

## RIGHTS AND ISSUES OF PEOPLE INVOLVED IN PROSTITUTION IN INDIA-AN ANALYSIS

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**Abstract:** Human rights violations are common throughout India; they are mostly prevalent in the lives of people involved in prostitution and sex work. Discrimination against sex workers in India is as much an issue as the discrimination faced by other marginalized groups along lines of class, caste, race or religion. Sex work is not treated as work, but as a dirty and immoral lifestyle threatening to taint the “innocent” public. As a result of the stigma there is evident denial of basic rights for both sex workers and their families. Even these women cannot access good healthcare and are often subject to abuse, violence and exploitation by police and government officials, while their children face harassment in schools and the workplace. There are other issues also being faced by this class of people. The author would be focusing on various rights available to them and how far it is being ensured to them.

**Introduction:** Prostitution in India is not a new age profession but as some people call it, is one of the oldest professions in the world. It started off in the 6<sup>th</sup> century with the emergence of a practice called *Devdasisystem* which later on ritualized prostitution. According to it, young girls were married to deities and then sent to serve as prostitutes to the upper-caste community members. As far as laws are concerned, prostitution in India is not illegal per se. Although India is a signatory to numerous international agreements on the rights of women and has a constitution that prohibits discrimination and exploitation by gender, as well as a plethora of related legislation, it has failed to satisfactorily protect the human rights of women, particularly those of sex workers. This is manifested in high levels of violence in the sex industry, child sex workers, lack of access to health care, and high levels of HIV infection. Policies that revolve around rescue and rehabilitation, or are based on the premise that sex work is immoral, are unlikely to effectively promote the well-being of sex workers. An alternative paradigm, which revolves around an explicit recognition of the human rights of sex workers together with an activist approach to achieve them, involving collaboration between NGOs and collectives of sex workers, has worked well to protect the human rights and health of sex workers in India.[1] However, Indian penal code states that certain activities related to prostitution are contraventions of law.

But in India it has not been expressly stated that prostitution to be totally banned. Since inception of our constitution, there has been discussion of protecting basic fundamental rights; for example the right to livelihood which is already brought under Article 21 in the *Olga Tellis* case.[2]The basic question that to be answered here is, whether Judiciary or any government can deny to its citizen these basic rights?. And one another thing that to be noted here

is whether any government or judiciary specifies which all professions or job can be undertaken by its citizens, the answer is no because it being very difficult to categorize it in a in discriminatory manner. The other question is how far the governmental authorities could implement the existing rules and regulations.

In India this has always been the case. It is estimated that in India about three-fourths of HIV transmission occurs through heterosexual relations and the rest occurs mainly through transfusion of infected blood and sharing of infected equipment. The role of male heterosexual relations in HIV transmission in India cannot, however, be ruled out, although evidence of such transmission.[3] Almost all the human rights and fundamental rights are available guaranteed to prostitutes as well, but they are no longer enjoying it due to the stigma associated with their profession and also reluctance from the side of authorities in conferring them with those rights, So the problem faced by these people to be addressed and remedies to be suggested and its being the great need of the time. All have the notion in the present day society that, these people are running an undignified profession, and it is very much undisputed.

### **Protection of Prostitutes under the Present Law:**

- Suppression of Immoral Traffic in Women and Girl Act -1956
- Prevention of Immoral Traffic Act-1956
- Immoral Traffic (Prevention) Act-1956

In the present state of affairs the laws that regulate prostitution in India is Immoral Trafficking (Prevention) Act, 1956 (this was before amendment known as Suppression of Immoral Traffic in Women and Girl Act, 1956). It is the main statute dealing with prostitutes in India. One of the major protection that it gives to prostitute workers is firstly; it does not criminalize prostitution per se, and secondly, it punishes the acts of third parties such as middle men, brothel keepers, pimps, etc. who either facilitate this

entire act or procure and live on the earnings of the prostitute workers. Since involvement in this sex trade makes the sex workers highly vulnerable to exploitation, hence the latter category of protection is held in a very high regard by the lawmakers. In furtherance to same-sex workers cannot solicit in public spheres but can practice their trade privately. In private spaces neither the workers nor the clients are held criminally liable or prosecuted.

**Problems faced by Prostitutes:** In spite of enactment of the above-mentioned legislations, there are not enough steps taken by the authorities in order to regulate the said profession.

- Firstly, although third party involvement is prohibited but a major problem arises when even organized prostitution is not allowed.
- Secondly, since these sex workers do not come under the ambit of labour laws, therefore they are not provided with adequate protection under the said laws.
- Thirdly, most of the girls brought under this profession are by force or through trafficking. There is no straightjacket mechanism through which if it is found that the element of free consent lacks then such persons who have caused this coercion can be sent to jail. All these factors lead to denial of basic human right as enshrined in the Constitution and various other Central Government Acts. One of the major reasons behind the emergence of these problems is that prostitution in India is not legal.

Sex workers are more of abused and less respected. Since the law does not recognize prostitution as a profession, therefore it is not possible to take such unfavorable clients to court. In the current system, prostitutes are not considered as bearers of rights. They are highly pimped and often raped. Most of the girls involved in this profession are forced into it. Such innocent and unsuspected women generally are forced into this sex trade before attaining the age of eighteen years. It is estimated that every hour, with four women and girls entering into prostitution in India, three of them do so against their will. After being sold, they get trapped into shady brothels, raped and forced to sleep or have unprotected sex with psychopaths who burn and bruise them. Anyone who tries to escape these prisons is brought back by use of force and tortured even more so as to set a deterrent example for other workers. Till the time they continue to serve in the brothels they are denied of all basic rights, for example, they do they do not have ration cards nor do they have a right to vote. They are forced to live in poverty and miserable living conditions.

Lack of regulation and periodical medical tests causes the rampant spread of sexually transmitted diseases

like HIV-AIDS. These brothel turned dungeons not only infects them with STDs but also other diseases such as cervical cancer or traumatic brain injury or psychological disorders etc. which do not find their cure for a very long period of time. After they grow old, they are thrown on the streets accompanied with no means to earn a shelter and bread and butter for rest of their lives. Being suppressed by societal norms and notions of morality, their voices remain unheard. This problem gets aggravated to a completely different level when these prostitutes are not even aware of the rights that are available to them.

In the recent times there has been an emerging trend of trafficking of child prostitutes in this profession. Such girls are not kept at one place for a long period of time. Instead they are shifted occasionally so as to avoid familiarity with customers and also to avoid police detention. At various instances, the money earned by the child workers is taken away by the middlemen leaving the labour of such child workers as unpaid.

The Indian laws have miserably failed to protect the prostitute workers and safeguard their rights. The Immoral Trafficking (Prevention) Act (ITPA) 1986 although aims at removing the middlemen from this profession but its practical implementation has resulted in depriving the sex workers of their means of earning a livelihood. ITPA often goes against its stated purpose and instead of protecting sex workers it goes against them. In the name of "public interest," prostitutes are evicted from their place of work or residence. The term public solicitation has been interpreted vaguely and as a result police officials have been known to accuse workers of solicitation and then demand bribes or free sex.

**Stigma and Marginalization:** Stigmatization is experienced as the major factor that prevents women in sex work from accessing their rights. Due to this discrimination, women in sex work have been denied safety, proper healthcare, education and, most importantly, the right to practice the business of making money from sex.

**No provision for Safety & Security:-** People in sex work are not only at a higher risk for violence, but are also less likely to get protection from the police as often they themselves are very perpetrators of this violence against sex workers. Because society deems women in sex work to be morally corrupt, they are assumed guilty thus "deserving" of any violence committed against them.

**Lack of Education:** Lack of education is a major inhibitor both among sex workers and their children. Studies have shown that women in sex work have drastically low level of education. In a survey it was 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 school. But the stigma against a woman

in sex work is not limited to the woman herself; it carries down to her children, regardless of their own professions or lifestyles. Children of sex workers repeatedly report discrimination, ostracization and isolation felt on account of their mothers' work. Many are embarrassed by their home lives. This has had significant effects on their education, as the drop-out rate in this community is particularly high. Children abandon school for myriad reasons, ranging from failed test scores to harassment by teachers and classmates. This harassment is incredibly debilitating for school-aged children.

**Lack of Healthcare:** The health of sex workers and their children suffer the most due to this stigma and marginalization existing in our society. Illiteracy, ignorance and fear of ill treatment by medical establishment make it difficult for women to access healthcare therefore they are unlikely to seek either preventative or curative care, resulting in lower levels of health. Women are therefore at a higher risk for health problems, with a lesser chance of accessing good healthcare.

**Initiatives taken by Government:** Since the Immoral Trafficking (Prevention) Act (ITPA) of 1986 has somewhere failed to achieve its objectives or aims that it had envisaged and due to increasing pressure over legalising prostitution several programs have been undertaken by the central government to tackle this issue. Among all initiatives, one of the major contributions made is by the Association for Moral and Social Hygiene. It works for rehabilitation and liberating prostitutes from the sex trade, controlling the STDs, creating a favorable public opinion, opening rescue homes and hospitals for the furtherance of its objectives. The sex worker is not a threat to the society. They need the rest of society to recognize and fight against their own misconceptions, judgments and unfounded fears.[4]

In furtherance of the convention signed at Geneva for the suppression of immoral traffic in women and girls, an advisory committee was set up which recommended for enactment of a comprehensive legislation which would keep a check on prostitution, establishment of a special police force, special courts to look into human right violation of sex workers and their families etc. There have been multiple suggestions for legalizing prostitution. But the question whether such legalization would really result into overcoming the faults of the existing system or whether it would come up with its own unique problems affecting rights of sex workers remains unanswered. The success of legalization of the commoditization of women depends on upon the efficiency of prostitution licensing board or the Prostitution Control Board. In the experience of foreign countries, mixed observations have been reported. For some countries, it has been favourable

whereas for the others such as Germany, New Zealand etc. it has hardly brought any positive or remarkable changes.

The Sonagachi project, run by Dr Smarjit Jana, designated a 'best practice project' by the WHO, is one way of doing it. He organized the workers like a labour collective. He lobbied with pimps, the police and government. Now the sex workers have access to literacy classes, technical training for jobs, schools and loan facilities and day care centers. In other words, they finally have a life.[5]

**Conclusion and Suggestions:** While sex workers collectives have shown tremendous progress in asserting the rights of sex workers across India. As a result, people in sex work will have to be trained as high-class escorts, requiring the intervention of commercialized business enterprise. Middle class prostitutes lose all independence; they no longer work for themselves, but now rely on others to train and prepare them for this type of industry. Poor sex workers have no place in the globalized world. The middle class men that used to buy their services have either gone to the upper class (and now only takes high level escorts) or have been downgraded by the new economy and cannot afford a prostitute. They are left with no work. For sex workers in India to access and enjoy their rights, massive misgivings and stereotypes about sex work need to be broken down. The sex worker does not necessarily need or want to be rescued; she is not a threat to the greater "chaste" society, nor is she awaking case of HIV. Furthermore, she is capable of advocating for herself, and demanding her own rights.[6]

Legalization would also translate into better work conditions and better wages for workers. Pimps and middlemen will gradually be eliminated. The job of the police will be to protect rather than extract 'protection money' from sex workers. The police can also then spend its time and resources tackling more serious issues than people having paid sex. In countries like the Netherlands, prostitutes have been brought under the tax net. They pay their taxes like any other working citizen. In India, prostitution is estimated to be an 8.4billion dollar industry. Taxing it would also enable the government to channel money back into the profession, thus enabling it to protect the rights of sex workers better.

It is essential that the present status be changed and necessary steps be taken to ensure that Sex workers should enjoy the same protections and benefits as other citizens and workers. Sex workers must be understood as persons endowed with rights in a meaningful fashion, not merely as a rhetorical claim.[7] Let the government aware about their rights as well so that, they are not denied with their basic rights.

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