

Rights of Sex Workers in India “Are Profession and Dignity Synonyms? ”

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Abstract

“Although, several International Covenants have been ratified by India on women rights and also has a Constitution that expressly criticize the exploitation and discrimination based on gender and sex, then also it has not been successful in constructively promoting and protecting the human rights of women, especially mentioning the sex works in India. This miserable state of affairs is manifested by the intensity and extent of violence that still exists in the sex industry - discrimination at the hands of police and judiciary, exploitation during the housing facilities and employment, deep concerns relating to health, safety and security of the sex workers including the issues of lack of consent and consultation, extortion and pimping, rejection of self-determination and psychological abuse. The article focuses and highlights the plight of sex workers in India and the challenges reflected that are encountered by them as well as how this profession is not dignified in India where the right to livelihood is interpreted as part of right to life under Article 21 of the Constitution of India. The pertaining policy framework for the rights and protection of sex workers through rehabilitation and rescue techniques is ineffective in safeguarding their interests since it has been governed by the principle that sex work is immoral. Therefore, the article offers a substitute suggestion which whirl around the concept of redefining prostitution as sex work and further legalizing and decriminalizing sex work in order to protect the human rights and how ‘dignity’ and ‘profession’ are treated as synonyms in India.”

“**Keywords** – women rights, discrimination, sex workers, legalising and decriminalising sex work, policy framework, immoral, dignity and profession.”

Introduction

“Over the years, one of the notable changes that have been seen is the emergence of an international consensus on human rights. It is unanimously agreed by one and all that there are certain intrinsic and fundamental rights that cannot be denied to human beings and must remain unchallenged and absolute in their entirety. In 1948, the United Nations further stressed upon this premise by adapting the Universal Declaration of Human Rights, which recognized every person’s right to life, liberty and security.”

“These rights are also enshrined in the Indian Constitution under Article 12, 14, 15, 21 and 32. They have been formulated in a manner similar to that of the U.S. Constitution’s Bill of Rights. Article 15 establishes that individuals will not be discriminated on the basis sex, caste, class, religion and other such attributes. Trafficking is prohibited under Article 23 of the constitution. Article 24 bans the practice of employing minors in hazardous occupations. These fundamental rights under the Indian constitution are inalienable as well as positive in nature and are strictly enforceable. Some other objectives that the constitution lists down are the right to livelihood for all individuals, protection of women and children against all forms of abuse, right to practice any occupation in a free and fair manner and under humane and just work conditions.”

“Much of the inspiration for the dignity of a human being in international and regional history”

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“derives from the Universal Declaration of Human Rights. The Preamble speaks about dignity in two places: ‘whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ...’, and a little later: ‘whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedoms’. Article 1 takes up this theme and provides: ‘all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’ There have been more mentions of the word ‘dignity’ in the remainder of the text. As said in the Article 22, it has been derived that the right to social security provides every member of a society, a right to social security and is also entitled to realization by the way of national effort and international cooperation and in addition with the resources and organization of every state for the social, economic and cultural rights indispensable for the dignity of a person as well as free personality development. Article 23(3), laid down in the context of right to work. Provides that ‘everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection’.”

“In addition to that, protection is available by way of legislation to marginalised groups, namely religious and ethnic minorities, women and children, who are facing issues concerning discrimination, exploitation, denial of livelihood, etc. Such laws include the Indian Penal Code, Code of Criminal Procedure, Bonded Labour Act, Child Labour Act, Minimum Wages Act, NCW Act, Protection of Human Rights Act, SC/ ST Act, etc.”

“Point being, even though India is signatory to several international agreements, has an excess of associated legislation and has set up ample national and state human rights commissions and other related bodies, it has failed to protect the human rights of its citizens. There are several reasons as to why India has not done a satisfactory job in safeguarding human rights, in spite of taking all the necessary steps. One of them can be the mentality of people that do not tend to change with time. Another major reason for non-performance is the state of the Indian legal system and its enormous backlog of pending cases, so much so, that people have estimated that it may take more than 350 years for the Judiciary to get rid of this backlog.”

“Safeguarding the human rights of citizens is the prerogative of the state and is essential in ensuring the well-being of the people of that state. Ignoring violations of human rights in terms discrimination in access to healthcare and education, alienation and exploitation at work, forceful misappropriation of wages, and defilements of similar kinds, can go a long way in ascertaining the overall welfare and development of the concerned state in a negative manner. Likewise, discriminatory treatment of minority groups by the law enforcement agencies can result in such groups going underground and facing further violation and abuse.”

ANALYSIS

“The approach of the CEDAW—and the voices of female sex workers within India. It categorises sex work into four legal models, namely, prohibition which criminalizes all aspects of the sex trade, partial decriminalization which criminalizes only those who force women into sex work and those who trade in under-age sex workers, social control legalization which decriminalises but regulates the sex trade with the aim of containing through (often punitive) restrictions, and finally, pro-work which advances towards sex work as a valid employment by extending the legal and human rights of other workers to sex workers. The article argues that the legal response to sex work most nearly accords with a women’s human rights

approach is partial decriminalization combined with a pro-work model as well as places India's current regulatory framework into the prohibition of the same. Although, the institution of this model in India constitutes considerable challenges and problems, it has a magnificent capacity to, first, reduce the corruption and crime that surrounds sex trade, second, to promote, protect and enhance the public health and third, to provide the appropriate human and legal rights protection to sex workers as required by international obligation."

"The most imperative aspect to ponder upon is that does profession and dignity go hand in hand? The Universal Declaration of Human Rights (UDHR) was crucial in familiarizing the use of 'dignity' or 'human dignity' in Human Rights discussions. It should be understood by the use of 'dignity' beyond the basic minimum principal, does not provide a universalistic, principled basis for judicial decision-making in the context of human rights, with the meaning that there is mutual perception of what dignity requires primarily and considerably within or across jurisdictions. Women's right to dignity, profession including other rights, are a part of fundamental human rights that were entrusted by the United Nations for every human being on the planet since about 70 years ago. These fundamental rights include the rights such as right to live freely and away from violence, slavery and discrimination. In addition, it also includes right to be educated, to own property, to vote as well as to earn a fair and equal wage. Acquiring rights for a woman is about equality and giving equal opportunities and also to bring a change in the society including how the countries and the communities work."

"The meaning of dignity is therefore context-specific, varying significantly from jurisdiction to jurisdiction and over time within particular jurisdictions. Indeed, instead of providing a foundation for principled decision-making, dignity seems to be open to a remarkable judicial manipulation, increasing rather decreasing the judicial discretion. A convenient language for dignity has been provided for the adoption of factual interpretation of human right guarantee which appear to be, not just coincidentally intentional, but highly contingent on local circumstances. However, despite that, we contend that the concept of 'human dignity' plays a vital role in the human right's development and not just in providing an agreed content to human rights but in contribution to the interpretation and adjudication of particular methods of human rights. Not to mention that society too plays a crucial role when it comes to terms of human dignity. Societal values and perceptions are what builds the basis on which certain professions are seen to be dignified and some that aren't."

"The sex workers, who are made to join this profession, operate under various constraints. Most of them enter the sex industry without consent, when they are children. Due to their tender age, they become increasingly susceptible to violence and exploitation, both physical and economic. As per studies conducted in the Sangli district of Maharashtra and in villages of Nepal, it has been discovered that more than half of the sex workers were roped in when they were less than 14 years old. Also, in most cases, it was the family members of the children, who sold them to the brothel owners. Child sex work, though illegal, is a thriving industry in India and more than 40% of sex workers in India are children."

"Even the law enforcement agencies of India do not spare the sex workers. Instead of making sure that they remain safe and protected during the course of their occupation, the police in turn harass and detain sex workers without any reason and make them go through further trouble and mental trauma. The Immoral Trafficking Prevention Act, 1986 states that sex work in itself cannot be termed as an illegal activity if it is practiced independently and privately. The police disregard this legislation and arbitrarily arrest sex workers and extort them, releasing them only after they are paid money by the sex workers. And, due to position that sex workers have in the society, they are all the more vulnerable to such happenings."

LEGALISATION, DECRIMINALIZATION AND THE WAY FORWARD

“In my opinion it is essential that the state explores all the ways and means by which the sex workers’ human rights can be effectively protected and their economic and social status be elevated. One of the ways for achieving that is forceful rescue and rehabilitation’ of the sex workers. Sex workers would be ‘rescued’ from their brothels and then relocated to different places. They would be provided adequate means of livelihood, so that they can find gainful employment in order to sustain themselves. Rescue and rehabilitation would require the state to use various methods in order to restrict entry into the sex industry, such as prohibiting the trafficking of women and children. Although in practice, there is always confusion with respect to the policy behind this move. Some groups are guided by the principle that sex work is immoral, so it is not always clear if the motive behind the ‘rescue and rehabilitation’ is to impose and enforce a certain moral perspective or to actually improve the sex workers’ conditions and well-being.”

“The other way to restore the human rights of sex workers and reduce the high levels of violence and exploitation they face is by legalizing sex work and the sex industry in itself. That would ensure that the political rights and civil liberties of sex workers remain protected. Trafficking and exploitation of sex workers can also be dealt with, through this method.”

“The first step in the process of legalizing prostitution is to redefine ‘Prostitution’ as ‘Sex Work’. Sex workers have been referred to as Prostitutes ever since the concept of sex work originated in the west. Prostitutes are considered to be a category of women who are looked down upon and alienated from the ‘mainstream society’ because of their mannerisms and sexual norms but primarily their occupation and the value judgment that is attached with it.”

“Designating ‘Prostitution’ as a special human rights issue is in itself a violation, since it unnecessarily distinguishes prostitution from other kinds of female or low status labour. Giving undue importance to the issue of prostitution reinforces and further highlights the weak and vulnerable position of the women and men involved in this profession. ‘Sex Work’ is a term that the sex workers have themselves come up with. Instead of attaching social and psychological connotations to it, it should simply be seen as just another income generating activity for women and men. It is essential that the service of providing commercial sex be looked as ‘work’, if the process of exclusion is to end for the sex workers. Instead of highlighting the differences between sex work and other professions, the focus needs to shift and what must be noticed is how much sex workers have in common with any other workers; that the social discrimination and other problems that the sex workers face during their work, are not that unique and different from the problems faced by workers employed in other menial occupations. “

“Legalization of sex work (Prostitution) as any other form of work is an issue that has been widely contested time and again. The International Labour Organization (ILO) has taken a protectionist approach in this regard. In 1996, the Global Alliance Against Traffic in Women launched an international investigation of “Trafficking in Women”. The report examined the process of recruitment of sex workers and the living and work conditions that they were subjected to. It also stressed upon issues such as lack of accountability in this unorganized and informal sector, lack of recourse to the authorities and the extremely high levels of violence and abuse that prevailed in the sex industry. This research was ground breaking in terms of realizing the need for recognition of the human rights and labour rights of sex workers and establishing the minimum standards for working conditions in the sex industry.”

“Furthering into the debate of legalization of the sex industry, there are many economic, worker and societal benefits that could come about by legalizing sex work. One of the major benefits that the government could reap is that, if sex work happens to get legalized, it can be regulated and taxed. This would undoubtedly add

another entire market to the economy and contribute significantly in terms of revenue generation. The International Labour Organization has mentioned in one of its recent reports that in countries such as Netherlands, Japan, Thailand Malaysia and Philippines, the sex industry accounts for a major share in the total GDP of the country.”

“Legalizing sex work would also result in significantly improving the working conditions for sex workers. Since the sex industry would become a regulated industry and minimum standards for work would be established, the sex workers would not be subject to exploitation and abuse. Brothel owners and money lenders would be accountable to the law enforcement agencies and would be governed by a statutory framework of laws. Sex workers would be entitled to labour rights as well as regular earnings in exchange for their services. Also, there would be a reduction in the discriminatory treatment that is meted out to the sex workers in areas of healthcare and education.”

“Sex workers often experience weakening stigma and discrimination that enlightens the ability to protect their health and well-being. It is preferred by them not to reveal their occupation when they are asking for help and care from the government or private hospitals because of their prior experience of being treated ill, stigmatised and discriminated against. Female sex workers are humiliated and criticised, made to wait for inordinately long periods of time, not examined properly, forced to undergo HIV tests, overcharged for services at private hospitals, denied medical services delivery care; and their confidentiality violated. Sex workers have been discriminated and subject to sexual demands at hospitals where they go to seek care and medical treatment from the doctors. The vulnerable position of sex workers is further exacerbated in medical facilities. Condoms found on the premises of brothels are being used as evidence of prostitution against sex workers.”

“In 2014, the SR-VAW following a visit to India observed, “Sex workers in India are exposed to a range of abuse including physical attacks and harassment by clients, family members, the community and state authorities; they are forcibly detained and rehabilitated and consistently lack legal protection; and they face challenges in gaining access to essential health services, including for treatment of HIV/AIDS and sexually transmitted diseases.”. The Rapporteur also called for a review of anti-trafficking legislations: “The Special Rapporteur recommends that government review towards the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes the sex work and ensures that standard measures to address trafficking of persons do not overshadow the need for effective measures to protect the human rights of sex workers.””

“Society as a whole would also thrive if the sex industry is given suitable government sanctions. Legalizing sex work would result in a general reduction in the level violence and crime that prevails in the society. The sex industry would no longer be required to remain underground. There may be stricter laws to regulate the practice of commercial sex but since it will be an organized sector, the conflict between brother owners and sex workers would not go unnoticed and the sex workers would no longer be at the vulnerable edge.”

“But simply recognizing the rights of sex workers would not be sufficient, without built-in safeguards for civil liberties. Legalization and decriminalization may also have its vices. They may result in the practice of excessive state control. That, coupled with the stigmatization that sex work is immoral, is unlikely to achieve the desired result. It’s imperative that the state strikes a balance and understands the context and constraints under which the sex workers operate.”

CONCLUSION AND SUGGESSTIONS

“It is evident that India as well as many other countries have not been able to successfully protect the human rights of the citizens. Sex industry in India is plagued with problems such as child sex workers, lack of

access to health care and education, violence, abuse and exploitation at the hands of the brothel owners, local money lenders and law enforcement agencies. Even though India has a sound constitution and legislation in place, and has set up a variety of organisations and commissions to tackle the issues of human rights violation, it has been ineffective in guaranteeing the fundamental rights to its citizens, in this case, sex workers. Methods of rescue and rehabilitation have failed due to the existence of misnomers such as sex work being immoral.”

“Legalization and decriminalisation of the sex industry has been suggested as a viable method to restore the human rights and labour rights of sex workers and reduce the high levels of violence and crime that is prevalent in this industry. In order to do that, prostitution needs to alienate itself from special status that has been accorded to it and needs to be redefined simply as sex work. Popular imagery of a woman engaging in sex work needs a to be reengineered to the extent that stakeholders like politicians, media and law enforcement agencies stop visualising and portraying sex workers through binary lenses and in a stereotypical manner.”

“Enacting newer legislation to restrict sex work would not prove to be effective, unless it is closely understood as to what sort of constraints, coerce women to inadvertently become a part of the sex industry, be it their low status in the society, marginal earnings or domestic abuse. “

“Non-governmental organizations play a vital role in bridging the gap between mainstream society and sex workers. Their non-judgmental and unbiased approach and the credibility they enjoy enables them to aid sex workers with better access to healthcare and education, and provide them information and other technical support.”

“Awareness and sensitization about the human rights would go a long way in ensuring better treatment for sex workers. Sonagachi has set a self-regulatory body that comprises of members of the district and officials from the National Human Rights Commission and the Bar Council of India. Such establishments must be set up in other parts of India as well.”

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