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EMPOWERING THE RIGHTS AND DIGNITY OF SEX WORKERS: COMPREHENSIVE ANALYSIS OF SUPREME COURT LANDMARK DIRECTIVES

AUTHORED BY - PRANITA YONZONE

Prostitution simply means buying and selling sexual services and favours and has been present since time immemorial. At a global level, prostitution is often cited as the oldest profession and is also one of the most controversial ones. Irrespective of its legal status, prostitution remains a thriving industry despite being disregarded, prohibited, and regulated in the present society. In the context of India, though prostitution has been present for ages, the profession has still not been acknowledged in mainstream society. India has failed to adequately protect the rights of sex workers, despite being a signatory to numerous international agreements on women's rights, having a constitution that forbids gender discrimination and exploitation, as well as a plethora of related legislation. One of the most ignored groups for a long time has been prostitutes and their children. Last year they received the much-needed attention they deserved from the Supreme Court. The Supreme Court order upheld the fundamental rights of sex workers to be treated with dignity and respect and has issued guidelines for the police related to the treatment of sex workers in India. This development regarding prostitution has been a positive one but the big question here is how far they will be implemented or have been implemented till now. In this context, the article will comprehensively analyse the Supreme Court directives and discuss the extent to which they are being implemented.

Keywords: prostitution, exploitation, sex workers, Rights, Supreme Court order.

INTRODUCTION

Prostitution is an age-old institution; evidence of its existence for ages has been found in history, mythology, literature, music, drama, sculpture, archaeological structures, ruins, etc. In fact, prostitution is also regarded as the first profession (Sudha, 2006, p. 1). This enduring presence has solidified prostitution's status as the oldest profession in history. Furthermore, the institution of prostitution has developed greatly over time; it has undergone significant changes in perception, social acceptance, and legal frameworks. These changes reflect the dynamic nature of societies and the evolving attitudes towards this complex profession (Sinha & Basu, 1933, p. 1). Despite

changes over time, the institution of prostitution continues to hold significance in modern society. If a comparative analysis is done to assess the extent to which the institution has undergone changes, it becomes apparent that it has witnessed significant transformations.

Throughout Indian history, numerous texts shed light on the integral role of prostitution in ancient society. These texts emphasize the respectable position held by prostitutes and the autonomy they enjoyed across various domains of life, encompassing the socio-economic, political, and religious realms. In the past, despite being aware of certain limitations, prostitutes enjoyed a considerable amount of respect within society. However, the present perception of prostitution has drastically shifted, viewing it as a disgraceful phenomenon and a significant threat to society. These women are denied the right to maintain respectability and are treated with contempt. Over the course of time, the institution of prostitution has experienced a shift in societal perception, evolving from being recognised as a celebrated necessity to being widely condemned as a morally unacceptable practise.

Prostitution, though it has existed since time immemorial, is still considered profoundly against the ethical and cultural aspects of India. At present, there are 2 million sex workers working in India; the unofficial number is expected to be much higher than this. There is still a lot of ignorance and misinformation in the area, the most prominent of which is that prostitution is illegal in India. It is definitely worth looking into the Supreme Court ruling on the profession and how it may affect the industry because it may shed some light on the matter, dispel myths about prostitution's legality in India, and enhance the lives of those who engage in it. This article aims to clarify the sex industry's present legal status in India. There have been several cases involving sex work prior to the present ruling. In our nation, sex workers' fundamental human rights are often violated, thus it is crucial to pay close attention to their condition.

EXAMINING THE LEGAL LANDSCAPE OF PROSTITUTION IN INDIA

The Indian Constitution guarantees basic human rights to all Indians. It promotes the ideal of socioeconomic justice by providing equal opportunity for individuals to access government benefits and equal legal protection. This undoubtedly suggests that prostitutes, like any other regular citizen of India, are entitled to all constitutional rights. Individuals associated with prostitution have the same basic rights ingrained in the Indian Constitution, according to constitutional protections. Therefore, people who participate in prostitution cannot in any manner

be denied their fundamental rights. In the following aspects, prostitutes and citizens are equal:

Article 14 stipulates that the state must not deny anyone equality before the law or equal protection of the laws within India's territory. Discrimination on the basis of religion, race, caste, gender, or place of birth is prohibited.

Article 15(3) of the Indian Constitution states that nothing in this article limits the State's ability to provide special provisions for women and children. It is critical to acknowledge that the affirmative action provision included in this article is one of the least-implemented fundamental rights in our Constitution.

Article 19(1) states that all citizens shall have the right to free speech and expression; to assemble peacefully and without arms; to form associations or unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practise any profession or carry on any occupation, trade, or business.

Article 21 of the Indian Constitution addresses the protection of life and personal liberty. It states that no individual shall be deprived of their life or personal liberty except in accordance with a procedure established by law. The Supreme Court, in landmark cases *Sunil Batra v. Delhi Government* and *Maneka Gandhi v. Union of India*, has interpreted Article 21 to encompass the right to live with dignity (Ministry of Labour and Employment, n.d.).

Article 23(1) of the Constitution of India prohibits the trafficking of human beings, forced labour, and other similar forms of exploitation. Additionally, **Article 23(2)** states that any violation of the provisions outlined in clause (1) shall be considered an offence.

Article 39(f) of the Indian Constitution emphasises the importance of providing children with opportunities and facilities to develop in a healthy manner, ensuring conditions that promote freedom and dignity, while also safeguarding them from exploitation, moral abandonment, and material neglect.

Article 41 of the Indian Constitution mandates that the State establish robust provisions to protect the rights of individuals in terms of employment and education. The state is responsible for ensuring the right to work, education, and public assistance in situations of unemployment, old age, sickness, disablement, and other instances of unjustifiable need, to the extent of its economic capacity and progress.

Article 51A of the Indian Constitution lays down certain duties to be performed by each and every citizen of India and also calls upon the State to eliminate practises that demean women's dignity and promote humanism. Consequently, our constitution not only guarantees the right to live with dignity but also urges the State to protect women and children from exploitation, reinforcing its commitment to their well-being.

The aforementioned Articles serves as evidence of the Indian Constitution's commitment to preserving the rights and dignity of all its citizens, including those involved in prostitution. It guarantees equal treatment under the law, safeguards fundamental freedoms, and emphasises the protection of women, children, and marginalised individuals.

LEGALITY OF PROSTITUTION

The legal position of prostitution in India is ambiguous, with the act of prostitution being deemed legal; however, certain prostitution-related acts are forbidden under the Immoral Traffic (Prevention) Act of 1956. These unlawful actions include soliciting, kerb crawling, owning or operating a brothel, practising prostitution within a hotel, involvement in child prostitution, and pimping and pandering (The Immoral Traffic Prevention Act, 1956).

DEFINITION OF PROSTITUTION UNDER THE IMMORAL TRAFFIC PREVENTION ACT (ITPA)

Prostitution is described as "the sexual exploitation or abuse of persons for commercial purposes" under Section 2(f) of the ITPA. A prostitute is a term used to describe an exploited individual. The SITA's definition of prostitution was deemed inadequate since it solely defined prostitution as the act of a woman or child offering her body for sexual gratification, ignoring the crucial aspect that exploitation or force was frequently utilised. The new legislation changed the definition of 'prostitution' to mean the sexual exploitation or abuse of persons for commercial purposes, and the expression 'prostitute' shall be considered accordingly. Thus, two components are required to classify sexual conduct as prostitution.

1. A female offers her body for indiscriminate sexual intercourse, and
2. She does it for payment (Ghosh, 1993).

ANALYSIS OF THE JUDGMENT OF THE SUPREME COURT

19 May, 2022, witnessed a historic moment as the Supreme Court of India recognised sex work as a legitimate profession. This landmark decision represents a significant stride in the ongoing advocacy for the rights of sex workers, solidifying the legality of consensual sex work. As a result of this ground breaking decision, strict laws on prostitution have been relaxed, and extensive guidelines have been established to safeguard sex workers' rights, dignity, and general well-being.

The Supreme Court made news when it invoked Article 142 of the Indian Constitution, using its discretionary power. The Supreme Court recognised sex work as a profession, a socially and

historically ground-breaking decision that stirred both applause and controversy. It provided guidelines to acknowledge prostitution as a profession and emphasised the importance of treating sex workers with dignity and ensuring their access to constitutional rights. The ruling granted persons who practise this profession and their children the same "decency and dignity" as other people. The verdict acknowledges the agency and autonomy of consenting adults engaged in the trade, grants them legal protection, and aims to address the deep-rooted social stigma surrounding sex work. It reaffirmed that they are also entitled to a dignified life under Article 21 of the Constitution. This verdict came from a three-judge bench—Justices L Nageswara Rao, BR Gavai, and AS Bopanna (*Budhadev Karmaskar v. The State of West Bengal, 2022*).

The new Supreme Court ruling emphasises the need for rehabilitation and the promotion of enabling conditions that preserve the dignity of sex workers, which is consistent with the ideals stated in Article 21 of the Indian Constitution. This ruling demonstrates the Court's commitment to ensuring that sex workers receive essential support and conditions to live with dignity.

The panel issued ten recommendations which are as follows-

- Sex workers have the right to equal legal protection. Criminal law must apply equally in all circumstances, regardless of age or consent. When it is obvious that the sex worker is an adult engaging with consent, the authorities must refrain from intervening or taking any criminal action.
- When a sex worker complains about a criminal, sexual, or other form of sexual offence, the police must take it seriously. Any sexually assaulted sex worker should have access to all resources available to sexual assault survivors, including immediate medical care.
- As voluntary sex work is not illegal and only operating the brothel is, the sex workers engaged should not be jailed, penalised, harassed, or victimised. So while operating raids this fact should be considered and sex worker should not be criminalised.
- State governments may be instructed to conduct a survey of all ITPA Protective Homes in order for instances of adult women kept against their will to be evaluated and processed for release in a timely manner.
- The sex workers and/or their representatives must be involved in the planning, design, and execution of any policy or programme for sex workers, as well as in the development of any amendments to the legislation governing sex work.
- A sex worker's child should not be separated from their mother just because the mother is a sex worker.

- The Court mandated that the media should refrain from publishing photographs of sex workers or disclosing their names while covering rescue efforts and that the Indian Penal Code's voyeurism provision under Section 354C be enforced if the media does post images of sex workers with their customers.
- All sex workers should be treated with dignity by the police, and they should also refrain from abusing them verbally or physically, using force against them, or forcing them to engage in any sexual activity.
- Measures taken by sex workers to safeguard their health and well-being (such as the use of condoms) shouldn't be seen as crimes or used as evidence of crimes.
- The Central Government and the State Governments should hold workshops to educate sex workers about their legal rights in regard to sex work, the rights and obligations of the police, and what is permitted/ prohibited under the law, through the Legal Services Authority at the National, State and District level. Sex workers should be informed as to how they can approach the judicial system to uphold their rights and avoid unwarranted harassment at the hands of traffickers or the authorities (*Budhadev Karmaskar vs. The State of West Bengal, 2022*).

In addition, the Court instructed the UIDAI to give Aadhar cards to sex workers while exempting them from the requirement of evidence of domicile. The Supreme Court's ground-breaking decision establishing the profession of sex workers covers a wide range of concerns concerning the protection and empowerment of those involved in sex work. These suggestions attempt to address long-standing issues confronting sex workers and ensure that they are treated with the same dignity, respect, and rights as any other person, free of prejudice and abuse.

At the centre of these recommendations is a holistic approach aimed at bringing about fundamental changes in how society sees and treats sex workers. This entails resolving legal, social, and policy issues in order to establish an environment that respects the rights and humanity of sex workers.

MAJOR POINTS ON THE JUDGEMENT

POLICE VIOLENCE AGAINST SEX-WORKERS

The complex dynamic between the police and sex workers has been a longstanding topic of debate in Indian films and literature. This connection has been fraught with strain and conflict throughout history. According to various comprehensive investigations on the issue, the police regularly play a significant role as perpetrators of crimes against sex workers. Given that police personnel are responsible for ensuring everyone's rights and safety, when it comes to sex workers, the scenario

is quite different. Unfortunately, many sex workers are abused and have their rights infringed by law enforcement, jeopardising their citizenship status.

The very need for the Supreme Court to outline these guidelines indicates the lived reality of sex workers in India. The requirement for this to be specified in a judgement as of 2022 demonstrates how deeply ingrained patriarchal viewpoints are within the system of law. The ruling maintains:

"When it is clear that the sex worker is an adult and is participating with consent, the police must refrain from interfering or taking any criminal action. There have been concerns that the police view sex workers differently from others. When a sex worker makes a complaint of criminal, sexual, or any other type of offence, the police must take it seriously and act in accordance with the law." (Mutsuddi, 2022). The court instructed the police to provide all necessary services, including emergency medical and legal care.

The bench further said:

"It has been noticed that the attitude of the police towards sex workers is often brutal and violent. It is as if they are a class whose rights are not recognised. The police and other law enforcement agencies should be sensitised to the rights of sex workers, who also enjoy all the basic human rights and other rights guaranteed in the Constitution to all citizens. Police should treat all sex workers with dignity and should not abuse them, both verbally and physically, subject them to violence, or coerce them into any sexual activity" (Varsha, 2022).

Thus, with the enforcement of the Supreme Court's directions, police authorities will have to treat all sex workers equally and with due respect, providing them with proper medical care in accordance with Section 357C of the Criminal Procedure Code, 1973. They have to be attentive towards sex workers, and no physical force, harassment, or arrest will be permitted when a private act of work is involved. Police have been the main perpetrator throughout history in harassing prostitutes, and this direction of the Supreme Court with respect to police can safeguard thousands of sex workers from unnecessary police harassment and intimidation. The Supreme Court has called out the need for sensitisation of the police force and other law enforcement agencies on the rights of sex workers.

MEDIA

The Supreme Court called upon the Press Council of India to develop specific guidelines for the media in handling situations related to sex workers. It explicitly warned against the publication or broadcasting of images of sex workers with their clients under the guise of filming rescue operations and declared such conduct a criminal offence. The Norms of Journalistic Conduct 2022, formulated by the Press Council of India, also explicitly caution against revealing the identities of sex workers in news reports and broadcasts through irresponsible media practises. Norm 39, clause (e) of the Norms of Journalistic Conduct 2022, calls on the media to refrain from publishing or broadcast images of sex workers during arrest, raid, or rescue operations, both as victims or accused, and not to publish or broadcast any photo that would result in the disclosure of such identities (Yadav, 2020).

SEX WORKERS AND THEIR CHILDREN

One of the recommendations stated that a child of a sex worker should not be separated from the mother merely because she is involved in sex work. Furthermore, it should not be presumed that a minor found residing in a brothel has been trafficked (The Pioneer, 2022). If the sex worker claims a child in a brothel to be her son or daughter, testing can be performed to ascertain whether the claim is correct or not, and if found to be true, the minor should not be separated forcibly. If there is a case of a trafficked minor, a magistrate may place the minor, who has been rescued from a brothel, in any Juvenile Justice Act-approved child care institution. In *Gaurav Jain v. Union of India* (1997), the Supreme Court declared that children of sex workers should not be allowed to live in brothels and should have access to reformatory homes. To comply with the Supreme Court's mandate, a reasonable alteration may be made while keeping the child's welfare in mind (Vij, 2022).

VOLUNTARY SEX AS LEGAL

The Bench ordered that sex workers should not be "arrested, penalised, harassed, or victimised" whenever there is a raid on any brothel, "since voluntary sex work is not illegal and only running the brothel is unlawful" (Rajagopal, 2022). Under the ITPA Act, which governs prostitution in India, engaging in sex work itself is considered legal. However, certain related activities such as soliciting, pimping, operating brothels, and kerb crawling are deemed illegal in the country. Unfortunately, this legal distinction can make sex workers residing in "red light areas" susceptible to police intervention. While the police aim to enforce anti-trafficking laws, they often exceed their authority by taking action against both sex workers and their clients, even when the

transactions involve consensual and private sex work (Kanika Chugh, 2021).

So, despite the fact that sex work was never illegal in India, these sex workers have to face such atrocities. Also, arguments such as 'sex work cannot be a consensual job' and 'sex work is about the objectification of women' by critics over the years have led to the development of the perception of sex work as something illegal. Thus this guideline recognises sex work as a legal profession.

REHABILITATION OF SEX WORKERS

The Supreme Court has issued a series of directions on rehabilitation. The court has asked the states to conduct a survey of all Immoral Trafficking (Prevention) Act Protective Homes so that instances of adult women incarcerated against their will can be assessed and processed for release in a time-bound manner (Ananthakrishnan, 2022). The practise of holding prostitutes in rehabilitation institutions against their will raises severe concerns about human rights breaches and a lack of autonomy. It is critical to recognise that sex work is a complicated subject and that the people involved should be able to make decisions about their own bodies and lives. Thus the implementation of this guideline will release sex workers who are forcefully detained in rehabilitation centres.

INVOLVEMENT OF SEX WORKERS IN DECISION-MAKING

The Supreme Court ordered the union and state governments to include sex workers and/or their representatives in all the decision-making processes, including planning, designing, and implementing any policy or programme for sex workers, as well as formulating any changes to sex work legislation. Involving sex workers in decision-making will pave their path towards empowerment (Sarda, 2022).

AWARENESS DRIVES

The Supreme Court's directive also includes a mandate for governments to conduct public awareness campaigns and provide education to sex workers about their rights, the legality of their profession, and the responsibilities of law enforcement, as reported by Sarda (2022). This crucial directive is set to have substantial implications for the protection and empowerment of sex workers in India. The goal of using this proactive approach is to bridge the information gap, educate sex workers, sensate the public and develop a sense of autonomy among this marginalised population.

ENVISIONING THE FUTURE: THE EXTENT OF IMPLEMENTATION

After the passing of the Supreme Court's landmark Order, the next hearing was scheduled for 27th July 2022. The following hearing was to discuss the rationale behind the preservation of these recommendations and to explore the possibility of dropping them in favour of implementing a new law that would be beneficial for sex workers. The anticipation was that the centre would align with the Court's ruling and prioritise the rights and well-being of sex workers. The distressing truth remains that the centre has chosen to postpone the scheduled hearing without providing any information on a new date. This action reflects the centre's apparent lack of prioritization for the needs and concerns of sex workers. The fight to uphold the rights and dignity of sex workers is hampered by this lack of cooperation. Without the active support and cooperation of the centre, ensuring the proper execution of the Court Order becomes challenging. The centre's support is vital for ensuring the Court's ruling is effectively implemented. Regrettably, at present, there is a clear absence of tangible action from the center in advancing this process. The current circumstance has cast serious doubt on the Order's successful execution. According to reports, certain states, like Odisha, are still not abiding by the Supreme Court's directives. The failure of these states to adhere to the Supreme Court's guidelines hampers efforts to protect the rights and dignity of sex workers.

According to recent news, sex workers in Bhubaneswar have complained that the authorities in Bhubaneswar are not abiding by the Supreme Court's decision. According to a newspaper report, the sex workers have asked:

“The Supreme Court has directed that sex workers are entitled to dignity. But here in Bhubaneswar who cares for us? We are being treated very inhumanely. The government is doing nothing for us. Our demand is that the government should allow us to live with dignity. We should have houses, ration cards, health cards and other benefits as well,” alleged a sex worker (Pattnayak, 2023).

“Our work has been recognised as a profession. But why the State government is discriminating against us. During Hockey World Cup, our houses were demolished and we were forced to spend nights under the open sky. Why we are being treated in such a way? Even today we don't have roof over our heads. We are living in miserable conditions without any basic amenities,” said another sex worker (Pattnayak, 2023).

This sheds light on the extent to which the Supreme Court's directives are followed. Bhubaneswar is the first city to report about the failure of the state to adhere to Supreme Court directions, but there may be more states where sex workers are facing the same issue, but if these are not reported

in the media. The centre's lack of compliance and the failure of certain states to adhere to the Supreme Court's Order demonstrates the urgent need for action. Protecting the rights and dignity of sex workers requires a comprehensive approach involving collaboration, support, and recognition from the government and stakeholders. Only then can meaningful change be achieved, and the welfare of sex workers ensured.

CONCLUSION

Sex work has historically been condemned as sinful and indecent, driven by gender-based prejudices around sex and female honour. In the past, affluent men maintained relationships with these prostitutes as mistresses, with little scrutiny on the man's character. However, the mistress was often portrayed as a villain, blamed for marital disruptions, and labeled as fraudulent. This narrative endures today, branding women who engage in transactional sex as impure, lacking virtue, and incompatible with a respectable and prosperous society.

Such perceptions have given rise to laws like SITA that dehumanised sex workers. Nevertheless, recent years have brought a glimmer of hope through judicial actions. The Supreme Court order has shed some positive light on the life of sex workers however the successful implementation of a Supreme Court Order recognising sex work as a profession would depend on several factors. These factors include the government's seriousness in formulating appropriate laws to regulate the industry, the willingness of society to accept and support these changes, the commitment of authorities to enforce regulations, and the availability of necessary resources and support systems for sex workers. While the Supreme Court Order represents a positive development, it also raises significant questions about its actual enforcement and the challenges it may encounter in practise. With persistent pressure from the Supreme Court on the centre, we can anticipate positive changes in the long run.

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