

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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CONTEMPORARY OVERVIEW ON SOCIO-ECONOMIC HISTORY DEVELOPMENT AND STATUS QUO OF PROSTITUTION IN INDIA

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ABSTRACT

The primary component of legislation intended to prevent sexual exploitation and human trafficking is “The Immoral Traffic (Prevention) Act”². It renders operating a brothel, profiting from prostitution and engaging in prostitution-related activity unlawful. There are extra sanctions for involving minors.

Apart from the provisions of ITPA, the Indian Constitution's fundamental rights section particularly addresses the protection of sex workers in India. Furthermore, the Indian Supreme Court has ruled that sex workers ought to be treated with dignity and accorded equal protection under the law, acknowledging prostitution as a respectable occupation.

A sex worker who is engaged in this profession faces numerous mental and physical issues that has long term effects in their life. Studies have proven that sex workers in a society is a major reason which control the rate of rape and assaults on women. But their growth is facing stagnation which can be improved by introspection of each member in a society.

Keywords: Sex Worker, Prostitution, ITPA Act, Sexual Exploitation, Human Trafficking.

I. INTRODUCTION

Man has reached the moon and beyond and at earth it is the artificial intelligence and robots in fashion but the social creeps like caste discrimination poverty social exclusion still continues. “It’s a very painful and humiliating job, we have to live a life of ignominy and shame. One might enjoy it for the first time or the second, but when you have to do this to earn a living and

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² The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956).

do it every day, your body no longer remains yours. It becomes public property.”³ These are the words of Rekha a sex worker from Delhi Red Street. A sex worker has always been excluded from the society for their nature of work being shunned. They have only received spurn instead of their wish to head a normal life. A microscopic lift is seen in their social affiliation from recent decade. The reason for their enrolment into this profession, continuance and sufferings are dealt in this paper.

II. FEMALE SEX WORKERS IN INDIA

History has been unjust to sex workers. Many women turned to sex worker who were ‘devadasis’ in flourished court. But downfall of kingdoms and raise of British rule turned devadasis to prostitutes. Earlier who had eminent positions and divine status in courts was pushed to choose a job with no interest by poverty and family circumstances. There are too many stories on their history but this is relevant. Talking about the social environment, sex workers are always excluded from the society. There are two view points on this concern

- i. If their activity is totally normalised then it leads to increase in trafficking and more will be dragged to it. And people may be hesitant to accommodate them in localities which further makes an exclusion.
- ii. If not normalised then a class of people will be deprived of basic fundamental rights guaranteed in Constitution of India.

Another dilemma in this service is that the one who has exploited them enjoys all privileges in society. Often the service seekers may laugh off on it however, a service provider is ostracized. A sex worker is always exploited and subsequently shunned in the society. Many voluntarily blind folds on these side of their work and make futile comments on physical pleasure and pay scale.

Pseudo hierarchy in the society is one of the main reasons for degrading this profession to a pathetic level. Society has been judgemental in classing the job of individuals. Where a person is forced to take some job and to continue it for long is some hard. It *exhausts their mental health*, with which performing an activity (even with an earning) is equal to a surrender. Society without examining the actual means has established a pseudo hierarchy which created two

³ Shoaib Shafi, "Indian sex worker in GB Road, New Delhi's main red light district, tells her story of pain and loss" (2019)

sections mainly white-collar jobs and the rest. Here the reason for such a list being unknown, it has been deep rooted in minds of people living now and for the generations to come it will remain the same.

Pathways are 3-fold

First, women are propelled into sex work as part of their family profession. The stigma of exclusivity contained in prostitution as seen along with caste-based discrimination, severely limits the educational, alternative economic and career opportunities. Second, many young women from domestic rural areas as well as from socially and economically backward countries are deceived, sold, or otherwise trafficked into sex work. Driven by extreme poverty faced by their families and the lure of relatively better incomes, women choose to return to sex work, albeit in a coercive context, they once returned to their homes.

Sex workers in Calcutta are conservatively estimated to earn an hourly wage almost twice that of women in urban India. Thus, some women choose sex work as a means to support her stakeholders after being widowed, divorced, or abandoned by their family. Statistically about 9% of a random sample of sex workers in the Sonagachi “red light” area stated that they voluntarily chose this profession. While some sex workers are street-based, majority of them work, and often live, in brothels clustered in red light areas of big cities and small towns.

Basic human rights jurisprudence in India has gained potential recognition and constitutional status by the wide interpretation awarded by the constitutional courts in India, leaning towards Article 14, 19 and 21.⁴ The constitutional updation for human decency and dignity has been explicitly incorporated by Article 21. In the case of “Francis Coralie Mullin v. Administrator, Union Territory of Delhi, the Court broadened the interpretation of the right to life under Article 21. It was expanded to encompass not only the protection of limb or faculty, but also the right to live with human dignity. It goes without saying that this fundamental safeguard of human decency and respect applies to sex workers and their children as well. They often bear the weight of the social stigma associated with their profession, leading to their marginalization within society. As a result, they are denied the right to live with dignity and the chance to offer the same to their children”.⁵

⁴ *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

⁵ *Budhadev Karmaskar v. State of West Bengal* (MANU/WB/0194/2007).

III. LEGISLATIONS PERTAINING TO SEX WORKERS

In 2022, the film "Gangubai Kathiyawadi" starring Alia Bhatt tells the tale of Gangubai Harjeevan Das, an Indian social activist, sex worker, and brothel madam who lived in Mumbai's Kamathipura neighbourhood during the 1960s. In the movie Her early life, her issues, how she is being forced into the world of prostitution and her later attempts to help all women and children in that social class were all shown. The tale aptly captures the mentality of a great deal of people in this nation. The Immoral Traffic (Prevention) Act of 1956⁶ encompasses the legislation pertaining to sex work. In India, prostitution or sex work are both legal; however, certain related acts, such as pimping, are not.

The Immoral Traffic (Prevention) Amendment Bill, 2006, was also presented with the goals of addressing sexual exploitation and human trafficking while reinforcing the ITPA. Sections that penalised prostitutes for looking for clients were removed by the bill, which also established central and state agencies to fight human trafficking. On the other hand, trafficking for domestic and bonded labour was not covered. The ITPA has been useful in combating human trafficking and sexual exploitation in India, even though its enforcement and society's obligation to prevent these crimes remain crucial.

The Immoral Traffic (Prevention) Act, 1956 or (ITPA)⁷

ITPA makes many prostitution-related activities illegal. "Section 2(a) of Act defines a "brothel" as any home, room, or place used for such activities."⁸ Section 2(f) of the Act⁹ also defines prostitution. People who are sexually abused or exploited for financial gain or other forms of payment in kind or currency are known as prostitutes. Although the Act does not make sex work illegal, it does forbid operating brothels, subsisting on the money earned of prostitution, pimping, soliciting, luring someone into prostitution while they are in jail, and engaging in prostitution in public places. It runs counter to the idea of prostitution in general. They meet their clients in hotels since they are unable to open a brothel. These hotels are frequently raided by the authorities, who then arrest the owners and their guests. Most of the time, they are arrested and told that what they did was unlawful. However, is lawful in practice.

⁶ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956).

⁷ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956).

⁸ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s. 2(a).

⁹ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s. 2(f).

In order to care for and safeguard women and girls who have been rescued from prostitution or who require care and protection, the Act also calls for the construction of protective homes and corrective institution¹⁰. In order to make its prohibitions stronger, the ITPA was further updated in 1986 with the goal of preventing human trafficking.

“The Immoral Traffic (Prevention) Act, 1956”¹¹, which focuses more on punishing sex workers than it does on solving human trafficking, has drawn criticism. The Act addresses "prostitution," in a manner similar to human trafficking. Rather than focusing on the people traffickers, this has led to the prosecution of sex workers who willingly do the act. Instead of using the terms "trafficking" or "human trafficking" once, the Act concentrates on penalising actions related to "prostitution." Human trafficking victims are now considered criminals as a result of the 1986 revision to the Act, which altered the definition of "prostitution," which has drawn criticism for inflicting more harm than good. Instead of serving as a deterrent to human trafficking, the Act has been described as a tool used by law enforcement to penalize sex workers.

In the case “*Kajal Mukesh Singh and Ors v. The State of Maharashtra*,” the Bombay High Court made it clear that the law is meant to safeguard sex workers rather than to penalize them.”¹² Commercial sexual exploitation, including pimping, recruiting, and seduction in public spaces, is illegal. Running a brothel or permitting its premises to be used for prostitution is likewise prohibited. People who exchange their bodies for cash are acknowledged by the law as victims, not offenders. The ITPA does not outlaw prostitution per se; rather, it outlaws the networks of support that facilitate and promote prostitution.

Constitutional articles protecting sex workers

Fundamental rights established in the Constitution serve as the primary source of the constitutional articles protecting sex workers in India.

Article 14

“Article 14 of the Indian Constitution ensures equality before the law and equal protection of

¹⁰ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s. 2(b).

¹¹ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956).

¹² *Kajal Mukesh Singh and Ors v. The State of Maharashtra Criminal Writ Petition No. 6065/2020 dated 24/09/2020.*

the laws for all individuals, including sex workers.”¹³ This provision is significant in protecting sex workers rights as it ensures that they are not discriminated against based on their profession or status. Article 14 forms the basis for ensuring that sex workers are treated fairly and justly under the law.

Article 19(1)(g)

“Article 19(1) (g) of the Indian Constitution guarantees every Indian citizen the fundamental right to practice any profession or to carry on any occupation, trade or business subject to reasonable restrictions.”¹⁴

It says nothing in this section grants permission to practise any trade, company, or profession that is illegal in accordance with the law. Individuals may not be subject to arbitrary limits; instead, they must be in line with public morality, order, and the public interest. People engage in sexual work as a career, and Art. 19(1) (g)'s reasonable restriction does not appeal to them.

“The Hicklin test, which was established in the *R v. Hicklin* case, is used in India to define obscenity. The question is whether the content that is being called obscene has the potential to corrupt and deprave people whose minds are prone to such immoral influences and who might come into possession of such a publication. Most sex work is done behind four walls, and it doesn't corrupt or deprave people's minds.”¹⁵

This article guarantees that those who operate in the sex industry are free to practice without worrying about harassment or discrimination.

Article 21

“Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which includes the right to a dignified life.”¹⁶ “In the case of *Budhadev Karmaskar v. State of West Bengal*, the Supreme Court of India has recognized sex work as a profession and stated that sex workers are entitled to dignity and equal protection of the law under Article 21. The court has also issued various guidelines to protect the rights of sex workers, including protection, support, and medical assistance to sex workers who are victims of sexual assault, sensitization of the police force about the rights of sex workers, development of media guidelines to protect the privacy and confidentiality of sex workers, and ensuring access to legal aid to sex workers. The Supreme Court's guidelines under Article 21 are a significant step towards recognizing the

¹³ The Constitution of India, art.14.

¹⁴ The Constitution of India, art.19(1)(g).

¹⁵ *R v. Hicklin* (1868) 3 QB 360.

¹⁶ The Constitution of India, art.21.

dignity and rights of sex workers in India.”¹⁷

In short, the constitutional articles protecting sex workers in India intent to make sure that sex work industry are treated with dignity and respect, have access to legal protection against sexual harassment, and are not discriminated against based on their profession or status.

IV. A COMPARATIVE EXAMINATION OF THE UNITED KINGDOM AND INDIA’S LAWS CONCERNING SEX WORK

The Sexual Offences Act, 2003¹⁸ in the United Kingdom addresses legislation pertaining to sex industry. Whereas in India, “The Immoral Traffic (Prevention) Act, 1956”¹⁹ (ITPA) is the lawful system for sex work. The Sexual Offences Act of 2003 addresses offences related to child prostitution (Sections 47 to 51), sex trafficking, as well as prostitution and its victimization etc. the Act seeks to lower the number of sexual offences in the UK. Under this act, individuals who intentionally promote a minor under the age of 18 to become a prostitute are subject to harsh penalties. In Great Britain (England, Wales and Scotland), prostitution per se is permitted in exchange for money. Under The Sexual Offences Act of 2003²⁰, however, soliciting in public, kerb crawling, running, managing, helping in management, maintaining or running a brothel, pimping, and pandering are all regarded as crimes. In England and Wales, paying for sex with a forced sex worker is prohibited and is punishable by strict liability offense.

The legal foundation for sex work in India is set by “The Suppression of Immoral Traffic (Prevention) Act, 1956”²¹ (SITA). ITPA was created in 1986 as a result of additional revisions and modifications to the Act. ITPA covers commercial sex-related activities rather than completely banning sex work. It also makes it possible for sex workers to be freed and receive rehabilitation. The police and magistrates are authorised to enforce the act. The victims' security, restitution, and compensation are expressly covered by this statute.

Coming to what is a brothel, a brothel is a place used for illicit sexual activity. “Section 3 of The Immoral Traffic (Prevention) Act 1956 lists the penalties for doing so. It says that anyone who maintains, helps maintain, or manages a location that is utilised as a brothel faces three

¹⁷ *Budhadev Karmaskar v. State of West Bengal* (MANU/WB/0194/2007).

¹⁸ The Sexual Offences Act, 2003 (c. 42).

¹⁹ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956).

²⁰ The Sexual Offences Act, 2003 (c. 42).

²¹ The Suppression of Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956).

years of rigorous imprisonment and a fine of up to two thousand rupees. Following sentencing, the punishment consists of two years rigorous imprisonment, not to exceed five years, and a fine of up to two thousand rupees.”²²

According to “Section 55 of the Sexual Offences Act of 2003, anyone who maintains, operates, or assists in the operation of a brothel will face consequences”.²³ The UK law stipulates that maintaining an area or premises that is used as a brothel is a crime that has a minimum sentence and allows for a summary trial. All of the offences listed in the Act for summary trial, however, are not covered by any provision in Indian law. Nonetheless, compared to Indian legislation on indictment, the UK legislation prescribes a greater sentence.

The exploitation of prostitution is the main emphasis of UK legislation. It establishes harsher penalties for a few prostitution-related offences. Nearly every facet of the prostitution offence is covered by Indian law. The UK statute does not go into the same detail or list all of the significant prostitution-related sections as the Indian legislation.

Gender-specific prostitution crimes have been broadened under schedule 1 of the UK statute. This includes all individuals, regardless of gender, engaged in prostitution. The prejudice against gender-based prostitution is significantly reduced by this clause. The most important clause in UK law is this one.

V. INCURIOUS PROLONGMENT

When a lady is recognised as a sex worker it is very hard for her to come out of that vicious circle. A girl who is brought into prostitution at a very young age is deprived of her elementary or higher education. She lacks mental growth and self-determination. Thus, she finds it very hard to afford herself into a better profile. Burdened with pressure from the family for monetary earnings stabs her to continue to do the same. Especially, in most of the north Indian states where there are large number of members per family, it requires everybody to earn. This forms the reason for high rate of illiteracy in northern states of the country, where young children are deprived of schools and employed in farms, fields and industries. This is why even the trafficked girls once dragged to this community are forced to continue in the same field.

²² The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s. 3.

²³ The Sexual Offences Act, 2003, s. 55.

VI. FINANCIAL TOXICITY

Even though not admitted in family their income is always welcomed. They are mostly excluded from attending family functions and social gatherings even if fully funded by themselves. In many places remuneration is pooled by an agent and a part of it is distributed among them. Thus, they find it hard to live. They need money to take care of their children and fund families along with their personal needs. But often they find hard to manage their money. As they lack proper employment papers etc banks restrict access to loans or create deposits. Thus, they settle with local money lenders who exploits the funds. To meet with immediate needs especially aged sex workers take loans at high rates of interest from unauthorised financial institutions. As their living arrangements are improper many amounts get stolen also. In addition to this, their wardens or agents, police officers as well as criminal gangs snatch a high amount from them when kept in self -custody. Thus, this financial mismanagement put them to further financial debts.

The Usha Multipurpose co-operative society which basically function in west Bengal has allowed to accumulate their funds and also provide micro credit to sex workers. it also offers many other banking services. Thus, sex workers in West Bengal have got rid of the misery of financial mismanagement.

Yet there are many parts in India where, the money they get as remuneration is looted which needs a solution. Rather than avoiding them banks can provide loans or accept deposits which helps them to accumulate wealth.

VII. ORGANISATION OF SEX WORKERS

There are many numbers of NGO's and other organisations which raise voice against social discrimination and also for their better mental and physical health.

“Usha Cooperative, Durbar Mahila Samanwaya Committee (DMSC)” is India's oldest and the first organisation which was formed with an aim of empowering and uplifting the livelihood of sex workers. One of its core action plans contained 3 r's in late 90's namely respect, reliance and recognition. The primary goal is fixed to fight exploitation and discrimination. It functions as a collective organisation where basic human rights is demanded as well as other rights to safe sex is jointly advocated. The HIV awareness it spreads has formed a crucial role in helping

thousands of sex workers all over India. Even though it began by focusing on west Bengal state now it operates all over the country. It runs educational, healthcare and rehabilitation institutions. Hence it fights against the old strategy of administrators and government to beat them up and transporting the sex workers to far off places in name of eradication. The children of sex workers are also provided with great hands of help.

The Sonagachi Project was replicated, including community organizing and advocacy, peer education, condom social marketing, and establishment of a health clinic in Kolkata, mainly functioning in India. A study conducted by National Institute of Health released the statistics as “HIV seroprevalence rates among sex workers have ranged from 50–90% in Bombay, Delhi, and Chennai. However, HIV rates of only 10% have been observed among sex workers in Calcutta, a city on the drug route into the heart of India and one of the most impoverished urban areas in the world. Condom usage has risen in Calcutta, from 3% in 1992 to 90% in 1999, compared with steady rates of low condom use among sex workers in other cities in India”.²⁴ Many NGOs talk about rehabilitation and just bring them out or get signed from them not to return to sex work which neither benefits sex workers nor their dependents. Many sex workers have commented that actually they are not in need of rehabilitation as they don't want to return from this profession as it is their work. Proper education on their matters to protect their body from contagious diseases and rationing system extending to them, which is being implemented recently is a progress. Notwithstanding, women who are trafficked and channelised can be given life opportunities.

VIII. SUGGESTION

- i. Use of health and safety measures by sex workers should not be conferred as commission of an offence nor the materials to be summoned as evidence of offence.
- ii. State government should ensure that children of sex workers are given due respect and development opportunities. Separating their children should be stopped and given adequate surveillance.
- iii. The central and state government involving in planning, designing or organising any projects beneficial for the sex workers must include them in the program at the panel level.

²⁴ HIV Prevention Among Sex Workers in India, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2826108/> (last visited on April 14, 2024).

- iv. Appropriate education must be given to sex workers in matters relating to rights obligations health measures and most importantly on steps to access judicial bodies in case of unnecessary harassment of trafficking and sexual assault.
- v. Police or anyone in authority must handle sex workers case just like any other case. They should not be subjected to humiliations and rejections while seeking help to restore the rights guaranteed by the constitution.

IX. CONCLUSION

The events in a sex workers life, their hardships and vulnerability are showcased which is an eye-opener to take steps to their upliftment in society. The Immoral Traffic (Prevention) Act (ITPA) 1956 had in it many changes compared to the repealed Act but its success rate is yet a question mark as neither the socio-political situation of the sex workers has not improved nor they have acquired economic independence. By the intervention of the honourable Supreme Court the profession and its community are to be treated with standard dignity and humanity. However as all their benchmarks are to be applied in human beings there is no universal mode of application. Only individual development through education and self-redefining can evolve the mentality towards sex workers as well as to offer them a better standard of living.