



HUMAN RIGHTS OF SEX WORKERS

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Abstract

Although India has ratified several international covenants on women rights and has a constitution that expressly condemns discrimination and exploitation based on sex and gender, it has not been successful in effectively guarding and promoting the human rights of women, especially sex workers in India. This sad state of affairs is manifested by the intensity and extent of violence that exists in the sex industry, discrimination at the hands of the police and judiciary, exploitation during employment, concerns relating to health, safety and security of the sex workers and their children, presence of minors in the sex industry, issues of lack of consent and consultation, extortion and pimping, abjuration of self-determination and psychological abuse. The paper highlights the plight of sex workers in India and reflects on the challenges that are encountered by them. The existing policy framework for protection of sex workers' rights through techniques of rescue and rehabilitation is ineffective in safeguarding their interests since it is governed by the principle that sex work is immoral. Therefore, the paper proposes an alternative hypothesis which revolves around the idea of redefining prostitution as sex work and further on, legalizing and decriminalizing sex work to protect the human rights and health of sex workers in India.

INTRODUCTION

After World War II, 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 32.1 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.

In addition to that, protection is available by way of legislation to marginalized 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.²

Quasi-judicial bodies and Ombudsman organizations and associations established under legislation, such as the National Human Rights Commission (NHRC), National Commission for Protection of Child Rights (NCPCR), National Commission for Women (NCW), are also involved in the process of administering justice in cases of human rights violation. They function in a speedy, inexpensive and effective manner and investigate from the grass root level.³

Public Interest Litigation is another way in which the Indian judicial system has become accessible and approachable to the citizens. In the case of a PIL, all it takes for a person to move the Supreme Court is a written application of an issue that is of public interest.⁴

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, despite taking all the necessary steps. One of them can be the general lack of accountability in national and state commissions and the police force. 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.⁵

HUMAN RIGHTS AND HEALTH OF SEX WORKERS

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 of 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.

Even though there's a plethora of laws that are in force, due to their poor implementation, India has not allowed various groups such as women and people belonging to subordinate castes & tribes to make full use of the gains of such laws in terms of equality in health care and education.

Indian women are particularly seen to be experiencing the effects of discrimination and violation of their human rights in areas of education, health and work. This is marked by the poor literacy and earning rates that women have, compared to men.⁶

Sex workers constitute to be an all the more vulnerable group with this already vulnerable group. 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 old⁷. 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.⁸

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.⁹ And, due to position that sex workers have in the society, they are all the more vulnerable to such happenings.

Sex workers are also discriminated and exploited in areas of access to health care, in terms of earnings for the services they provide, and in the process of procuring financial credit. This situation has only worsened after the HIV epidemic. For instance, in a hospital, an HIV test is prescribed for a general person, only if he is suffering from TB, STD or diarrhea, but in the case of a sex worker, HIV tests are mandatory even if they want to get themselves for common cold. Such happenings are not only entirely discriminatory in nature, but also result in the further stigmatization and marginalization of the sex workers.¹⁰

In another instance in a hospital in Kolkata, it is a part of the process for the health workers and medical practitioners to take a blood sample of every woman visiting the hospital for treatment, if she happens to be a sex worker. There is no justification that is provided for the nature and purpose of such a test. This amounts to a clear violation of the sex worker's right to information and right to privacy.¹¹

Another area of concern for the sex workers are their earnings. This practice is more prevalent in the case of child sex workers that whatever amount they earn in return for their services, most of it is seized by their 'managers' or the brothel owners, and what is left is an amount, which is not even sufficient for one meal a day. In some areas of Sonagachi, the red light district of Kolkata, it has been observed that the sex workers were made to turn over their entire income to the brother owners, a situation similar to slavery.

In addition to facing discriminatory practices in areas of health and employment, it is very difficult for sex workers to obtain credit through any means. Due to lack of proper documentation, there is negligible access to banks and other financial institutions and local money lenders are the only option that they are left with. The money lenders spare no effort to exploit the sex workers in this area. In some cases, it has been found that the interest rate that was charged to the sex workers was above 100% per month. In most of these cases, the sex workers remain indebted to the money lenders throughout their lives and are exploited by them in cash and kind.

Access to education is a far-fetched dream as far as sex workers are concerned. In the Sonagachi district, literacy levels of sex workers are as low as 11%, a figure much below than even women in rural India.¹² Sex workers cite poverty as the main reason for entering the profession, and almost all of them are illiterate.



Overall, the sex industry is marked by the high levels of poverty, illiteracy of the individuals, discriminatory treatment in terms of health care, earnings and employment, exploitation by the law enforcement agencies and harassment at the hands of the brothel owners and money lenders.

LEGALISATION & DECRIMINALIZATION

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.¹³

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 labor. 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.¹⁴ 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 Labor 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”.¹⁵ 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 groundbreaking in terms of realizing the need for recognition of the human rights and labor 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 Labor 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.¹⁶

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 labor 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.¹⁷

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 brothel owners and sex workers would not go unnoticed and the sex workers would no longer be at the vulnerable edge.¹⁸

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 & RECOMMENDATIONS

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



organizations 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 decriminalization of the sex industry has been suggested as a viable method to restore the human rights and labor 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 visualizing 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 there 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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