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UNIONS AS SHIELDS AGAINST EXPLOITATION: THE CASE FOR ORGANISING THE SEX INDUSTRY

AUTHORED BY - VEDHIKA GUPTA

ABSTRACT

This research paper primarily focuses on the Rights of Sex Workers. That a woman's worth and her right to bodily autonomy should not be defined by her sexual history or by her professional choices. It is very important to keep in mind that judging someone or victim blaming on the basis of her professional choices, will not only be harmful but will also lead to a culture of misogyny and violence. Through this paper the reader will get an overview of how society look at the work done by a sex worker along with the problems faced by sex workers while following their profession. However, every woman irrespective of her choices and her profession deserves equal protection under the law. The readers will get an insight about the challenges might occur in unionization and its potential benefits if given recognition. The paper does mention few landmark judgements of Hon'ble Supreme Court providing such women their rights as equal to others. Alongside, it provides the possible solution. Regardless that there exists difference of opinions in different people, everyone deserves respect and equal rights.

INTRODUCTION

Prostitution is considered as one of the oldest professions in the world. There are almost 100,000 women per state who are working in this profession. It is to be mentioned that majority of the women are joining this industry or have been working in this industry is because they were being forced to join the profession. Despite having lakhs of women in the profession per state, still if we talk about a true profession, prostitution will not be considered in the line. Recognising prostitution as a true profession and subjecting it to regulations similar to other industries could pave a way for Unionisation, improved working conditions, safety for sex workers. This grounded approach will definitely offer a significant benefits for those caught in this often exploitative system.

India, few years back has decriminalised prostitution which had made the profession of sex workers a legal recognition on certain aspects. But continuation of illegality of brothels and

income leaves these sex workers vulnerable to exploitation and abuse, and still are considered as illegal. Women who are engaged or working in the profession are exploited in such a way that they are suffering from violence, physical and mental abuse and sexually transmitted diseases. While unionisation can give them a vital mechanism and provide them access to safety, healthcare, mentioning and addressing the physical, mental and economical challenges faced by them. Such women need protection from these abuses, which could only be granted by unionization of the Sex industry.

Unionization of Sex workers will offer a platform to sex workers to raise their voice and address their grievances and to advocate for improved working conditions similar to other recognised profession. This will give them a power to fight against exploitation and such other practises and will pave a way to equal treatment.

If we see the situation of sex workers in other countries all around the world, sex workers have been given their right and freedom. In Australia, sex workers have been included in unionization. Under the Australian liquors Hospitality and miscellaneous workers union sex workers are been included. In Japan, also the government is bringing unionization of sex workers so that their community can be more strengthened and get protected.¹ Thus, there is a need in India also to have a union for sex workers.

PROSTITUTION AS AN INDUSTRY

Few of the queries that come are whether prostitution fits in the definition of an industry. As this only will decide that it qualifies as an industry or not. The ambit of this question will be stating that the sex workers are eligible for benefits under the 1947 Industrial Dispute Act or not. The act was enacted so that there should be a good relationship between the labour and the employer or the management of industries. The same is applied to all the establishments which fall under the purview of Industry.

The term industry has been defined under “*Section 2(j) of the Industrial Disputes Act, 1947. It defines, that any type of business, trade, undertaking or calling of employees includes employment, handicraft or industrial occupation*” will be covered under this act. Basically, it

¹Nitish Pattanaik, Need for Sex Workers Union in India, INDIAN LAW PORTAL BLOG (Apr. 08, 2023)

states that an industry in simple language is cooperation between the employer and employee in a proper organised manner for the purpose of production activities.² In India, there is lack of regulations on prostitution which has left the sex workers for exploitation. Due to lack of regulation, it omits the profession to come under Industry as there is not employer employee relationship. Also, this profession or the type of work sex workers do is being operated in very secretive manner in places which are popularly known as Red-Light areas. The workers in this profession are usually women who are being exploited. These workers not only have social but a legal disadvantage too. As any formal organization or unions of sex workers are not been permitted hence, there exists a successfully established informal organization which is popularly known as the Karnataka Sex Workers Union.³

Karnataka Sex Workers Union was formed as to a reason that four women were arrested under the Immortal Traffic (Prevention) Act. This news went to the media and lot of exposure was into the news. This case was having a strong effect due to which, a hype was seen in the informal organisations members and other people in the sector with the motive to come together and form a relationship with NGO's and sex workers in a cooperative manner. This case is one of the prominent case, because it was observed that many of the workers who are in this profession don't even have ration or voting card as they don't have their ID proof or proper address with them as such facilities were never been claimed by the workers because of not having proper identification. And this, Karnataka Sex Workers Union was helping these workers in providing them with ration and voter card. Not only this but the union also settled their various disputes and helps them to have old age benefits such as pension. The biggest achievement of Karnataka Sex workers Union is that they run a 24/7 helpline not only for the workers but also the women's who have been abused or exploited, the organisation used to provide them with the legal aid assistance. Karnataka Sex Workers Union is an incarnation that how an organisation should work. If an informal organisation can work like this and try to make a difference in the lives of sex workers, a formal organisation can bring a lot to regulate and treat the sex workers in a respectable way. The approach of this case should be taken with a perspective to resolve the dispute arising in this profession and a positive change should be brought in the form of unionization of sex workers, hence it should be allowed. As this has the potential to improve the status of sex workers in the industry.

²Industrial Disputes Act, 1947, § 2, No. 14, Acts of Parliament, 1947 (India)

³Sumana Satyamurthy, Unionisation of Sex Workers, Vol. 2 JCLJ (2022)

POTENTIAL BENEFITS OF UNIONIZATION OF SEX WORKER IN INDIA

- 1. Voice and Collective action:** A union will provide a platform to sex workers to raise their disputes and advocate for better working conditions. A chance to negotiate with brothel owners, clients and authorities will be given. This collective power will help them address issues like exploitation, violence, unfair treatment and lack of access to healthcare services.
- 2. Equal rights and recognition:** Unionization can contribute in dismantling the stigma and discrimination faced by the sex workers. While recognizing it as legitimate labour union can pave the way for equal access to basic human rights, legal protection and social acceptance.
- 3. Safety and formation of regulation:** Unionization can lead to a more secure and safe working environment including formation of regulation for brothels, health care and protocol for handling violence and harassment against the sex workers. This can reduce vulnerability for sex workers.

PROBLEMS FACED BY SEX WORKERS

- 1. Safety:** Women who work as prostitutes are not just victims of violence of their clients but there are very less chance of them getting protection from police in fact they are considered as perpetrators of this violence. Because society deems such women as morally corrupted and assumes them to be guilty. As per the author this is the clear result of discrimination and inequality.
- 2. Health:** Bandawwa Makadwale, a sex worker in the state of Karnataka who was a member of VAMP says that the sex workers suffers discrimination even in hospitals and are not given even a curative care which results in lower level of health. She stated that “doctors don’t treat us properly and government doctor don’t let us come in front of them”. Such inhumane treatment of sex workers irrespective of the rights guaranteed to them.
- 3. Education:** lack of education among the sex workers and their children has affected the community at large. In the baseline survey of the community in Sangli, SANGRAM found that less than 2% of the women have been to school of any kind, and less than 50% of that

2% have finished high school⁴. Children of sex workers are also repeatedly reported discrimination in school because of their mother's profession or work this has also been portrait very well in the bollywood movie named "Gangubai". Undoubtedly this harassment at the age of 4-5 years have led to lower self esteem and lack of motivation in school for kids.

CHALLENGES IN THE PATH OF UNIONIZATION

- 1. Legal status of sex worker in India:** While prostitution is legal in India, but brothel ownerships is not which creates a complex legal landscape that can hinder the efforts.
- 2. Building trust within the community:** The difference of experiences faced by the sex workers create a diversion in their perspective about unionization and building that trust and solidarity within the community alongside acknowledging such diversions is a task in itself.
- 3. Social stigma and discrimination:** The deep rooted social stigma surrounding sex workers in Indian society poses a significant challenge. Overcoming these differences and gathering big public support for addressing the sex workers' rights and equal protection under law is equally important and challenging.

LEGISLATIVE AND JUDICIAL REFORMS

The Supreme Court has issued certain safeguards while hearing a plea highlighting the destitution faced by the sex workers due to Covid 19 filed in 2022, the directions are as⁵:

- a) The three judge bench has directed police to not interfere in cases where there is consent of sex workers as voluntary sex work is not illegal.
- b) Sex workers are also entitled to equal protection of law, hence any complaint of criminal, sexual or any other type of criminal offence made by sex worker should be taken seriously by the police and act accordingly.
- c) Child of sex worker should be kept separately and in case they are found living in brothel it should not be presumed that the child was trafficked.
- d) In case any sex worker is a victim of sexual assault then they should be provided with all the facilities available to a survivor of sexual assault.

⁴ From "Sex Work and HIV/AIDS: The Violence of Stigmatization" By Meena Seshu for UNAIDS Global Reference Group on HIV/AIDS and Human Rights.

⁵ The Times of India, (May 27, 2022)

- e) Government should take measures to educate and spread awareness as to what is legal and prohibited under laws.

JUDICIAL PRECEDENTS RECOGNIZING THE RIGHTS OF THE SEX WORKERS

1. *Kajal Mukesh Singh & ors v. State of Maharashtra (2021)*⁶

In this case the order passed by the Metropolitan magistrate Mazgoan and the order passed by the Additional Session Court Dindoshi was challenged by three sex workers. The court held that the subordinate court have taken the matter involves in the case very casually, ignoring the facts and circumstances of the case also the provisions of the Immoral Trafficking (Prevention) Act were interpreted in a wrong way.

“Section 17 of the act doesn’t empowers Magistrate to hold the victims in custody for more than 3 weeks period without pronouncing the final order, if the magistrate is satisfied with inquiry taken place under section 17 (5) of the act than he shall direct the custody of the victim to protective home”.

The court also highlighted that the purpose of the act is not to abolish Prostitution and prostitutes rather it provides for the punishment for sexual exploitation and acts where the person is seducing other person which wasn’t the case. Considering all the facts the court held that these people also have fundamental rights to reside freely at any place of their choice and also to carry to any profession of their choice under Part III of the constitution. The consent of the victims should be taken before taking any action against them as they are major and have all the rights as normal ordinary citizen.

“Prostitution is not an offence, a woman has a right to choose her Vocation”.

2. *Budhadev Karmaskar v State of West Bengal (2011)*⁷

This case is a prominent landmark judgment which has paved a way for securing the rights of sex workers in the country. This case highlighted the vulnerable state of sex workers and

⁶ Kajal Mukesh Singh & ors v. State of Maharashtra 2021

⁷ Budhadev Karmaskar v State of West Bengal 2011

the social stigma attached to them across the country. The court upheld the Rights of Sex Workers including *the Right to Live with Dignity* as enumerated under *Article 21 of The Constitution of India*. This case has also impelled the Supreme Court to frame guidelines to address the plight of sex workers to avert the possibility of any mishap of the like nature. Moreover, it enervated the common people that sex workers are not mere commodities and they must not be looked down upon only because of their profession and the type of work they do. The sex workers too are human being and they are also entrusted with the same rights and privileges as the other human being in the society. The major concerns pointed out by the court were as follows:

- a) To prevent sex trafficking of woman
- b) Rehabilitation of those woman who doesn't wish to continue as sex workers
- c) Most importantly to provide a dignified environment to the sex worker who wish to continue in the industry.

3. *Delhi v. Panjak Chaudhray & Ors (2009)*⁸

This Judgement affirms an important aspect that a woman's sexual history will never impact her right to protection from sexual assault. If a woman is immoral that doesn't mean someone is permitted to rape her. She is equally protected under the laws as an ordinary citizen. Her consent will be of paramount importance. The court said that even if it is proved that the woman is a habitual to sexual intercourse no one can take advantage of that and contend that she is a woman of easy virtue⁹.

The court held that the sex workers also have the right to refuse and not to submit themselves for service and it depends on their choice to work or not.

SUGGESTION AND SOLUTIONS

If the Sex Industry has been recognised as industry under the definition of "Industry" in The Industrial Disputes Act, 1978, it would have created a huge difference as to how they are being treated and looked upon. Recognising the Sex Industry as a legal entity under the Act has merit. As such recognition will offer a legal protection and benefits to the sex workers, similar to those enjoyed by employees in other industry. However, the fact that the women doesn't need futile

⁸ *Delhi v. Panjak Chaudhray & Ors 2009*

⁹ The Times of India, (November 01, 2018)

pity they are capable of advocating for themselves and demanding their rights they just need the rest of society to recognise and fight against their own misconceptions and judgements. Adding more, the researcher would like to quote few more possible solutions as per her understanding:

1. To Educate and organise awareness campaigns.
2. Providing sex workers access to resources, legal assistance.
3. Tackling poverty, lack of education and limited opportunities can help in decreasing the number of women forced into sex work.

CONCLUSION

Prostitution is an act of sexual pleasures in return of monetary benefits. Most sex workers are working either due to poverty or illiteracy, however there are certain women who are working and choosing this as profession on their own choice. The profession has always been treated and looked upon as derogatory irrespective of the Supreme Court passing several judgments upholding the rights of sex workers and entitled them with equal rights which are guaranteed to an ordinary citizen. Access to a dignified life and lifestyle, choosing one's vocation, residing freely are the fundamental rights, and are rightfully extended to sex workers as well. And to combat the social stigma and discrimination one have to stand out and start focusing towards educating, tackling poverty, create opportunities which will help in decreasing the number and for those who are voluntarily working, recognise their work as any other work or profession in the eyes of law.

By focusing on all these above mentioned aspects, we can surely step towards a society where every individual's right and choices are respected regardless of their profession. However, ostracizing them based on their chosen profession is not only harmful but also hindering collective development towards a more inclusive and equitable society. While the researcher has only outlined the general approach and it's quite important to consider all viewpoints for the purpose of finding a perfect solution which will effectively address the needs and concerns of the Women involved. After all, the ultimate goal is to ensure safety, well being and empowerment of sex workers, regardless whether the industry is formally recognised or not.