

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 6 | Issue 6

---

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Critical Analysis on Unveiled and Hidden Realities of Sex Workers in India

---

KHUSHI MATHUR<sup>1</sup> AND SOHAM GARG<sup>2</sup>

## ABSTRACT

*“SEX WORK” refers to performing sexual activities in order to give pleasure to one’s erotic or sexual desires in exchange of goods or services provided with consent. This may happen frequently or infrequently. The word “sex work” itself defines it as a “WORK,” making it clear that anyone can engage himself or herself in this activity on their own will.*

*However, the harsh reality of society is that the large number of people engaged in this activity are because of various factors, and somewhere in the community they are not really accepted despite being legalized in our country. This article is aimed to draw reader’s attention to the critical analysis on various aspects of sex workers, which will include its history & background, hidden realities, legal framework and current situation.*

*It has been a debatable topic that whether the sex work is criminalized or decriminalized. It also shed light on morality, human rights, exploitation and trafficking. The authors discuss on the ‘hidden truths of sex work and workers’ through this article and draw a veil over the unrevealed facts, concerns and challenges encountered by them, and conditions of these people.*

**Keywords:** Sex-workers, Prostitution, hidden realities, devdasi.

## I. INTRODUCTION

The term “Sex Work” is a critical subject matter of debate, controversy and social stigma. In simple words, it can be defined as providing sexual services in exchange of some money or goods. It is a broad terminology which includes sub-areas like prostitution, escort services, webcam modeling, pornography, etc. among which prostitution is very popular since historical times. It has been a part of our society back from ancient times.

This term or profession is often associated with women and girls only but in real it has an extensive approach. Men as well as non-natural people are also engaged in such activities. Which makes them also, the significant victims of exploitation, violence, identity issue, health and safety along with these females.

At some places, this work has been criminalized and even regularized by law but with different

---

<sup>1</sup> Author is a student at Amity Law University, Rajasthan, India.

<sup>2</sup> Author is a student at Amity Law University, Rajasthan, India.

societies or regions or countries, the legal status of sex work varies. In India, Prostitution itself is not illegal but the activities related to it are illegal like running brothels, soliciting people in public or at public places, living off on earnings of prostitute. But still there are many well known and well established red light areas in India where the practice of sex work or prostitution is dominant. Kamathipura at Mumbai, Sonagachi at Kolkata, GB Road at Delhi, Shivdaspur at Varanasi, Itwari at Nagpur are some of the most famous red light areas in India.

Despite of having many laws in our country, the offences, crimes and violence in this industry is still at its rage. The prevailing laws are not only sufficient to provide protection and rights to such people.

## **II. BACKGROUND OF SEX WORK AND PROSTITUTION<sup>3</sup>**

Sex work is a genus and prostitute is a species. Initially, it is important to know about the origin of prostitution for the purpose of understanding sex work as they both are interconnected.

Prostitute also known as Tawaif is a woman who used to give or sell their body to satisfy other's erotic pleasures and this practice was done in order to receive some goods or money in return of these sexual favors or services.

As per the evidences of ancient Indian history, there were the women known as 'Devadasis' who were the devotees of and committed their whole life to lord Krishna considering him as their husband. They were prevented to marry anyone else. They were considered as 'servants of god' and performs dancing, singing, temple rituals, art etc. they were highly respected and enjoyed a great social status in the societies. Their position in the society was very prestigious and honored by people of society.

Latter on they were made 'Nagarvadhu', which means 'bride of the town' and made them directly connected with royals. They were called upon by these royals to entertain them by showcasing and exposing their dancing, singing, beauty and sometimes through sexual pleasure.

At the time when portuguese and japanese stepped in india, they used to bought women from their estates as their slaves for sexual joys. Particularly during the times of colonial rule, the respect and position of such women in the society was adversely affected and deteriorated as they were exploited and made mistresses of royals or noblemen. The concept of brothels and warehouses was established from here only and these devadasis turned into prostitutes or sex labourers.

---

<sup>3</sup> Postitution: A Brief History

### **III. HIDDEN REALITIES OF SEX WORK IN INDIA**

Yet the word 'Sex' is itself something on which majority of people are not ready to talk about openly. People are lacking in sex education which is one of the most important aspect to prevent exploitation and violence against any gender of any age. People are still typically seeing sex work as taboo and stigma to our society. The word sex worker, creates an image of women engaged in sexual activity for pleasure and entertainment but the reality states that, not only women infact, men, transgenders and bysexuals can also be wittensed in this industry.

The sex work is influenced by many factors out of which some of them are as follows;

- Financial Condition- It plays an important role in making people involve in sex work. It easily attracts and turns the people into sex worker who are unable to fulfill their basic living needs for survival or due to poverty.
- Supporting Family- Many people who are suffering from financial crisis or are economically poor opt for sex work in order to support the their family, children or dependents.
- Lack of Education- Lack of education about sexual awareness and one's rights can lead to exploitation and vulnerable conditions for the people who are engaged in sex work.
- Lack of Employment Opportunities- It makes the sex work an easily accessible and fastest source of income which is more likely to attract younger ones.
- Independency- Specially adults enters in this industry believing that this work will make them more financially independent than any other without much efforts in no time.
- Competition- Teenagers are more likely to have competitive spirit and jealous nature which pushes them to stand odd one out through premiums and luxuries. And in race of achieving the same they get indulge in such work to earn on their own.
- Human Trafficking & Forced Labor- It is a serious issue where people irrespective of their age are trafficked and sold to pimps or brothel owners and forcefully pushed into sexual activities to earn for them.

People engaged in this industry due to any factor are strong victims of discrimination, violence and exploitation by society. Despite of the fundamental rights which are conferred by constitution, the workers engaged here are strictly treated adversely by majority of society, in many areas they are not allowed to access public places, provided no dignity and respect, sometimes they didn't get adequate wages for their work, their children faces the consequences

to their parent indulge in sex work, physically and mentally harassed and exploited, forcefully abused, forced to fulfill inhuman and unnatural demands etc.

One of the most famous real life example can be seen through the movie “Gangubai Kathiyawadi” based on a girl named Ganga Harjeevandas Kathiyawadi from Gujarat who was sold by her boyfriend to brothel owner. She was forcefully engaged in sex work. Latter on, she was made leader by co-prostitutes. She stood and fought for their identity, rights, dignity and respect of her friends and their children. She encouraged them to stand back against exploitation, violence and abuse done by their clients, goons and public service officers.

Second real life example can be seen in movie named ‘Khuda Haafiz’ where the newlywed couple- Sameer and Nargis, was suffering from financial crisis as they lost their jobs during recession. They got a job offer in other country through an agent. Where Nargis was required to report first. As soon as Nargis reaches that place, she goes missing under mysterious circumstances from airport. Latter it was found that the company and agent who offered her job was fake and were the part of traffickers. She was bought to other country in name of job offer, mysteriously kidnapped from an airport and was sold to a brothel.

#### IV. LEGAL FRAMEWORK

The popularly known statutes in our country dealing in this field are;

1. Prevention of Immoral Trafficking Act (PITA), 1986
2. Indian Penal Code, 1860
3. The constitution of India

In which the *section 2(a), (f), section 3, section 4, section 5, section 6, section 7 and section 8 of Prevention of Immoral Trafficking Act (PITA), 1986* majorly defines the brothel and prostitution and imposes severe penalties and punishments for various illegal acts such as keeping a brothel or allowing premises to be used as a brothel, living on the earnings of prostitution, procuring, inducing or taking person for indulging in prostitution, for trafficking in persons, attempting to commit or abet trafficking in persons, for detention of a person at premises where prostitution is carried on, punishment for prostitution in or at the vicinity of public place and soliciting or seducing of a person for the same. The punishments for these acts vary depending on the offense committed.<sup>4</sup>

*Section 372 and 373 of Indian Penal Code, 1860* states that anyone selling, hiring, or disposing

---

<sup>4</sup> Prevention of Immoral Trafficking Act (PITA), 1986

of a person under 18 with the intent to use or knows to employ them for prostitution or illicit intercourse shall be liable for punishment and fine under such section. Prostitutes or brothel owners who buy, hire, or obtain possession of a female under 18 years old are presumed to have obtained her with the intent to use her for prostitution until proven otherwise and the constitution of india provides and protects their fundamental rights and prevents human trafficking, beggar and forced labour.<sup>5</sup>

For an instance, it can be assumed that the judiciary and legislature is trying his best to provide rights and protection to sex workers by making required laws but who will gurantee the proper implementation and regulation of such laws? Who will ensure that it will not happen further? Who will witness that now such people are safe and secured in society? They are not a dark reality and separate part of society? No exploitation, no trafficking, no forced labour.....and so, who will ensure this?

Yes, executive body is here for answering the above questions but to an extent only. It is so shameful for us that some of people who are the executors of law and protector of our society are themselves involved in such heinous offences and crimes. Many of those takes bribes or favours from such people. This reality is even more darker and deeper beyond we think.

Sex workers are also the part of our society. Constitution does not discriminate between any group or society. It equally provides and protects the fundamental rights which includes the very basic right that is right to live with dignity and respect under article 21.

*Let's take a dive into landmark rulings for sex workers.*

## V. CASE LAWS

- In *Gaurav Jain v. Union of India (1997)*, The Court found that the children of the sex-workers have the right to equality of opportunity, dignity, care, protection and rehabilitation and to be part of the “mainstream of social life” without any attached “pre-stigma”.<sup>6</sup>
- The *Buhadev Karmaskar vs. State of WestBengal (2011)*, case ia a landmark judgment that has paved the way for securing the rights of sex workers in India. The judgment has recognized the rights of sex workers to life and dignity and has opened up a space for dialogue and debate around sex work.<sup>7</sup>

---

<sup>5</sup> Indian Penal Code, 1860

<sup>6</sup> Supreme Court of India, *Gaurav Jain v. Union of India and others*, 9 July 1997, [1997] 8 SCC 114 – India

<sup>7</sup> *Budhadev Karmaskar Vs. State Of West Bengal*, Landmark Case For Securing The Rights Of Sex Workers

- The right to health was recognized as a fundamental right under article 21 by the supreme court of India in ***Supreme Court's Recognition of the Right to Health (2015)*** which made healthcare services including reproductive health and HIV prevention easy to access to sex workers and prostitutes.
- In ***Supreme Court Observations on Decentralization (2018)***, the supreme court recognized right to choose a profession as a fundamental right which impliedly states that the consenting adults can voluntarily participate in this industry.

## VI. CURRENT SCENARIO

Despite of so many laws, provisions, rulings and so on the situation of sex workers and prostitution is still complex and there are various challenges prevalent in the society which are expressly and dominantly experienced and faced by them like,

- Due to their nature of work, they gets affected by their basic rights and need of dignity, education, healthcare facilities etc.
- They are often marginalized and excluded from the mainstream of the society.
- They encounters the social stigma and discrimination from the society.
- Irrespective of legal provisions, the fear of legal consequences bars the reporting of many of such incidents happened.
- It may further accelerate their vulnerability to violence, exploitation, abuse and law enforcement.
- Many awareness and healthcare programmes and campaigns in this subject are conducted by various bodies but still there is a lack of or limited availability and accessibility of healthcare facilities are exposure to reproductive problems and HIV.....so on.

It cannot be said that the government is ignorant to their vulnerabilities or taking no interest on enforcement of their rights and protection provided by the law and taking no measures for their betterment. Government is continuously making efforts in this field by introducing many initiatives among which DICs are one of the best initiative providing healthcare and sex education, awareness and services including legal aid , vocational training to ensure overall wellbeing of such people but still there is a loophole which is affecting the effective enforcement of law. People are getting aware from all those programs and campaigns but not practically accepting the fact. Maybe not expressly, but impliedly the still consider it as a stigma to society,

avoids involving them with society and also prevent them to access even the public places and resources. The society is in today's scenario is stucked to their narrow and preservative thinking. Our legal framework has recognized the rights and so far provided protection to them by criminalizing the primary aspects of sex work and prostitute. Through these legal provisions the government has established many vocational and skill development training centers, clinics and healthcare services, NGOs, legal aid for this targeted group specifically to make them financially and socially independent and empowered.

But there are prevalent cases where they are abused, harassed, illegally arrested and targeted by the officials only which creates a doubt and question on the security and trustworthiness of law and regulations. The ITPA,1956 is not sufficient enough rather it has created legal ambiguities.

The opportunities and the alternate resources available to them are not sufficient enough to overcome the hardships of economic instability, unemployment and livelihood. Majorly youngsters in race of showcase are creating a new group among them. Due to economic dependency they are not able to fulfill their desires and finds this profession a cakewalk to earn. Lack of financial resources makes them unable to avail government benefits, proper education and required adequate health facilities. The lack of these alternatives not only affect their physical and social health but also the mental health. They becomes the victims of low self-confidence, psychological and mental health issues. There is a need of more vocational and alternative resources and employment which can make or help them come out of this darkness.

Many healthcare initiatives taken by the government for the people who are indulged in sex-work and prostitution with the aim to provide a better health and rehabilitation to them. HIV testing centers providing diagnosis and treatment services , Counseling on sexually transmitted diseases and infections, STI clinics rendering services of healthcare needs, conduct of healthcare services camps to aware and educate people about safe sex are few if the examples of initiatives taken.

But it is significant that there is a gap between these facilities and availability to these services which has adverse impact on health of such people. Inadequate accessibility to these services has increased the rate of sexually transmitted disease, complexities and complications in reproduction and delay or insufficient treatment has accelerated the adversity of their health conditions.

## **VII. CONCLUSION**

There are many efforts and initiatives taken by the government of India for betterment of the



people indulged in sex activities and prostitution due to any of the above discussed factors, ensuring and recognizing rights and dignity and providing them the protection and securities, medical and healthcare facilities, education, vocational training, skill development programs, legal framework yet in our opinion these are not sufficient and adequate enough to make them the ordinary member of the society and to make them self sufficient so that they can make themselves to come out of this profession. Following are some of the measures which should be considered for effective betterment of such people. They are;

- The rules and regulations we have, criminalizes few aspects of sex work or prostitution which only creates legal ambiguity rather they must be framed in order to eliminate this profession from society which will not only makes such involved people to work hard for their future but also gives them the dignity, respect and life they deserve.
- The training and programmed should be designed in such a way that it gives a ray of hope to those who are forced by their economic problems in this situation to become financially independent.
- Reservation system can be used temporarily till it gets eliminated to make these people come forward in the society and to contribute in it which will boost their self-esteem and also gives them a platform to do and achieve something.
- The law and order should be enforced in such an efficient manner that the fear of repercussion does not bars them to report the incidents happened to them.
- Life imprisonment or Capital punishment should be given to those who traffics and forcefully makes the people to indulge in this activity.
- Periodical health checkups to such people can save them from further big health issues.
- Those who are voluntarily in this industry should be given sufficient time to come out of this and if they don't do so then shall be punished.

If these measures will be considered while framing the policies it would really help the people to come out of this industry to start a fresh beginning.

\*\*\*\*\*

## VIII. REFERENCES

- Postitution: A Brief History- <https://www.speakingtree.in/allslides/prostitution-a-brief-history/prostitutes-and-aids>
- Devadasi System: Historical Background and Supreme Court Stance- [https://www.gktoday.in/devadasi-system-historical-background-and-supreme-court-stance/#Historical\\_Background](https://www.gktoday.in/devadasi-system-historical-background-and-supreme-court-stance/#Historical_Background)
- An Unspoken Truth Behind Prostitution In India: An In-Depth Blog Analysis- <https://www.legalserviceindia.com/legal/article-11353-an-unspoken-truth-behind-prostitution-in-india-an-in-depth-blog-analysis.html#:~:text=The%20historical%20perspective%20of%20prostitution,considered%20part%20of%20religious%20rituals.>
- Legalization of Prostitution in India and its Impact on the Exploitation and Violence Against Women- <https://www.ijlmh.com/paper/legalization-of-prostitution-in-india/>
- Laws Pertaining To Sex Workers In India: Contemporary Loopholes And Way Ahead- [https://www.legalserviceindia.com/legal/article-7943-laws-pertaining-to-sex-workers-in-india-contemporary-loopholes-and-way-ahead.html#google\\_vignette](https://www.legalserviceindia.com/legal/article-7943-laws-pertaining-to-sex-workers-in-india-contemporary-loopholes-and-way-ahead.html#google_vignette)
- Prevention of Immoral Trafficking Act (PITA), 1986- <https://indiankanoon.org/doc/69064674/>
- Indian Penal Code, 1860- <https://indiankanoon.org/doc/1938563/>
- Supreme Court of India, Gaurav Jain v. Union of India and others, 9 July 1997, [1997] 8 SCC 114 – India- <https://www.acrsl.org/casenotes/m2ll8m8skjpglk8-83mk2-k5yza-dcafy-x5ztr-bjfxk-c9y55-5ryfp-dwdgr#:~:text=The%20Court%20found%20all%20of,attached%20%E2%80%9Cpre%2Dstigma%E2%80%9D>
- Budhadev Karmaskar Vs. State Of West Bengal, Landmark Case For Securing The Rights Of Sex Workers- <https://corpbiz.io/learning/budhadev-karmaskar-vs-state-of-west-bengal-landmark-case-for-securing-the-rights-of-sex-workers/#:~:text=Of%20the%20Case-,The%20Budhadev%20Karmaskar%20vs.,and%20debate%20around%20sex%20work>

\*\*\*\*\*