

CONDITION OF SEX WORKERS IN INDIA

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ABSTRACT

Reading *ACHARYA CHATURSEN SHASTRI'S* book "*VAISHALI KI NAGARVADHU*" drown us into the river of sorrows. A prostitute or a tawaif or devadasi as different times have called them in India- are the facilitators of what some people say the "oldest profession of the world" i.e. **prostitution**. The pathetic condition of sex workers is clearly visible in a number of media reports and a dozen of you-tube documentaries. According to official estimates, there are over 12, 00,000 sex workers in India, though the actual figures are well over that.³ People in sex work face a number of discrimination and violence owing to their criminalised status and the continued conflation of sex work with trafficking. Human Rights are universal, absolute and fundamental moral claims, in the sense that they belong to all human beings, they are inalienable and are basic to a real living. In a number of pronouncements supreme-court of India has quoted for dignity of sex workers but still the conditions aren't improving. Author in his research found they lack fundamental rights as provided in Articles 14, 19 and 21 of Indian Constitution and also they lack human rights as in accordance with Articles 1, 3, 4, 5, 19, 22, 23(1), 24 and 25 of UDHR.

This research paper based in doctrinal research methodology tries to understand the flesh trade prevalent in India, mode of operation of sex trade, trafficking and exploitation of needy humans to compel them into this dark ocean of flesh trade, legal provisions and miserable condition of sex workers and critically examine availability of human rights as well as fundamental rights of sex workers with lenses of UDHR and Indian constitution.

KEY WORDS: - sex-workers, trafficking, discrimination, fundamental rights, UDHR.

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³ Annual Report, 2009-10, National AIDS Control Organisation, Ministry of Health and Family Welfare, Government of India.

INTRODUCTION

According to *'yourdictionary'* website sex worker is "any person paid to sexually gratify or arouse a customer, as a prostitute, a model in pornographic magazines, or a performer in pornographic films or nightclub acts".

Prostitution is one of the oldest professions of the world practiced since the advent of the organized society. Prostitution is practiced in nearly all the countries and in every type of society. Prostitution and the simultaneous evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of human person and endanger the welfare of the individuals, the family and community.⁴ Women became used to institutional legitimization of their low status and find nothing wrong in crimes. She has become a thing to be kidnapped, abducted, raped and gifted. For the satisfaction of sexual appetite of her master, she was purchased and also possessed. Thus she was reduced from human person to just bodies, for male utility.⁵

According to World Health Organisation (WHO) violence is defined as the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that results or has a high likelihood of resulting in injury, death, sexual or psychological harm, mal-development or deprivation of liberty.

The aim of this paper is to throw light on darker side of this odious act along with understanding its mode of operation.

PROSTITUTION IN INDIA

Prostitution is argumentative issue in India. Although, prostitution (exchanging sex for money) is not illegal, but the circumferential activities (operating brothels, pimping, soliciting sex etc.) are illegal. In fact the worst part is that the people in India forget that in series of hypercritical abuse of this profession, they put a question mark on the life of that person...of that girl who had possibly been just another victim of unexpected and unwanted assault of bad times.⁶ SONAGACHI in Kolkata, KAMATHIPURA in Mumbai, G.B Road in New Delhi, RESHAMPURA in Gwalior and BUDHWAR PETH in Pune host thousands of sex workers. In these red light areas of the country everyday thousands of girls are compelled in the profession. The most common form of prostitution involves women who sell sexual services to heterosexual

⁴ Ghosh, S. K., *The World of Prostitution*, A. P. H. Publishing Corporation, New Delhi, 1996, Page No. 95

⁵ Dr Singh, P. K., *Brothel Prostitution in India*, University Book House (P.) Ltd. Jaipur, 2004, Page No. 3

⁶ <https://www.ukessays.com/essays/social-work/sex-workers-in-india.php>

men. The regular pattern in society and throughout history is for the customers of prostitutes to be men. Male prostitutes who make themselves available to women are uncommon and lesbian prostitutes are considered extremely rare.⁷ Basically prostitutes are divided into grades in accordance with –

1. Their personal charms and accomplishment
2. Place of residence
3. Clientele e.g. brothel, call-girl etc.

The worst form of prostitution is brothel prostitution which is prevalent in various red light areas of India, here these workers suffer from a number of violence, exploitation and inhuman treatments. They are dependent on brothel keepers, pimps etc.⁸ and they provide sexual favours to their clients in exchange of money. These prostitutes belong to low socio– economic group families. The number of the clients they entertain daily is quite high and the localities where the brothels are situated are either densely populated or have high frequency of floating population e.g. KAMATHIPURA (Bombay), G.B. Road (Delhi).

MODE OF OPERATION

Poverty is one of the main reason which compel a helpless women to the doors of prostitution. A woman tortured economically, regularly mal-treated by family members, boyfriends or husbands who later turns out to be a pimp and a one with very low education strata rarely finds any other means to feed herself. Also there are many social factors which exploit the women. The constricted mentality leads to view that a women is a commodity. The bitter truth is that women who had sexual experience before marriage are still considered as used items or characterless and are rarely to be accepted as wife or daughter in law.

Human trafficking is the third largest organized crime after drugs and the arms trade across the globe. According to the definition of the United Nations – *“trafficking is any activity leading to recruitment, transportation, harbouring or receipt of persons, by means of threat or use of force or a position of vulnerability”*. Close to 80% of the human trafficking across the world is done for sexual exploitation and the rest is for bonded labour and India is considered as the hub of this crime in Asia. As per the statistics of the government – in every eight minutes a child goes missing in our country.

⁷ Frank N. Magill, *International encyclopedia of Sociology*, Vol. 2, London. Chicago, 1995, Page No. 44

⁸ Dr Singh, P. K., *Brothel Prostitution in India*, Op. Cit., Page No. 47

In Kerala women are sold openly in markets. Flesh trade in parts of Uttar Pradesh, Rajasthan and Madhya Pradesh is an activity in which only criminals and some communities are engaged.⁹ *'Human Trafficking, Human Misery'*, a book written by ALEXIS ARONOWITZ, states that an estimated 80% victims of trafficking are sexually exploited, abused or forced into prostitution as most victims are young women and children.¹⁰ Mainly women are trafficked for prostitution to India from Nepal is estimated to number about 1, 00,000 according to the Ministry of Labour and Culture.¹¹ Nepalese women are considered attractive because of their relatively fair skin, slender bodies and small Asian features. Many of the Nepalese girls end up in Bombay but they are also found elsewhere. It is difficult to find a brothel in India without some Nepalese women. Many of the girls are illiterates and come from villages in the mountains. They are told they are being sent to India to work in factories or as servants.

The industry operates by involvement of various chains of crimes and criminals as -

- (i) Uneducated, minors and peoples of lower socio-economic strata are tricked or lured in the name of providing jobs or marriage or sometimes kidnapped or abducted by the traffickers.
- (ii) Then these are sold for small amount of money to the pimps, brothel owners or madams.
- (iii) Then they are compelled and ill-treated to accept the marsh of this flesh trade. They are starved, solitarily confined and repeatedly raped to act in accordance.
- (iv) The perpetrators are protected by various peoples belonging to high profile societies.

EXPLOITATION OF SEX WORKERS IN BROTHELS AND THEIR CONDITION

"Premises only become a brothel when more than one woman uses premises for the purposes of prostitution, either simultaneously or one at a time".¹²

This implies that if two women are present, both must be there for the purposes of prostitution. In circumstances where prostitutes are working individually out of one flat but there is a rotation of occupants and the young women are moved on a regular basis, it does constitute a brothel.

Brothels are the dingy places with small confined cells with a messy bed to serve the customers. The sex-worker is forced to lose her dignity a number of times day by day for fulfilment of their pity needs as food, shelter and clothing. The fundamental rights guaranteed via

⁹ Daily Indian Express, Date 01/09/1984

¹⁰ <https://opinionfront.com/effects-of-human-trafficking>

¹¹ POUDEL, MEENA, *Traffic in Women: Violation of Women's Dignity and Fundamental Human Rights*, Asian Conference on Traffic in Women, December 11 – 13, Seoul, Korea, Page No. 137

¹² *Stevens v Christy [1987] Cr. App. R. 249, DC*

Article 14, 19, 21 and 23 of the Indian constitution are lost somewhere. Their basic human rights guaranteed by UDHR are also beyond their reach. Their children are also being compelled to adopt the same profession as hereditary or traditional profession. They lack basic medical facilities and access to justice, they are completely unaware with the outside world.

Art 21 of Indian constitution provide right to life and personal liberty , sex workers have a right to live with dignity , but then also most of their clients and exploiters do not even hesitate to deprive sex workers from their fundamental rights.¹³

WEATHER PRINCIPLES LAID IN UDHR AND INDIAN CONSTITUTION AVAILABLE TO SEX WORKERS?

- Article 1 of UDHR reads “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.”¹⁴ But the most of the sex workers in Indian brothels are neither born free nor have dignity as day by day they are served as items to the customers.
- Article 2 speaks about its applicability without discrimination.
- Article 21 of Indian Constitution is similar to Article 3 of UDHR “Everyone has the right to life, liberty and security of person.”¹⁵ In a number of judgements it has been held that Right to health is to be read with right to life.¹⁶

Health is a major concern of those women who are self – conscious of the risks of their occupation. The high class prostitutes takes care of their health and retain their beauty and charms for a long time, while the brothel women who have to live an irregular life lose their health earlier. A prostitute who resides in a house of prostitution for a few years approaches to decay. Sleepless nights, drinking habits and carnality destroy their health. They suffer from a number of venereal diseases as AIDS, Syphilis and Gonorrhoea etc.

- Article 23 of Indian constitution is similar to Article 4 of UDHR regarding abolition of slavery but mostly sex workers are kept in slavery.¹⁷
- Article 5 Of UDHR deals with inhuman treatment but still prostitutes confined in brothers suffer from inhuman treatment they lack proper shelter and sanitation and compelled to live in dingy and messy cells.¹⁸

¹³ as stated by justice KATJU in BUDHADEVA KARMASKAR v. STATE OF BENGAL

¹⁴ UDHR article 1

¹⁵ UDHR Article 3

¹⁶ STATE OF PUNJAB V MOHINDER SINGH CHAWLA(1997) 2 SCC 83

¹⁷ Justice RAMASWAMY in Gaurav Jain v UOI

- Article 19(1a) of Indian constitution has its roots in article 19 of UDHR but according to author in this particular case right to expression must include right to resist, in the historic judgement of article 377¹⁹ it was held right to choose sexual partner is fundamental right but in brothels they are compelled to have sex with the available partner.
- Article 22 of UDHR speaks about social recognition still in India sex workers are considered immoral and rarely are accepted as part of family.
- In ESC Ltd. V SUBHASH CHANDRA BOSE (1992) SCC 441 at 462 SC cited Article 25(2) of UDHR while upholding right to health of workers.
- Article 28 of UDHR reads as “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

LEGAL REMEDIES AVAILABLE TO SEX WORKERS IN INDIA

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 criminalise 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. Section 370 to 373 of IPC²⁰ deals with trafficking the sections 372 and 373 are more specific regarding trafficking of minors for prostitution. Indian constitution guarantees fundamental rights and which can be enforced by petition letters. Right to education has emerged as a tool to spread awareness and make children of these exploited familiar with the rights and remedies available. Many NGOs are working for resurgence of these suppressed classes so as to bring them to mainstream.

Recently SC considered prostitution by adults as profession and provided immunity from arbitrary arrest and exploitation by police officers.²¹

FACTORS WHICH ACCELERATE GROWTH OF BROTHEL PROSTITUTION

1. **Poverty:** - Lack of alternatives to gain a living is recognised by experts and international agencies as a strong driver to enter prostitution.

¹⁸ Gaurav Jain v UOI

¹⁹ NAVTEJ SINGH JOHAR V UOI

²⁰ INDIAN PENAL CODE 1860

²¹ Budhadev Karmaskar v. State of West Bengal And Ors. Criminal Appeal No. 135 of 2010

2. Unemployment: - The desire of employment is strong enough to compel anyone in this hell. Traffickers misuse this vulnerability to exploit by false promises of better job opportunities.
3. Support of police officers: - Justice RAMASWAMY accepted the police complicity in trafficking into prostitution by observing that the victims of the trap are poor, illiterate and ignorant sections of the society and are the target group in the flesh trade; rich community exploit them and harvest at their misery and ignominy in an organised gangsterism, in particular with police nexus.²²
4. Illiteracy and lack of skills: - Illiteracy and lack of skill don't leave these weaker section of society with any other option except them to wilfully join these brothels or to enter in flesh trade.
5. High income of brothel owners: - Justice RAMASWAMY in the same judgement quoted rich community exploit them and harvest at their misery and ignominy. Which clearly pointed towards high income of brothel owners at cost of misery to sex workers.²³

SUGGESTIONS

- Medical and Legal awareness must be spread in vulnerable areas with the help of various institutions.
- Enforcement of laws must be in a proper manner.
- Sex-workers after rescuing must be trained with some skills so that they have some means of livelihood.
- Brothels should be legalised so as to bring them under the scanner of state.
- Camps must be organised frequently to inform citizens about recent legislations.
- Instead of having no identity they must be treated as a specific class.

CONCLUSION

The author concludes that condition of sex workers in brothels is pathetic. They are not only the victims of the perpetrators of this heinous offences but also they lacks the basic fundamental rights. Only drafting of pieces of legislations is not enough but the need is to provide awareness and their proper enforcement. Not only of the state it's also the duty of all individuals to understand sex-workers are also humans.

²² GAURAV JAIN V UOI 1997 8 SCC at 114

²³ Ibid. 19

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