

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 2

2024

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Beyond the Shadows: Traversing the Plights & Rights of Sex Workers

SARTHAK ASWAL¹ AND MIDHUSHI SHUKLA²

ABSTRACT

Sex work is one of the most stigmatized professions globally. Sex workers have faced systemic discrimination and have had their rights violated throughout history. This study aims to delve into the complex landscape of sex work in India and tries to draw comparatives from the world scenario. Tracing back to ancient times, the paper begins with the evolution of sex work in Indian society, highlighting the association with courtesan culture during the Mughal period and despite its historical roots how it remains a stigmatized profession. Examining the legal framework surrounding sex work major emphasis is provided on the Immoral Traffic (Prevention) Act of 1956 and other relevant legislations. While efforts have been made to combat human trafficking and protect sex workers, significant gaps in enforcement and protection persist, leading to cases of exploitation and abuse. Recent judgments have also been taken into account and have served as a foundation for understanding the rights of these workers and the evolution and recognition of this profession. This study is aimed towards shedding light on the destigmatization and decriminalization of the people working in the industry and advocates safeguarding of their rights as well as dignity.

Keywords: Sex Work, Sex Works, Human Rights.

I. INTRODUCTION

S, a starry-eyed 12-year-old girl, had left her home, Bangladesh in the hopes of a job in Dhaka, as was promised by a family acquaintance. Her dreams never took off, however, as she was instead smuggled into West Bengal, and shackled in a brothel in Mumbai. After being enslaved for two years, the police rescued her and sent her to a shelter. The shelter, which was supposed to be a safe space, turned out to be yet another betrayal. The woman who made a promise to return her to Bangladesh instead betrayed her by selling her to a brothel in Namkhana, a small town in Bangladesh. (Sharma)

“Pinha tha daam-e-sakht qareeb ashiyaan ke, Udhne hi nahi paye the ki giraftaar hum hue”

¹ Author is a student at ILS Law College, Pune, India.

² Author is a student at ILS Law College, Pune, India.

This couplet by Faiz Ahmed Faiz roughly translates to: “Hunters placed the net near a nest and the young one got caught in it before it could even take its first flight”. This depicts the plight of not one but hundreds of thousands of women trapped in the shackles of prostitution in our country with almost no escape.

(A) What is sex work?

In everyday language, sex work refers to the exchange of sexual services, performances, or products in return for material compensation. This encompasses both direct physical interactions between buyers and sellers, as well as activities involving indirect sexual stimulation. It's important to note that the term "sex work" specifically pertains to consensual and voluntary sexual transactions, excluding non-consensual activities like human trafficking and other coerced forms of sexual activity.

Section 2(f)³ of the Immoral Traffic (Prevention) Act (ITPA) of 1956 defines the term "prostitution" under the law. The section reads as follows:

"Prostitution" means the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly."

Immoral Traffic (Prevention) Act (ITPA) of 1956 is an Indian law that criminalizes commercial sexual exploitation or prostitution. It aims to prevent the trafficking of persons for prostitution and to provide rehabilitation and support to victims of prostitution. The law prohibits soliciting, brothel-keeping, and living off the earnings of prostitution, among other activities related to commercial sexual exploitation. It also provides for penalties and imprisonment for those who violate the provisions of the law.

II. HISTORY OF SEX WORK IN INDIA

Prostitution in our country has existed since time immemorial and has not only a very long but also deeply complex history. The origins of its history can be traced back to ancient times. The word prostitution is not specifically mentioned in the Rig Veda but it does talk about women who may have engaged in sexual relationships outside of societal norms. The Purana also mentions that a woman who shared her bed with two men was known as a Kulata, with three men was called a Darshini, with four was referred to as a Pungaschalea, and with five was known as a Veshya. If a woman slept with more than five men, she was called a Mahaveshya. It is believed that prostitution was legal during the Brahmana period and they were called vesya created to minister to the wishes of merchants who lived a life away from home. Prostitution

³ Immoral Traffic (Prevention) Act, 1956, Section 2(f), No. 104, 1956 (India)

did exist during the Mughal era and is often associated with courtesan culture which existed in Mughal courts; tawaif or courtesans were women who were trained in various arts, such as music, dance, and poetry, and were often employed by wealthy patrons, including Mughal emperors and Nobles. Some courtesans also engaged in sexual relationships with their patrons, and this practice was often considered to be a part of the courtesan culture.⁴

(A) The Present Scenario

The Indian sex industry is one of the biggest in the world. As per a survey conducted in 2017, there are almost 16 million prostitutes in our country and the number is increasing magnanimously. According to the Havocscope Research Institute's report India ranks at 7th position in the world with a market worth a whopping 8.2 billion dollars. Prostitution is legal in our country subject to various limitations and is widely practiced and there exist almost 275000 brothels in the country.⁵

India in recent times has become one of the major source, destination, and transit countries for women and children being subjected to sex trafficking. According to the report by the National Crime Records Bureau, every eight minutes a child is abducted in our country.⁶ These sex workers are subjected to extreme living conditions with congested, small, and smelly rooms and are exposed to constant threat of Cervical Cancer, HIV, and other forms of STDs.

Several acts have been enacted to protect sex workers and trafficked women in our country, such as The Prevention of Immoral Traffic Act 1956⁷, The Indian Penal Code 1860,⁸ and the Juvenile Justice (Care and Protection of Children)⁹ Act which have all been legislated with the main aim of reducing prostitution in our country.

Sections 372 & 373 of IPC deal with child prostitution Sections 366A, 366B, and 370A of the Indian Penal Code pertain to the criminalization and punishment of certain actions. Specifically, these sections address the acts of producing a child with a minor girl, bringing a girl from another country for sexual exploitation, and exploiting a person who has been trafficked, respectively, but in reality, the scope of these provisions is very limited and offer very little to no protection to these people; consequently, it can be said that the rights for sex

⁴History Of Prostitution, Itimes (Sept. 12, 2014), <https://www.indiatimes.com/lifestyle/self/history-of-prostitution-277526.html?picid=1460674>.

⁵ Havocscope, Number of Prostitutes, <http://www.havocscope.com/number-of-prostitutes/>.

⁶ Shreya Shah, India's Missing Children, By the Numbers, Wall St. J. (Oct. 2, 2015), <https://www.wsj.com/articles/BL-IRTB-16945>.

⁷ Immoral Traffic (Prevention) Act, 1956, Act No. 104 of 1956 (India)

⁸ Indian Penal Code, 1860, Act No. 45 of 1860 (India)

⁹ Juvenile Justice (Care and Protection of Children) Act, 2000, Act No. 56 of 2000 (India).

workers remains to be a castle in the air for our country.

International Sex Worker Rights Day falls on March 3rd each year and has its roots in a sex worker festival held in India in 2001. The festival was attended by more than 25,000 sex workers and was organized by the Durbar Mahila Samanwaya Committee, a group based in Calcutta made up of over 50,000 sex workers and their community members. Since then, sex worker organizations around the globe have commemorated March 3rd as a day to recognize the rights of sex workers.

III. RECENT JUDGEMENTS

It is important to note that while sex work or prostitution is not illegal in India, trafficking for sexual exploitation is considered a criminal offence under Indian law. Additionally, certain aspects of sex work such as solicitation, pimping, exploitation, and renting out of property for sex work are also punishable under the Indian Penal Code 1860 (IPC) and the Immoral Trafficking Prevention Act 1956 (ITPA).

Despite these laws, Indian courts have issued some favorable judgments in the past regarding the rights of sex workers.

In 2011, the landmark case of *Budhadev Karmaskar v State of West Bengal*¹⁰ led to the Supreme Court of India recognizing that sex workers have the right to dignity under Article 21 of the Constitution, which guarantees the right to life and livelihood.

In 2019, the Calcutta High Court further affirmed the rights of sex workers by stating that under the Immoral Trafficking Prevention Act 1956 (ITPA), no sex worker who is exploited for commercial sex can be tried as an accused unless there is substantial evidence that she was a co-conspirator in the crime.¹¹

More recently, in September 2020, the Bombay High Court ordered the immediate release of three women sex workers from a state correctional institution, asserting that sex work is not a criminal offence under the law and that adult women have the right to choose their profession.

In 2022, a three-judge bench of the Supreme Court in the matter of *Budhadev Karmaskar v State of West Bengal* issued a groundbreaking ruling recognizing sex work as a profession and affirming that sex workers are entitled to dignity and equal protection under the law. The court stated that voluntary sex work is not illegal and provided guidelines for law enforcement to ensure that sex workers are treated with respect and not abused. These guidelines included

¹⁰ *Budhadev Karmaskar v. State of West Bengal & Ors.*, 2022 SCC Online SC 704

¹¹ Soumya Das, 'Instead of arresting, treat sex workers as victims', *Deccan Herald* (Aug. 11, 2019), <https://www.deccanherald.com/india/instead-of-arresting-treat-sex-workers-as-victims-753505.html>

directives that police should take complaints from sex workers seriously, refrain from arresting sex workers during brothel raids, and ensure that no child of a sex worker is separated from their mother solely because she is in the sex trade.

Following the recent court ruling recognizing sex work as a profession and affirming the rights of sex workers, some activists working to combat trafficking for sexual exploitation have emphasized that the ruling does not legalize brothels or the "flesh trade." Instead, the ruling aims to protect sex workers and ensure that they are entitled to a life of dignity as guaranteed under Article 21 of the Indian Constitution. It is important to note that individuals who profit from the sex trade, such as brothel owners and traffickers, can still be held liable and prosecuted under the law. The three-judge bench led by Justice L. Nageswara Rao emphasized that sex workers have the same right to a life of dignity as any other individual under the Indian Constitution.

The unfortunate reality is that many women are forced to turn to prostitution out of desperation due to extreme poverty. However, if these women are given the opportunity to receive technical or vocational training, they can acquire new skills that allow them to earn a livelihood without resorting to selling their bodies.

The Supreme Court has directed both the Central and State Governments to develop schemes aimed at providing technical and vocational training to sex workers and sexually abused women in all cities across India. These schemes should outline the specifics of who will provide the training and how these women can be rehabilitated and employed. By offering these women new opportunities for employment and income generation, the aim is to reduce their reliance on prostitution and create a path towards a brighter future.

IV. THE WORLD SCENARIO

Sex workers in India have historically faced significant stigma and discrimination, often being viewed as criminals rather than victims of exploitation. However, recent court rulings have recognized their right to dignity and equal protection under the law, and have emphasized the need to protect their rights and ensure their safety.

Sex workers have the right to choose their profession and work voluntarily, and are entitled to protection from abuse and violence. They should not be subject to arbitrary arrest or detention and should have access to legal and medical services. In addition, sex workers should have the same labor rights as any other worker, including the right to safe working conditions, fair wages, and freedom from exploitation.

Despite these legal protections, sex workers continue to face significant challenges. They often work in unsafe and exploitative conditions, with little access to health care or other services. They may also be subject to violence and abuse, which often includes harassment by law enforcement officials.

Furthermore, sex workers are often marginalized and excluded from mainstream society, with limited access to education and employment opportunities. This makes it difficult for them to transition out of sex work and into other forms of employment.

Overall, there is a need to continue advocating for the rights of sex workers in India and to work towards creating a society that is more inclusive and supportive of their needs. This includes efforts to reduce stigma and discrimination, provide access to education and employment opportunities, and ensure that sex workers are able to work in safe and dignified conditions.

V. SEX TRAFFICKING

Human trafficking is a grave violation of human rights, and, unfortunately, it remains a prevalent issue today. According to the International Labour Organization (ILO), an estimated 21 million people are victims of forced labor globally¹², with a significant portion located in the Asia-Pacific region. Women and girls are particularly vulnerable and are often forced into sexual exploitation, which includes sex work. The problem of human trafficking is complex, involving various factors such as poverty, inequality, corruption, and lack of education. Addressing this issue requires a comprehensive approach that addresses the root causes and protects the human rights of those affected.

Human trafficking can be defined as the illegal practice of recruiting, transporting, harboring, or obtaining people for forced labor or sexual exploitation by means of force, fraud, or coercion. Women make up the majority of the victims and the most common forms of human trafficking are sexual exploitation and forced labor.

In Alaska, USA, incidents revealed that their new sex trafficking laws were being used in a way that only targeted alleged sex workers, who were being charged with sex trafficking themselves or their colleagues. Furthermore, the "victims" or co-workers were convicted of prostitution in the same cases.¹³

¹² Forced Labour, Modern Slavery and Human Trafficking, International Labour Organization, <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>.

¹³ German Lopez, "Alaska's 'sex trafficking' law hurts the people it claims to help," Vox (Aug. 28, 2015), <https://www.vox.com/2015/8/28/9220255/alaska-prostitution-sex-trafficking>.

The predicament of sex workers is not limited to India; it is a worldwide problem. Sex workers confront comparable issues of discrimination, stigma, and rights violations everywhere they go. Many sex workers still experience exploitation and abuse despite worldwide efforts to stop human trafficking and defend the rights of those engaged in the sex trade.

Legal obstacles, social exclusion, and violence are commonplace for sex workers across the globe, especially wealthy nations. Consensual sex work is frequently confused with exploitation by laws designed to prevent human trafficking, which stigmatizes and criminalizes sex workers. Some regulations, purportedly intended to shield victims of human trafficking, are actually applied to punish and further victimize sex workers themselves, as seen in Alaska's controversial sex trafficking laws.

To protect the rights and dignity of sex workers everywhere, there is an urgent need for global solidarity and activism in the face of these difficulties. Decriminalization and de-stigmatization of sex work, along with extensive support services and legal access, are critical measures in guaranteeing the security, welfare, and self-determination of those involved in the sex trade worldwide. To address the systematic inequalities experienced by sex workers and fight toward a more just and equitable world for everyone, governments, civil society organizations, and communities must unite.

(A) Present Rights

Under criminal law, sex workers are entitled to equal protection regardless of their age and must be able to engage in consensual sex work without fear of interference or criminal action from the police. The right to life and personal liberty under Article 21 of the Constitution applies to all individuals, regardless of citizenship status.

During brothel raids, sex workers should not be arrested, penalized, harassed, or victimized, as voluntary sex work is not illegal and only running a brothel is unlawful. Children of sex workers should not be separated from their mothers solely based on the mother's occupation, and both sex workers and their children are entitled to basic protection of human decency and dignity. If a minor is found living with sex workers, it should not be automatically presumed that the child was trafficked. Instead, tests can be done to determine if the child is the sex worker's son or daughter, and if so, the minor should not be forcibly separated. Sex workers who are victims of sexual assault should be provided with immediate medico-legal care.

VI. CHALLENGES FACED

1. Discrimination and Stigmatization:

Sex workers have no rights, and people who conduct such jobs face prejudice because of their criminal status. These individuals face societal disdain and find themselves marginalized, enduring frequent mistreatment from both landlords and even the legal system. Their ongoing pursuit for equal human, healthcare, and labor rights mirrors that of other members of society. Unfortunately, they are often excluded from the same category as other workers, which perpetuates their struggle.

2. Abuse and Exploitation:

Sex workers frequently endure a range of abuses, encompassing both physical and emotional assaults, on many occasions. They would endure harassment from clients, family members, the community, and even those sworn to protect the law. It is important to note that while the Supreme Court's efforts to improve the living conditions of sex workers are a step forward, the criminalization of sex work persists in India. The Immoral Traffic (Prevention) Act, 1956 (ITPA) is the primary legislation governing sex work in India and it criminalizes the act of soliciting, brothel-keeping, and living on the earnings of sex work. This has resulted in the harassment and exploitation of sex workers, who are forced to work in unsafe conditions and are vulnerable to abuse and violence. There have been ongoing debates and movements to decriminalize sex work and recognize the rights of sex workers in India.

It is important to acknowledge that sex work is work and that sex workers deserve basic human, health, and labor rights like any other worker. It is crucial to shift the narrative away from seeing sex workers as victims in need of rescue and rehabilitation, and towards recognizing their agency and right to choose their own work. This includes ensuring that sex workers have access to legal protections, healthcare, and safe working conditions. It is also important to address the stigma and discrimination that sex workers face and to work towards creating a society that values and respects the rights and dignity of all individuals. In times of crises, such as the COVID-19 pandemic, it is especially important to prioritize the needs and well-being of marginalized and vulnerable populations, including sex workers.

VII. CONCLUSION

It is a tragic reality that many victims of sex trafficking in India are young girls from impoverished families. Poverty and lack of education make them vulnerable to traffickers who lure them with promises of better opportunities or debt relief. Many of these girls are forced into prostitution or other forms of sexual exploitation. The average age of victims has decreased over time, with younger girls being targeted as they are thought to be less likely to carry sexually transmitted diseases.

It is important to address the root causes of poverty and lack of education, as well as to increase awareness about the dangers of human trafficking. Victims of sex trafficking should be provided with appropriate support and rehabilitation services, and efforts should be made to bring traffickers to justice. It is also important to work towards ending the stigma and discrimination faced by sex workers, as this could help reduce the demand for trafficked victims. There is a need for legal protections and anti-discrimination laws for sex workers and trafficking victims. Decriminalization of sex work can provide sex workers with greater access to legal protections and can reduce the power dynamics that make them vulnerable to exploitation and abuse.

It is also important to address the systemic issues that contribute to the vulnerability of sex workers and trafficking victims, such as poverty, lack of access to education, healthcare, and social stigma. By addressing these issues, we can create more equitable opportunities for all individuals, including those in the sex trade.
