the Constitution of India. Secondly, reasonable restriction as followed with Article 19 (6) of the Constitution of India which implies that certain places are declared the places which are not meant for sex workers to work. Section 5 of the Act also talks about penal provision for the sex workers if not followed accordingly.¹⁹ Section 19 talks about the protective homes and correctional measures shall be followed in case of courts enquiry for the sex workers who are victims which comes under the said Act.²⁰ Section 2 (g) and 21 of the Act deals with the definition of protective homes and the authority given by the State Government to the victims mentioned in the Immoral Traffic (Prevention) Act, 1956. 'Protective Homes' means that authorized and licensed institution provided by the State Government for the persons who are need and care mentioned under this Act.²¹ Section 21 of the Act means State Government by his discretion shall provide protective homes to the persons who are in need of care and protection. The Section 2 (g) and 21 of the Act implies that as per the exploitation of the sex workers, they have been provided the special protection to them.²²

ADDRESSING STIGMA AND DICRIMINATION

In India the population is 1.1 billion where 2.5 million people living from HIV/AIDS in which 0.36 per cent of people are adults having HIV and 7 per cent of adults are on anti-retroviral treatment.²³

According to the dictionary meaning of Stigma is a mark of disgrace associated with a particular circumstance, quality, or person. In Christian tradition it means marks corresponding to those left on Christ's body by the Crucifixion, said to have been impressed by divine favour on the bodies of St Francis of Assisi

¹⁷ Section 2 (f), The Immoral Traffic (Prevention) Act, 1956 says: "prostitution means the sexual exploitation or abuse of persons for commercial purpose, and the expression "prostitute" shall be construed accordingly."

¹⁸ Section 3, The Immoral Traffic (Prevention) Act, 1956.

¹⁹ Section 5, The Immoral Traffic (Prevention) Act, 1956.

²⁰ Section 19, The Immoral Traffic (Prevention) Act, 1956.

²¹ Section 2(g), The Immoral Traffic (Prevention) Act, 1956.

²² Section 23, The Immoral Traffic (Prevention) Act, 1956.

²³ <http://www.unaids.org/en> (Visited on 24, 2019).

and others. According to medical meaning it is a visible sign or characteristic of a disease. According to the botanical meaning it means the part of a pistil that receives the pollen during pollination in flower.²⁴

Discrimination dictionary means the unjust or prejudicial treatment of different categories of people, especially on the grounds of race, age, or sex.²⁵ As both the words are meant and implies which are not accepted by the society and still have a thought of not considering stigma and discrimination as a part of their mental dictionary.

According to Indian Study from 1996 to 2018, if the HIV/AIDS is hereditary then, most of the families have supported men but in case of women sex workers condition there are various forms of discrimination which are as follows which are faces by the respondents:

1. Hospitals
 - a. Refusal from getting treatment
 - b. Refusal from getting admission in hospitals
 - c. Refusing in giving assistance for the treatment
 - d. Making use of plastic sheets to wrap the bodies
 - e. Denial in transportation of body
 - f. Restricted access of person entering into toilets or using of common utensils for drinking and eating.
2. Home and Society
 - a. Denial of getting share from household property
 - b. Physical isolate on in home
 - c. Restricted entry in public places
 - d. \Denial of death rituals
 - e. Blocked connections with children or other relatives

There are certain statements comments which are mention by various known specialists which are follows:

Legal provisions in India

There is no comprehensive law mentioned anywhere in India to deals with the menace of HIV/AIDS. There is no specific law which can protect persons from discrimination and social stigma who are affected from HIV/AIDS. The discrimination and social stigma are like attached disease or the simultaneous affect on the person who are infected with the disease. The law of land i.e. Constitution of India, 1950 guarantees in giving equality, liberty and justice to the people who are facing simultaneous affect on the persons who are

²⁴ <https://en.oxforddictionaries.com/definition/stigma> (Visited on February 24, 2019).

²⁵ <https://en.oxforddictionaries.com/definition/discrimination> (Visited on February 24, 2019).

having HIV/AIDS. Article 14 deals with no equality on giving treatment of HIV/AIDS patients. Article 15 and 16 Article deals with no discrimination with HIV/AIDS patients. Article 21 of the Constitution of India gives protection of having fundamental right to life, personal liberty and also ensuring right to privacy. The Directive Principles of State policy imposes duty on state to provide protection against discrimination.

For effective implementation the Gujarat High court has directed the State Government for effective supervision and control of the rehabilitation of prostitutes, there shall be constituted by the State a high power State Level Rehabilitation Committee in the case of *Sahyog Mahila Mandal v. State Of Gujarat*.²⁶ The Supreme Court of India has also advocated in the favour of better living for sex workers. It has also directed that the central and the state governments should prepare schemes for rehabilitation of physically and sexually abused women all across the country.²⁷ The State of Maharashtra has passed a bill for sex-workers which is called as Maharashtra Protection of Commercial Sex Workers, Bill, 1994.

MAJOR ORGANIZATIONS WORKING AS HELPING HAND

As Indian legal provisions and Parliament are working as tracks of the train which is slowly running but there are various other organizations and NGOs working for the welfare of the society and working day and night for their rights and these organizations and NGOs consider sex workers as the part of the society. The Organizations and NGOs working for the rights of sex workers are as follows:

1. National Network for Sex Workers²⁸

The National Network of Sex Workers is the organization who is working collectively to give human rights to sex workers. The organization is working collectively with the members of 50000 members and it is the only platform which bring collectively female, transgender and male sex workers with NGOs and sex worker rights activist. The combination of 12 CBOs/ State Federation and 8 NGOs across seven states NNSW is creating a light of human rights of sex workers in the darkness. There are various initiatives taken by this organization for the benefit of sex workers are follows:

- The National Conference of Sex Workers was held in 1997 which was attended by 4000 sex workers.
- In 2015, NNSW submitted the report to the Supreme Court Panel containing various positive acts can be done for the sex workers as per the Article 21 of the Constitution of India.²⁹

²⁶ (2004) 2 GLR 1764.

²⁷ <http://www.helplinlaw.com/civil-litigation-and-others/RHPI/rights-of-hiv-aids-patients-in-india.html> (Visited on March 11, 2019).

²⁸ <http://nnswindia.org/> (Visited on February 26, 2019).

²⁹ <http://nnswindia.org/upload/resources/2016/UPR-Submission-Sex-Work-Final-Submission-22-Sep-2016.pdf> (Visited on February 26, 2019).

2. Apne Aap Women's Collective (AACW)³⁰

Apne Aap Women's Collective is an anti-Traffic organization which works for the rights of women of 18+ years of age in the prostitution and for the children. This organization has done main focus on raising the charts of human rights of sex workers and their children should not exploited on the basis of the profession chosen by their mother and should not follow the same path. There are various achievements which makes this organization a welfare organization for them. Some of the achievements are as follows:

- In 2015, AAWC received Gulabrao Ganacharya Award for the services given by them at red light are at Kamathipura and Falkland Road in Mumbai as they served 2800 women and children since 1998.
- In 2015, AAWC received Gold Star Status Award for the providing financial and legal assistance to public domain.

REGULATORY FRMAEWORK FOR IMPROVING CONTDITIONS OF SEXWORKERS

As seen in above mentioned above the human rights of sex workers and their children are facing problem of negligence in treatment in hospital, in providing legal assistance, in giving security from the policemen and only negligence in the society that sex workers are also the part of the society. As also seen in the previous scenario that Immoral Traffic (Prevention) Act, 1956 has worked accordingly but the results are not as expected in the coming future. As neither the conditions of sex workers has improved nor they are accepted the part of the society. There should be a special act shall be passed which can be beneficial for the status and prohibition of exploiting the sex workers. The laws which can be referred for their protection are as follows:

- i. A self regulatory board shall primarily comprise of sex workers along with local policemen and local authorities.
- ii. There should be authentic certification of declaration of passing a special zone for the areas which shall be the place of working for sex workers.
- iii. If anyone found to be engaged in working outside the zone for their commercial sexual services would be subject to Rs. 4000/- fine or if second time again found to be working outside the zone for their commercial sexual services would be subject to Rs. 8000/- or 8 months of imprisonment or both.
- iv. There should be issuance of licenses to sex workers and shall be the provided by the regulatory board and shall have that license while working in the zone area.

³⁰ <http://www.aawc.in/index.html> (Visited on February 26, 2019).

- v. If anyone found to be engaged in working without the license in zone for their commercial sexual services would be subject to Rs. 4000/- fine or if second time again found to be working outside the zone for their commercial sexual services would be subject to Rs. 8000/- or 8 months of imprisonment or both.
- vi. A self regulatory board shall also be made for the inspection of sex workers of not more than three members who can check anytime while profession is being carried out by the sex workers. The self regulatory board shall make a note of every sex workers of giving them first warning and if again found to be working without license then license shall be cancelled for the 6 months.
- vii. Self regulatory board members shall not have the right to mandatory test by the sex workers while working in the premises of the zoned areas whether they are infected with HIV or STD.
- viii. Self regulatory board members shall have the responsibility to encourage constantly and continuously for the regular medical examination of the sex workers in the medical camp with the help of State Government in the zoned areas.
- ix. Any person who forces the other person to work as sex worker for the other person then that person shall be punished with the fine of upto Rs. 50000/- or imprisonment of 7 years or both.
- x. Group of policemen shall also be there for maintaining peace and protection of sex workers.
- xi. Every sex workers shall send their children to school for the education and will not promote their children for the sex work.
- xii. The schools will not be biased for the admission of the student on their parent's profession. Any school found to be doing biasness then school be punished with a fine of Rs. 50000/-.

CONCLUSION

Sex work has still not got recognition under the profession, Sex workers are still not considered as the part of the society. Legal assistance to sex workers comes once in a blue moon. Exploitation is for them has become like daily consumable items which can cause cancer. Medical examination comes when the sex workers are in the last door to death. From the above circumstances, scenario, conditions or facts the position of the sex workers hasn't changed much. Just providing assistance them after the cost of exploitation of the sex workers rights is not good enough for them. The sex workers are not the only one who suffers the exploitation but it is their children that face the both exploitation as well as discrimination. The respect is not lost by the sex workers but all persons who are related with any kind of relationship a sex worker. Simply by working on the laws and by special provision the right of the sex workers cannot be granted. For the eradication of the exploitation of sex workers the India need to work upon the security, medical attention, legal assistance and some strict actions need to be taken. If some of the necessary steps are not taken then this social evil as mention in 64th Law Commission Report of India 'Prostitution' can become a major problem in the coming future. The First and foremost thing which is needed to be done that all the departments or the committees which are working on the eradication of the exploitation of the sex workers needs to be very strict and obedient towards their goal for working the rights of the sex workers. The second step which is needed to be done those policemen who are first security against exploitation of sex workers needs to work in the zoned areas shall work for them not against them as of their security. The another step which shall be taken is that necessary committees, NGOs, local authority and Government shall work together for the abolition of exploitation of sex workers. It is well said that it is no good crying over spilt milk.