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DOES INDIA VALIDATES OR DENY HUMAN RIGHTS TOWARDS PROSTITUTION? - A STUDY

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Introduction

Prostitution has been always a debatable topic. We refer the word prostitution generally to a procedure through which an individual is placed in an exploitive position for economic gain. The most accepted definition is given in the encyclopaedia of social sciences which describes prostitution *“as the practice in which a female offers her body for promiscuous sexual intercourse for hire etc.”* However, another definition coined for ‘Prostitution’ by The Immoral Traffic (Prevention) Act, 1956 under Section 2(f) as, *“Sexual exploitation or abuses of persons for commercial purposes or for consideration in money or in any other kind.”*

We can say female prostitution is one of the oldest professions of the world, this profession is practiced in almost all the countries. In Vedic ages of India prostitution has been observed as an established institution. The references of high-class prostitution are observed in the Indian Mythology in the name of Rambha, Menoka and Urvashi, who used to entertain the guest through their feminine charms and dance in the court of Lord Indira, the Lord of Hindu Gods.¹

In various parts of the country, female dancers or singers have been traced who were generally referred as ‘Devdasi’ which means ‘a female servant serving to god’. This practise of dedicating girls to the god prevailed all over India in different name and forms such as in South India they were known as Devdasis, in North India as Mukhies, Natis in Assam state and so on. As the time passes by these rights has been transferred to the lords of the earth², who started exploiting the practise which also rooted the child prostitution and this eventually turned into a business implementation which have taken the exploitation of the women on a different level.

In the present scenario although the prostitution has taken up in a commercialised form but still this is not treated as work in India rather seen as an immoral activity which threatens the society, as a

¹Dr. Tulsing Sonwani, Prostitution in Indian Society: Issues Trends and Rehabilitation

²‘Sex-work in India: Human rights perspective’ retrieved from

<http://www.citizensrw.org/index.php/guest/newsStoryDetails/36>

result of which the women involving in this profession gets denial of basic human rights. Even we can see there are abundance of laws which are in force but due to its poor application the women sex workers do not even get a proper access to the education, safety or healthcare centres.

International Approaches Towards Prostitution

Human Rights speaks about the kind of living a human being is worth of. But on the contrary, it is also said that prostitution is the violation of human rights. Society provides different views on their understanding regarding human rights. It is very clear that many people consider prostitution is taken up by a woman of a particular section. According to them the work related to prostitution leads to the exploitation of a woman which directly infringes the human rights. Again, this view has been objected by many human rights activist or feminist. They appealed that prostitution should be seen as a constructive work and an exemption must be made from the list of violation of human rights. However various international approaches have been made to protect these defenceless individuals.

In the United Nation Declarations 1848, it is specified in Article 1 that all the humans have the right to live with dignity and Article 5 prohibits the cruel and degrading treatment. The preamble of The Suppression of the Trafficking in Persons and of the Exploitation of the Prostitute of Others, entitled under UN convention speaks that the trade of sharing body does not have any dignity and even if the act is carried with the woman's consent, still it is violating her rights.

The international treaty providing specifically women's human right is UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which is adopted by the General Assembly in 1979 and ratified by more than 177 countries.

Article 6 of Part I of the text states that, "***State parties shall take all appropriate measures including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.***"

CEDAW also formed a committee to monitor the efforts taken by the state parties for the protection of the women. The parties must report the measures taken by them of combined four years, on which the committee may provide recommendations if required.

The Coalition Against Trafficking in Women (CATW) introduced a New Convention Against All Forms of Sexual Exploitation. This convention declares any kind of sexual declaration is violation to human rights and also decriminalized the women carrying the act and criminalized the customers and the pimps relating to this profession. The convention also provides many support services such as education and any other alternative work for the surviving women.

The above conventions and treaties mostly portrayed against prostitution but in the present scenario there are many countries which have legalised the prostitution. In Austria the prostitution is completely legal but the workers must be registered. Legalisation of brothels has been done in Belgium with key cards and proper fingerprints technology.³ In United States only in some rural countries like Nevada prostitution is legal but the workers have to undergo health check ups and also register themselves.⁴

India on Prostitution

After the World War II it was agreed by all that there are certain fundamental rights which cannot be denied to any human. In the year 1948, United Nations considering the area, adapted the Universal Declaration of Human Rights which secures every individual's right to life and liberty. The Constitution of India also provides these rights under Article 12, 14, 15, 21 and 32⁵. Article 15 provides that no individuals will be discriminated on the basis of sex, caste, class, religion and any other such attributes. In addition to this, the legislation also provides protection to the marginalised groups which includes Bonded Labour Act, Child Labour Act, Indian Penal Code, Protection of Human Rights Act and so on., also quasi judicial bodies such as National Commission for Child Rights (NCPDR), National Commission for Women (NCW), National Human Rights Commission (NHRC) attempts to provide a shield in the cases of violation of human rights.

In spite of various enactments to deliver the protection, still human rights violation is one of the common issues which prevails in India, and this issue is very evident when it comes to the protection of the prostitutes. India is being one of the countries which fails to provide a proper mechanism addressing to the grievances related to the mistreatment, torture or any kind of inhuman or discriminatory behaviour to the prostitutes. This problem also extends to the healthcare centres around the country, for an instance generally test for HIV is given to an individual who is suffering from STD or TB but in case of prostitutes even if they come for ordinary checkup, mandatory HIV test has been done to them.⁶ Another similar instance in a hospital situated in Kolkata it includes in the duty of all the medical practitioners to take the blood sample of the woman who is related to the business of prostitution, there is no proper justification given for such kind of discrimination for this

³Available at <http://lawzmag.com/2015/12/18/rights-of-sex-workers-legalisation-of-prostitution-in-india-a-critical-analysis/>

⁴Lyra Radford, '15 Countries Where Prostitution is Legal and How it Works', retrieved from <https://www.ranker.com/list/legal-prostitution-facts/lyra-radford>

⁵Constitution of India, Preamble

⁶S. Bharat, HIV/AIDS Related Discrimination, Stigmatisation and Denial in India (Mumbai: Tata Institute of Social Sciences, 1999), p. 89.

particular class and clearly amounts to violation of right to privacy and information for those women.⁷

Another issue which prevails not only with sex workers but also with their children is lack of education. According to a survey most of the prostitutes is having drastically low level of education which does not limited to them but also their children. Recently National Commission for Protection of Child Rights (NCPCR) provided a report according to which the children of the prostitutes not readily accepted by the peers and they often faces abuse or discrimination in the school which leads to the isolation rather mingling with the society and there is a fear that due to this behaviour the children may also forced to join the same profession as carried by their mother.⁸

Dichotomy of Indian Law

In India the law protecting prostitutes is the Immoral Traffic (Prevention) Act, 1956 (ITPA). The Act states that, “*prostitution as the sexual exploitation or abuse of persons for commercial purposes*”. It can be observed that according to the provision of the Act the prostitution is not prohibited but the manifestations of such work is forbidden.

According to Section 7 of the ITPA Act it prohibits prostitution in any public places, child prostitution or any kind of organisation such as brothels, pimps and soon. The Central Government also empowers any police officer to search any such areas and to make arrests without any warrant and protect any individual forced in this work. So, as it can be seen the law itself is contradictory, as any related activities to prostitution is considered as crime. Recently many foreigners also got involved in prostitution, in the year 2015 ten women from Thailand were arrested in Jaipur for carrying two brothels in the name of massage parlours.⁹

In the first instance the Act seems very attractive but later it turns out to be a very ambiguous one. It made clear that soliciting or inviting any clients or advertising in any such concerned matters are illegal but on the other side still numerous brothels are running in our country because to carry out the prostitutions, these women are dependent on the brothel owners for the customers. There is a requirement of amendment for this Act to provide equal protection and rights to the sex workers as these rights are also enshrined for all under Articles 14, 15 and 21 of Indian Constitution. Even though in the year, 2006 the Immoral Traffic (Prevention) Amendment Bill, 2006 was introduced in

⁷ Bindman, Stephen, 1996. Prostitute murders hard to solve, and no one cares. Ottawa Citizen [Canada], July 29 1996.

⁸ “Children of sex workers face abuse and discrimination in school, become isolated: Govt child rights body” retrieved from <https://www.indiatoday.in/education-today/news/story/children-of-sex-workers-face-abuse-and-discrimination-in-school-become-isolated-study-by-child-rights-body-1439319-2019-01-25>, India Today, 26 January, 2019

⁹ “10 Thai women arrested for prostitution in India.” Bangkok Post (Jaipur, India) 9 November 2015.

the Lok Sabha by proposing a crucial alteration of removing the provision that used to penalise the prostitution for soliciting clients, but sadly it has not reached the status of enforcement.

However, on the brighter side Judiciary have taken positive approaches towards to the protection of the women in this profession.

In the case, *Tara v State*¹⁰, an approach has been made by the police of Andhra Pradesh to the Metropolitan Magistrate in Tis Hazari Court of Delhi for a search warrant for House no. 21, GB Road New Delhi, which has been issued by the Magistrate. The fifteen petitioners who was produced before the court claimed that they were picked up illegally along with forty-one others and A.P. police made a discrimination by keeping only fifteen people in custody, thus disparaging their dignity. The petitioners were detained more than twenty-four hours before producing to the Magistrate, moreover the petitioners did not want to go back to Anantpur, A.P. their hometown, as they have already settled in Delhi, in spite of that transportation was made without their consent by violating the Articles 14 and 21 of the Constitution of India. Therefore, a Writ petition was filed by an NGO which promotes human rights. The High Court of Delhi held that the dealing of the police with the aggrieved parties infringes the rights provided in Article 14 and 21 of the Constitution of India, the Court also suggested that through Social Welfare Boards the Central and State Governments should have schemes for rehabilitation centres, which will provide a protection for the prostitutes, as they also have the right to live the life with dignity.

One more case, *BudhadevKarmakar v. State of West Bengal*¹¹, which have arisen out as a result of a criminal appeal in the Supreme Court where the accused BuddhadevKarmakar was convicted for brutally murdering a prostitute on 17th of September 1999. The Apex Court depicting the instances from Sarat Chandra Chatterjee's Srikanto and Devdas stated that, like any other human, the prostitutes also have the right provided by Article of 21 of Constitution of India and their issues also need to be addressed because majority of women becomes a prostitute not for the luxury but for the necessity. The Court further stated that such woman must be given the opportunity for the vocational and technical training for making her worthy enough to earn her living by using such skills. Accordingly, the Supreme Court ordered both Central and State Government for preparing schemes for such vocational or technical training for the prostitutes and submit the report on the matter.

¹⁰ W.P. (CRL) 296/2012

¹¹ C.R.A. 487 of 2004

Conclusion And Recommendations

Prostitution is not a socially acceptable work in India, therefore minimum degree of security and safety is not available to them. The society considers prostitution as a corrupted profession and continues to carry a discriminatory behaviour with this class of women. This stigma is extended to their children as well. Due to their mother's profession, they face an unjust behaviour even in the education centres, for which they feel embarrassed and decides to dropout from the school. Reports shows that the dropout ratio of these children is considerably high. The problem does not end over here, due to the healthcare issues often sexually transmitted diseases are transmitted to their children and due to the fear of ill treatment in the hospitals they choose to stay with the sickness by curtailing their life span short.

It is very evident both in India and other countries that the protection of human rights is not equal to all the citizens. As we can observe sex industry is attached with other issues such as lack of proper access to healthcare, education, violence on children, exploitation and abuse of women in the hands of the brothel owners and so on. Even though we can see that India is having a sound Constitution still it is ineffective to provide the proper fundamental rights to the sex workers. As we can see ITPA Act, 1956 have tried to address the grievances related to these problems but somewhere it failed to reach its objectives and due to this the demand for legalising the prostitution is increasing day by day, for which several programmes has been taken u by the Central government. Major contribution has been made by Association for Moral and Social Hygiene, which works for rehabilitation for prostitutes, providing proper health centres and rescue homes, changing the opinion of the public in favour of the workers and controlling the sexually transmitted diseases. The Sonagachi project which is run by Dr. Smarjit Jana is designated as the 'best practice project' by the World Health Organisation, where he made lobbies with the pimps, police and government through which the sex workers are now having clear access to the education, training for jobs, day care centres and loan facilities.¹² Moreover India is also the signatory of the convention signed at Geneva for the suppression of immoral traffic in women, even an advisory committee has been formed which will provide recommendation for the proper legislation for keeping a check on prostitution and formation of special courts to regulate against the violence on prostitutes and their families. But the question still lies that whether such changes in legislation would really fill the loopholes of our existing system and eradicate the unique problems of the sex workers. The success of the legislation may be observed if government make initiatives for setting

¹²Available at <http://lawzmag.com/2015/12/18/rights-of-sexworkers-legalisation-of-prostitution-in-india-acritical-analysis/>

up board for licensing the prostitution or board for controlling the prostitution.¹³ As we have discussed before this procedure has been followed by many foreign countries by registering the sex workers where the government achieved to keep a check on them in an effortless manner.

In the present status it is important to take the necessary steps to ensure the fact that a prostitute must enjoy the same benefits and rights as the other citizens of India, for instance in Netherlands the prostitutes pay taxes like any other citizen.¹⁴ If India follows the same process by legalising the prostitution and treating the prostitutes like any other workers, it would enable government to channel the money for the betterment of the life of the sex workers. Moreover, promotion of the awareness should be made about the rights of the prostitutes for ensuring the better treatment of these workers, self regulated bodies comprising of members of district and officials from the Bar Council of India and National Human Rights Commission as formed in Sonagachi¹⁵ must be also established in various parts of India.



¹³Harsha Asnani, 'How Are The Rights Available To Prostitute Workers in India Violated' retrieved from <https://blog.iplayers.in/rights-available-prostitute-workers-india-violated/>

¹⁴Available at <http://www.imrfjournals.in/pdf/MATHS/AEIRJ-Volume%204-Issue-2/5.pdf>

¹⁵ Shreyas Gupta, Human Rights for Sex Workers in India: The Way Forward, July 19,2013