



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

A SILHOUETTE OF SOCIETY: SEX WORKERS & PROSTITUTION IN INDIA

AUTHORED BY: ADEEB BAKHTAVAR (NLU, SONIPAT)

Synopsis

This article endeavors to present a thorough perspective on the legal status, rights, provisions, and historical context of sex workers and prostitution in India, examining these aspects through the lenses of both societal perspectives and constitutional considerations. It seeks to analyze the disjunction between the legal rights afforded to sex workers as delineated in court judgments and parliamentary statutes, and the actual conditions experienced by prostitutes. Utilizing statistics and diverse datasets, the article aims to shed light on the state of healthcare for sex workers and the prevailing societal treatment towards them, thereby providing a nuanced understanding of the complex landscape surrounding this issue.

Introduction: The History and Existence of Sex Workers in Society

Since the epoch when humanity coalesced into societies, there has been a remarkable cognitive and social evolution. Commencing as pastoralists and hunters, we have traversed the ages to inhabit a world marked by urbanization and globalization. In this interconnected tapestry of diverse societies, myriad job opportunities and occupations have emerged, pursued either as a manifestation of personal passion or societal responsibilities.

Amid this myriad, certain professions have achieved global acclaim and are deemed noble and elite across diverse societies. Occupations such as that of a Lawyer, Doctor, Teacher, and Artist have stood the test of time, existing since the inception of human society itself.

However, amidst the ever-changing tapestry of evolving societies, one occupation has endured as a constant throughout history – that of sex work, commonly known as prostitution. Often referred to as the oldest profession, its roots extend deep into the annals of time¹.

¹ *Aman Nigam*, Recognising Prostitution as a Profession and holding up its dignity under Article 21 : How can Conventional barriers be challenged?, 3.1 JCLJ (2022) 470, 2022.

The earliest recorded acknowledgment of prostitution traces back to 2400 BC, unveiling a glimpse into the past. The historical account unveils a brothel temple nestled in the ancient Sumerian city of Uruk, under the management of Sumerian priests. This unique establishment was a tribute to Ishtar, the ancient goddess embodying love, war, and fertility².

Whereas in the intricate tapestry of Indian history, the Rig Veda sheds light on a tradition where kings bestowed the unusual gift of slave girls to revered rishis. A unique chapter in cultural evolution emerged around the 6th century, marked by the institutionalization of ritualized prostitution. This transformative practice gained prominence with the dedication of girls to Hindu deities, ushering in the era of 'devdasis,' where 'dev' signified god, and 'dasi' denoted female servant. These girls were regarded as divine handmaidens, a poignant intersection of spirituality and societal norms in ancient India³.

This profession, with its roots deeply embedded in history and persisting through centuries, continues to cast its shadow across the fabric of our contemporary society. Despite its unwavering presence, it remains ensconced in stigma and taboo, perpetuated by the very individuals who constitute the social tapestry. The existence and prevalence of sex work and prostitution, according to me is a Silhouette of the very society we live in, screeching for attention, regulation, awareness, and protection of the rights of the sex workers akin to a solitary light piercing through the profound darkness of a deep canyon.

Current Legal Status and Rights of Sex Workers

The term 'Sex work' was coined by Carol Leigh to start a moment to redefine how people viewed sex work⁴.

It recognized sex work as work, rather than a status and rejected the word prostitution.

Is sex work or prostitution legal in India? Sex work is legal in India but with some ambiguities, as **The Constitution of India**⁵ provides some rights and safeguards to its citizens and at the same

² García, Magaly Rodríguez, et al., editors. *Selling Sex in the City: A Global History of Prostitution, 1600s-2000s*. Brill, 2017. JSTOR, <http://www.jstor.org/stable/10.1163/j.ctv2gjwwht>, 2017.

³ Rajni Bala, 'Prostitution in India', 3, *Scholarly Journal for Interdisciplinary Studies* 19, 2016.

⁴ Palash Varyani, Pratishtha Srivastava, "Supreme Court declares Prostitution as a Profession", 2.4 *JCLJ* (2022) 498, 2022.

⁵ Constitution of India, 1950, <https://ltdashboard.legislative.gov.in/sites/default/files/COI...pdf>.

time some activities related to sex work are penalised under statutes like **Immoral Traffic (Prevention) Act (1956)**⁶ which includes sexual abuse, brothels, pimping and the involvement of minors.

In India, the business of sex work or prostitution generates 40,000 Crores Rupees annually, which underscores the fact that commercial sex work is a way for people to earn livelihood⁷.

The Constitution of India unequivocally extends fundamental rights to individuals engaged in prostitution, just as it does for all other citizens. This inclusive provision is grounded in the principles of equality enshrined from **Article 14 to 18**⁸ and further amplified in **Article 19**⁹, emphasizing the right to practice any profession, trade, or occupation. Moreover, the sanctity of life and personal liberty, encapsulated in Article 21¹⁰, encompasses the right to live with dignity. Thus, recognizing sex workers as integral members of society, the constitution secures their entitlement to these fundamental rights, reinforcing the democratic ethos of equality and individual autonomy.

As well as the assurance of the right to livelihood is expressly extended to both men and women through state policies delineated in the **Directive Principles of State Policy (DPSPs)**¹¹, outlined in Part IV of the Constitution. While these principles are not inherently enforceable, a notable judicial precedent in the case of P.N. Swamy, Labour Liberation Front, Mahaboobnagar v. Station House Officer, Hyderabad¹², witnessed the Andhra Pradesh High Court adjudicate that specific obligations enumerated in Part IV, coupled with their corresponding rights, form an integrated framework granted to sex workers. This legal affirmation thus converges the constitutional ethos, elucidating the interconnectedness between the DPSPs and the collective entitlements bestowed upon individuals engaged in sex work.

In the landmark case of **Francis Coralie vs Union Territory of Delhi**¹³. The Supreme Court, in its expansive interpretation of the right to life, rendered a verdict of profound significance. Within

⁶ Immoral traffic prevention act, 1956, Act 104 of 1956, acts of parliament, 1956, India.

⁷ Dharmendra Chatur, 'Legalization of Prostitution in India' *Human Rights Law* 21, 2009.

⁸ INDIA CONST. art 14, 15, 16, 17 & 18.

⁹ INDIA CONST. art 19.

¹⁰ INDIA CONST. art 21.

¹¹ INDIA CONST. Part IV, DPSPs.

¹² *PN Swamy, Labour Liberation Front, Mahaboobnagar v. Station House Officer, Hyderabad*, (1998) 1 ALD 755.

¹³ *Francis Coralie v. Union Territory of Delhi*, (1981) 1 SCC 608 : AIR 1981 SC 746.

this judicial pronouncement, the apex court elucidated that the right to life encompasses not merely biological existence but extends comprehensively to the right to live with inherent human dignity. This holistic conception of life's sanctity encapsulates the provision of fundamental requisites such as sufficient nutrition, shelter, and clothing, affirming that these elemental facets are integral components of a life lived with dignity.

Furthermore, the court, in its discerning wisdom, underscored that the right to life encompasses the freedom to engage in activities that inherently constitute the expression of one's human self. By recognizing the right to carry out functions that embody the essence of individual expression, the judiciary heralded a jurisprudential paradigm that acknowledges the multifaceted dimensions of human existence. In essence, the Francis Coralie case not only safeguarded the tangible essentials for a dignified life but also championed the right to pursue actions that resonate with the intrinsic nature of being human.

Moreover, the rights of sex workers find protection under **Section 375C of the Code of Criminal Procedure, 1973**¹⁴. This statutory provision stipulates that individuals engaged in prostitution, who become victims of sexual assault, are entitled to access all services accorded to survivors of sexual abuse, with a specific emphasis on prompt medical attention. The directive underscores a commitment to ensuring that those in the profession of sex work, confronted with instances of sexual assault, are afforded comprehensive support akin to any other survivor of such heinous offenses. In essence, **Section 375C** represents a legal imperative to extend equitable access to critical services, particularly expeditious medical care, recognizing the vulnerability of sex workers in the face of sexual violence.

Addressing the pervasive discrimination and social stigma encircling sex workers, the judiciary, as exemplified in the case of **Gaurav Jain vs Union of India**¹⁵ promulgated expansive directives for the rescue and subsequent reintegration of sex workers and their children into mainstream society. The court, cognizant of the nuanced dynamics at play, unequivocally asserted that women involved in prostitution ought not to be perceived as perpetrators, but rather as victims ensnared by adverse socioeconomic circumstances.

¹⁴ Criminal Procedure Code, 1973, Act 2 of 1974, *India*.

¹⁵ *Gaurav Jain v. Union of India*, (1997) 8 SCC 114 : AIR 1997 SC 3021.

A cornerstone of the court's pronouncement lay in its resolute emphasis on empowering these women economically. This empowerment, as envisioned by the court, materializes through avenues such as self-employment initiatives and vocational training programs. By recognizing the intrinsic link between economic autonomy and the liberation of individuals engaged in sex work, the court sought to dismantle the entrenched cycle of exploitation and marginalization. In doing so, the judicial intervention in **Gaurav Jain vs Union of India** not only underscored the need for a compassionate and rehabilitative approach but also laid down a blueprint for fostering enduring societal inclusion and empowerment.

As well as, in the judicial precedent set by the Supreme Court in the case of **Buddhadev Karmasakar vs State of West Bengal**¹⁶, a pivotal affirmation was made, asserting that sex workers, as human beings, inherently possess the right to life under Article 21 of the Indian Constitution. The court emphatically declared that no individual or entity possesses the prerogative to inflict harm or perpetrate violence, including murder, upon sex workers. This pronouncement solidified the recognition of the inviolable dignity and entitlements of individuals engaged in sex work within the constitutional framework.

Furthermore, the nuanced distinction between women trafficked for commercial sex and consenting, mature women who willingly choose sex work as a profession was elucidated by the **Justice Verma Commission in 2013**¹⁷. This commission, through its discerning analysis, delineated the legal status of sex work as a distinct profession. By categorizing consensual adult engagement in sex work as a legitimate professional choice, the Commission underscored the importance of recognizing the agency and autonomy of those who willingly enter into such arrangements. This legal perspective sought to dispel misconceptions and contribute to a more nuanced understanding of the complexities surrounding sex work within the ambit of the law.

Laws and Reality: A sharp contrast

Even after the efforts of the judiciary, safeguards of the constitution and existing laws in force, there remains an ambiguity, stigma and blur around the sex workers and their rights. Statistics show that there are nearly 500,000 child sex workers in India even after the Immoral Trafficking

¹⁶ *BudhaDev Karmaskar v. The State of West Bengal Criminal Appeal (SC) No. 135 of 2010.*

¹⁷ [.https://www.sconline.com/Members/SearchResult.aspx](https://www.sconline.com/Members/SearchResult.aspx).

act¹⁸. Whereas the access to health care and health conditions of sex workers is in an aggrieved state, a report showed that many prostitutes whose blood was tested were HIV positive. In so far as the report about AIDS amongst sex workers, it is stated that out of the 70,000 prostitutes in the red-light district, 65% were already infected with the dreaded AIDS disease and had been tested HIV positive in Mumbai¹⁹.

According to data there are approximately one million women and children victims of sexual exploitation alone including 40% of children in prostitution through abduction²⁰. In 2016 alone 20,000 women and children were trafficked for prostitution in India²¹. These statistics underscore the sharp contrast between the actual conditions and safeguards provided in statutes and judgements, and also highlights the non implementation of law, lack of awareness, and absence of will to work for the betterment of the sex workers.

Conclusion:

The enduring stigma, taboo, and discrimination directed at sex work and its practitioners, present since the dawn of society, perpetuate a cycle of exploitation and subjugation. Despite judicial and governmental guidelines, sex workers often find themselves ensnared in perilous conditions. Prostitution becomes the haunting silhouette of our societal landscape, casting those engaged in it as stranded souls in a dark and precipitous valley.

To go by Justice Ramaswamy's words, "women found in flesh trade should be viewed more as victims of socio-economic circumstances and not offenders of the society, some police authorities have already set out the process of sensitization towards the sex workers and their treatment."²² The intervention intended for the rescue of sex workers, under the ITPA often paradoxically leads to their blatant mistreatment at the hands of law enforcement. In order to liberate sex workers from the cycle of violence and exploitation, it is imperative to explore alternative strategies, such

¹⁸ Jaffer Latief Najar, 'Human Trafficking in India : How the Colonial Legacy of the Anti-Human Trafficking Regime Undermines Migrant and Worker Agency' (LSE Human Rights, 11 February 2021) <[https://blogs.lse.ac.uk/humanrights/2021/02/11/human-trafficking-in-india-how-the-colonial-legacy-of-the-anti-human-trafficking-regime-undermines-migrant-and-worker-agency/#:~:text=According%20to%20data%2C%2095%25%20of,prostitution%20\(Divya%2C%202020\)>](https://blogs.lse.ac.uk/humanrights/2021/02/11/human-trafficking-in-india-how-the-colonial-legacy-of-the-anti-human-trafficking-regime-undermines-migrant-and-worker-agency/#:~:text=According%20to%20data%2C%2095%25%20of,prostitution%20(Divya%2C%202020)>)>

¹⁹ *Public at Large vs State of Maharashtra and ORS* (1997) 4 Bom CR 171.

²⁰ Robert I Friedman, 'India's Shame : Sexual Slavery and Political Corruption Are Leading to an AIDS Catastrophe' 3 *Trends in Organized Crime* 60, 1998.

²¹ National Crime Records Bureau, 2016.

²² *Gaurav Jain v. Union of India*, (1997) 8 SCC 114 : AIR 1997 SC 3021.

as adopting a Human Rights or Activist approach. Organizations like DMSC and SANGRAM exemplify innovative paradigms that not only seek to emancipate sex workers but also empower them to assert their rights within society.

More emphasis must be laid on health care regarding the prevention and protection of sex workers from HIV/AIDS.

Initiatives such as the HIV and AIDS program have demonstrated notable success, as evidenced by statistical data. Prior to its implementation, condom usage stood at a mere 4 percent. However, following the program's introduction, figures in 2001 reflected a remarkable 80 percent increase in condom usage²³. To address contemporary challenges, it is essential to integrate a more modernized approach, augmented by state support and assistance. Notably, the prevalence of HIV in Sonagachi, where the program was initiated, ranges between 8-10 percent, in stark contrast to the 60 percent prevalence observed in Mumbai's Kamathipura red-light area²⁴.

The imperative to enhance awareness, accountability, and access to essential services, such as healthcare, legal assistance, and equality, underscores the need for the steadfast implementation of peer education programs. This commitment should extend beyond governmental agencies to encompass non-government organizations and student bodies. A poignant illustration of this approach involves collaborative efforts with medical students engaged in the distribution of free condoms and the provision of health-related assistance. Concurrently, law students can contribute their expertise to offer legal support. This comprehensive strategy not only empowers communities through education but also addresses fundamental aspects of public health and legal advocacy, thereby fostering a more inclusive and responsive societal framework.

Furthermore, it is crucial to place significant emphasis on the rights, upbringing, and education of the children born to sex workers, as they bear no responsibility for the circumstances they find themselves in yet remain the most vulnerable demographic. Ensuring the well-being and education of these children becomes paramount, with a focus on promoting their enrollment in mainstream schools. Such an approach not only safeguards their fundamental rights but also holds the potential to generate a positive impact on ameliorating their overall living conditions.

²³ Mishra, G. *et al*, "Protecting the Rights of sex workers: The Indian Experience", Mishra, G. and Chandramani, R. (eds.), *Sexuality, Gender and Rights*, (New Delhi, Sage Publishers,) 2005.

²⁴ Jenkins, C, *Female sex workers: HIV Prevention Projects: UNAIDS Case Study*, UNAIDS/00.45E, 70.

Overall, society must refrain from moral judgment and instead view sex workers as ordinary citizens. More robust measures must be implemented to enforce laws that safeguard their interests, offering protection against exploitation, violence, and trafficking. Such as the participation and involvement of NGOs, sex workers representatives and awareness programmes to regulate policies and eliminate the stigma and discrimination. Only through a shift in perspective and proactive legal enforcement can we extend a lifeline to those navigating the shadows of the sex industry.

